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IGOR TOMĚŠ

IGOR TOMESŠ

OLD AGE PENSION, CONDITIONS OF ELIGIBILITY

PODMÍNKY NÁROKU NA STAROBNÍ DŮCHOD

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The author: Doctor in Laws in 1955, Doctor of
Philosophy (in laws) in 1965 is Associate Profes-
sor of labour and social security law at the
Faculty of Law, Charles University in Prague

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INTRODUCTION

This study deals in monographic form with certain problems selected from a more comprehensive study on old-age security in socialist society, currently under preparation. It is the first monograph in postwar Czech literature, which attempts to analyze the problems of old-age pension. It was successfully defended as a Doctor of Philosophy (in Laws) Dissertation at the Faculty of Law of Charles University in May 1965.

When selecting from the overall problem of old-age pension, the author has limited himself the questions of determining the conditions of eligibility to old-age pension and its duration because he considers these two questions to rank among the principal problems involved in the legal provisions governing old-age pension. He intends to deal with the problems of the amount of old-age pension benefits and the legal guarantees of their payment at a later date.

The present study aims at summing up the results of past research and at outlining some of the principal problems involved. At this particular stage the author was mostly concerned with arranging systematically existing facts and problems, and with pointing to certain existing necessities and mutual relations, and thereby with contributing to a scientific understanding and the planning of suitable measures to be adopted in the future.

When studying questions of old-age pension, we must often consult economists, physicians, sociologists, psychologists, demographers, mathematicians and statisticians, and devote considerable attention not only to questions of legal form, but also to preliminary economic and demographic considerations, as well as to a sociological study of the effects of individual regulations. We must not forget the important requirement of finding the most effective alternative of a possible solution, which need not necessarily be the one in general use at present. Nor must we ignore solutions developed elsewhere in the world and experience gained in other countries.

Before we proceed to explain the conditions of the legal eligibility to

old-age pension, it will be useful to clarify some of the definitions used in the present study.

The term "social security" seems to be one of those terms, whose meaning is clear to everybody but which nobody has yet succeeded in defining in a generally acceptable manner.

First of all, we must realize that as an economic instrument, social security has become an essential part of distribution of the national income. Secondly, we must remember that the social security law is a set of rules of law determining the scope of consumption of people unable to work, as well as of members of the socialist society who enjoy a comparable status. Thirdly, the right to social security has the character of an inalienable right of workers established as a result of political development. Finding a proper solution of the non-antagonistic contradiction between the individual's interest in the highest degree of security, on the one hand, and the interests and economic possibilities of society at the individual stages of its development from capitalism to communism, on the other hand, is a complicated affair requiring a clarification of long-range concepts. The economic effects of any change in the social security law do not fully manifest themselves immediately, but only in the course of a longer period. This is true especially of the provisions governing pension security, where the full impact of every reform appears only after several decades and where only the future can verify whether the adopted measures were appropriate.

Although we have not undertaken the task of defining social security, it is necessary to determine the meaning of this term at least for the needs of the present study. In order to avoid ill-considered definitions without adequate scientific preparation, we shall limit ourselves to outlining the features of the socialist law of social security. It is a set of legal rules governing relations whereby the socialist state provides security to a specific group of people against the economic effects of unintended inability or reduced capacity to work, due to illness, accident, unemployment, maternity, care for a specific member of the family, old age and loss of the breadwinner, and against the economic effects of special events, in particular the birth of a child, the upbringing of children and their education, death, etc.

In order to achieve its objectives and to fulfill its tasks in this sphere, the state makes use of different organizational, administrative and financial methods, depending on the nature of each case and the needs involved; the methods most frequently applied include "social insurance", "state social security", and "social welfare". The main differences between these methods may be briefly summed up as follows:

“social insurance” provides eligible persons with the title to benefits as a counter-value for the payment of premiums; under “state social security” schemes, eligible persons are entitled to benefits in cash and in kind as a service financed by society (depending on the type of benefits, these schemes are called, for example, pension security); under “social welfare” schemes, needy persons are provided with benefits in kind and us cash, generally through a non-contributory scheme financed by society.

We must also determine the place of old-age pensions in the system of social security. As already indicated, old-age security constitutes one of the branches of the social security law. This term may be applied to a set of rules governing the relations whereby the state provides to its citizens (in some cases only to workers or certain workers) who have reached a specified age and have met certain prescribed conditions, certain material, cultural, health and other means of life within society. These rules govern individual and collective care, benefits in cash and in kind, benefits and services, or any other activities aimed at the aforesaid goal — e.g., the work of public organizations concerned with pensioners, the involvement of pensioners in political and other public work, etc.

Of these varied forms of protecting aged persons we have chosen only one — old-age pension. For the time being, old-age pension is considered to be a cash benefit regularly paid by the administrator of an old-age scheme to persons who have attained a specified age and have met the prescribed conditions. The payments are made on the basis of a legally valid decision granting pension and specifying its amount.

However, old-age pension is not the only cash benefit regularly paid in old age under a pension scheme. The same result is achieved through a personal pension, social pension, wife’s pension, in certain respects also by disability and survivors’ pensions, pensions paid to war veterans, etc. It is not the purpose of the present study to analyze all these methods of old-age security; its sole aim is to discuss the most frequent and most usual form, i.e. old-age pension.

Some additional terms must be explained. We shall distinguish between pensionable age and retirement age, although in many cases the two terms may overlap. The term pensionable age will be used to specify the age set by law at which a person becomes eligible to old-age pension (i.e. not to a proportionate old-age pension which is granted in some countries to persons who have grown old prematurely or to persons who have attained higher age without meeting the conditions of eligibility to the full pension). On the other hand, the term retirement

age specifies the age when persons eligible to old-age pension leave a job and actually retire. The distinction between the two terms is important especially in those countries, where eligibility to old-age pension fully or partly depends on retirement from remunerated activity.

The author does not consider the aforesaid definitions well devised and final fixed. He would welcome any move towards the formulation and unification of the terminology of social security.

*

In conclusion, the author should like to take this opportunity to thank his colleagues from the Faculty of Law, Prof. V. Fábry, Asst. Prof. M. Kálenská, Asst. Prof. J. Kovářík, Asst. Prof. B. Pospíšil, and Asst. Prof. K. Witz, as well as his friends at the State Office of Social Security, dr. A. Merta, V. Vergeiner, and dr. V. Vrba, for their valuable comments and suggestions. Gratitude is also expressed to former colleagues in the Social Security Division of the International Labour Office, with whom the author worked as member of that Division from 1959 to 1963.

THE ROLE OF OLD-AGE PENSION

The development of society, the growing alienation of the producer from the means of production, advancing industrialization and urbanization, and the growing separation of the urban proletariat from his original agricultural base were paralleled by a growth of the economic and social need of providing for the old worker who became unable to work, because his wage was the only source of alimentation for him and his family. The shifts in class strength under the complex political conditions of the 19th century changed the economic necessity of social intervention in this sphere into a political imperative. As the capitalist relations of production continued to develop, social measures benefiting old people became an integral part of these relations.

The socialization of the productive forces, the proclamation of exploitation as immoral, and the prevalence of the principle of remuneration according to the work performed made social security for old people an integral part of the distribution of the national income also in a socialist society. Distribution according to work cannot provide for the personal consumption of an individual, if he is unable to work. Society must therefore take upon itself also care for those of its members, who find themselves in a situation, where they cannot work (in old age, for example), and provide for a certain degree of their personal consumption according to other criteria — according to their needs — independently of the results of their work.

The needs of old people may be satisfied in a number of ways. In a socialist system of distribution, the payment of old-age pension offers the most effective and acceptable form of distribution for the overwhelming majority of the old population because it enables these people to decide freely as to the structure of their consumption, and to satisfy best their individual needs.

The problem of old-age security is the most important and in many respects also the most difficult problem of social security. Beveridge¹

¹ William Beveridge, *Social Insurance and Allied Services*, London, 1942, § 3.

lists two reasons why this is so: old age is by far the most important cause of disability to work in adult age; of all the contingencies, old age involves the most varied economic and social effects (ranging from acute poverty to acute loneliness, etc.). Old-age benefits thus have many purposes. Surveys carried out in West European countries have shown that in most of the investigated cases old age was the main cause of poverty. The biological reproduction of old people is most seriously affected because they have no prospects of returning to active work and remunerative activity. Another reason for the increased need of social care for old people is their loneliness. Thus, old-age pension must fulfil a number of important economic and social purposes.

§ 1 — DEFINITION OF OLD-AGE PENSION

Thus far, neither legal theory nor the legislator have formulated a general definition of old-age pension; they have either defined the contingency giving rise to eligibility, or have summed up the legal conditions giving rise to eligibility to old-age pension. In the latter case they have often substituted a summary of these conditions for a definition of old-age pension.

The first group of theoreticians who substitute the contingency for a definition of old-age pension² includes the leading authorities of many

A similar definition was used by the Philadelphia conference of the International Labour Organization in 1944, which in its interpretation of the definition of old-age pension stressed the chain of causation between age and inability to perform efficient work, increased impossibility to obtain work and permanency of unemployment.⁴ Eight years earlier, the Czech author F. Preis⁵ pointed out that the contingency was countries. For example, in 1942, Beveridge defined the contingency of old-age as "retirement from occupation, paid or unpaid, through age".³ not the age but rather — in the case of the pension scheme for non-manual workers and commission agents — the chain of causation

² The term "contingency" is used here as a synonym for an eventual need; we do not wish to use the term "social risk" applied thus far (see Z. Neubauer, *Sociální pojištění po stránce procesní*, Brno, pp. 12 ff.). L. Pisca uses the term "phenomenon" for events, states and processes in which social security is involved (see L. Pisca, *Sociálne zabezpečenie v socialistickej spoločnosti*, pp. 99 ff.). However, the term "phenomenon" by itself cannot specify anything.

³ Beveridge, *op. cit.*, § 311.

⁴ I.L.O. Recommendation No. 67, Art. 12: "The contingency for which old-age benefit should be paid is the attainment of a prescribed age, incapable of efficient work, the incidence of sickness and invalidity becomes heavy, and unemployment, if present, is likely to be permanent."

⁵ F. Preis, *Hmotné právo čs. sociálního pojištění*, Prague, 1936, pp. 204 ff.

between the age and the inability to perform the respective occupation, and — in the case of old-age insurance for manual workers — “professional incapacity” to perform the present occupation.

In 1952, the International Labour Organization abandoned the definition of the contingency of old age as the chain of causation between the age and incapacity to work, and defined this contingency as “survival beyond a prescribed age”.⁶

F. Netter, a leading personality of French social security, defining — in 1959 — the contingency, stressed not age but the social guarantees of providing benefits, that is the guarantee provided by society to secure a person against the economic effects of old age.⁷

Netter came closest to reality. In France old-age pension has the character of a “served out” protection against the economic effects of old age because it is provided irrespective of retirement (cessation of employment). No system of social security, social insurance or social welfare makes a person eligible for pension merely because such person has attained a certain age, but because he had lived his whole life in “economic dependence” on the results of his own work and because at a certain age people usually lose their ability to perform the required amount of work. This principle is also observed by the Scandinavian systems of social security, which do not tie the payment of the basic social welfare pension to changes in the beneficiary’s earning capacity and income, but, by setting a high pensionable age, in fact assume such a change (67 years in Denmark, Iceland and Sweden, 65 years in Finland, and as much as 70 years in Norway).

In the socialist countries the contingency is not only the attained age, but the effects of a certain age on the capacity of the individual to be fully active to work for society or to live a social life. The chain of causation between age and the process of work, or life in society, as the case may be, constitutes the principal, although not the sole condition establishing eligibility to old-age pension. In Czechoslovakia society secures its members not because they have reached a certain age but because, due to their age, they have only a limited possibility to share in distribution according to the work performed; this principle is applied to old-age pension, where, under the new provisions, the principle “wage or pension” is being used (in some cases the payment of a limited old-age pension is regulated differently); it is also true of all optional benefits paid because of old age (social pension, wife’s pension, etc.),

⁶ I.L.O. Convention No. 102, Art. 26, Par. 1.

⁷ F. Netter, *Sécurité Sociale et ses principes*, p. 98: “... ont pour objet de garantir des ressources aux personnes qui ont atteint un certain âge.”

which are granted according to the social needs of the prospective beneficiary; finally, it is also true of widow's pension in cases where this pension assumes the role of old-age pension as well (concurrence of pensions and earnings).

Old-age pension is designed for the simple reproduction of an individual who no longer systematically takes part in the process of work, whose degree of "wear" is determined by his everyday biological needs, and who cannot expect that he will permanently return to systematic, full-time work. The standard of these needs depends at the various historical period on the stage of economic development and the social traditions of every country.

Old-age pension does not cover the costs of participation in the process of work or the costs of the expanded reproduction of man as a worker (increasing qualification etc.); however, in addition to covering the costs of simple material reproduction, it should also cover the costs of man's cultural reproduction. The amount of old-age pension should be appropriate not only to strictly individual needs but also to the needs specified by society at a given period (recognized average needs). The need is not to be understood merely as the subsistence minimum; it includes all that society considers essential at the respective stage of its development (i.e., for example, also a radio or television set, etc.).

Engels states that socialist society must enable all its members to maintain and developed their abilities most comprehensively.⁸ This indicates that socialist society is not and cannot be interested in providing only a partial and inadequate compensation of a full loss of earnings. Old-age pension also fulfills important ethical and other, non-economic functions. In its substance, it should enable full of selfrealization personality also of those members of society, who are fully or partially imable to work. The humanistic character of socialist society should also be manifested in assistance provided to individuals to share fully in the life of society, even when they do not work or work only partially. Society should make this possible by paying individuals adequate and not mere subsistence pensions. However, as long as it is unable to produce a wealth of consumer goods, it proceeds with its distribution more modestly and, as a rule, applies various limiting yardsticks to determining the share of every old person. Equalitarian, low pensions are a manifestation of the limited economic possibilities of a society, rather than a preview of the proclaimed future (communist) distribution according to need.

⁸ F. Engels, *Anti-Dühring*, Czech edition, Prague, 1949, p. 171.

Under the existence of distribution according to work performed, old-age pension is, in the end, a form of subsequent consumption, of postponed consumption of individual members of society. Its amount is therefore differentiated according to the past merits of every individual.

In addition to its economic role, i.e. to provide its users with such a standard of personal consumption, which would secure the material and cultural conditions for personal reproduction appropriate to human dignity, old-age pension can also fulfill some other economic functions. For example, sometimes old-age pension is paid in full or in a reduced amount in addition to the wage. In such cases the wage is the main guarantee of reproduction of the man power of the aged persons. The old-age pension either supplements the means for the simple reproduction of the man power of the working aged person who do not possess the same ability to work as young workers or may serve as a special stimulus for prolonging the productive age of the respective individual.

Thus under socialism, old-age pension is a substitute benefit by its nature. Society provides it as a substitute for income derived from work at a time when its members as a rule stop earning due to old age. It is usually paid only to people, who have certified in a prescribed manner that they had worked all their life, as a substitute for their past income. In this respect it differs from optional benefits which are paid to old and needy individuals (e.g. social pensions). Old-age pension differs from other benefits whose purpose is also to provide a substitute for the loss of earning capacity, in that the contingency is met by expiration of time, and the loss of earning capacity is presumed; in cases where an actual reduction or loss of earning capacity are required, the decision whether to retire or not is left to the eligible person; in this, old-age pension differs, e.g., from invalidity pension.

Summing up, the contingency usually designated as old age is not understood as survival beyond a certain biological (chronological) age, but rather as the effects of such survival on an individual's participation in work for society or the life of society, provided that his duty to work has more or less terminated (economic and social effects). Eligibility to old-age pension has become an inalienable human right. It is guaranteed by the Constitution and governed by law as an obligatory, periodical cash benefit under a certain legal system of social security (insurance), provided under prescribed conditions set for the contingency of old age. This working definition meets best our purposes. It contains all the essential features characterizing old-age pension as distinct from other cash benefits. Old-age pension is not a universal benefit but a cash benefit of a *specific* system of social security, provided as a statutory

claim (obligatory) to persons enjoying protection under such system (protected persons).

§ 2 — SCOPE OF PERSONS PROTECTED

Old-age pension schemes in Czechoslovakia cover practically all of benefits granted to the non-active population (social pensions, wife's pensions, etc.) and of certain mandatory benefits which have a similar purpose (widow's pensions), every old individual may enjoy at least a certain degree of social security.

FROM THE CHARACTER OF CLASS RELATIONS DIFFERENCES IN THE SCOPE OF PROTECTION ENSUING

Old-age security has developed on the territory of Czechoslovakia from coverage of only certain categories of workers to coverage of the whole economically active population. Although the differences relating to individual categories of employed workers have been eliminated in the course of this development, certain differences have survived, depending on the character of the relations of production. This historically based class differentiation proceeds from the different forms of the participation of individuals in the creation and distribution of the national income, and from the limited economic potential of the state. Employees take a direct part in creating and distributing the national income, while members of agricultural co-operatives and privately operating farmers do so indirectly. The pace at which the differences existing in social security coverage are being eliminated depends on the rate at which the participation of individual categories of workers and individuals in the creation and distribution of the national income is being brought closer together, as well as on the rate of development of the material and technical potential of society.

In the period of transition from capitalism to communism, this class differentiation is historically dependent on the forms of the transition from small-scale production in agriculture. Collectivization turns small-scale producers into a new class of co-operative farmers.

Securing this class of *co-operative farmers* in old age does not constitute only a qualitative change of securing individual farmers who are small-scale producers. It is a qualitatively different problem which is related with the complex problem of the dual form of socialist ownership. The existence of the two forms of socialist ownership is an objective necessity ensuing from the differences in the approach of the working class and the peasants to socialism. The difference between the two forms of socialist ownership is determined by the degree to which

production has been socialized. State socialist ownership is nationwide, while co-operative ownership of the means of production is a group ownership.

The co-operative form of ownership is also linked with a different method of distribution. In the first stage of collectivization, distribution is often influenced by the extent of former private ownership. As the socialist elements of the collective relations develop, co-operative farmers gradually pass over from distribution according to the extent of land they have transferred to the co-operative, to distribution mostly or exclusively according to the work done. They come ever closer to the forms of distribution existing in the state socialist sector of the economy.

The difference in the forms of distribution is also manifested in the greater dependence of individual co-operative farmers on the results of the work of the whole collective. In the state socialist sector the individual worker's share of the national income (his wage) is primarily determined by the amount of his work, and fluctuations in the economic results of the enterprise (socialist organization) for which he works affect his earnings only to a limited degree.

The remuneration of members of co-operative farms depends primarily on the sale of what they have jointly produced, i.e. on the purchasing prices. In addition, an important part of their remuneration is the income derived from their private lots.

Hence, as long as the principle of remuneration according to work is in force and old-age pension has the role of substitute distribution in cases where individuals are no longer able to take full or limited part in distribution according to their participation in the social process of work, as long as the state can allocate only limited funds to old-age pensions, and as long as our society constitutes a form of a non-antagonistic co-existence of different classes, it must also take into account the specific conditions of work and life of co-operative farmers and adjust to them — for a transitional period — the forms of social security.

The gradual extension of industrial forms of organization in agriculture strengthens the elements in common. For example, the steadily growing application of fixed remuneration in co-operative farms and the introduction of profit-sharing by workers in industrial enterprises gradually remove the existing differences in the systems of remuneration. Both co-operative farmers and employed persons have gradually become dependent on a remuneration which, in turn, is conditional upon their performance. Thus certain situations in their lives cause very similar economic effects and the differences in social security coverage are becoming unwarranted. Moreover, in its endeavour to solve the labour problem in agriculture, society has a political interest in eliminating the

surviving differences between co-operative farmers and state farm employees, and between urban and rural populations.

A specific problem is involved in the protection of *self-employed persons* who are economically active outside any legal relation (e.g. employment or membership in a co-operative organization). In contrast to other working members of the socialist society, they realize their share of the national income only on the market, when selling their products. This is characteristic of small-scale production.

Although the number of self-employed persons may grow in the near future — due to certain moves to spur the service industry — self-employment is not and can never become the principal type of economic activity and pension protection of the self-employed the prevailing system of old-age security in a socialist society. Consequently, we shall concentrate, in the following analysis, on the main forms of participation of workers in remunerated activity in Czechoslovakia, i.e. employment and membership in co-operative organizations. As the self-employed represent a very minor group, integration of their schemes is advisable.

Thus, at its current stage of development Czechoslovakia's socialist society provides:

- a) complete and comprehensive old-age security primarily to employees; an equal status is enjoyed by those co-operative farmers, in whose case the form of determining their share of the profits of their co-operative does not greatly differ from remuneration of employees (members of producer co-operatives); the same status has been extended to certain categories of persons who perform beneficial activities recognized and supported by society either free of charge or for pay (students, apprentices, artists, voluntary firemen, et al.);

- b) a special form of old-age security (also full range, although on a lower level) to co-operative farmers and apprentices and non-members of farm co-operatives who have an equal status;

- c) a limited form of old age security to self-employed farmers and craftsmen, and unpaid family workers.

Summing up, we may say that socialist society has removed the differences between the social security coverage of manual workers, office workers, etc. However, thus far it has not possessed the necessary funds to provide the same degree of protection to all protected persons. The scheme and standard of old-age pensions differ according to the nature of the relations of production. Differentiation according to category of workers has been replaced by class differentiation, with preferential treatment of employees. However, this differentiation is becoming outdated and the trend is towards integration of the systems of old-age security.

The differentiation based on the socialist relations of production is not the only one in socialist social security. The protection of employees is also affected by preferences based on the hazards involved in various professions or jobs and or on the social importance of the work involved. involved.

Preferential treatment based on the hazards of a profession or job is expressed in the division of employees into different work categories.⁹ The details of the systems existing in six European socialist countries are listed in Table No. 1.

The table shows that:

a) The preferential treatment expressed in the form of work categories is based primarily on the degree of the health hazards involved in the working conditions, such as mechanical (extreme physical exertion) or chemical and physical causes of injury (poisoning, high temperatures, atmospheric pressure, dust, etc.). Similar rules are in force in Rumania.

b) The individual socialist countries of Europe have adopted different numbers of work categories: two (Poland, Hungary) or three (Czechoslovakia, Rumania, USSR). There are yet two other differences: in Yugoslavia workers are not divided into any work categories at all; in China there are, in addition to the usual work categories, special privileges in force for heroes of labour and battle. Thus, the principal question of the *concept* of socialist security in old age is not involved here at all. The respective laws do not specify work categories at all or only in very general terms. It is left to the government or even the administrative agencies to determine their concrete scope, taking into account all the circumstances involved.

c) The creation of work categories and the division of employees into these categories have also been influenced by tradition, although the pilots and professional soldiers, although there exist other, just as hazardous occupations; tradition was combined with preferential treatment. Importance of tradition must not be overestimated. The most important tradition involves special rules in force for miners. It was originally established not as a reflection of the hazards involved in their work, but

⁹ The provisions governing pension security of co-operative farmers have recently introduced for certain members of co-operations forms with a higher level of economy preferences enjoyed by the second work category, in conformity with the list of activities of this category relating to the pension security of employees. These provisions, applicable only to the members of the aforesaid co-operative farms, has no parallel in other socialist countries.

Table No. 1

COUNTRY	WORK CATEGORIES		
	I	II	III
BULGARIA (1957)	Workers employed underground and exposed to silicosis and radioactivity, those working in caissons and divers, and others specified by the government.	Workers specified in a list of professions (issued by the government).	Other employees
CZECHO-SLOVAKIA (1964)	Workers employed underground, in radio-active surroundings, in the air flight personnel), under water (caisson workers, divers, etc.), in heavy chemical industry and those exposed to heat, as specified by the government.	Employees working under especially difficult conditions specified by the government.	Other employees
HUNGARY (1958)	—	The law refers to a list of occupations issued by the government.	Other employees
POLAND (1954)	Miners have their own system of social security.	Workers employed underground and on the sea, teachers and those working under conditions harmful to health, in jobs specified by the government.	Other employees
RUMANIA (1959)	Occupations and jobs extremely hazardous to health and involving extremely hard work, as specified by the government.	Occupations and jobs hazardous to health and involving hard work, as specified by the government.	Other employees The distinction between manual and non-manual workers was abolished as from 1. 1. 1967.
U.S.S.R. (1956)	Workers employed underground, under harmful conditions and those exposed to heat, as specified by the government.	Workers employed under difficult conditions, as specified by the government.	Other employees
VIETNAM — D.R.V. (1961)	—	Workers employed under hazardous and difficult conditions, as specified by the government.	Other employees

NOTE: This table was assembled according to legal provisions governing eligibility to old-age pension. According to secondary sources, Albania and China differentiate work categories according to the degree of the hazard involved in particular jobs. Information from the German Democratic Republic and the Korean People's Democratic Republic was not available to the author.

as an expression of the prevailing economic conditions and relations of production. Or, for example, tradition influenced the current legal situation in Poland, where miners and railway workers have preserved their own scheme of old-age security. The impact of tradition had been felt until recently also in Czechoslovakia; until 1964, the first work category was reserved exclusively for miners working underground, for pilots and professional soldiers, although there exist other, just as hazardous occupations; tradition was combined with preferential treatment attached to a socially important field of work, i.e. the principle of remuneration not only according to the quantity and quality, but also the social importance, of work. However, the *health* aspect gradually also prevailed here.

d) Preferential treatment linked to the degree of the harmful effects of a particular work is not an exclusive feature of the schemes in force in the socialist countries. According to available sources, persons employed in arduous and hazardous work can retire at an earlier age in Argentina, Belgium, Chile, Greece, Iran, Israel, Libya and Turkey, to name a few examples. Miners enjoy a privileged position in Australia, Austria, Belgium, France, the German Federal Republic, Holland, Italy, Japan, Luxemburg and Nicaragua. This differentiation makes it possible to set a proportionately higher statutory age for eligibility to old-age pension in the case of other workers by setting aside occupations which accelerate the process of invalidization.

e) Preferential treatment based on the degree to which the working conditions are injurious to health is very frequently supplemented by preferential treatment extended to women and based on differences existing in the biological functions of the two sexes. Women are usually enjoying the same privileges as men under the first work category. They have a privileged position in Yugoslavia where work categories are otherwise non-existent. However, we shall discuss this problem further on further on.

Members of armed forces are either subject to special regulations (e.g. in Poland) or special conditions are in force for them within the framework of the general regulations (e.g. Czechoslovakia or Yugoslavia). This kind of preferential treatment is motivated by purely political considerations. The special status of these persons, just as the status of war invalids will not be discussed in this study.

The differentiation of the qualifying conditions for old-age pension according to living and working conditions is manifested in differences in the pensionable age and higher pension benefits. It is due to imperfections in industrial safety technique and should not be viewed as

an expression of distribution according to work done in the true sense of the word, and even less so as a feature of the transition to communism.

This differentiation can be eliminated through improvement of industrial safety and hygiene and, in keeping with the process of raising the general standard of living and the potential of the national economy, through raising the amount of all pension benefits to the highest level, that is through a gradual levelling off towards distribution according to need in a wealthy society.

§ 3 — THE BASIC CONCEPTS OF DEVISING QUALIFYING CONDITIONS FOR OLD-AGE PENSION

The definition of old-age pension depends on its basic approach and on the selected concept. In the past development of pension schemes we have noticed two different approaches of the nature of old-age pension: when attaining a certain chronological age,

a) the eligible person either merits his entitlement to retirement (presumption of merit), or

b) is assumed to be incapable of work (fiction of invalidity).¹⁰

Although both approaches have different practical consequences, the difference between the presumption of merit and the fiction of invalidity is rather weak when we assume that people have usually won their merit at an age when, as a rule, they are invalid.

The *presumption of merit* is based, as a rule, on an imaginary equivalent between the life's work of a man and his entitlement to old-age pension. The work of a lifetime should not be viewed narrowly as an individual's direct contribution in values he had produced for society, etc., but more broadly, as his contribution to the extended reproduction of society's labour force, the consolidation of comradely and civic relations, etc. Many experts are wrong when they view the payment of contributions as a merit, because it is obvious that it is not a social merit but the purchase of a right which has the same character of an obligation as the conclusion of a simple insurance contract.

Society guarantees to its individual members for their merits the right — fixed in advanced — to be given appropriate protection once

¹⁰ Older literature and practice were based, as a rule, on the fiction of invalidity: "Old age is considered by the law as permanent invalidity presumed to occur at a certain age, which varies from 50 to 70 years, according to country". See *General Problems of Social Insurance*, International Labour Office, Studies and Reports, Series M, No. 1, Geneva, 1933, p. 37.

they reach a certain age. Thereby it relieves them of participation in distribution according to work, which under socialism means the duty to work. The presumption of merit expresses the harmony of interests of society and the individual, that is solidarity within a society based on distribution according to work done.

The merit of individual members of society is further underlined by the method of financing social security. If it is based on a system of current budgeting (as in Czechoslovakia), economically active persons need not support disabled members of society for the whole period of time, when economically active pensioners share in the creation of the national income. The national income is the sole source of covering the costs of protecting an old individual. Thus the economically active person morally becomes a kind of creditor who is entitled to the payment of his claim when he is no longer able to work; however, he must "collect" his claim from the next generation which inherited the results of his work. In this respect it is a kind of socialized duty of maintenance of children towards their parents, arising from the fact that the parents had attended to their upbringing. It is also the reverse side of the socialization of the parents' duty to raise their children and pay for their education (a comprehensive system of society's care for the upbringing of the future generation). In his productive age every individual thus contributes to the upbringing of the future generation either directly or indirectly through society's funds and therefore expects that when he grows old, the new generation will in turn contribute towards the maintenance of his standard of living.

The *fiction of invalidity*¹¹ is manifested in the fact that old-age pension is paid at an age when general experience warrants the conclusion that changes in a person's health due to old age had reached

¹¹ In professional literature we sometimes come across the erroneous term "presumption of invalidity". If we view the institution of old-age pension as a continuation of invalidity pension, we construe pensionable age as the moment when all individuals become invalid, but do not examine the question of their actual invalidity. If we were to deal with a legal presumption, we would have to admit proof to the opposite as well as an examination into the changes in every individual's state of health. However, we are not aware of a single pension scheme based on the fiction of invalidity, which admits such proof. We must not confuse proof of invalidity with proof of general economic need, where no causal relationship is construed between a change in a person's health and his need of old-age pension. Hence, a fiction is involved rather than a presumption.

On the other hand, the "merit" concept involves a presumption because while we presume that an individual has won some merit at a certain age, at the same time we set certain criteria permitting differentiation between the degree of such merit; although these criteria cannot express all the aspects of the individual's merit, they do permit a distinction to be made between different degrees of merit, as well as proof of insufficient merit.

such a degree where they caused the contingency of invalidity. This general experience, considered against the background of the economic potential of society, tradition, etc., and, under capitalism, also the state of the class forces, determines the chronological age at which society presumes a person to become disabled and does not examine or even admit proof to the opposite, that is, it establishes the fiction of invalidity.

If the actual state of affairs were to be taken into consideration when determining this fiction, it would require the acquisition of reliable indices, examination of the process of invalidization of various age groups, and other investigation. Obtaining all these data would be very costly, difficult and disproportionate to the social importance of the final result. Hence, the principal factors in considering the question of pensionable age are the experience of society and subjective factors of decision-making; consequently, the probability of error is rather great.

While the practical application of the two approaches may be quite similar, the consistent application of the presumption of merit or the fiction of invalidity leads in particular to differences in the construction of the conditions establishing eligibility to old-age pension and the conditions of its payment. If the pension is granted at an age when it is deserved, it can be paid irrespective of any changes in the economic activity or earning capacity of the entitled person. If old-age pension is granted at an age when disability is presumed, it is possible to examine — just as in the case of disability — the connection between the attainment of the specific age (which replaces a change in a person's state of health) and economic activity, or its cessation — i.e. the moment of the pensioner's need.

Difference in approach thus leads to a difference in purpose. Old-age pension can compensate a loss or reduction of earnings due to presumed invalidity, or secure sufficient income to persons of a certain age, which permits them to retire partially or fully and to enjoy a deserved rest before they become totally disabled.

Although the two approaches seem to be incompatible, the practical implementation of most pension schemes based in principle on a single approach has given rise to a number of compromise solutions by supplementing them with some elements the other concept.

The presumption of merit is not identical with the economic equivalence of income and expenditures in social insurance. We may therefore speak of three basic concepts of setting forth the conditions of eligibility to old-age pension, in force in the world today:

- a) the concept of social need,
- b) the concept of equivalence,
- c) the concept of merit.

None of these concepts is applied in its pure form in any country. The aforesaid division is the result of a certain abstraction (generalization) essential for understanding the individual solutions.

The *concept of social need* (subsistence minimum) may be simply expressed by the words "he needs it". It can proceed either from the fiction of invalidity or from social need which can be proved, or from both, from a mutually conditioned combination of both points of view. What is involved is not a fiction of a change in health (the fiction of invalidity), but a connection between a presumed change of health due to old age and the inability to earn a living (incapacity for work). In this relationship, the economic aspects — the social need — are therefore usually studied.

Need¹² may be viewed as the need to secure the subsistence minimum¹³ or as the need of protection appropriate either to an individual's standard of living or to the standard of living attained by society in general. The differences between these three concepts of need are quite obvious. In political practice, attempts are frequently being made to present the guarantee of the subsistence minimum as the provision of appropriate protection; this creates an extremely flat, distorted and dangerously simplified view of the communist principle of distribution according to need. For the sake of exactness and comprehensiveness, it is therefore suitable to analyze the main differences between guarantee of the subsistence minimum and the provision of an appropriate protection.

Every social security benefit is designed to cover the needs of the protected individual. This proceeds from the fact that it is granted only sequences of an occurrence (old age etc.) recognized by society. Its purpose therefore is either to eliminate generally the economic but also social consequences of the recognized occurrence by providing protection appropriate to the individual's past standard of living, or at least to lessen these consequences either providing protection appropriate to the existing, average standard of living of society as a whole or at least by guaranteeing the subsistence minimum.

The first case involves full — or at least substantial — equivalence between the standard achieved by the individual during his lifetime (we shall not consider now the methods where by such individual standard of living can be measured) and what society will grant him.

¹² The nature of need was most clearly explained by B. Šmýd in his article „Nárok na dávky sociální péče“, *Sociální zabezpečení*, No. 12/1963. In this connection, mention should also be made of another article by the same author, „K významu slova sociální“, *Sociální zabezpečení*, No. 7/1963.

¹³ „Les pensions de vieillesse doivent garantir aux vieillards un niveau de vie minimum“, F. Netter, *op. cit.*

It is a full reflection of the socialist principle of remuneration according to merit in the sphere of social security. It is also manifested in a deformed and greatly reduced form in those systems, which tie the amount of the entitlement to the payment of the insurance premiums.

In the second case we find a relationship between the average earnings of a collective of economically active individuals and what the socialist society grants to its old members. It expresses the relation between society's potential and the needs of economically active and inactive individuals. It is a manifestation of the principle of social solidarity which must not be confused with the communist principle of distribution according to need. The question is not one of what old people actually need but one of what society can and does give them, while their needs may be only one criterion — although an important one — for considering the financial aspects of social security.

The question of social need is involved only in the first of the aforesaid three concepts of purpose (guarantee of the subsistence minimum). When applying this concept, society grants to its old members only what it recognizes to be the essential minimum for their subsistence. Let us recall on this occasion Beveridge who advocated in Parliament the basic (social) concept of the British national insurance: national insurance should aim only at eliminating want without undermining the initiative and responsibility of individuals for securing a better standard of their protection in old age. In other words, the state should provide to an individual only the minimum and he himself must provide for any higher benefits.¹⁴

The social concept underlies the form of social welfare schemes applied in the Scandinavian countries and the countries of the British Commonwealth.

The *concept of equivalence*¹⁵ can be found where a pension system based on the insurance principle proceeds from the presumption of a kind of "credit—debit" balance. In substance, it is presumed that the insured person pays a prescribed amount of money. The motive of social solidarity is manifested, as a rule, in the fact that the paid amount is not returnable and is paid only to a person who meets additional conditions. The objection may be raised, that higher benefits may be purchased for higher premiums. However, in fact the progressive scale of benefits is usually not proportionate to the progressive scale of

¹⁴ W. Beveridge, *op. cit.*, §§ 6—10.

¹⁵ "Le principe de la compensation, qui est le fondement même de la sécurité sociale...", Léon-Eli Troclet, *Problèmes généraux de la sécurité sociale en Belgique*, Brussels, 1961, p. 102. Also see E. M. Burns, *Social Security and Public Policy*, New York, pp. 31 ff.

contributions, so that the higher income groups bear part of the burden of financing the benefits of the lower income groups. Most contemporary pension schemes which apply this concept admit in addition supplementary periods of service as periods of non-payment of insurance contributions credited by society.

Although the aforesaid balance does not have the character of a strictly balanced mathematical equation (since it is actually deformed by aspects of social solidarity), we can speak of a purchased right because the proportion between the paid amounts and the title to benefits and their amounts, even though deformed, is applied as the basic criterion.

This concept is characteristic of most contemporary systems of social insurance. As a rule, eligibility is determined by the number of contributions or the period of insurance. Thus, for example, a certain number of contributions paid weekly or monthly is required in Libya (250 contributing weeks, of which at least 50 in the past 3 years, or the total of 1000 contributing weeks), the United Arab Republic (240 contributing months), the United States (at least one fourth of insured quarters since 1950, or the total of 40 insured quarters), etc. A specific period of insurance is required in workers' insurance in Belgium, France, Austria, and other countries.

In prewar Czechoslovakia, qualifying period to be met, was expressed in the terms of contributing weeks (Section 107 of the Act No. 221/1924). The concept of equivalence was also apparent in pension insurance (the Act No. 26/1929, as amended); under Section 16 of this Act, the insured person had to pay contributions for 60 months. Under Section 14, contributing months included those when contributions were paid, months acquired by qualified transfer, specified months acquired through a voluntary continuance of insurance, and months which could have been purchased in some special cases. Equivalence in this narrower meaning is quite apparent here. This concept of equivalence could formally be compared, for example, with pension insurance of self-employed persons in present-day Czechoslovakia. Socialist countries have, as a rule, abandoned this concept in their systems of old-age security.

The *merit concept*¹⁶ may be simply expressed by the words "he merits it". The concept of merit is a qualitatively higher variation of the

¹⁶ Older literature narrows down this concept and replaces it by a somewhat improved variation of the social concept. "... it is convenient to regard as social security services only such schemes as provide the citizen with benefits designated to prevent or cure disease, to support him when unable to earn and to restore him to gainful activity." See *Approaches to Social Security*, International Labour Office, Series M, No. 18, Geneva, 1942, p. 18.

concept of equivalence, where simple individual equivalence has given way to the relation between the quantity of socially useful work performed during active life and the degree of the socially possible satisfaction of personal needs. The relation of individual equivalence has changed into a relation of social equivalence (as regards the quality of protection), in which individual evaluation is the most important viewpoint as regards the degree of individual protection. The criteria for determining the degree of individual protection have changed: a simple pecuniary yardstick has been replaced by criteria of individual merit, recognized by society (past average wage or period of employment, etc.).

Viewed from a broader aspect, an individual's merit in the end also depends on the degree of development of the forces of production, in which the individual had taken personal part. For example, in Czechoslovakia the same merit of individual citizens was judged — irrespective of any changes in the legal provisions — differently in 1956 than in 1960 or 1963. The differences are due, for example, to changes in the amount of the average minimum wage, the price level of the family basket and thereby in the real value of wages, or, broadly speaking, also in the national income, the consumer fund of society, etc. In other words, changes may occur in society's idea of the degree of the average necessities of life, the means of the average standard of living, which can turn appropriate protection into an inappropriate one and vice versa, without altering the level of protection. Without the merits being changed, distribution according to these merits is altered. We see therefore, that an individual's merit is only a relative rather than an absolute criterion for determining the individual's share in the total of relatively limited means in relation to the whole proceeds of society's work at a particular stage of development of the society.

The concept of merit differs in theory from the concept of equivalence or the concept of social need. If the concept of merit were consistently applied and if the prosperity of society steadily grew, an individual's share of the protection provided by society could grow above the level of a simple mathematical equation. This share is an expression of balance between individual merit and the average, socially possible consumption of individual members of society at a certain stage of its economic development. As a rule, the share should therefore be higher than an individual's minimum need (see above).

However, it is quite possible that for a transitional period, if wrongly or partially applied, the concept of merit can provide for worse individual protection than the concept of equivalence. The latter provides for a strict, mathematical and objective "credit—debit" relationship.

Since the merit serves only as a yardstick for determining the proportionate share of the whole — the national income — which is determined according to other criteria, it is not possible to guarantee that this share will always be proportionate to the true merit of the recipient won during his active life. These cases of quantitative inferiority should be exceptional and transitional in view of the fundamental trend of development of society towards economic prosperity.

As the forces of production grow and socialist relations of production gradually develop into communist relations, a new, *fourth concept* will find its application — distribution according to need. We have not included it in the basic list because it has not been realized anywhere in the world thus far, although some of its elements will gradually manifest themselves in the pension schemes of the socialist countries (e.g. medical care, nursing service, etc.). Communist distribution according to need constitutes a qualitatively higher stage of distribution than distribution according to the work performed. It presupposes such a wealth of material goods, when limited distribution according to work will not be necessary and when this method of distribution will therefore become outdated. Thus, communist distribution according to need has nothing in common with limited distribution according to society's potential and according to needs recognized by it, financed from social security funds. It must not be confused with the practice of equalizing pension schemes. The latter practice is an expression of the fact that a given socialist society does not yet produce enough goods necessary for protecting all its members according to their needs. It involves the determination by society of the maximum possible share of a non-working individual appertaining to him within the scope of socialist distribution; it is not a manifestation of distribution according to need as claimed in certain political documents.

The three concepts of construing the conditions of eligibility to old-age pension, as outlined above, gave rise to *three formes of pension schemes*:

- a) social welfare,
- b) social insurance,
- c) social security.

These three forms determine or profoundly influence the determination of the conditions giving rise to eligibility to old-age pension. It is difficult to say whether any of the aforesaid forms exists in its pure character in any country. A certain form usually prevails in individual pension schemes, but sometimes it bears unsubstantial traces of influence exerted by the other forms. The next chapters will primarily try to

analyze the substance of these three forms, although we shall also try to draw a comprehensive picture including all, even chance, factors.

*

The conditions set for the establishment and especially the duration of the entitlement to old-age pension differ according to the design followed by society and according to the character of the remaining vital capacity of the affected person. The conditions will be different with respect to persons who can still take full or at least an important part in society's work, those who leave work but can still take part in society's life by offering a certain help (mostly economic), or who can participate even less than substantially in society's life, and, finally, with respect to persons who are no longer able to participate even in public life. Without analyzing these obvious differences, we shall merely note them for the time being. We do so primarily because of the close connection existing between this differentiation and what has been said of the concept of conditions giving rise to entitlement to old-age pension.

PENSIONABLE AGE

Individual pension schemes set a great variety of conditions for entitlement to old-age pension. However, if we try to generalize these conditions, we find that they are of different importance, duration and purpose. There are conditions common to all old-age pension schemes. They provide the foundation of the institution of old-age pension and represent the basic features of this institution. They constitute an essential requisite without which it is impossible to arrive at a definition of old-age pension at the current stage of historical development. In addition to these basic requisites we meet in legislative practice also with other conditions giving rise to eligibility to old-age pension, but these conditions have other purposes which are subsidiary from the viewpoint of the actual purpose of social security (such as protection against abuse by foreign nationals, provisions against hostile elements, etc.). Of these other conditions the condition of economic need which is the subject of a separate chapter (Chapter IV) is most important.

Besides dividing conditions into basic and subsidiary ones, we must distinguish — according to the effects of their non-fulfilment — between conditions establishing the right (eligibility) to old-age pension and those relating to the realization of this right through the payment of the pension benefits, i.e. realization of a periodical benefit through the payment of individual instalments. These conditions can be briefly described as conditions of duration of entitlement to old-age pension. The author is aware of the fact that this designation is not exact because, for example, a concurrence of pension and wage may preclude the payment of old-age pension, but does not abolish the right to the pension. In such cases only the claim to the payment of the instalments for the respective period is voided, but not the actual title to old-age pension, which is voided only by death.

The author will try to ascertain all the conditions of the establishment and duration of the title to old-age pension in the Czechoslovak schemes of pension security, classify them and specify their purpose in the

course of the continued development of the institution of old-age pension in Czechoslovakia. The most important condition is pensionable age.

§ 1 — OLD AGE AND THE CAPACITY TO WORK

Aging is an extremely *individual and complex process* which differs from person to person. Without trying to go into detail, let us briefly recall the results of studies carried out by competent specialists, gerontologists in particular. Dr. F. Bláha¹⁷ makes a distinction between chronological and biological old age. Chronological old age is that period in man's life, which follows after a certain age limit set in terms of time. *Biological old age* is a period when all the physiological signs of degeneration of man's organism have appeared. Biological aging is a process lasting the whole lifetime (the so-called limit of the possible length of life). This limit can be reached, if we remove pathological damage of all kinds (sickness and injuries), if we reduce the influence of all damaging factors affecting the organism.

Aging is a biological process as unavoidable as youth or death. The organism undergoes unavoidable changes with certain specific features. According to J. A. Trojan,¹⁸ aging generally manifests itself as a reduced ability of the organism to adjust to changes in its medium and as a loss of functional reserves at the later stages of life. C. Tibbitts¹⁹ sums up the two main groups of the physical manifestations of aging as follows:

- a) He considers biological aging to be a complex of progressive changes
 - in the composition of cells and their capacity to grow,
 - in the structure and functions of the tissues,
 - in the speed, strength and persistency of the neuromuscular system etc.

Carlson and Stieglitz²⁰ also point out that these changes are paralleled by a steadily growing chronical illness due to the accumulation of damages of the organism. There are many biological factors, and scientists are constantly discovering new ones. Today we are unable to determine, even in a general manner the extent of the influence of pathological changes on biological changes.

- b) Psychological aging is a process of changes in the central nervous

¹⁷ Prof. MUDr. F. Bláha, *Prodloužení lidského věku*, Prague, 1960, pp. 42 ff.

¹⁸ MUDr. J. A. Trojan in the Preface to Dr. Bláha's book, *op. cit.*, p. 10.

¹⁹ See the article by C. Tibbitts in the *Handbook of Social Gerontology*, Chicago, 1960, p. 7.

²⁰ J. J. Carlson and E. J. Stieglitz, *Psychological Changes in Aging*, American Academy of Political and Social Sciences, 1952, pp. 18—31.

system, in man's sensory and perceptive capacity, and in his ability to receive, organize and apply information.²¹

Aging of the organism therefore involves a complex of very complicated, gradual changes in the structure and functions of the human body. Some of them can already be defined and measured, such as changes in the structure and growth of cells, the structure and function of the tissue, in respiratory and cardiac activity, in basal metabolism, and in the speed, strength and persistency of the neuromuscular system.²²

All these changes result in a loss of strength and vitality, in a reduced capacity to withstand tension, in declaration of the senso-motoric reactions, in reduced resistance to chronic disease, and in a general weakening of the organism.

The process of aging is influenced by living and working conditions as well as by pathological and other processes to which man has been exposed at the various stages of his life. Human life can be prolonged primarily by elimination of the pathological causes of deformations and premature death, and by improvement of the standard of living and working conditions.²³

Old age is not an illness. On the contrary, statistics show that, for example, in Czechoslovakia only 69 % of all pensioners over 65 years old (68 % of men and 70 % of women) were invalid in 1958; of that number, only some 13 % were fully invalid or helpless.²⁴ Nevertheless, in most cases the basic entitlement to old-age pension arises at the age of 60. The problem becomes even more complicated when we realize that women are frequently granted a lower pensionable age.

It is difficult to determine when a man becomes old merely on the basis of the knowledge of the aforesaid biological and psychological process. Some scientists have tried to do so with lesser rather than greater success. For example, Italy's Greppi²⁵ divided the course of the second half of man's lifetime into a pre-senile period (45 to 60 years), aging (60 to 70 years), and a senile period (over the age of 70). He associated the loss of capacity for systematic work only with the third period, although he admitted that manifestations of aging may appear at an earlier or later age.

²¹ See J. E. Anderson, *Psychological Aspects of Aging*, Washington, pp. 267—289.

²² Aging may be accelerated by external causes. These include illness but also social causes, hunger, undernourishment, lack of sleep and physical exertion, as well as too large a number of births, excessive sexual activity, etc. Some of these causes were again demonstrated at the Gerontological Congress in Copenhagen. (See *Sociální zabezpečení*, No. 12/1963, p. 8.)

²³ Also see Bláha, *op. cit.*, pp. 15 ff., or Pisca, *op. cit.*, p. 151.

²⁴ *Sociální revue*, VII (1961), No. 2, p. 77.

²⁵ See his report to the Gerontological Congress in Merano in 1957.

As medical care and the standard of living continue to grow, an increasing number of people will enjoy a "healthy" age and approach ever closer the biological limits of human life (which are also relative). These limits are estimated by J. Trojan to be about 100 years,²⁶ while F. Bláha places them at 120 to 150 years.²⁷ The progress of man towards the biological limits of human life is many times slower than the extension of the median life expectancy as well as the life expectancy of individual age groups.²⁸

Although we do not consider *old age* to be an *illness*, we do not preclude a *mutual link between the two*.

1. The process of aging is accelerated by all illnesses and "sins" of modern-day youth (alcohol, nicotine, coffee, etc.), as well as by some of the negative consequences of the growing standard of living — obesity, etc. These facts are confirmed by all physicians specializing in gerontology.

For example, F. Bláha states that the origin and causes of a number of different serious and chronic diseases must be sought far in advance of their actual manifestations.²⁹ Diseases preceding old age accelerate its course. Unhealthy working conditions, too, speed up the process of aging. It is a matter of general knowledge that especially some manual occupations obviously cause premature aging. We shall yet discuss this question from another aspect, when considering changes in the structure of employment due to age.

2. The sickness rate combined with incapacity for work is higher after the age of 45. E. Gerfeld³⁰ ascertained two peaks in the sickness rate — in early childhood and at the age between 45 and 50. Another interesting feature is a greater incidence of sickness of women between the ages of 25 and 45.

3. As man grows older, the character of his disease changes. F. Bláha³¹ demonstrated this process on the relationship between the relative incidence of cardiovascular diseases, rheumatism, tonsillitis and diseases of the alimentary tract, and the age of the patients. He showed that the incidence of cardiovascular diseases rises sharply after the age of 40, while the relative incidence of tonsillitis sharply drops with older age. Growing age is also accompanied by a higher incidence of rheumatism. Among older people we find a prevalence of diseases which presume

²⁶ J. Trojan, *op. cit.*, p. 214.

²⁷ F. Bláha, *op. cit.*, p. 136.

²⁸ L. Pisca, *op. cit.*, pp. 147 ff.

²⁹ F. Bláha, *op. cit.*, p. 27.

³⁰ See E. Gerfeld, *Differenzierte Krankheitsanfälligkeit und Lebensalter*, Via Humana, Basel, 1956.

³¹ F. Bláha, *op. cit.*, p. 131.

an extended influence of negative factors and which cause chronic pathological changes. On the other hand, the incidence of infectious diseases reaches its peak at a young age. For example, typhus and typhoid fever are most frequent in the 10—14 age group, dysentery at the age of 4, scarlet fever, diphtheria and whooping cough in the 5—9 age group, virus-induced encephalitis in the 10—14 age group, infectious hepatitis in the 5—14 age group, etc.³²

Old people also suffer from ailments which are related with the weakening and wear of their organism. The principal ailments of this type include degenerative diseases of the heart and blood vessels, malignant tumors, vascular ailments of the central nervous system, and chronic diseases of the upper respiratory tract.

4. Older age is furthermore accompanied by a prolonged average duration of incapacity for work and by an increased number of working days missed due to illness. Table No. 2 shows a drop in the sickness rate per 1000 insured persons and its average among men and women. The average duration of sickness is markedly longer after the age of 40 and then 60.

5. The number of accidents substantially drops in older age. According to F. Bláha,³³ the share of accidents and acute ailments of the respiratory tract in the total of causes of incapacity for work drops from 56 % at the age up to 19, down to 16.7 % after the age of 60.

Thus old age may involve sickness and even today is often associated with it. But it is not the same sickness which attacks a young organism. Growing age is accompanied by an increased number of days lost because of sickness, the duration of sickness is longer, and the gravity of sickness grows. The ailments of members of the older generation may be further complicated by remnants of ailments which had not been properly treated in youth, as well as by the effect of other socio-economic factors.

In this connection we should also point out that besides sickness, i.e. pathological processes, the biological process of aging is accompanied by functional changes which in many respects may resemble changes of a pathological nature (aging of the nervous system — a general atrophy of the brain, etc.). Old age means an unstable state of compensation when so-called senile crises may occur as a result of special structural compensation of the higher nervous activity; senile crises are a symptom of old age and are of considerable importance for evaluating the responsibility of an individual, his behaviour and adapt-

³² *Statistická ročenka ČSSR*, Tables 17 and 18.

³³ F. Bláha, *op. cit.*, p. 130, Table No. XVI.

Table No. 2

Sickness Rate, Age and Incapacity for Work in Czechoslovakia in 1956

Age	Cases of incapacity (per 1000 insured persons)		Average duration of a case (in days)		Number of days of incapacity (per 1000 insured persons)	
(1)	(2)		(3)		(4)	
	Men	Women	Men	Women	Men	Women
0—19	1727	1056	10.5	10.8	18179	11448
20—29	1129	995	12.5	13.6	14162	13542
30—39	977	1099	14.3	15.9	14004	17523
40—49	849	1005	18.0	18.4	15272	18525
50—59	865	1044	23.9	24.9	20694	25100
60+	810	856	34.0	39.7	27586	34006

Drawn up according to data supplied by the Central Administration of Sickness Insurance of the Central Council of Trade Unions.

ability. They occur in particular, if old people must suddenly adjust to changed conditions and, in general, change their past way of life.³⁴

Disease may be created and the patient cured either without any aftereffects or with more or less lasting effects. In other cases the disease stabilizes and its progress is stopped without the patient ever being cured. If a disease results in a lasting change in the organism or if it turns into a chronic state, we speak of invalidity, provided that some other socioeconomic conditions are met. At this point we are not concerned so much with a definition of invalidity or a detailed analysis of this whole problem, as rather with an assessment of the *relationship between invalidity and old age*.

Invalidity and old age are two different contingencies which are closely linked by three factors:

- a) invalidity causes premature aging and shortening of work activity;
- b) old age contributes to invalidity by accumulating the effects of the pathological and morbid processes of biological aging;
- c) old age need not necessarily bring about invalidity, although at the last stage of man's life the state of advanced senility may have similar effects on work activity.

The relationship between invalidity and old age was studied in Czechoslovakia by J. A. Trojan.³⁵ He pointed to the sharply rising sickness rate linked with invalidity. The incidence of invalidity in the age groups

³⁴ F. Bláha, *op. cit.*, p. 158.

³⁵ J. A. Trojan, *op. cit.*, p. 120.

up to 45 does not exceed 10 per thousand; in the older age groups, past fifty, the incidence of invalidity goes up and stands at 30 per thousand already at the age of sixty.

This shows that invalidity does speed up aging and that the number of invalids grows with age; on the other hand, far from all old people are invalid and under certain conditions therefore constitute a potential source of labour.³⁶

Most old people can be placed between two extremes set by the chronic deterioration of an individual's health resulting in total incapacitation for work on the one hand, and the unaltered or substantially unaltered capacity of an individual to continue at his present work, on the other hand. The latter extreme is frequent especially among farmers, gardeners, office workers, some categories of intellectuals, etc.

In this connection, mention should yet be made of another category of old people, which has thus far been overlooked in most surveys and which is of great importance for our purpose (determination of the conditions for establishing eligibility to old-age pension). It includes persons with an altered capacity for work (an increased distaste for continued work or fatigue) which does not reach the degree required for invalidity, but acts as a great obstacle to continuation in the present job and, in particular, to finding a new one. These people are in a way victims of social conditions and their past life. They cannot find work and, in fact, lack the necessary stamina and energy to do so. They are frequently individuals who are mentally aged and tired, although physically they are not invalid. (We do not intentionally use the term "healthy" because in a way these people are very sick.) Attaching to this category is another large group of people who want to work but whose health does not permit them to carry a full work load, not because they are that ill, but because they would run the danger of a further deterioration of their health (e.g. following cardiovascular diseases), and society is unable to provide them with a suitable job (mostly because enterprises still greatly resist employment on a part-time basis). All such individuals are in special need of society's help. Finally, there are many people who look forward to retirement.

In addition to the health factor, the character of the previous job (occupation) is also important for determining the working capacity of old people. Two aspects must be distinguished in this respect: the effect of old age on the work performance in the present job, and the effect of

³⁶ See Gros—Clarke, *Age and the Working Lives of Men*, Nuffield Foundation, London, 1959, pp. 24—26, and European Seminar on the Individual and Social Importance of Activities for the Elderly, *op. cit.*, p. 57.

the character of the job (occupation) on the possibility of employing workers from the older age groups.

Studies on the *effects of old age on performance of the present job*, or at work in general, indicate that with growing age performance at work does change in some respects, but not in general; with growing age differences between individual workers become apparent and increase. A large number of older workers has the same or a higher performance than the average young man; older people make up for the loss of physical fitness due to age by changing or adjusting their methods of work, so that the overall level of their working capacity remains unchanged.³⁷ A survey made of 2217 factory workers in the shoe and textile industries, and of 6000 government and private office workers, in the United States³⁸ showed that workers in the 55—64 age group had, as a whole, a somewhat lower output than the total average; however, the performance of many of these workers was higher than the average performance of the least efficient younger age group; the differences between the various age groups of office workers were insignificant. Similar results were obtained in a survey carried out among commercial employees in Canada.³⁹ The most interesting findings obtained from this survey show that better performance was given in retail trade by workers over 40 years old than workers younger than 30. This does not mean, of course, that we should generalize this finding. In some occupations, where the worker is exposed to extreme physical exertion or to the harmful effects of the production process, workers become invalid earlier than in other occupations. The aforesaid findings cannot therefore be applied to all occupations, but only to normal occupations where specific influences do not cause an early deterioration of the worker's fitness and which do not require exceptional physical exertion.

The necessity of differentiation based on occupation has been demonstrated by other surveys conducted in Canada and the United States, which show that in occupations requiring exceptional physical exertion the output of workers past the age of 55 rapidly drops. A study carried out in England in 1957 showed that a large number of miners, fishermen, quarry workers, crane operators et al., that is of people engaged in physically arduous occupations were leaving their jobs after sixty. On the other hand, this was not true of forestry workers, typesetters, painters,

³⁷ See, e.g., A. P. Welford, *Skill and Age*, Oxford University Press, 1951, or *Aging and Human Skill*, Oxford University Press, 1958.

³⁸ *Monthly Labor Review*, Washington, U.S. Department of Labor, January 1960, Vol. 83, No. 1, pp. 39—43.

³⁹ *Age and Output in Retail Trade*, Ministry of Labour, Ottawa, 1960.

postmen, night watchmen, waiters, hairdressers, storage keepers, setters and maintenance workers. Another survey shows that there are occupations where many people in the older and oldest age groups are employed; these include saddlers, night watchmen, tailors, gardeners, watchmakers, shoemakers, barbers, farm hands, etc.⁴⁰ The same source notes that retirement at pensionable age is more frequent in transport, the chemical industry, engineering, electrical engineering, etc.

Other findings show that a person who leaves his job or past occupation need not necessarily retire; there is large regrouping and labour fluctuation among population in the older age groups. People who cannot keep up with younger workers in their present occupation seek new jobs. As a rule, older workers leave assembly-line production in large plants either for "auxiliary" services in the same plant (such as maintenance, tool-making etc.), where skill and experience are of greater value than strength and speed, or for smaller manufacturing enterprises, or the service industry, where they are not exposed to the speed and exacting pace of large-scale, assembly-line production. In some occupations,⁴¹ such as earth-moving, large-scale industrial production, or transport, the rhythm of work of a large group of workers is frequently more important than strength, and older workers cannot keep up with such rhythm and pace. The result is a flow of workers within the same enterprise or between different enterprises. However, this fluctuation is economically desirable because it helps to prolong the average length of active life of the workers.⁴²

The existence of fluctuation or rather regrouping of labour has also been confirmed by American experts.⁴³ They ascertained an outflow of workers from the mining industry, a stagnation of their number in industrial production, and an influx of workers past the age of 65 into farming, forestry, finance, the insurance business, trade and the service industry. This "age fluctuation" is manifested mostly among less qualified and manual workers and decreases with growing skills; it is sub-

⁴⁰ "Problèmes de l'emploi des personnes âgées", *Revue Internationale du Travail*, Vol. 76 (1957), No. 4.

⁴¹ F. Bláha, *op. cit.*, p. 261.

⁴² It seems that the endeavour of older people to seek jobs with better working conditions, with an even pace of work, not requiring greater exertion at peak periods, in quieter surroundings and with better relations among the employees also exists in Czechoslovakia, according to some more recent, partial surveys. M. Vondráček discussed them with editors of the daily *Rudé právo*. The discussion was published under the headline „K některým otázkám vztahu mezi lidmi“ in the January 6, 1965, issue of the *Rudé právo*. Although the age of the employees changing jobs is not specifically listed, it may be assumed that they are mostly workers of middle and older age.

⁴³ J. M. Kreps — C. E. Ferguson — J. M. Folsom, *Employment, Income and Retirement Problems of the Aged*, Duke University Press, Durham, North Carolina, 1963, pp. 118 ff.

stantially smaller among intellectual workers and is practically nonexistent in occupations requiring an exceptionally high intellectual capacity. British statistics show⁴⁴ that roughly one out of 190 workers between the ages of 55 and 65 leaves for a more appropriate job. They also indicate that out of several hundred people older than sixty, who sought a substitute job, three out of every five accepted jobs usually reserved for older people, such as watchmen, cleaners, messengers, doormen, or retail salesmen.

This age fluctuation and the extremely rapid technical development are closely linked with another question — the capacity of the aged to adjust to changed conditions. We have seen that a general feature of old age is a low adaptability and the endeavour to make up for this deficiency with schematization and routine. This universal finding of physiologists and psychologists will have to be somewhat modified or placed into relative proportions in view of the experiences gained in Canada, Great Britain and the United States in the course of the second world war. At that time older workers very quickly adjusted to new technological processes and methods, especially if these were based on techniques and methods to which they had been accustomed from their previous jobs. This experience is supported by findings obtained in the Soviet Union, Czechoslovakia, Great Britain and other countries from the work rehabilitation of persons above the age of forty. If older persons grasp in the course of training the substance of the new method, they acquire perfection within a very short period of time. Older people require more time to understand new methods than young people. For example, the retraining of a tram driver into a bus driver in the London public transport system takes three weeks among persons younger than thirty; only a few individuals above that age are able to master the new occupation within the same time, but all individuals in the 30—60 age group, and most people older than sixty, mastered it within 4 to 7 weeks.⁴⁵

Greater difficulties are encountered during structural changes in the national economy (as in the case of miners in Belgium, France, and especially West Germany). Between 15 and 20 % of workers over sixty had to abandon hope of finding a new job only because they could not understand and adjust to completely new working conditions and style of work, in particular in occupations where they could not apply their past experience.

New technology does not therefore present an obstacle to the employment of older workers; on the contrary, a simplification of the substance

⁴⁴ *Aging in Industry*, London, 1955, et al.

⁴⁵ H. M. Clay, "The Older Worker and His Job", *Problems of Progress in Industry*. No. 7/1960, London, pp. 16—18.

of a job can help prolong the active life of older and skilled workers.

Thus far we have spoken of physically healthy people. However, we know from accessible data, that people older than 65 may suffer from chronic diseases which hinder, if not prevent, their continued work.⁴⁶

It seems, however, that suitably chosen work which does not excessively tire the organism slows down the process of aging and prolongs the worker's life towards the biological limits of human life.⁴⁷ Active old age has become today the battle cry of doctors in their fight against the degenerative processes of old age.⁴⁸ Work adjusted to individual pace of life and capacities benefits the old workers themselves. In this connection we should perhaps note that in Czechoslovakia we have not yet fully developed the study of specific working conditions for older people with a view to prolonging their active, working life. It is obvious today, that their working conditions must be changed. It is disputable, whether it is more advantageous, for example, to let them work on a part-time basis, or on full-time basis with more frequent and longer periods of rest.⁴⁹

§ 2 — SOCIETY'S INTEREST IN OLD PEOPLE

Society is not interested in the physical old age of individuals as such. However, if an old person has depended all his life on work as the principal means of his support and loses this means because he becomes incapacitated for work due to old age, protection of old people becomes a social problem.

Old age is gradually becoming a social problem mainly in two respects:

a) The work of older individuals is not merely a question of their physical fitness, but is increasingly becoming a question of the possibility of continued employment or of finding a job. Both depend on the social conditions under which the old people live.

b) As division of labour and the productive forces continue to develop and the producer is increasingly becoming alienated from the means of production, protection of the aged outgrows the possibilities of their

⁴⁶ Josef Ambrož, *Pracovní aktivita starších věkových skupin obyvatelstva*, SÚSZ Praha 1964.

⁴⁷ See F. Bláha, *op. cit.*

⁴⁸ In his book *Makrobiotika*, W. Hufeland points out that only work corresponding to the individual's capacity, one which is well considered, socially useful, intellectual and public, upholds vitality in old age and is a means of prolonging life. Ilyin of the Soviet Union, on the other hand, recommends all kinds of physical exercise and games adjusted to the specific psychological and physiological characteristic of the aging man.

⁴⁹ F. Bláha, *op. cit.*, p. 222, prefers two days of rest per week and longer annual leave with a full, eight-hour working day to shorter working hours, while in the case of some ailments, doctors often recommend reduced working hours.

individual savings and those of their families, and socialization of their protection is becoming an objective necessity.

The fact that the problem of the work of the aged is primarily a social one has been confirmed not only by studies carried out by English experts,⁵⁰ but also by Polish and Czechoslovak surveys. According to T. Krzyzewski, specialists in Poland stop working when they become eligible to old-age pension not only because they are ill or feel so, but also because the management of the enterprise dismisses them as soon as they have reached the prescribed pensionable age.⁵¹ J. Ambrož⁵² states that the drop in the work activity among persons older than sixty from 62 % in 1930 to 37 % in 1950 and 35 % in 1961 was due to the extension of pension security and higher pension rates, and was therefore not caused by any deterioration of the health of these people. On the contrary, Ambrož points out that the work activity of men up to and over sixty has grown by one to two years, and comes to the conclusion that the 60—65 age group constitutes a certain reserve source of labour in Czechoslovakia.

Surveys carried out in a number of countries have ascertained a connection between continued work and economic necessity (low pensions, insufficiently long period of employment to make a person eligible to old-age pension, etc.). The connection between the amount of the pension and views on its adequacy and/or the feeling of need to continue in gainful activity, which Ambrož had ascertained, is most convincing and important. If the old-age pension represent 60 % of the wage, or 1000 crowns a month, the ratio between individuals who claim that the pension is adequate and those who claim the contrary (and, if possible, continue in gainful activity) evens out. Above that sum, the former view prevails, while the latter opinion prevails when the monthly pension drops below the aforesaid level.⁵³

Sociological research⁵⁴ also brought attention to *the role of objective and subjective incentives* to continued work activity, such as the social need of work, its suitability, and moral incentives.

⁵⁰ According to a report presented at the International Congress of Gerontology at Merano (1957) a medical survey carried out in Birmingham showed that out of 1000 sixty-year old workers only 6% were unable to engage in any earning activity; in the case of workers 65 years old the proportion of the disabled was 10%, and that of the 69-year olds 23.6%.

⁵¹ Tadeusz Krzyzewski, „Aby zkušenosti starých odborníků nepřicházely nazmar“, *Praca i Zabezpečenie społeczne*, November 1963, Warsaw.

⁵² J. Ambrož, „Jak prodlužovat pracovní aktivitu“, *Sociální zabezpečení*, No. 3/1964, pp. 7 ff.

⁵³ See Graph No. 6, *Sociální zabezpečení*, No. 3/1964, p. 13.

⁵⁴ See V. Lamser, „Několik myšlenek k sociální gerontologii“, *Sociální zabezpečení*, No 1/1964, p. 8; J. Ambrož, *op. cit.*, etc.

The social need of work has a different character in different socio-economic formations. Under capitalism the problem of unemployment and reduced possibility of employment in the pre-pensionable and pensionable age has deep economic roots. Older employees are out of job more frequently and for extended periods of time. For example, in Belgium, which suffers from structural unemployment, 40 % of the unemployed were people over fifty in 1959; men in the 40—45 age group had to wait for a new job for the average period of 16.6 months, those older than sixty for 40 months, while men younger than twenty only 3.9 months. In France (April 1961) people over 40 years old made up as much as 60.3 % of the total number of unemployed. In Switzerland which suffers from a shortage of labour the majority of the small number of unemployed were people over forty (in 1961). In the United States, 32 % of the unemployed were men 45 to 64 years old, and 52 % were older than 65, etc.⁵⁵

Legal practice in the Western countries has developed discriminatory measures against older people (e.g. fixing a maximum age for employment) and thereby has further undermined their position on the labour market.

Socialist society has gradually eliminated unemployment. However, under socialism, too, the social need of work, unfavourably interpreted by managerial workers and economic officials in enterprises and their superior agencies, may hinder the extension of the work activity of persons who have become eligible to old-age pension.⁵⁶

Historical experience has also shown that in a socialist state, too, temporary and limited unemployment may occur (for example, after the defeat of the intervention in Soviet Russia, after the counter-revolution in Hungary, in connection with certain structural economic changes, especially in agriculture, in Poland, etc.). These cases are not due to the substance of the socialist system but rather to shortcomings, mostly organizational, arising out of economic practices or extraordinary political events. It is obvious, and Czechoslovakia's own practical experience has confirmed it, that in such economic difficulties society may be interested, for a transitional period, in having certain categories of persons, who have become eligible to old-age pension, retire and make way for young workers (see Government Decree No. 521 of 1958). How-

⁵⁵ Report of the Director General, Part I, 46th Session of the International Labour Conference, Geneva, 1962, Work and Retirement.

⁵⁶ See the speech of the former Chairman of the State Social Security Office, Evžen Erban, at a meeting in Ostrava-Vítkovice, published under the title „O zaměstnání osob, které splnily podmínku nároku na starobní důchod“ in *Otázky sociálního zabezpečení*, June 1962, No. 4, and the aforesaid findings of Polish experts.

ever, more often society's interest aims at having older workers continue in gainful activity and at spurring their interest in continuing in employment or other form of work. The endeavour to dismiss people eligible to old-age pension and the lack of interest in trying to convince them to stay on are most frequent in some enterprises mostly in material production which is essential for the fulfilment of the economic plan.

Under the new principles of improved and planned management of the national economy, the amount of the gross income of the enterprise and thereby also of the funds available for remunerating its employees will primarily depend on the amount of the proceeds of the sale of the products manufactured by the enterprise. This means that in its own interest, the enterprise will be forced — by economic pressure — to manufacture only products which are in demand on the market and for prices prevailing there. It will be therefore interested not only in modernizing its plant but also in rejuvenating its labour force. It may consequently happen that some managers, and possibly groups of workers, underestimating the professional experience, skill and knowledge of old workers, will favour their own, narrow interest against that of society as a whole. Especially in the sphere of manual production, some enterprises may choose a young and more productive employee and "retire" an older one because the costs of old-age pension are borne by the whole society, but the consequences of lower productivity would be borne by the enterprise, that is its workers.

This is, of course, merely an assumption, and only practical experience will show whether the author's concern has been justified. However, when determining the conditions of eligibility to old-age pension, this future possibility, too, must be at least realized.⁵⁷

The more the problem of employing the aged becomes a social problem, the more their protection, in case they do not find a job or can no longer work, becomes society's obligation.

Old age requires protection from society only when it is connected with reduced capacity to gainful activity. Society did not always attend to its old members incapable of work. The burden of care for the aged had shifted from the owner of the means of production (the slave owner and the feudal lord) and the family (as an economic unit under feudalism) to society as a whole only with the abolishment of the ownership

⁵⁷ The aforesaid concern has also been confirmed by L. Pisca who points out that some managerial workers tended to forget, when evaluating the output of older manual workers, the valuable experience of such workers, which many times outweighs their loss of physical stamina. (L. Pisca, *Nová mysl*, 1962, p. 499.) These trends towards promoting narrow local interests were thus manifest already under the old methods of management.

(full or partial, direct or indirect) of man by man, i.e. when human labour was doubly "liberated" — from the ownership means of production and personal dependency. Only the establishment of capitalist relations of production gave rise to the objective necessity of society's interest in the protection of its old members incapable of gainful activity. A subjective factor spurring this development was the political organization of the working class and certain political conditions prevailing in 19th century European society. For the time being, let us proceed from the assumption that the aging of individuals becomes a social problem only under certain relations of production at a certain stage of development of productive forces and in connection with certain forms of reproduction of the labour force also from the viewpoint of the reproduction of society's labour force as a whole; in saying this, we realize that this general assumption must still be proven.

In the initial stage of capitalist development, society took care of all individuals incapable of work by methods which were only a modern form of feudal and church charity. Old age and aging did not constitute a prominent contingency in those days of low life expectancy. Only industrial development, urbanization and its essential supplement — sanitary policing — reduced the mortality rate of infants, children and adolescents, and prolonged median life expectancy.

Modern society faces a new social problem that of its aging, of a growing relative and absolute number of old and dependent persons. In the process of reproduction of the labour force, the funds for the reproduction of the labour force at times of temporary and permanent incapacity for work have shifted to society which is increasingly assuming the task of securing the life of a growing number of old people incapable of work at least to the minimum extent. Protection of the aged population by society has become an important economic factor in the life of an industrially advanced capitalist society.

As we have already explained, this process continues under socialism. Care for old individuals incapable of work has become an integral part of the system of distribution of the national income. Consequently, socialist society is vitally interested not only in the problem of aging of the population but also in the preservation of the working capacity of as many of its members as possible.

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Summing up, we may say in conclusion that it is not a particular age limit, but the general state of a man's health, his abilities, physiology and needs, which change in the process of biological aging, that determine how an older person can find his place in the social organization

of work. Aging is dependent not only upon the state of an individual's health, but also upon socio-economic factors which may often act as primary and most important factors in the process of prolonging the work activity of the older age groups. As regards the relationship between the sickness rate and old age, and the relationship between the capacity for work and old age, we may note in general, that growing age is paralleled by a growth of absence from work due to sickness; the duration of sickness and its gravity grow longer. However, in view of a drop in the occurrence of sickness, these facts need not necessarily manifest themselves in increased absence from work. Growing age is also paralleled by growing invalidity due to changes in the nature of sickness as well as to the physiological processes caused by aging. Increased invalidity affects more seriously only individuals in the oldest age groups.

Old age does not preclude continuation of gainful activity. In fact, continued gainful activity tends to prolong man's active life. Physiological aging, accelerated and increased by pathological changes in the organism, does, however, cause changes in the relationship between the experience, knowledge, speed, strength and skill of a worker. Changes occur in his performance at work, even though these changes need not necessarily affect the final results of his endeavour or the remuneration he receives. Thus, it is the character of the work involved, which to a considerable extent determines whether older workers are able to continue at their present jobs; it seems that in the early stage of old age there occurs fluctuation of workers caused by the need of modifying the working conditions of workers in the older age groups. Some occupations (professions) provide the job opportunities meeting the changes in the organism and the character of work performance of older persons. Some auxiliary jobs have, in fact, become — because of this character as well as because of the lower average wage offered — a haven and something of an exclusive domain of these persons.

Prolongation of active life — not necessarily through participation in employment — if appropriate to the state of an individual's organism, today offers an important means of prolonging the vitality of the organism and of decelerating the degenerative processes. The realization that they are still useful to society may help older people preserve their health well into old age.

The author therefore fully agrees with the conclusions of the conference on questions of the standard of living, sponsored by the Czechoslovak Academy of Sciences and the Research Institute of Economic Planning, and held at Smolenice in 1959. The conference pointed to the need of creating conditions for extending socially useful activity into

old age and in doing so of making full use of the findings and achievements of all branches of science and technology. As society progresses towards communism, when work will become man's primary need, further reduction of pensionable age should not be considered an indication of a growing standard of living; on the contrary, it will be necessary to combine the principle of socialist remuneration according to work with elements of communist distribution according to need. All these facts must be taken into consideration when determining pensionable age.

§ 3 — GENERAL PENSIONABLE AGE

The principal condition of eligibility to old-age pension is the contingency which is defined as the economic and social consequences of the attainment of a certain age. It is most difficult to determine properly a certain physical age as pensionable age, and we should never assert that a certain age limit is proper or represents the optimum. Pensionable age is usually determined as the reflection of certain political, economic and other circumstances: at the best, it may be most suitable for a given period, under given conditions and under the impact of all decisive and other factors.⁵⁸

Determination of the pensionable age is primarily an economic and sociological, i.e. a social problem, and questions of health are secondary, especially at the initial stage of development of old-age pension schemes. However, the health service affects the determination of pensionable age in other ways — for example, by a general reduction of the mortality rate, in particular among the young age groups. This fact merely confirms our argument because the health service acts as a social factor through structural changes in the demographic set-up of the population.

If we claimed that the determination of pensionable age was primarily dependent on the knowledge of the process of aging, we would not be able to explain the differences between the actual termination of the productive age and its fictional end as specified by law, or the reasons behind differences in the concepts of the nature of old-age pension, or the causes of different treatment of individuals of the same age, who had engaged in different work or had belonged to different classes or social groups in their active age.

⁵⁸ For example, the fight of the trade unions for a lower pensionable age in Japan is justified because the prescribed age of 60 to 65 years is too high for the conditions prevailing in that country; on the other hand, in Sweden a relatively large percentage of the population lives to be sixty, and this age would be too low as a generally applicable pensionable age.

National laws define the contingency of old age by fixing the age at which pensions are payable.⁵⁹ However, there are cases where eligibility to old age pension does not require the attainment of a particular age, and instead the attainment of biological old age is presumed after a longer period of performance of a prescribed activity. For example, in Brazil old-age pension is granted as an alternative, irrespective of the actual age, after 30 years of employment, or, in Ecuador, after 35 years of payment of contributions. A parallel of this type of pensions is the long-service pension in the Soviet Union. Similar pensions exist most frequently in the pension schemes for public servants in the Western countries (Israel, Costa Rica, some of the States in the United States, et al.).

The determining factors for specifying pensionable age include: the state of the productive forces and the relations of production determining the economic possibilities and needs of society, under capitalism also the balance of forces in the class struggle, the overall economic, cultural and social level of society, the demographic situation, and tradition.⁶⁰ Many authors underline in particular the role played by the last of these factors;⁶¹ tradition undoubtedly plays an important role in countries with a strong working class which considers social security as a material right it had won, or in the developing countries which have strong traditions of the clan system. Nevertheless, we must not forget that in these countries, too, economic possibilities and necessities are of primary importance.

An additional factor influencing the choice of the general pensionable age is the choice of the basic approach to old-age pension. Under systems based on the fiction of invalidity pensionable age must on the whole correspond to the age when people as a rule become invalid, incapable of performing fully valuable work for remuneration, to the age when sickness and invalidity are frequent, and unemployment, if at all existent, becomes a constant threat.⁶² Under systems based on the presumption

⁵⁹ See International Labour Organisation, Studies and Reports, Series M, No. 10, *op. cit.*, p. 144.

⁶⁰ Also see L. Pisca, *op. cit.*, pp. 76 ff.

⁶¹ "...les facteurs sousmentionnés varient d'un pays à l'autre. ...il est difficile de dégager les tendances communes sauf une — qui est plutôt négative: c'est la tradition qui détermine en grande partie la situation actuelle dans chaque pays et il est bien difficile pour le législateur de procéder à des réformes substantielles qui se heurteraient aux traditions admises...", see A. Zelenka, *Les tendances de la sécurité sociale dans le monde*, Document de la Conférence européenne sur la sécurité sociale, Bruxelles, 10—15 décembre 1962, p. 15, No. V (9484) 62-F.

⁶² This is how the general condition for determining pensionable age is defined in the Income Security Recommendation No. 67 [1944] issued by the I.L.O.; see *Conventions and Recommendations*, I.L.O., Geneva, 1950; see also International Labour Conference, 46th Session 1962, Report I (1), Geneva, p. 67. A similar approach

of merit, pensionable age represents the peak of a man's lifetime, when the eligible person has bought or deserved the right to retirement and rest by having paid financial contributions or by the fact that he has made his contribution to the development of society through a lifetime of work. In the first case the pensionable age will be set higher than in the latter case, so that the eligible person may actively enjoy his retirement prior to becoming invalid.

It may be said, in general, that the choice of concept will affect the determination of pensionable age in the upward direction in the case of the social concept, and in the downward direction in the case of the concepts of equivalence and merit; however, this applies only up to a certain limit of economic and social effectiveness.

Out of the 67 pension schemes existing in the world in 1964, men were granted full pension at the age of 50 in one country, at the age of 55 in 11 countries, at the age of 60 in 25 countries, at the age of 62 in two countries, at the age of 65 in 22 countries, and the age of 67 in three countries, and at seventy in three countries.⁶³ Pensionable age for men is usually lower primarily in the developing countries of Africa south of the Sahara, and higher in the European countries. Seventy is the pensionable age in Ireland, Norway and New Zealand, 67 in Denmark, Iceland and Sweden. The pension schemes in the aforesaid countries are based on the concept of social need and have the form of state pension schemes.⁶⁴

In the decade between 1953 and 1963, pensionable age was changed only in several countries. Brazil abolished the requirement of age for eligibility to long-service pension. Chile reduced the pensionable age of women from 65 to 55. Greece slightly reduced the pensionable age of employees in industry and commerce. Switzerland reduced the pensionable age of women by two years. Recently Czechoslovakia joined Denmark in raising the pensionable age of childless women by two years and that of women who raised one child by one year; this increase was compensated by a reduction of the pensionable age of women who

was promoted by the International Social Security Conference at Caracas in 1955, Report I, Item II, Pensionable Age in Old-Age Insurance Schemes, p. 27. See also International Labour Conference, 1966, Report V (1): Revision of Conventions No. 35—40 concerning Old-Age, Invalidity and Survivors Pensions.

⁶³ Yugoslavia is the only country in Europe which grants pension to men at 55 after 35 years of employment. All the other European countries grant old-age pension to men at 60 or 65 or even at a later age.

⁶⁴ A more detailed comparison can be found in the previously quoted conference of the International Social Security Association (London), the Inter-American Social Security Conference (Caracas) 1955, etc. The data reported at the I.S.S.A. Conference in London are also quoted by Jacques Doublet, "Age de la Retraite et Prolongation de la Vie Humaine", *Droit Social* (France), Vol. 24 (1961), No. 3, p. 173.

raised three and four children by one year, and of women with five and more children by two years.⁶⁵

In addition to a full pension, most countries also grant partial pension at a higher pensionable age and after the requirement of a shorter qualifying period has been met. However, this question is closely linked with another condition of eligibility to old-age pension, which will be mentioned later.

Czechoslovakia's social security proceeds from its own traditions when determining the pensionable age, although in many respects its approach resembles those of schemes used in other Central European countries.

Under the commission insurance system for miners (Section 12 of the Act No. 242 of 1922) eligibility to old-age pension was established irrespective of the insured person's capacity for work at the age of 55 and after 30 years of employment in an enterprise compulsorily insured with a mining insurance fund, or at the age of sixty and after 15 years of membership in the aforesaid insurance fund.

Originally, pension insurance of non-manual workers was based on similar principles as the pension scheme for public servants. Under the latter scheme, a public servant was entitled to full pension after 40 years of insurance.⁶⁶ A reform put into effect in 1914 (Act No. 138 of the Imperial Code) reduced the general qualifying period from 10 to 5 years or 65 (for women), even if the actual period of insurance was not 40 years (35 in case of women); it is rather interesting that in those days invalidity was considered as premature aging and invalidity insurance was also granted at the age of 65 to individuals who had lost employment.

Under the pension insurance scheme for non-manual workers (Section 20 of the Act No. 26 of 1929), eligibility to old-age pension was established after cessation of the insured gainful activity after 60 months of paid contributions and after the attainment of the age of 60 by men and 55 years by women; as an alternative, eligibility was also acquired — irrespective of age — after 480 months of contributions. An amendment passed in 1934 added another alternative — so called social pension for insured persons who became unemployed after age of 55 (53 in the case

⁶⁵ In statistical terms (see the Czechoslovak Statistical Yearbook — *Statistická ročenka ČSSR*, Table 3—4): in 1961, 26.9% of women had no living child, 19% had one child, 24.7% two children, 18.8% three or four children, and 15.2% had five or more children. This shows that the latest adjustments brought an increase of the pensionable age to 45.9% of women, and benefited 34% of women. We must at the same time realize that the average of live-born children per woman is 1.9, and that the prospect of an earlier retirement could not yet have manifested itself as an incentive for a higher birth rate; however, experience gained in other spheres of social security does not warrant much optimism.

⁶⁶ See also A. Jindřich — J. Podlipský, *Penzijní pojištění*, Prague, 1934, pp. 30 ff.

of women), provided that they had been insured for less than 10 years and provided that they did not subsequently regain employment. Thus, under the regulations in force in 1935, there were three types of old-age pension: pension based on physical age, pension based on years of service, and pension granted for permanent unemployment in older age. Under the Nazi occupation, four pensions were created: for physical age (65 years), for combined physical age and years of service (60 years and 180 months of contributions), for years of service (480 months of contributions), and for unemployment at older age, or premature payment of pension (55 years, 120 months of contributions, and one year of unemployment). The differentiated pensionable age of 60 for men and 55 for women in pension insurance was a predecessor of the present system, just as the system of alternative conditions of a lower pensionable age and a longer qualifying period, and a higher pensionable age with a shorter qualifying period.

Under the social insurance system for manual workers (Section 112 of the Act No. 221/1924), eligibility to old-age pension was acquired after cessation of gainful activity at the age of 65, originally after a qualifying period of 150 contribution weeks; the qualifying period was reduced to 100 weeks of contributions as of January 1, 1929, and again raised to 150 weeks as of May 1, 1939; the qualifying period for persons older than 45 was 250 weeks of contributions. Beginning on January 1, 1943, the qualifying period was raised to 750 contribution weeks. The increase was to have been put into effect gradually.

This legal situation served as the basis for the Gottwald Government when it drew up the National Insurance Act in 1948. Two types of old-age pension were established — a full one at the age of 60 after 20 years of insurance, and a proportionate one after 4 years of insurance within the last 5 years before the day of fulfilment of the last condition; in both cases the condition was a substantial drop in earnings. The fiction of invalidity was applied in construing old-age pension (see the introductory report on Section 2 of the Act No. 99 of 1948). The former pension corresponded to the concept of equivalence, the latter to the concept of social need.

Miners could acquire old-age pension (Section 139) at the age of 55 after 25 years of work under the ground or after 35 years of work in the mining industry, 10 of which had to have been performed underground, or at the age of 60 after 15 years of employment in the mining industry. This form of miners' pensions was the predecessor of the current pensions granted in the first work category. Even then it was not enough to have fulfilled the requirement of the prescribed years of work in mining at any time. In order to prevent unwanted fluctuation of labour,

not more than two years must have passed between termination of employment in the mining industry and the day of fulfilment of the last condition.

The Act No. 99/1948 also served as the basis for the first Social Security Act (No. 55 of 1956). It extended the qualifying period for eligibility to the proportionate pension from 4 to 5 years and simplified the conditions for eligibility to old-age pension in the first work category (miners etc.) by replacing different qualifying periods with a uniform period of 20 years of employment underground. Differentiation was put into effect between the pensions granted to employees, co-operative farmers in Unified Agricultural Co-operatives of the IIIrd and IVth types,⁶⁷ in other agricultural co-operatives, and to privately operating farmers; these persons (except employees) were entitled to old-age pension only at the age of 65 after 8 years of insurance (men) or 5 years of insurance (women). Members of Unified Agricultural Co-operatives of the IIIrd and IVth types were entitled to old-age pension already at the age of 60, provided they had been insured for 20 years; obviously, this provision would have no practical effect until 1968.

The aforesaid reform did not, however, settle the main problem — how to deal with the rapid aging of the population, which would have meant an increase of pensioners in view of the existing provisions concerning pensionable age. The problem was how to achieve — without raising the general, statutory pensionable age — a situation where people would retire after the age of 60, 65 or even later. As we have seen, the solution should not be sought in a change of the pensionable age, nor would any improvement be achieved by changes in the qualifying period. The solution has to be sought in achieving harmony between the payment of pensions and continued employment. This question is discussed in Chapter IV below.

DIFFERENTIATION OF PENSIONABLE AGE ACCORDING TO SEX

Many general pension schemes in the various countries differentiate pensionable age according to sex. Over 30 pension schemes afford preferential treatment to women by providing for a lower pensionable age for them. As a rule, the difference between the pensionable age set for men and women does not exceed 5 years. Only Chile recently increased the difference to 10 years. The aforesaid differentiation is most common in Europe. Out of 35 countries in Africa, Asia and the

⁶⁷ Unified Agricultural Co-operatives were divided into four types, depending on the method of distribution of income among members — whether it was based on land ownership (type I) or work (type IV).

Americas, only 14 give preferential treatment to women. It is rather interesting that in Denmark and Finland the pensionable age granted to unmarried women, widows etc. is different from that for married women. It is also remarkable that the number of schemes giving preferential treatment to women has relatively increased in the past 30 years.⁶⁸

The lower pensionable age set for women in almost half of all the world's pension schemes (and almost in all the European schemes) is explained by the social status and biological functions of women. An employed woman must not only perform her job, but it is also assumed that she takes care of the household, bears children and raises them. Thus she usually holds two "jobs". Any assistance granted to her can only alleviate her fate. But it does not relieve her of the major burden of responsibility.

Views concerning this problem are still not uniform.⁶⁹ The opponents of the differentiation of pensionable age object in particular that a woman of 55 has, as a rule, overcome most of the difficulties and is fully capable of work. Demographic data show that women in the older age groups as a rule live longer than men. Differentiation is also opposed by many women (see some of the resolutions passed by the U.N. Commission for the Status of Women in the period 1961 to 1963), who view it as a form of discrimination of women.

There is no doubt that it is primarily women with children who must carry the aforesaid two "jobs". On the other hand, for many unmarried or married but childless women — just as for men — work is the main purpose of life and therefore they tend to prolong their gainful activity. Therefore, the substance of the preferential treatment of women was expressed in principle in the 1964 provisions with greater precision by granting preferential treatment to mothers and not childless women. They also provide for a specific feature of Czechoslovakia's everyday life — the role of grandmothers in a situation characterized by a high rate of women employment. Mothers who are in the pensionable age are, as a rule, grandmothers and take care of or help raise their grandchildren whose mothers are employed. Thus they do not remain inactive.

While the usefulness of the measures favouring employed mothers is beyond any doubt, the slightly preferential treatment extended to mothers with more children, as introduced by the Act No. 101 of 1964, evokes some doubts. It is rather difficult to understand what difference there is in the physical condition of a mother of two or of three children;

⁶⁸ We reach this conclusion by comparing the current situation described, e.g., in the publication *Social Security Throughout the World* with the already quoted publication *I.L.O. Studies and Reports*, Series M, No 10, p. 145.

⁶⁹ See L. Pisca, *op. cit.*, p. 152.

why mothers of one and two children have the same pensionable age and why they should differ from mothers of three or four children; why we distinguish between mothers having 4 and 5 children, but do not do so with respect of mothers of 3 and 4 children. The endeavour to express the care devoted to the raising of every additional child by reducing the pensionable age by one year is doubtful. After all, by bearing a child, a woman is given the opportunity to lead a physically full life, while childlessness, on the other hand, may cause mental and sometimes also physical deformations and problems, especially in older age. These are problems for medical men and sociologists to analyze. There is certainly no doubt that this differentiation in the pensionable age of women according to the number of children they have raised is a unique experiment which has no parallel in the world⁷⁰ and its results should be instructive for many countries. It somewhat resembles the differentiation of the pensionable age of women in Denmark and Finland; however, these two countries proceeded from different considerations and give preferential treatment to unmarried women.

DIFFERENTIATION OF PENSIONABLE AGE FAVORING CERTAIN CATEGORIES OF PERSONS

A number of European countries grant a more advantageous pensionable age (usually reduced by 5 years against the pensionable age applying to the average urban employee in industry⁷¹) to persons working in *conditions injurious to health* (e.g. Albania, Argentina, Belgium, Bulgaria, Chile, Greece, Hungary, Iran, Israel, Libya, Poland, Rumania, Turkey, the U.S.S.R., Yugoslavia, et al.). In some countries employees receiving preferential treatment are divided into two categories according to the hazards and injurious effects involved in the work performed. More

⁷⁰ In the Soviet Union pensionable age is 5 years lower for women who have raised 5 or more children up to the age of eight; the data cited by L. Pisca in footnote No. 70, *op. cit.*, p. 152, are not exact. (Comp. *Gosudarstvennye pensii i posobiye*, Moscow, 1963, p. 103.) This preferential treatment of women has a somewhat different character than the recently introduced Czechoslovak provisions. Women who raised five or more children up to the age of eight enjoy certain advantages over other women and have a pensionable age ten years lower than men. No difference is made between women not meeting this condition, irrespective of whether they are mothers or not. The overwhelming majority of women enjoy without any additional difference the same advantage — a five years lower pensionable age than men. The fact that this additional advantage enjoyed by women with many children is a rather special measure and that it does not affect many women is apparent from the fact that most Soviet authors do not even mention it. (See, e.g., V. V. Karavayev, *Sotsialnoye strakhovaniye v SSSR*, Moscow, 1955, pp. 95 ff.; E. A. Astrakhan, *Principy pensionnogo obespecheniya rabochikh i sluzhashchikh*, Moscow, 1961, pp. 35 ff., etc.)

⁷¹ We proceed from the pensionable age applying to urban employees in industry because in some countries commercial employees get preferential treatment while employees in agriculture, on the other hand, have a higher pensionable age.

exposed workers enjoy the advantage of a further reduction of the pensionable age by another 5 years (e.g. in Albania, Bulgaria, the Soviet Union) or 3 years (in Israel).

Of similar nature is the *differentiation favoring miners* working underground,⁷² although here the decisive factors include the results of the class struggle, the power of the miners' trade unions, and tradition. Many countries grant a similar advantage to railway workers⁷³ and seafarers.⁷⁴ These more or less "professional" categories of employees are most often granted a pensionable age reduced by 5 and sometimes by 10 years compared with the average urban employee in industry. This differentiation is based on the already mentioned presumption that injurious and hazardous working conditions accelerate the degenerative processes of old age. A subsidiary reason may also be the professional privileges of certain occupations or the social significance of a particular occupation or profession, which may become the principal motive of preferential treatment under a specific economic and social situation. This was true, e.g., in Czechoslovakia in 1956 with respect of miners working underground and in coal mines. In 1964 these social preferences began to give way to health considerations, which was manifested, for example, in the fact that additional groups of employees were promoted to the first work category, this time primarily because their health was considerably endangered at work (this is true of jobs involving especially arduous and unhealthy work in metallurgical industry or in heavy chemical industry, work in caissons, work in the final processing of radioactive raw-materials, diving, etc.).

The capitalist countries differentiate pensionable age *according to appurtenance to a particular group of employees*. In Chile, the pensionable age of workers is 65 years, while office workers are eligible to old-age pension after 30 years of service irrespective of their age. In Luxemburg the pensionable age of workers is 62 years, while that of office workers is 60 years.

An especially marked preference in this respect is enjoyed by public servants, not only in Western Europe. The newly independent African countries have often set up special pension schemes for their public servants, which are similar to the schemes existing in the former metropolitan powers. Other groups of the population are not entitled to any

⁷² E.g. in Belgium, Bulgaria, France, Great Britain, Holland, Italy, Japan, Luxemburg, Poland, Rumania, the U.S.S.R., West Germany, Yugoslavia, etc.

⁷³ E.g. Argentina, Belgium, Brazil, Denmark, Finland, France, Great Britain, Holland, Norway, Poland, etc.

⁷⁴ E.g. Argentina, Belgium, Brazil, Chile, Finland, France, Holland, Italy, Japan, Norway, Spain, Sweden, etc.

old-age pension whatsoever, or receive pensions under much more modest and newly established pension schemes.

The socialist countries included the elimination of professional privileges among their first measures in the sphere of social security following the socialist revolution. These countries have also eliminated all differences between the schemes previously applicable to workers and office employees.

In some countries there is differentiation of pensionable age applying to *different groups of the gainfully active population*. After World War II pension schemes for *self-employed persons* were established. Many countries provided for a higher pensionable age for self-employed persons than for the average urban employees in industry. For example, in France and Italy the difference is five years. The same is true of Czechoslovakia. Similarly as in France and Italy it is 65 years provided the person ceases gainful activity, or else 70 years for men.

The collectivization of agriculture in the socialist countries gave rise to a new class of co-operative farmers. In Bulgaria and Czechoslovakia these farmers become eligible to old-age pension at the same pensionable age as employees. In Hungary and Poland employees still enjoy a more advantageous pensionable age 5 years lower than that applicable to co-operative farmers. Under the new scheme for cooperative farms in the USSR (1964), the pensionable age is 65 years for men and 60 years for women, or 55, if they have raised at least 5 children up to 8 years of age.

GENERAL PENSIONABLE AGE AND CONTINUED EMPLOYMENT

We have already said that pensionable age must not run counter to the purpose of old-age pension. By setting pensionable age so that it is in keeping with the other conditions, we may promote either continued economic activity or retirement. However, we shall return to this question in the following chapter. Now we are primarily interested in the *possibility to influence the development of the employment rate among older individuals through pensionable age*. Thus far we know of three possibilities:

a) *Anticipated payment of old-age pension.*⁷⁵ Anticipation of the payment of old-age pension makes it possible to maintain a higher pensionable age as a rule. Anticipated pension is sometimes granted in the full amount, or reduced. This usually depends on the grounds stated in the application for such a pension. Anticipation of the pension serves a purpose similar to the invalidity pension but finds its application

⁷⁵ Old-age pension paid before the attainment of pensionable age.

precisely in those situations, when the eligible person becomes needy without being entitled to an invalidity pension.

Some pension schemes provide for the payment of a reduced old-age pension up to five years before the attainment of pensionable age. In Argentina, Belgium, Greece and the United States reduced old-age pension is paid upon the application of the insured person without any examination of the grounds of the application. In Belgium, for example, 5 % is deducted from the full pension for every year missing to the prescribed pensionable age. Sweden permits anticipated payment of old-age pension reduced by 0.6 % for every month missing to the attainment of pensionable age.

Other countries permit anticipated payment of old-age pension in the case of long-term unemployment in the last five years prior to the attainment of pensionable age. In West Germany and Austria the insured person may apply for the payment of the full amount of the pension after at least one year of unemployment. A similar provision exists in the pension schemes in force in Mexico and Uruguay, where, however, only a reduced pension is paid in such an event.

Provisions regarding the possibility of anticipated payment of a reduced old-age pension are frequently to be found in the pension schemes of the developing countries, such as the Congo (Kinshasa), Burundi, Upper Volta, et al.

Anticipated payment of old-age pension is a part of new attempts by society to "individualize" pensionable age. It proceeds from the endeavour to replace a single, chronologically determined pensionable age with a pensionable age span of five years. Preferential treatment is given to individuals who defer their retirement until they reach the farthest limit of this age span. A different technique of determining pensionable age is applied here, aiming at detaching the pension from rigid fiction and bring it closer to the diversity of actual life.

b) A similar purpose is followed by the *valorization of retirement*. Use is made of the difference between pensionable age and retirement, and material stimuli are applied to induce the farthest possible extension of this difference, so that retirement is deferred as much as possible after the attainment of pensionable age. This method is linked to the problem of continued employment and we shall therefore analyze it in that connection. Nevertheless, we must note at this point that this method is especially suitable for schemes which for various reasons provide for a low pensionable age.

c) The third method proceeds from the previous two and involves *gradual retirement*. It is thus far applied mostly in corporate additional insurance in the United States. It has not yet spread much beyond that

country. It combines the advantages of anticipated retirement and of valorization of retirement in that instead of pensionable age it provides for a pensionable age span (an analogy of the first method) and material stimuli for extending economic activity (the second method) with a simultaneous compensation, even though of merely a partial loss of earnings due to a lower performance or reduced working hours, which is presumed as a necessary consequence of the gradual degeneration of the organism caused by old age.

This method, supplemented with additional measures, seems to be most suitable to the needs of socialist society in its slow transition from the principle "each according to his ability — to each according to his work" to the principle "each according to his ability — to each according to his need". All workers would have a material interest in extending their economic activity — according to their ability (even partial) — and society would grant them a share of the national income appropriate to their need due to a drop in their earnings.

We shall return to this question in connection with continued gainful activity.

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We may thus sum up that pensionable age is the principal condition *sine qua non* of eligibility to old-age pension, irrespective of whether it is expressly set or, as an exception, is tacitly assumed by the setting of a very long qualifying period. The length of the chronological age limit set as the pensionable age is determined by the needs and possibilities of society as well as by the needs of the individual, and by the chosen basic concept; pensionable age is higher where fictitious invalidity is presumed and social need is required, and is lower under those pension schemes which award merit or provide services (an equivalent) against the payment of insurance contributions.

Several methods of fixing pensionable age have been developed. A low pensionable age may be set and material stimuli may be used to spur interest in deferring retirement well beyond the limits of pensionable age. A similar result is achieved by the setting of a higher pensionable age combined with the possibility of anticipated payment of old-age pension. Recently a third alternative came into being — gradual retirement. It combines the advantages of the two previous methods and, in addition, makes it possible for every individual to extend substantially his gainful activity (even though a limited one) by protecting persons who are not invalid but are no longer capable of engaging in their original gainful activity, and who cannot yet be granted partial invalidity pension. Gradual retirement — in contrast to partial invalidity pension —

makes it possible to assess also subjective factors and is not limited only to the physical health of the protected person. An important role is played by the will of the person concerned — namely, how individuals who feel exhausted but are not invalid may choose to retire permanently or temporarily, or may retire partially. This question will be discussed in detail in the next chapter.

FOR OLD-AGE PENSION OTHER QUALIFYING CONDITIONS

§ 1 — LEGAL RELATIONS DETERMINING ELIGIBILITY TO PENSION

Under the Act No. 101 of 1964 (Section 11), old-age pension is granted to a worker who has met the prescribed conditions "in the course of employment". Existence of employment is also required under Section 12 of the same Act for eligibility to a partial old-age pension. Professional soldiers and members of armed forces become eligible to old-age pension under Section 99 of the Act only if they meet the prescribed conditions while serving in the armed forces. The Act No. 103 of 1964, concerning social security of co-operative farmers similarly requires in its Section 44 the existence of covered activity. Section 7 of the Order No. 105 of 1964 requires the existence of insurance at the time of establishment of eligibility to old-age pension.

Thus, one of the conditions of eligibility is the existence of a certain legal relation at the time eligibility arises. In order to become a pensioner, an individual must first be protected, i.e. he must be a potentially entitled person. If he is not protected, he cannot become eligible to old-age pension. The existence of a prescribed legal relation is therefore a *conditio sine qua non* of eligibility to old-age pension.

The basic legal relations may have different forms. In substance they may be divided into relations arising from social security (the legal relation of insurance) and legal relations governed by other branches of law, whose primary purpose is not social security coverage.

Insurance is seldom requested under Czechoslovakia's old-age pension schemes. At present it is required only under the pension insurance of self-employed persons.

We shall therefore focus our attention on the second group of legal relations, which are governed by other branches of law, and on their importance for eligibility to an old-age pension.

The rather widespread view that social security was merely a derivation of employment⁷⁶ was theoretically correct while the Act No. 99 of 1948 was in force, because the existence of employment then consti-

tuted a legal fact establishing insurance *ipso iure*. However, the current provisions of the Act No. 101 of 1964 proceed from a broader base.

Employment is only one (although the main and most widespread, but no longer the only one) of several possible activities. Let us analyze more closely Section 1 of the Act No. 101/1964, which governs the scope of persons protected. Under subparagraphs a) to g) it lists a number of activities which cannot always be classified as employment and which, moreover, do not always constitute even gainful activity.

The Act does not extend protection only to the parties to certain legal relations. It uses a formulation which indicates that it rather has in mind:

- a) specified persons (personal status), who may acquire their qualification either through participation in a certain legal relation (employees) or through license issued by a certain authorized institution (recognition of an artist by the competent professional organization);
- b) specified activities, e.g. fight against fascism et al.

Specified persons enjoy protection under all circumstances, while in the case of specified activity protection is limited only to the possible consequences of such activity, but not to other contingencies which might have endangered the respective person in the course of his activity.

Thus the *conditio sine qua non* of eligibility to old-age pension is a defined or prescribed activity in a certain legal relation, which need not necessarily constitute employment, or a prescribed legal qualification of a person who is not a party to any of the specified relations, i.e. labour-law relations or relations granted equal status. This definition of the basic legal condition for establishing eligibility to old-age pension has divorced the legal relations of social security from labour-law relations.

This process is linked with the more general development from professional security schemes to a universal and uniform system. The objection may be raised that a uniform system was introduced as early as in 1948 and later disintegrated. However, that system involved only organizational, financial and administrative unity. Current development aims at uniformity of the material provisions as the outcome of the gradual elimination of classes in Czechoslovakia. An interim stage of this development will be the application of uniform provisions to all gainfully active individuals, and its final aim a universal system of protection in old age for all members of society.

The existence of the basic legal relation, or of a certain personal status, is also an essential condition for establishing *eligibility to a preferential*,

⁷⁶ Comp. all the editions of university textbooks on Soviet labour law and textbooks on Czechoslovak labour law (published by the Law Faculty of Charles University in Prague).

or higher, pension connected with the performance of a certain qualified occupation (the first two categories of work). In order to become eligible to old-age pension, workers in the first two work categories are required, for example, to be employed at such work at the time they attain the prescribed age (Section 11 of the Act No. 101/1964). An employed worker is considered as being employed in a privileged work category, if "such employment ended for reasons of health, recognized by the social security review commission of a district national committee, or for other serious reasons recognized by the district governmental council on the basis of a recommendation issued by the executive bodies of the local organization of the Revolutionary Trade Union Movement, and if the aforesaid reasons continue".

When examining whether employment in the first two work categories continued at the time the last condition was met (this is a restrictive condition), we can always proceed from the status quo on the day all the conditions of eligibility were met, because the preferential claim is based on the period of performance of the preferred occupation. This excludes any speculation.

It remains to be said whether in view of the link with the continuation of the preferred occupation, the restrictive condition of validity of the advantages arising from the preferred occupation is not superfluous. Here we must bear in mind the possibilities available to society (by abolishing this condition, we would enlarge the scope of persons qualified to receive preferential pensions) and the needs of society (the need to interest workers in staying in the preferred occupations); the needs of society need not always match the interests of the individual who after having worked twenty years in the preferred occupation (the basic condition) would rather protect his health and leave the job which threatens his health, for a less hazardous one. The question of desirability of such a restrictive condition can be definitely answered only with a thorough knowledge of the possible economic consequences of its abolishment and after ascertaining the views of the persons concerned through a sociological survey. But it may be said in general that the restrictive condition is not essential because eligibility to preferential pensions is primarily linked with the length of the period during which the organism is exposed to the harmful surroundings at work, accelerating the processes of aging.

Since a prescribed activity in certain employment, or a prescribed personal status, are the *conditio sine qua non* for establishing eligibility to old-age pension, we must necessarily ask, whether a past (earlier) fulfilment of this condition would not be sufficient and *whether it is necessary for this situation to last at the time when all the other conditions are met.*

Two solutions offer themselves on this point:

- a) a restrictive one, or
- b) a liberal one.

Under the restrictive solution the prescribed situation (i.e. a legal relation or personal status) must unexceptionnally exist at the time all the other conditions are met. We meet with this solution occasionally in social welfare schemes which require citizenship for the establishment of eligibility. The harshness of this condition is most frequently lessened by an alternative demand of a prolonged permanent residence (e.g. in Norway, Sweden and other countries).

Under the liberal solution eligibility is established by the attainment of a certain period of prescribed activity which need not necessarily continue at the time the other conditions are met. A liberal solution is applied primarily in schemes based on equivalence. This is obvious because if an individual has bought even a part of the right to a pension, he should not be deprived of such a part. Social insurance schemes have therefore created the institutions of surrender money⁷⁷ or return of paid insurance contributions.⁷⁸ In other cases even this partially purchased claim is preserved and is paid in the form of partial pension when the other conditions are subsequently met. This is a practice similar to the Czechoslovak provisions under which periods of employment preceding an interruption in remunerative work are included in the overall period of employment after a certain minimum period of coverage after resumed employment (Section 8 of the Act No. 101/1964).

Under systems based on the presumption of merit we meet most frequently with a compromise between the two extremes. The harshness of the restrictive solution is "lessened" by a partial application of the liberal solution. The institution of protective term or period is esta-

⁷⁷ E.g. under the Czechoslovak invalidity and old-age insurance (the Act No. 221 1924) and under pension insurance (the Act No. 26/1929), a widow was granted surrender money as a benefit under social welfare insurance, from which no eligibility to any of the social welfare pensions could be established, because the deceased employee had not met the qualifying period (for details see F. Preis, *op. cit.*, p. 381).

⁷⁸ Return of contributions (in full or partially) is considered in the West European countries today as a contradiction of the basic principle of mutual subsidy in social security. It is therefore being gradually eliminated. It survives only in some Latin American countries and in certain special schemes for specific categories of employees (e.g. public servants). It has most often been preserved to cover cases where a woman leaves employment after marriage. For example in Turkey a woman who leaves employment after marriage receives the contributions she has paid and 50% of the premiums paid by her employer. A similar practice exists in Japan. These measures are explained by the fact that many young women in these countries leave employment after marriage and do not return to the labour market. On the one hand, these women cannot fulfill the conditions establishing eligibility to pension benefits and have paid their contributions in vain, and, on the other hand, they need a certain sum to set up their new home. By having the old-age pension contributions returned to them, these women are granted a kind of "trousseau allowance".

blished, i.e. a period during which the respective individual is considered as meeting the condition of existence of a legal relation or personal qualification (as a legal fiction). This measure differs from the liberal solution mainly in that it does not recognize past situations but requires their existence (or fictitious existence) at the time of the fulfilment of the chronologically last condition establishing eligibility.

Protective period is an institution which is rather widespread today. It covers two years under Czechoslovakia's old-age security. It begins to run on the day the required legal relation or personal status end, and must still run when the other conditions establishing eligibility are fulfilled.

Determination of the length of the protective term is a matter of consideration based on the possibilities of the given society (the longer the term is, the more people can qualify), its needs (increased protection of older individuals who can hardly find a new job after having lost their previous one), as well as on individual needs (as we have shown in the preceding chapters, sickness and deformations due to old age can disqualify a person from remunerative work prior to the attainment of pensionable age, without making the affected person eligible to invalidity pension). The length of the protective term is therefore a matter of policy. A rather limited sociological survey carried out in Prague showed that if the protective term allowed it, only older women who already meet the condition of the length of employment, establishing eligibility to old-age pension, would leave employment prior to the fulfilment of the other conditions of employment to attend to their grandchildren, for example. However, such cases are not numerous.

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We may sum up in conclusion that one of the conditions of eligibility to old-age pension is the existence of a certain legal relation, or a certain personal status, at the time of the fulfilment of the chronologically last condition of eligibility or in the course of the protective term. The required legal relation (which is basic) is only a condition and may be replaced by appropriate, legally recognized activity (such as basic military service).

Eligibility to old-age pension is not a claim (product) derived from the basic legal relation; the mere existence of this basic legal relation does not give rise to the claim. The basic relation must always continue for a certain period of time — with the periods of appropriate activities added thereto.

The condition of the existence of a certain legal relation, or personal status, is essential for construing the conditions of eligibility to old-age

pension, as long as there exist different systems of old-age security, for it is the legal relation, or personal status, which determines under which system of social security the entitled person will become eligible to old-age pension. Once all differences between the individual systems are eliminated and a uniform system of old-age security is established, this condition will not be essential. Under the Constitution all citizens have the duty to make their living by honest work and not exploit the labour of others; only those persons are excluded from this duty, who meet one of the socially recognized reasons of inactivity. It will then be unnecessary to require the basic legal relation as a condition of eligibility since the amount of the benefit, too, is conditional upon the respective individual's remuneration. If the individual did not work without any valid reason, he would not be entitled to any share of the national product, and although he might become eligible to a pension, the amount of the pension would equal zero. Once the different systems of old-age security are unified, the condition of the existence of a certain legal relation, or personal qualification, will necessarily disappear.

A different fate is in store for this condition in connection with entitlement to a preferential old-age pension. In this case the condition is not essential even today, and the reason why it still exists lies outside social security; it includes certain economic and social interests, such as material interest in stabilizing labour in certain preferred occupations, or the economic possibilities of society.

§ 2 — THE QUALIFYING PERIOD

We have already indicated that the establishment of eligibility to old-age pension does not depend only on the existence of the basic legal relation, or a certain personal status, but also on the duration of this situation (*the qualifying period*).⁷⁹

THE DEFINITION OF THE QUALIFYING PERIOD

The qualifying period can have an *extremely varied character and importance*, depending on the nature of old-age pension. In social welfare schemes, where old-age pension merely provides for minimum subsistence, the qualifying period is often expressed in terms of permanent residence. There, the qualifying period has the purpose of protecting the pension system, which is not reserved only to the nationals of

⁷⁹ The length of employment etc. may affect old-age pension not only with regard to eligibility (as the *conditio sine qua non*) but also with regard to the amount of the pension. The second aspect is connected with the composition of the pension scheme, the analysis of which is not the subject of this study.

the respective state (e.e. Sweden and Australia), from abuse by foreign nationals. In Australia aliens may acquire pension by naturalization, if they meet the alternative condition of twenty years of permanent residence. Norway requires five years and Canada ten years of residence for eligibility to old-age pension.

Under the social insurance schemes, which are based on actual or imaginary equivalence of the contributions and the pension, either a certain period of payment of contributions or a certain period of insurance are required. The latter case involves a broader concept, and the payment of all the contributions is not necessarily required for meeting the qualifying period. The loosest variation of this qualifying period is the period of insured employment, where the decisive feature need not even be the actual establishment of the insurance.

The application of different forms of qualifying period in social insurance schemes often depends on the scope of the persons protected under these schemes. If social insurance covers the whole gainfully active population, long qualifying periods are unnecessary.

If a social insurance scheme protects only a limited scope of persons, a long qualifying period is necessary to ensure that the advantages of the social insurance scheme are reserved only to the persons for whom they have been designed, so that other persons will not have the opportunity to gain eligibility to pension only by being insured for a short, transitional period.⁸⁰ For example, Israel, where the whole gainfully active population is insured, requires five years of insurance. The qualifying period most frequently varies from 15 to 25 years of insurance or insured employment.

No matter how greatly the qualifying periods set in old-age insurance schemes vary, their basic purpose is, as a rule, to maintain a certain proportion between the payment of the contributions and the establishment of eligibility to the pension (its basic amount). This fact is markedly apparent when we study the effect of the length of the insurance on the amount of the pension in the pension scheme, which, however, is not the subject of this study.

Under schemes based on the merit concept, the qualifying period is only a transitional necessity. A person gains little true merit for the development of society, if he serves for 40 years, as a fiscal clerk or a charwoman. The author does not want to slight the social importance

⁸⁰ However, this is not an absolute rule. For example, Switzerland, where federal social insurance covers all gainfully active persons, requires twenty years of insurance and Great Britain, in addition to the payment of 156 weekly contributions, the payment of the average of 26 weekly contributions for every year of insurance from the first entry into the insurance scheme.

of these occupations; he merely wants to point out that a certain number of years of service in a society where exploitation of man by man is unconstitutional and where all citizens have the duty to work does not constitute any special merit. Therefore, a qualifying period cannot be considered, in a socialist society, as a basic criterion of merit affecting distribution of the national income. By meeting the requirement of a qualifying period, the entitled person becomes eligible to pension not because he merits it but because he has earned it by his long years of service. This, in a way, is a remnant of the concept of equivalence.

Although the qualifying period is not a measure of true merit, it is essential for a transitional period of time. Its essential character is due to the tradition which gave rise to the current system of social security and to the social and economic needs of the transitional period between capitalism and communism. Czechoslovakia's pension systems have developed from national insurance which merely unified — organizationally and financially — the previous maze of rules, regulations and schemes. The different pension schemes in our society are a manifestation of differences in the relations of production. As long as different systems of pension security exist, the merit system, too, must maintain long qualifying periods, so that individuals who did not work in the past cannot abuse the various benefits (for a transitional period, which will end some time after 1975), so that the class and economic differentiation between individual groups and classes of the socialist society is preserved (the main objective is to limit speculative transfers from one system into another), and so that a certain balance is maintained between the individual's overall contribution, i.e. the work of his lifetime, and the type and/or amount of his old-age pension. An important reason for setting a longer qualifying period connected with a lower pensionable age (most prominently applied in the Yugoslav old-age pension scheme, for example) is also the relationship between a certain length of gainful activity and the degree of wear of the organism; in this sense we may also say that after a long period of gainful activity man finally "deserves" rest.⁸¹

For these reasons in Czechoslovakia until 1964, the qualifying period required in respect of periods prior to the 1948 reform was the period of insurance. In 1964 the period of insurance was changed into period of employment.⁸² This changed the content of the qualifying period

⁸¹ As the nationwide discussions carried out in recent years have shown, this view is also widespread among workers in Czechoslovakia.

⁸² The introductory report on the Act No. 101/1964 (Records of the National Assembly, issue No. 193, Third Electoral Term, 1964) states that the Bill has abandoned the system of insured periods according to the old regulations, and is based on periods

although its purpose remained unaltered. The extension of the qualifying period from 20 to 25 years further underlined the differentiation between the various categories of the gainfully active population in the socialist society.

Section 6 of the Act No. 101/1964 defines qualifying period as the period of employment, while Section 39 of the Act No. 103/1964 as the period of remunerated activity and Notice No. 105/1964 as the period of insurance. The period of insurance is understood as meaning the period of actually paid contributions; this is an expression of the fact that this system is based on the concept of equivalence; therefore, it will not interest us from the viewpoint of our further analysis.

The period of employment has become a fiction because besides the periods of employment and apprenticeship it also includes periods of membership in producer co-operatives, of basic and other military service, as well as of certain other activities which do not have the requisites of employment but are covered by sickness insurance (periods of study etc.). The qualifying period also includes periods of certain inactivity, such as unemployment, lock outs, strikes, persecution, etc. Period of employment is thus in fact a socially recognized period of activity or inactivity.

CREDITED PERIODS

In view of the highly diversified forms of life and its situations in our society, it was necessary to include among the preferential periods additional periods enjoying the same protection, respect and social recognition as periods of employment. This gave rise to the *institution of credited periods*. These are different periods of activity (care for a child, underground and guerilla activity during the Nazi occupation, active participation in the war against fascism, training courses, vocational rehabilitation etc.) as well as inactivity (imprisonment and persecution during the Nazi occupation, receipt of benefits in connection with incapacity for work, etc.). These, too, are socially preferred periods of activity and inactivity, which differ from employment in that they are applied only subsidiarily, i.e. they are not taken into account if they parallel periods of employment in a given calendar period. Some credited periods

of actual employment. The latter periods are added up as of the day of the founding of Czechoslovakia as a sovereign state... This is to eliminate from the social security system the principal remnants of the old social insurance schemes and is to do away with the past discrimination of manual workers as against non-manual workers who enjoyed greater advantages as regards the crediting of their past periods of insurance in view of the earlier origin of their insurance scheme.

are also awarded only in respect of eligibility to old-age pension but do not affect its amount. Under Czechoslovak law some of the credited periods are multiplied by two or one and a half.

Out of the originally strict definition of the period of employment (insurance etc.) supplemented by certain credited periods,⁸³ two categories of preferred periods developed under the Czechoslovak system of social security — periods of employment (which also include many periods when an individual was not actually employed or was not party to any relation of equal status — such as unemployment, periods of persecution for participation in the working class movement, periods of military service) and credited periods. It is difficult to find any profound theoretical explanation why, for example, a period of persecution for participation in the working class movement is viewed as a period of employment, while the period of persecution because of participation in the fight against fascism is considered a credited period, why peacetime military service is a period of employment, while wartime military service is a credited period, why apprenticeship and study are periods of employment, but periods of preparation for an occupation by vocational rehabilitation and periods of vocational training courses are credited periods.

It seems that, in fact, we have already replaced the requirement of a specified period of employment by the requirement of a specified period of socially preferred activities or inactivity, which differ according to whether they are decisive for both eligibility and the amount of pension or merely for eligibility purposes. If this development was intentional, it would be proper to abandon the term period of employment and introduce the term period of recognized activity and give equal status also to some periods of forced inactivity. If, on the other hand, this development is unintentional, it would be proper to define exactly the respective terms, return to their original meaning, and define period of employment as a period of remunerative work and relations of equal status, and credited periods as periods of other, socially recognized activities and forced inactivity, which have the same value as "employment" in the calendar periods when the entitled person was not "employed", or, in other words, as periods substituting periods of employment. What is included in such periods is not a matter of theoretical but rather of practical political and economic consideration.

Much greater terminological consistency characterizes the provisions

⁸³ This is the situation still prevailing in social insurance schemes where periods of insurance represent only those periods when contributions were actually paid, and credited periods of equal status.

governing the period of economic activity with respect to co-operative farmers. Section 39 of the Act No. 103/1964 includes in this period exclusively periods of insurance since October 1, 1948, periods of social security coverage under the aforesaid Act, the period of apprenticeship, the period of certain study, and — optionally (according to the discretion of the district national committee) — also the period prior to January 1, 1957, when a woman worked on a co-operative farm without being its member. The Act defines credited periods as all periods of service in the armed forces, periods of other military activity, resistance activity and persecution, and, in the case of women, also periods of care for a child up to the age of three. A comparison with the regulations in force with respect to employees shows that the wording of the provisions included in the Act No. 101/1964 was not intentional and is merely the outcome of current legislative practice.

THE COURSE OF QUALIFYING PERIOD

Periods of employment, insurance etc., whose lapse fulfills the condition of a qualifying period, may be counted for the whole period of productive age or only for a certain period of time often immediately preceding the fulfilment of the chronologically last condition of eligibility to old-age pension.⁸⁴ For example, in Belgium, eligibility to old-age pension requires insurance from the first possible day of employment, or actual commencement of employment (according to rules in force since 1955 for blue collar workers and since 1957 for white collar workers, the total of 45 years for men and 40 years for women). Similar regulations are in force in Holland where insurance from the age of 15 to 65 is required, including substitute periods. On the other hand, Colombia requires a qualifying period of 500 weeks of contributions within a specified period of 20 years preceding the fulfilment of the chronologically last condition.⁸⁵ Similarly, Libya, too, requires 250 weeks' contributions, of which 50 must have been paid in the last three years preceding the day of fulfilment of the chronologically last condition.

Most frequent in this respect are combinations or alternations of the two aforesaid possibilities. For example, United States regulations require either the payment of contributions for 40 quarters, or the payment of one fourth of all possible quarters' contributions since 1950 or from the day of the first entry into the insurance scheme. An example of combi-

⁸⁴ See also International Labour Office, Studies and Reports, Series M, No. 10, "Compulsory Pensions Insurance", Geneva, 1933, p. 171.

⁸⁵ An alternative condition calls for 1000 weeks' contributions.

nation is the already mentioned British system; similar regulations are in force in Iraq and Cyprus.

The most frequent requirement is a generally shorter period of employment etc., irrespective of when this condition was met, but in order to preserve the already acquired period, it is necessary to continue the employment, insurance etc., until the day the last condition is met. Any interruption in the course of the period of employment not only stays its inclusion in the qualifying period but may also cause abolishment of the right gained previously.

Provisions regarding interruption of periods of employment may sometimes be found in social insurance schemes, but chiefly in systems based on the concept of merit. For example, under the Czechoslovak pension scheme for employees, the previously accumulated period of employment is lost after a five-year interruption in the prescribed activity. In order to eliminate the harshness in the application of this principle, Section 8 of the Act No. 101/1964 sets out the rules for the restoration or preservation of previous periods of employment. A lost period of employment may be restored only by a subsequent period of employment following the interruption, of a certain length which differs according to the length of the interruption. A previously acquired period of employment may be preserved only if the district national committee certifies that the interruption was based on serious grounds. A similar provision is contained in the Act. No. 103/1964 with respect to co-operative farmers (Section 41).

Most of the world's pension schemes include in the period decisive for the establishment of eligibility to old-age pension all the qualified periods of employment, insurance, etc.; they do not require either an uninterrupted course of these periods or their fulfilment in the same employment (the same employer). The only exception known to the author is the rule concerning the qualifying period in the pension scheme of the People's Democratic Republic of Vietnam, which requires 25 years of gainful activity, of which the last five years must be spent in uninterrupted employment.⁸⁶

LENGTH OF QUALIFYING PERIOD

We must yet discuss the length of the qualifying period required for establishing eligibility to pension. In this connection we must consider two questions:

The two questions are closely linked together.

⁸⁶ Under a number of schemes, like those in the Soviet Union, Bulgaria and elsewhere, uninterrupted employment affects the amount of the pension but not the establishment of eligibility.

1. Can there be a uniform qualifying period?
2. What interim measures must be taken before eligible persons can meet a long qualifying period?

No pensionable scheme could set a consistently uniform qualifying period. At least two had to be provided for —

- a basic qualifying period for eligibility to full pension,
- a minimum qualifying period for eligibility to a partial pension.

For we can hardly assume that all protected persons (insured persons etc.) will meet the conditions making them eligible to a full pension; alternative provisions are especially important where the qualifying period for a full pension is long. Extension of the qualifying period by reform of social security results in lessened protection because eligibility to a full pension is acquired by a reduced number of persons; thus it may happen that if eligibility to old-age pension is conditional upon lifelong employment of the protected person, most people will receive only a partial pension.

In Czechoslovakia, too, there are two qualifying periods in force: 10 years for eligibility to proportionate old-age pension. 25 years for eligibility to full old-age pension and

In order to become eligible to old-age pension in the first two work categories, a person must have worked at least 20 out of 25 years in an occupation falling under the respective category and must have been in that employment in the last two years preceding the date of eligibility.

Many countries provide for a margin between the qualifying periods for full and partial old-age pensions either because the qualifying period for a full pension is higher (e.g. 35 years for men and 30 years for women in Yugoslavia) or because the qualifying period for a partial pension is lower (e.g., the Soviet Union requires only a five-year qualifying period for eligibility to a proportionate pension, of which three years immediately prior to the day on which the last condition is met). Elsewhere a uniform qualifying period is lower in both instances (e.g. Hungary requires only ten years of employment, West Germany 150 months' contributions). Similar qualifying periods as those in Czechoslovakia are, for example, in force in Bulgaria and Rumania.⁸⁷

Besides different qualifying periods for full and proportionate old-age pension, different qualifying periods are also in force according to the sex of the worker. Many countries apply a shorter qualifying period to women; the difference is usually five years (in Europe this is true, for example, of Albania, Belgium, Bulgaria, Poland, Spain, the Soviet Union,

⁸⁷ For details on the minimum qualifying period see International Social Security Association, XIIIth General Meeting, London, 1958, Report III, Old-Age Insurance, p. 31.

and Yugoslavia) and is often linked with a lower pensionable age of women.

Czechoslovakia formally requires the same qualifying period of both men and women but care for a child up to the age of three is credited to women as a substitute period, which is merely a variation on the differentiation favouring women.

Different qualifying periods for full and proportionate pensions still do not settle the *question of the "retroactive effect" of the law*, or rather the *evaluation of the periods of employment acquired prior to the day the law went into effect*. This question is no longer of any practical importance for the protection of employees in Czechoslovakia. Non-manual workers have been insured against old age since 1909 and manual workers since 1926; under the new system periods acquired under the previous systems are included in the qualifying period. The transitions from periods of insurance to periods of employment under the last reorganization of the social security of employees eliminated this difference and made possible a uniform crediting of years of employment as of October 28, 1918. Thus manual workers also receive credit for periods of employment completed before the day the Act No. 221/1924 went into effect.

A different situation exists with respect to co-operative farmers and self-employed persons who could have been insured only from October 1, 1948, and thus could have completed only some 17 years of insurance (insured gainful activity). If these persons could become eligible to full old-age pension only after a 25 year qualifying period, the majority of co-operative farmers would never become eligible to full old-age pension until 1973. These special cases therefore had to be provided for and full old-age pension had to be granted after a shorter qualifying period to persons who have a long-range character of co-operative farmers. In order to prevent any abuse of this provision, a strict classification of the periods that may be credited was introduced:

- 25 years of protected agricultural activity
- 20 years of insurance (protection) of which five years lasted immediately prior to the day the last qualifying condition was met, or
- 15 years (men) and 10 years (women) of insurance (protection).

CONNECTION BETWEEN QUALIFYING PERIOD AND PENSIONABLE AGE

As a rule, the length of the qualifying period is not set independently but in close connection with the pensionable age. If the pensionable age is low, the qualifying period is usually long and vice-versa.

Pension schemes which provide for a lower pensionable age and a long

qualifying period usually set an alternative, higher pensionable age when a person becomes eligible to a proportionate old-age pension even at the completion of a shorter qualifying period.

We come across this practice in many pension schemes. Its purpose is to eliminate hardship where due to various reasons, the eligible person could not complete the prescribed qualifying period. Most frequently two old-age pensions are provided for — a full pension and a proportionate one. This is, for example, the case in Bulgaria. France has three pensions: a full one after 30 years of insurance, a proportionate one at the same pensionable age and after 15 years of insurance, and an allowance at a higher pensionable age and after 5 years of insurance.

The same purpose as that of a proportionate old-age pension can be served by a temporary crediting of non-insured years completed prior to the effect of the insurance.

The dependence of pensionable age on the qualifying period is especially prominent where women, persons employed on arduous work, or persons working in harmful surroundings are granted preferential treatment with respect of their pensionable age. A reduced pensionable age without an appropriate reduction of the qualifying period and a more advantageous scheme of pensions is an imaginary advantage or may even turn into a disadvantage. It is an imaginary advantage because if a woman is to obtain the same pension, she must work for the same period of time as men. And it turns into a disadvantage where the attainment of a certain age induces the employer to replace the aging woman for a young worker.

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Summing up the discussion on the qualifying period, we may say that this period is a *conditio sine qua non* of eligibility to old-age pension. Its character and purpose differ according to the type of old-age pension schemes, or the concept of such scheme. In social welfare schemes a prescribed period of residence offers protection against abuse of the system especially by foreign nationals. In social insurance systems a prescribed period of contributions, insurance or insured employment protects the equivalence between the insurance contributions and the amount of the insurance benefits, and prevents the abuse of the pension scheme by persons for whom it was not designed. In systems based on the merit concept, the prescribed period of employment protects the system against the abuse of preferential treatment by persons for whom such treatment was not designed; it should grant every eligible person protection corresponding to the nature of the major part of the lifetime activity of such person.

Periods of employment for which credit is granted gradually acquire

under socialism the character of socially preferred activities or forced inactivity. This is manifested particularly in the rapid growth of the different types of periods of activity and inactivity, which are considered as credited periods. This rapid development marked also the latest provisions governing the qualifying period in the Act No. 101/1964, which obscure the basic differences between the period of employment and the qualifying period.

The length of the qualifying period varies according to whether eligibility to a full or a proportionate pension is involved. A provisional reduction of the qualifying period is usually applied where for the time being it is not possible to complete the basic qualifying period for eligibility to a full pension. The qualifying period is frequently differentiated also in favour of women as a recognition of their mission in society.

Under socialism the existence of a qualifying period does not constitute an expression of the concept of merit but rather of the concept of equivalence because it is connected with the parallel existence of different pension schemes. After these schemes are unified, the importance of the qualifying period as a measure of "long service" rather than "merit" will decrease.

The length of the qualifying period is always closely linked with a certain chronological pensionable age. The lower the pensionable age is, the longer tends the qualifying period to be.

§ 3 — OTHER QUALIFYING CONDITIONS FOR OLD-AGE PENSION

Besides the essential conditions, the establishment of eligibility to old-age pension may be made dependent on any additional *ad hoc* conditions.^{87a} Depending on the prevailing needs, any scheme may set forth additional conditions of eligibility to old-age pension, which are in keeping with or promote special interests. It is impossible and it would not even serve any purpose to try and list all the *ad hoc* conditions which are linked with the nature or the *raison d'être* of old-age pension. Nevertheless, we must mention at least those which exist in Czechoslovakia as well as those, which are most often in effect in other countries.

We can divide them into two categories:

^{87a} The term *ad hoc* is not an accurate one. Once provided for us a pension scheme, there conditions are, from the legal point of view, also a *conditio sine qua non* under that pension scheme. From the theoretical view point, they are, generally speaking, not an essential condition for the definition of an old-age pension or for the protection of the social security scheme and may be, therefore, considered as *ad hoc*.

a) conditions limiting eligibility to old-age pension only to the citizens or inhabitants of a particular country, members of a certain nation, religion or race, or excluding certain categories of persons from eligibility;

b) conditions limiting eligibility by other conditions of a socioeconomic nature.

As regards the former group of conditions, they have a dual character:

1. they either restrict the possibility of abuse of the pension scheme by persons (usually foreign nationals) who did not contribute to the creation of society's funds used to finance the old-age pensions (protective regulations);

2. or they are conditions which prevent certain persons or groups of persons within the national community from sharing the advantages of the pension scheme (discriminating regulations).

PERMANENT RESIDENCE OR CITIZENSHIP

The conditions listed under (1) above are common mostly under social welfare schemes. These schemes frequently require for the granting of pension a certain length of residence in the country (qualifying period of residence). This condition places no restriction on the inhabitants of the country but prevents aliens from abusing the social welfare advantages.

Under social insurance and security schemes, permanent residence is extremely rare as a qualifying condition. Although the Czechoslovak pension scheme does not expressly require permanent residence as a qualifying condition, it does have the provision of Section 6, par. 1, subpar. 5(b), of the Act No. 101/1964, which is designed to prevent aliens from abusing the rather advantageous system of awarding periods of employment abroad towards the completion of the qualifying period. Periods of employment (apprenticeship) abroad are credited only if the respective worker is a permanent resident of Czechoslovakia on the day he becomes eligible to old-age pension and, if he is an alien, only if he can prove that he has been employed on Czechoslovak territory for at least ten years (which is impossible under the existing passport and visa regulations, unless such person has a Czechoslovak residence permit).

Some countries, where pension schemes are mostly of a social welfare nature, exclude from the benefits provided under those schemes persons who are not their citizens on the same grounds, on which other countries require a certain period of residence. This is true, e.g., of Australia and Sweden.

Bilateral agreements or ratifications of International Labour Organisation Conventions,⁸⁸ under which the ratifying states are to grant citizens of another state the same benefits as to their own citizens, overcome the consequences of the qualifying conditions of residence or citizenship.

RACIAL AND RELIGIOUS DISCRIMINATION

The discriminating conditions listed under (2) above are due to different causes. Most frequent in the history of social insurance has been discrimination of certain professions, races, religions or nations, such as discrimination against Jews in Nazi Germany and the Nazi-occupied countries during the second world war. Open racial discrimination in social welfare is practiced today only by the South African Republic where pensions are granted under different conditions and at different amounts according to the colour of the beneficiary's skin. The aforesaid measures have a reactionary purpose and appear most often in countries which openly oppress a particular nation, race, etc.

POLITICAL CONDITIONS

It would not be accurate to associate the aforesaid measures with regulations in force in some socialist countries, whereby the working class prevents members of the defeated class in the postrevolutionary period to abuse the advantages of its revolutionary victory. These regulations have the function of protecting the achieved advantages and of limiting their application only to the victorious class and its allies at the time when society cannot or for political reasons does not want to distribute equal shares to all its members. These temporary measures are designed to promote the development of newly emerging relations of production.

In the Soviet Union, for example, persons whose class origin made them hostile to socialism were excluded for a certain time from social security. A decree issued by the Federal Council of Social Insurance at the People's Commissariat of Labour of the USSR on Day 23, 1929, which introduced old-age pension for some categories of workers, excluded from eligibility to old-age pension all individuals who had been disenfranchised because of their class origin. A joint decision of the Central Committee of the Communist Party of the Soviet Union (then the All-Union Communist Party of Bolsheviks) and the Council of People's Commissary of the USSR, adopted on February 13, 1930, and concerning pension

⁸⁸ Maintenance of Migrants Pension Rights Convention, No. 48 (1935) and Equality of Treatment (Social Security) Convention, No. 118 (1962).

insurance, extended the scope of persons excluded from eligibility to old-age pension to persons deprived of voting rights

- because of their official status held under the czarist regime and White governments;
- because of their service in the White armies and counter-revolutionary bands;
- as clergymen of different religious denominations.

The situation in Czechoslovakia was somewhat different. In view of the old tradition of social insurance and especially in view of the very advantageous state pension scheme for public servants, many top representatives of the old political and economic regime had acquired higher pensions than workers and normal employees. This fact was criticized in the course of a nationwide debate. Consequently, the Act No. 41 of 1958⁸⁹ (Article IV) authorized the social security commissions of the local governmental councils to reduce the pensions of such individuals by amounts corresponding to the period when they represented the past political and economic regime.

Czechoslovakia's regulations differ in their concept from the Soviet system which divested certain individuals of eligibility to old-age pension. On the other hand, in Czechoslovakia no exact legal provisions were set and decisions were left to free consideration of the authorities. This situation was further complicated by the fact that exact legal provisions were replaced by a general authorization of the Government to specify the rights of the local governmental councils to effect the aforesaid adjustments of pensions; this voided the only legally determined guarantee enjoyed by these citizens (see the introductory report on Section 142 of the Act No. 101/1964). The latest legal regulations extended the scope of the affected persons to cover also individuals who had been especially active in the suppressive apparatus of the past political and economic regime.

It is proper that these individuals do not receive credit towards their pensions for periods when they acted against the people. But in this case this denial of credit should be applicable *ex lege* to all such individuals. The fact that free consideration has been allowed for withdrawing or reducing a pension without publicly and firmly established and controllable legal provisions does not strengthen the constitutionally guaranteed right of every Czechoslovak citizen to protection in old age. On the other hand, it would be quite in keeping with all internationally recognized social security principles if periods of activity against the people were

⁸⁹ The Act No. 88/1958 of July 3, 1958, concerning certain changes in social security, which went into effect on July 23, 1958.

not credited by law as period of employment. Optional full or partial crediting of such periods to individuals who have merited a higher pension by their subsequent life and work would achieve the same objective and the constitutional rights of the citizens would be thoroughly respected.^{89a}

PROTECTION OF THE SOCIAL PURPOSE OF OLD-AGE PENSION

The conditions limiting eligibility to old-age pension, which are more of an economic character, include, for example, the provision precluding eligibility to old-age pension if another pension has already been granted (concurrence of eligibility). The most frequent provisions of this type are the rules concerning *concurrence of old-age and invalidity pensions*. The Act No. 221/1924 concerning social insurance (Section 112) excluded directly in the legal definition eligibility to old-age pension, if the applicant was already being paid invalidity pension. This was a natural consequence resulting from the concept under which old age constituted fictitious invalidity. The Act No. 29/1929, concerning pension insurance (Section 20) used a more careful wording "instead of invalidity pension"; since old-age pension was granted in the same amount as invalidity pension, this provision had no practical effect.

The current provisions (Section 56 of the Act No. 101/1964) make possible, in the case of concurrence of two proper claims to a pension, a choice of the higher pension; however if the respective person meets the conditions of eligibility to old-age pension prior to becoming fully invalid, he may not become eligible to invalidity pension (dtto, Section 20, par. 2).

This category of economic and social restrictions also includes provisions which are in a way analogical to the economic condition of eligibility to old-age pension. This applies, in particular, to the *state of want* (need). Rules making eligibility to old-age pension conditional upon demonstrable social want can be found today only in social welfare schemes. For example, in Australia, Finland, Denmark, Canada etc.

In countries with social insurance or security systems the condition of want is applicable only to social assistance and social welfare.

A similar purpose is followed by the provisions of the Polish pension scheme, under which a pension is reduced not only by income derived from gainful activity but also by other income, derived, for example, from property.

^{89a} The Government is at present studying the possibility of abolishing completely the described provisions.

Some unique conditions of eligibility to old-age pension may come into being as a result of the endeavour to *promote agricultural development through pension insurance*. For example, in Czechoslovakia we could witness how eligibility to old-age pension was tied to continuation of activity in agricultural co-operatives. A similar purpose is followed by the recently introduced system of pension insurance for farmers in Poland, under which eligibility to a pension is made conditional upon membership in a co-operative farm or donation of land to a co-operative or state farm.

Another purpose is followed by the provision of pension insurance for farmers in Western Germany, which also makes eligibility to old-age pension conditional upon the transfer of land to another person. It is designed to support the process of rejuvenating agricultural labour and the old-age pension is partly reminiscent of, or supplements, the rights (annuity) aged farmers reserve for themselves when transferring their property to their successors.

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Summing up, we may say that besides conditions essential for eligibility to old-age pension, the legislator, proceedings from social or economic needs, may set further qualifying conditions for old-age pension. They may be of a political and social, or of an economic nature. The former conditions most frequently include protective measures against the abuse of the pension scheme by aliens and measures of a class character fitting the interests of the ruling class. The second group of conditions contains rules on the payment of a single benefit (concerning the concurrence of claims), conditions of want and, finally, various provisions designed to further economic development in a particular direction, e.g. in agriculture.

ECONOMIC CONDITION OF ELIGIBILITY TO OLD-AGE PENSION

As already indicated, it is not only old age which is considered as the contingency, but also the chain of causation between the attainment of old age and changes in the socio-economic situation of the individual. Only the economic and social effects of changes in working capacity are most frequently considered as the contingency covered by old-age pension. This chain of causation is expressed in legal definitions as economic condition.⁹⁰ The specific feature of old-age pension (in contrast to invalidity pension, for example) is the fact that the fulfilment of the economic condition is decided upon by the individual interested in receiving the pension; this fact forces the administrator of social security to engage in rather complex considerations and to adopt various measures if he wants to influence the decisions of the eligible persons.

The economic condition differs from all the other conditions discussed thus far in particular by the fact that, as a rule, its mere fulfilment on the day eligibility to the pension is established, is not sufficient (as, for instance, in the case of pensionable age, qualifying period etc.). The pensioner must continue to observe it in order to preserve his already established eligibility. It is therefore a permanent condition. In this respect economic condition appears more as a condition of duration of eligibility to old-age pension.

If the economic condition is included in the legal definition of old-age pension, it becomes a *conditio sine qua non* of eligibility to such pension. If it is to be a condition of eligibility to old-age pension, the economic condition must reflect a true change in the economic and social situation of the applicant for the pension; this is achieved most frequently either

⁹⁰ The condition of economic need, known as economic condition for short, must not be confused for the condition of social want (social need). In the former case it does not matter what the protected individual personally owns and whether his savings can or cannot cover his needs; the decisive factor is his need due to the fact that his regular income from gainful activity has ceased. In the latter case it is ascertained whether the respective individual suffers from want. This case is not typical of the socialist countries.

through a formal request of retirement from covered employment, or from all gainful activity, or request of a reduction or loss of earnings on the day eligibility is attained.

However, most pension schemes require this situation to continue also after the day an individual becomes eligible to old-age pension. The economic condition is the most frequent condition for the payment of the pension, the condition for the actual realization of the individual's subjective title to old-age pension, not a condition of the establishment of the title. Under this concept, the individual's subjective title to old-age pension is established even if he continues his gainful activity, and is not voided if he resumes gainful activity after he had retired. What is voided, or rather suspended, is the title to the payment of the individual instalments during the period when the aged person or pensioner has an income from gainful activity or is engaged in such activity.

The economic condition of the continuation of old-age pension is usually worded either as a formal condition — as the requirement to abstain from specified employment — or as an economic one — the so-called earnings rule, applicable in cases of concurrence of old-age pension and earnings from continued or new employment after the last condition of eligibility to old-age pension has been met.

Because of their marked similarity, the economic conditions of the establishment of eligibility and continuation of payment of an old-age pension will be discussed jointly.

§ 1 — RETIREMENT CONDITION

Finding the proper relationship between eligibility to pension and continuation of employment is a world-wide problem today. In Czechoslovakia it was recently pointed out at the Twelfth Congress of the Communist Party. Evžen Erban formulated it consisely in 1962 as a search for a system of benefits which would promote a situation where everybody, who has the capacity to work, worked according to his capacity, and everybody who does not yet have such capacity or has lost it be economically secured as well as possible from society's social funds.⁹¹ Thus a pension should not be a signal for retirement.

In studying this problem, we proceed from the fact that there is a difference between pensionable age and retirement, and that the length of the period between these two points can be regulated by appropriate economic and other measures.

⁹¹ E. Erban, „Principy sociálního zabezpečení a jejich aplikace v další fázi vývoje naší společnosti“, *Sociální revue*, VIII/6, p. 244.

A study carried out in 1933 showed⁹² that social insurance system only rarely made the granting of old-age pension conditional upon termination of gainful activity. It was then generally recognized that the attainment of pensionable age, completion of the qualifying period, insurance, etc. (the concept of equivalence) were sufficient for establishing eligibility. Cessation of gainful activity was viewed as a manifestation of need, which was typical of systems based on the social welfare (social) concept.

The situation changed after the second world war. A survey made of some 40 pension schemes applying to the majority of the urban population of the respective countries showed that the existing pension schemes could be divided into:

a) pension schemes not requiring retirement as a qualifying condition for old-age pension, and

b) pension schemes under which retirement or a significant drop in earnings were a *conditio sine qua non* of eligibility to old-age pension and its duration.⁹³

The first of these two groups includes, in particular, most social welfare schemes. Nevertheless some of these schemes, e.g. those in Australia, Denmark, Iceland, the South African Republic and New Zealand, require as a qualifying condition a drop of income from both occupational activity and property. The first group also includes a number of social insurance schemes. Old-age pension is paid irrespective of retirement or income from occupational activity e.g. in Bolivia, France, West Germany, Luxemburg, Holland, and some other countries. Luxemburg and West Germany require retirement only for anticipated payment of old-age insurance.

The reasons why these schemes do not require retirement vary. They are often important economic reasons, such as a labour shortage; the concurrent payment of pension and wages offers the most effective material incentive for continued occupational activity.⁹⁴

In other instances the reason must be sought in the fact that the pensionable age is so high that only a few pensioners, once they reach it, are able to continue being gainfully occupied; experts in Sweden and Norway state that the savings obtained from the introduction of the

⁹² I.L.O. Studies and Reports, Series M, No. 10, *op. cit.*, p. 16.

⁹³ See, i.a., the conclusions of a Committee of social security experts of the I.L.O., Document of the Governing Board of the I.L.O. No. GB 154/10/15 of March 1963, Appendix II, par. 22.

⁹⁴ See, e.g., J. Gallas, J. Mařík, S. Mimra, *Zákon o národním pojištění*, Prague, 1950, p. 286.

economic condition cannot even cover the costs of the enlarged administrative operations needed for effecting the pension cuts and for controlling earnings reports.

In still other cases, pensions are too low and must be supplemented by income derived from at least part-time gainful activity; this was a frequent practice before the second world war.⁹⁵ Today it is, for example, France, where most pensioners are still to be found in the lowest income group.

Another reason why various pension schemes do not require retirement as a qualifying condition for old-age pension may also be a consistent application of the fiction of invalidity. In every case, however, the aforesaid systems view the attainment of a certain age rather than the consequences of old age as the contingency.

The second group of pension schemes — listed under (b) above — proceeds from the assumption that it is the economic and other consequences of old age which constitute the contingency and therefore considers retirement or a substantial drop in earnings as the material and essential condition of the duration of eligibility to pension. This economic condition is also applied in different forms. The consistent application of the economic condition is reflected in the retirement condition either through the fact that this condition is expressly specified in the respective legal provisions, or through the consistent exclusion of the concurrent payment of old-age pension and income from gainful activity. For example, in Belgium, Italy, Morocco, Poland and the United Arab Republic the granting of pension is conditional upon the cessation of all gainful activity.

Some special pension schemes or systems with a limited scope of persons protected require only cessation of insured employment; this is true, for example, of Mexico.

Other systems require observance of the economic condition only for a certain interim period, within a certain age span; after its upper limit is reached, the economic condition is no longer applicable. This is the practice in effect, for example in Great Britain, Israel, Nicaragua, and in the United States. In Great Britain the economic condition must be met for eligibility to old-age pension only between the ages of 65 and 70; then the pension is granted irrespective of this condition.

Experience gained in many countries has shown that a strict retirement condition without alternative economic incentives promoting postponed retirement creates mass cessation of gainful activity if the benefits

⁹⁵ See, e.g., T. Higuchi, "Old Age and Retirement", *International Labour Review*, Vol. XC, No. 4, p. 334.

are sufficiently high to support an appropriate standard of living of the retired workers.⁹⁶

Sometimes the retirement condition has in its background the economic need of forcing old people out of work and make their jobs available to the younger, unemployed generation.

A strict retirement condition places old people who are still able to work before a major decision — a choice between activity and inactivity. This dilemma may be further deepened when retirement would cause a substantial decrease of the living standard and the exceptionless application of the principle "pension or wage" does not permit a supplementary income from occupational activity. That is why many countries which adopted this principle permit the concurrence of pension with occasional income of insignificant extent.

FACTORS AFFECTING ACTUAL RETIREMENT

The question must still be answered, whether the economic condition of retirement affects the continuation of gainful activity, i.e. the desired postponement of retirement.

Sociologists give a negative answer. They have discovered that retirement is hindered primarily by low pensions, irrespective of whether eligibility to old-age pension is economically qualified.⁹⁷

Retirement irrespective of the economic condition is also strongly influenced by the development and level of a country's economic structure and economic fluctuations.

This argument is clearly supported by developments in the West European countries. We may recall the statement of the Director General of the International Labour Office⁹⁸ that industrialization⁹⁹ reduces the share of old people in economic life, including countries with an aging population. E. W. Burgess reaches a similar conclusion which he supports by twenty years (1930—1950) of development in the West European

⁹⁶ *Ibid.*, p. 335.

⁹⁷ See International Labour Conference, 46th Session, Report I, Part 1, *op. cit.*, p. 69: "But if pension fails to provide the worker with sufficient income to support himself and his family, he will have no choice but to continue in gainful activity as long as he can. It is unfair to him if, after he has contributed for so many years, he may never receive a pension." Also see, e.g., Margaret L. Stecker, "Why Do Beneficiaries Retire? Who among them Return to Work?" *Social Security Bulletin* (USA), Vol. XVIII, No. 5, May 1955, pp. 3—12. Also comp. *Report of the Committee on the Economic and Financial Problems of the Provision of Old-Age*, H. M. Stationary Office, London, 1954, Appendix V; E. Erban, "O zaměstnávání osob, které splnily podmínky nároku na starobní důchod", *Otázky sociálního zabezpečení*, 1962/4 [June].

⁹⁸ International Labour Conference, Report I, Part 1, 46th Session, *op. cit.*, p. 15.

⁹⁹ Under capitalist relations of production.

countries.¹⁰⁰ During that period employment of people over the age of 65 dropped, for example in Sweden where the population ages very rapidly, from 49.8% to 36.1%, and in Denmark, where the pensionable age was gradually increased from 60 to 67 years, from 41.7% to 35.9%. The greatest drop was registered in Italy (from 72.6% to 33% in 1955); the reduced employment of older people is also connected with the gradual extension of the scope of persons protected under social insurance.¹⁰¹ T. Higuchi states that a similar development also exists in the developing countries, such as the Philippines et al. R. Ball sees the cause of this trend also in the growth of productivity in agriculture and reduced small-scale farming which has been the means of subsistence of many old people.¹⁰²

Structural changes in industry and various administrative reorganizations, too, affect retirement. It is a common practice that cuts in the number of administrative personnel primarily affect individuals who seem to suffer least from the loss of a job, i.e. recipients of old-age or invalidity pensions, widows or married women. An additional factor in the West European countries is unemployment which very seriously affects an early retirement, irrespective of whether the unemployment is due to cyclical fluctuations of business activity or structural changes (e.g. in the West European mining industry in recent years).

Unemployment does not cause only retirement. On the contrary, it may also cause a re-activation of retired workers in countries where the pensions scheme does not tie eligibility to old-age pension to the economic condition. In such cases pensioners are willing to work for lower than average wages because the pension they receive will cover the balance. Thus they offer unfair competition to the other workers.

CZECHOSLOVAK EXPERIENCE

In Czechoslovakia the economic condition appeared in two forms with respect to employed persons, namely as

- a) the earnings condition,
- b) the retirement condition.

A common denominator of both conditions was the fact that the eligible person must have suffered economic need by retirement or by substantial reduction of his earnings.

The pension scheme for non-manual workers in prewar Czechoslovakia offered a prime example of its kind and consistently required retirement

¹⁰⁰ E. W. Burgess, *Aging in Western Society*, Chicago University Press, 1960, p. 66.

¹⁰¹ *Ibid.*, p. 347.

¹⁰² R. Ball, "Retirement Programs and the Changing Participation of the Aged in the Labour Force", *Proceedings of the IVth Annual Social Security Conference*, Michigan, 1962, p. 145.

as a condition of eligibility and its duration. The Act No. 26/1929 made an exception and it seemed that the tradition was abandoned: old-age pension was granted unconditionally to men at 65 and women at 55. The situation on the labour market (a high unemployment rate) made the view prevail, that social insurance should compensate, or lessen, the consequences of the loss of earning capacity. A. Jindřich and J. Podlipský¹⁰³ show that pensioners enjoying the unconditional old-age pension presented, as a cheaper labour force, a pressing, unfair competition to younger employees. This fact greatly weakened the position of the workers in their fight against attempts to shift the economic consequences of the cyclical crisis on their shoulders. Under pressure of the working class the government was therefore forced to abolish this provision in 1934 (the Act No. 117).

Under the social insurance scheme for manual workers (1924), the requirement of cessation of mandatorily insured work or service was modified in a way which permitted earnings up to one third of what "a physically and mentally fit employee of the same occupation and with the same training as a rule earns in the same district"; the Act No. 221/1924 therefore made a substantial reduction of earnings rather than retirement the qualifying condition for old-age pension. The extent of the permitted earnings was increased by the Act No. 184 of 1928 as a compensation for reduced sickness insurance benefits. Amendment No. 2 of 1944 dropped the earnings condition from the wording of Section 112 of the Act No. 221/1944. Old-age pension could then be paid irrespective of the recipient's earnings.

Under the commission insurance scheme for miners the pension was not affected by any continued employment, no matter how well paid it was or of what kind it was.¹⁰⁴

Thus, all the three possible approaches were gradually applied in Czechoslovakia between the two world wars.

This fact had to be considered by the authors of the National Insurance Act, No. 99 of 1948. Naturally, the Act did not recognize the changes put into effect during the Nazi occupation, and proceeded from the prewar tradition of social insurance. A substantial, more than 50% loss of earnings was required for eligibility to old-age pension. The loss was measured over longer periods — the annual average. It had to be, therefore, a permanent, not a temporary, loss. As stated by the introductory report on the Act No. 99/1948, the legislator proceeded from the fact that old-age pension "is not a pension for long years of service along

¹⁰³ *Op. cit.*, p. 38.

¹⁰⁴ See F. Preis, *op. cit.*, p. 215.

the lines of the pension scheme for public servants, but a compensation for lost earnings, or their substantial reduction due to old age".¹⁰⁵

It is interesting to note in this connection the practice of the concurrent payment of pension and wage, introduced as a "remuneration" for the re-activation of pensioners. Also the Act No. 87/1947¹⁰⁶ retained both pension and wages for employed pensioners during a period of extraordinary need of labour as a provisional measure and in the interest of prolonging occupational activity, or of re-activating already retired workers. The provisions of this Act were derogated by the National Insurance Act because, as the authors of a commentary on the Act said,¹⁰⁷ "under normal conditions the insured person is either gainfully active or receives pension", which means that unless there is an urgent need of labour, the eligible person is left with a choice between wage or pension.

The earnings rule as an economic condition of eligibility to old-age pension and its duration under the National Insurance scheme was

The Government Decree No. 46/1952¹⁰⁹ tried to adjust the old-age pension partially eliminated by the Government Decree No. 49/1951.¹⁰⁸

pension of self-employed persons so as to make it correspond to their productivity and the length of their insurance (the concept of equivalence), and made eligibility to old-age pension conditional upon incapacity for work or an officially sanctioned cessation of self-employment (authorized retirement), i.e. upon a strict economic condition (Section 18). In order to extend preferential protection to members of agricultural co-operatives which adopted socialist forms of agricultural production (Section 1), the aforesaid Government Decree made eligibility to old-age pension and its duration conditional upon incapacity for work (invalidity) or continued work in the co-operative according to the individual's capacity (Section 7); this latter condition is most unusual in social security schemes. If an individual continued working in the co-operative, his pension was not reduced (Section 12).

The subsequent reorganization of the national insurance scheme was based on the changed economic conditions. The general part of the introductory report on the Act No. 55/1956 indicates that the qualifying conditions for the individual types of pension, including old-age pension,

¹⁰⁵ The Act No. 87/1947, concerning certain measures for realizing the national mobilization of the labour force.

¹⁰⁶ Introductory report on Section 62 of the Act No. 99/1948.

¹⁰⁷ Gallas, Mařík, Mimra, *op. cit.*, p. 286.

¹⁰⁸ For details see Dr. Jan Říha, „Starobní důchod“, *Sociální zabezpečení*, 1957,

¹⁰⁹ Government Decree No. 46/1952, concerning the national pension scheme of members of Unified Agricultural Co-Operatives, self-employed persons, and members of their families assisting them, issued under Section 6, par. 3, of the Act No. 102/1951.

as specified in the National Insurance Act, had become outdated; the legislator concluded that they were too modest and were in keeping with the limited possibilities of Czechoslovakia's postwar economy,¹¹⁰ which was especially true of retirement as a qualifying condition for old-age pension. "This condition increasingly appeared incompatible with the guiding principles of socialist society because it was prejudicial to those individuals who although entitled to a pension continued to work and thus helped to enlarge our national income. The necessity of changing this system ... resulted in a complicated and unsatisfactory system of reducing pensions, granting exceptions ... which did not offer the workers security and understanding of one of the constitutionally guaranteed rights, and forced them to retire."

The Social Security Act, No. 55 of 1956, was drawn up on the basis of the aforesaid considerations and made use of the technique of a temporary, uniform reduction of old-age pension in case of concurrence of the pension with employment during the first five years of eligibility to old-age pension. After that period the full pension was paid. The new Act thereby passed from an economic condition for eligibility to old-age pension to a temporary application of the earnings rule to the payment of the pension. The eligible person was additionally entitled, in co-operative farmers to work in the co-operative could be waived for serious reasons (Section 8).

The mentioned political declarations, promulgated by the State Social (Section 22) as their pension were rather low. The obligation of visions governing eligibility to old-age pension of self-employed persons and members of agricultural co-operatives because the rules adopted in 1952 were considered a success.¹¹¹ Only self-employed persons older than 70 could receive old-age pension while still being gainfully occupied (Section 22). The obligation of co-operative farmers to work in the co-operative could be waived for serious reasons (Section 8).

The rules put into effect for employees by the Act No. 55/1956 was generally considered as too generous by experts, including those abroad. In view of the extension of the median life expectancy, unfavourable changes in the demographic structure of Czechoslovakia's population and the relatively very low pensionable age with a relatively short qualifying period, a very rapid growth of the overall expenditures on social security purposes was expected.

¹¹⁰ See the general part of the introductory report on the Act No. 55/1956.

¹¹¹ "The existing rules ... put into effect by Government Decree No. 46/52, have on the whole proven their worth." Quoted from the introductory report on the draft of the Government Decree No. 56/1956, concerning the sickness and pension insurance of members of Unified Agricultural Co-Operatives and the pension insurance of individually operating farmers and other self-employed persons.

Only three years later this concern proved true. The Act No. 17/1959 dropped the provisions of Sections 10 and 11 of the Act No. 55/1956 and instead authorized the Government to draw up rules governing the concurrence of pension with continued employment. In its Decree No. 19/1959, the Government limited pension payments by fixing a ceiling on the amount of pension paid in concurrence with wages or salaries earned in continued employment (1200 crowns for the first work category, 600 crowns for the second category, and 400 crowns for the third category, all per month; after attainment of an age five years higher than the respective pensionable age, these amounts were set at 1400, 1200 and 1000 crowns respectively per month). The Government kept on the books the concurrent 4 % pension increment only for the first and second work categories during the first five years of eligibility to pension, and for the third category provided for an alternative between partial pension or the 4 % increment.

The Twelfth Congress of the Communist Party of Czechoslovakia found even these rules too extensive and decided, among other things, "to put into effect a modification of the pension scheme so that it should be more in keeping with the economic possibilities and the continued development of the socialist society, and promote a voluntary extension of occupational activity. The principle wage or pension should be applied, the payment of one-third pensions should be abolished..."¹¹² The necessity of this decision was explained by Antonín Novotný¹¹³ at the Twelfth Congress, where he pointed out that the costs of the pension scheme had grown more rapidly than the national income. He termed as a progressive trend all that was in keeping with the principle "that under socialism everybody works according to his capacity", which corresponds to the "new stage we have entered in building an advanced socialist society, a stage in which we shall create the conditions for transition to communism, when work will gradually become a prime human need... In our society pension is acquiring the character of a social benefit whereby our society protects those individuals who can no longer work due to old age or invalidity. However, this will not change the continued right of men to retire at sixty, if they so decide."

In keeping with the decision of the Twelfth Congress, the Act No. 101/1964 reverted to the retirement condition as a *conditio sine qua non* for the payment of old-age pension and allowed only insignificant, greatly limited occasional earnings.

¹¹² XII. sjezd KSČ (*dokumenty*), published by the Central Committee of the Communist Party of Czechoslovakia, Prague, 1962, p. 100.

¹¹³ *Ibid.*, p. 35.

The pension scheme of co-operative farmers was newly set out by the Act No. 32/1962,¹¹⁴ which was to bring closer the qualifying conditions for old-age pension of co-operative farmers, manual workers and other employed persons (Section 1). The Act dropped the condition of continued work in the co-operative past the age of 65 and preserved the unreduced pension in the case of concurrence with earnings from work in the co-operative. A substantial change was effected two years later by the Act No. 103/1964, which consistently introduced the economic condition of eligibility to old-age pension (Section 46, par. 5), the same as in the case of employees, and allowed only insignificant, occasional earnings.

The mentioned political declarations, promulgated by the State Social Security Acts of 1964, when confronted with reality, had to cede to important exceptions. If the living standards of pensioners were not to deteriorate, social security had to grow more rapidly than the national income because of the ageing of the population, the increase in earnings and the number of protected persons on the one hand, and the stagnation of the economy in the early 1960's, on the other hand. Manpower shortage in certain types of employment forced the Government to make an important compromise between the political requirement "wages or pension" and the needs the economy. The Order No. 60/1966 made, generally speaking, three types of exceptions:

- a) in the first years of entitlement to pension, old-age pension is payable regardless of earnings in cases of
 - aa) occasional work, e.g. seasonal, casual, etc., limited by a certain number of days per year;
 - bb) work of negligible extent not exceeding a specified number of hours per year;
- b) after the age of 65 (60 in the case of the first work category and women), the old-age pension is payable, subject to a maximum of 600, 800 and 1000 crowns a month in the third, second and first categories respectively, regardless of the amount of earnings;
- c) old-age pensioners receive full pension if they belong to the low pension group or earn less than 400 crowns a month, work in an agricultural co-operative, or earn money not under an employment contract.

SOME GENERALIZATIONS

It seems that the economic condition need not be essential for eligibility to old-age pension. As a qualifying condition for pension, it

¹¹⁴ The Act No. 32 of March 29, 1962, concerning social security of co-operative farmers, which entered into effect on April 1, 1962.

may be applied either in the form of a retirement condition, or in the form of an earnings rule. The same or similar effect may be achieved by tying the continued payment of the pension to the level of any possible income from gainful activity.

The decision whether the fulfilment of the economic condition is to be considered as a qualifying condition for eligibility to the pension, as well as the choice of the technique of tying the payment of pension to the economic condition, depend on the initial concept of old-age pension. In social welfare systems the earnings rule is not necessary because of the usually high pensionable age or the need to supplement low pensions by additional income; if it is necessary to make the existence of the welfare benefits conditional upon the needs of the applicant, it is more advantageous to tie old-age pension to the applicant's overall property situation (state of want).

Under insurance schemes, which consistently proceed from the concept of equivalence, economic condition as a qualifying factor is not necessary; on the contrary, it may be viewed as a negation of the principle of equivalence. However, most social insurance schemes also proceed in part from the concept of social need, in so far as they grant proportionate pensions in the case of non-fulfilment of the qualifying conditions for a full pension and make eligibility to old-age pension conditional upon the fulfilment of the economic condition, or, at least, make the extent of payment of old-age pension dependent on any possible earnings.

Under social security systems based on the concept of merit, it is the consequences (economic or social) of the attainment of a certain age rather than the attainment of such age, which constitute the contingency. Consequently, the existence of the economic condition as a qualifying factor only represents a consistent application of this principle; past merit is a measure of the share of society's consumption funds which the pensioner will receive, which does not preclude (or presume) the application of the viewpoint of social want in the case of continuation of the title to the payment of old-age pension. The practice of the socialist states varies in this respect.

Experience gained in different countries throughout the world has shown that if eligibility to old-age pension is not made conditional upon the fulfilment of the economic condition, the concurrent payment of the pension and possible earnings makes it possible to pensioners to improve through their own diligence their material situation, and promotes the employment rate of pensioners. On the other hand, the existence of a retirement condition may encourage old people to retire if their pension does not involve a decrease of their living standard, or, if they are not offered material incentives, to postpone their retirement.

Under the Czechoslovak social security system, it would be unsuitable to pay full pension besides income from gainful activity; this is due to several reasons which have already been analyzed but which are summed up below:

i) Under the Czechoslovak concept, the contingency is not the attainment of a certain biological or chronological age, but the effects of such age on the individual's life. This concept is not typical of Czechoslovakia alone, but of all the socialist countries (perhaps with the exception of Albania) as well as of some West European states, although most of the latter do not make eligibility to old-age pension conditional upon the fulfilment of the economic condition.¹¹⁵

ii) In contrast to countries with a similar age structure of the population (e.g. the German Democratic Republic), the Czechoslovak legal regulations have set a relatively low pensionable age. In such cases a low pensionable age need not necessarily be advantageous either for society or the pensioner. It is not just to demand from society and, in particular, from its gainfully active members to support individuals who are fully able to work only because the latter have attained a certain prescribed, low age. In a socialist society everybody should help to create the national wealth according to his capacity. The setting of a chain of causation between age and a drop in the standard of living due to reduced earnings is quite justified and desirable.

iii) This fact is the more serious, since according to E. Erban, about one ninth of the adult population, and according to L. Pisca as much as one sixth, does not participate in the creation of society's consumption funds.¹¹⁶ Society is interested in prolonging the occupational activity of its members in order to include older individuals in the creation of the national wealth and thus save the costs of their pensions.

iv) There is no reason why an individual should share considerably more in the distribution of the national income only because he has attained a certain chronological age. Soviet experts, for example, do not understand why all of a sudden, exactly on his sixtieth birthday, there should be so much ado about a worker...¹¹⁷ Workers in the younger age groups even opposed the payment of the one-third pensions.¹¹⁸ They considered it unfair that a man doing the same job as they had a higher

¹¹⁵ See D. S. Gerig, *op. cit.*, p. 19.

¹¹⁶ The difference in the figures is probably due to the fact that Erban (*op. cit.*, p. 10) considers only persons 60 to 65 years old, while Pisca (*op. cit.*, p. 497) considers all persons over the age of sixty, which in this case is not accurate because persons who are older than sixty or even seventy have usually a partially if not fully reduced capacity for work.

¹¹⁷ E. Erban, *op. cit.*, p. 11.

¹¹⁸ *Ibid.*, p. 12.

income (augmented by a pension or its part) only because he had attained a certain age.

The slogan "wage or pension" as a general directive, precludes the cumulation of a full old-age pension and wage and underlines the social function of old-age pension. As a basic principle for determining the conditions of continued eligibility to old-age pension it should not be contradictory to the payment of a limited part of the pension in addition to the wage as a material incentive for prolonging occupational activity, and secondly it should not exclude the payment of a part of the pension in case of part-time gainful activity, no matter whether casual employment or limited permanent employment are involved. A bureaucratic or formalistic application of this principle does not solve Czechoslovakia's problem of transition to a flexible determination of pensionable age, encouragement of postponed retirement and extension of occupational activity. The most fitting solution will have to be sought in a suitable application of the rules governing concurrence of pension with earnings, which seem to be the best and most effective economic supplemented with a promise of a future higher pension provided that receipt of old-age pension benefits is deferred (i.e. with alternate possibilities).^{118a}

§ 2 — DEFERRED RETIREMENT INCREMENT

Practical experience has shown that a worker who is to decide whether he should continue in gainful activity or retire and receive an appropriate pension usually asks himself two questions:

- what he would gain by staying on the job,
- what he will do if he will no longer be gainfully active.

If the answer to the first question is negative, he most often retires without asking the second question. We must remember that a man who has retired always nurtures the hope that he will find an opportunity to help society and earn something besides his pension. It is only in the case of clerical occupations that a worker asks himself also the question and then often prefers to be employed beyond pensionable age; the reason is obvious — clerical workers have a substantially more limited opportunity to be useful to society and on the side earn a modest supplementary income. It is primarily a fear of "social death" which forces

^{118a} Since this study had been written (1964), some of the ideas presented here have been respected in the recent Government Order No. 60/1966, concerning the concurrent payment of pensions and earnings.

clerical workers to continue in gainful activity beyond pensionable age. In addition, in the case some well-paid categories of workers, an economic factor also plays an important role — the marked difference between the level of the salary and the pension.

Currently, pensioners in Czechoslovakia have a wealth of opportunity to earn a supplementary income "clandestinely", in spite of a strict economic condition which allows no exception. Shortcomings in the service industry enable all pensioners who are former manual workers to earn considerable income by helping their fellow-citizens with maintenance, repair work etc. Unskilled workers find many opportunities for odd jobs, domestic work, etc. Socialist organisation frequently employ qualified non-manual workers in work of an auxiliary and operational character, which is essential for the efficient operation of the respective organization. Organizational changes and especially often mechanically effected reductions of the administrative staff have affected primarily auxiliary administrative personnel who are today replaced by part-time employment of pensioners. Consequently, socialist organizations today occasionally seek ways of circumventing the economic condition set by the Act No. 101/1964 and of employing pensioners in these essential but badly paid jobs.

These general findings may be confirmed by arguments *a contrario*. We may recall the already cited finding of F. Netter,¹¹⁹ who concluded from his long years of experience in the French social insurance system that when France was in need of rapidly increasing her labour force, she also had to obrogate the economic condition of eligibility to old-age pension. Similarly, Higuchi¹²⁰ states that fear of a premature retirement of much needed workers forced a number of countries to abandon the economic condition of eligibility to old-age pension.

But even in countries where the economic condition is enforced, deferred retirement can be achieved by *making deferred pensions advantageous*. This usually takes on the form of an increment raising the basic sum of the pension, or the form of an increase of the percentage rate of the pension, or of pensions increased by a certain percentage of the basic rate. A promise of a future higher pension, if the eligible individual defers his retirement, provides the main economic incentive for deferred retirement under systems which make eligibility to old-age pension conditional upon the fulfilment of the economic condition.

It has already been noted that this principle was applied, for example,

¹¹⁹ *Op. cit.*, p. 106.

¹²⁰ *Op. cit.*, p. 348.

provided for a pension increment of one shilling for every 12 weeks of by Beveridge in his national insurance plan.¹²¹ In 1961, the British scheme deferral beyond the pensionable age during the first five years, and an increment of one shilling and sixpence weekly to non-insured women who deferred their pension application beyond the age of sixty. Under the mandatory state extended pension insurance scheme, the pension was increased in such a way, that the deferred pension was considered as additional contribution which raised the amount of eventual benefits.¹²²

It is remarkable that similar practices were in effect also in countries with social welfare schemes, which extend preferential treatment to individuals who defer their pension. In Finland, for example, the pension is raised by 12.5% of the basic pension rate, and in Iceland by 7.5%, for each year of deferral beyond the pensionable age; the increments are granted only up to five years of deferral. The increments in Argentina and Israel amount to 5% of the basic rate annually (in the latter country the total amount of the increment is limited to 25%).¹²³

These measures are based on a simple economic consideration. By deferring their retirement, workers save society the costs of financing the pension schemes; part of the achieved savings may be used for material incentives to workers to defer their retirement. The success of this practice is determined by two conditions:

- i) The material incentive must be high enough to give the worker at least the impression that by deferring his retirement he is gaining certain advantage, but the advantages provided must not use up all the savings society has achieved by the deferrals;
- ii) the worker must in no case suffer detriment from the deferral, e.g. because he had lower earnings.

The appropriateness of the increment as a material incentive is tested in practical application. For example, in Czechoslovakia the Act No. 101/1964 provides for an increment of 4% of the average monthly wage for each year of deferral beyond the pensionable age, which would mean, in terms of a share of the pension, an 8% increase in the case of a basic pension rate of 50% of the salary or wage. This increment is rather high compared, for example, with deferred retirement increments in Finland, Iceland or Great Britain (where the increments amount to 7.3% of the pension). It also stands up well in comparison with the other socialist countries, among which only Yugoslavia (5% of the pension for each

¹²¹ *Op. cit.*, par. 245.

¹²² "The Evolution of the State Pension Schemes in Great Britain", *International Labour Review*, Vol. LXXXI, No. 5 (1960).

¹²³ See D. Gerig, "Pensionable Age under Old-Age Pension Schemes", *International Labour Review*, Vol. LXXII, No. 4 (1955), Offprint, p. 20.

year of deferral) grants higher increments than those granted for each year of employment after completion of the qualifying period.

In this respect, therefore, the deferred retirement increment provided for under the Czechoslovak system seems most effective. However, its effectiveness is greatly weakened by the low absolute ceiling placed on the amount of the pension, as expressed in terms of cash. In the third work category, which covers some 80% of all pensioners today, the highest possible pension basically equals the nationwide average wage, and the basic pension rate represents half of the wage. The deferred retirement increment is then applied primarily in the case of those workers, whose wage approaches the national average, or is lower than the average, and to a lesser extent in the case of better paid, highly qualified workers whose earnings exceed the national average wage. Moreover, members of our society today earn their living by honest work and it is, and in the future will increasingly be, the rule rather than an exception that they will have been employed for more than 25 years, which means that the pension of most of them will approach 60% of the wage or salary decisive for their basic pension rate. The lack of effectiveness of deferred retirement increments as an economic incentive is also indicated by the fact that under the old regulations, workers often preferred one-third pensions to deferred retirement increments. The most frequently cited reason for this phenomenon was the fact that workers preferred present income to a future promise.

Most institutions administering 23 pension schemes in countries offering deferred retirement increments confirmed in a poll¹²⁴ that these increments may act as an economic incentive encouraging workers to defer in effect their retirement.

§ 3 — INCOME FROM GAINFUL ACTIVITY AND PAYMENT OF OLD-AGE PENSION PODMÍNKY NÁROKU NA STAROBNÍ DŮCHOD

Thus, the setting of the retirement condition as a qualification for eligibility to old-age pension and its duration provides one possibility of implementing the principle raised by the Twelfth Congress of the Communist Party of Czechoslovakia — “wage or pension”. However, it is not the only possibility and, as already indicated, not the most effective one either. About one third of all of the world’s pension schemes has chosen to adopt rules governing concurrence of pension and wage. An I.L.O.

¹²⁴ Association internationale de la Sécurité Sociale, Problèmes de l’âge de la retraite et conditions connexes pour la perception des prestations de vieillesse, Document ISSA(XV/VI/IVS), p. 11.

European Regional Conference¹²⁵ pointed out that these rules may strictly limit the cumulation of wage and pension in particular during the first five or even ten years of entitlement to pension.

The concurrence of earnings from gainful activity and old-age pension payments may be expressed in several ways through

a) the period of gainful activity,

b) the amount of the earnings,

c) the amount of the cumulated earnings and pension. The advantages and disadvantages of each method are obvious.

If the payment of old-age pension depends on whether the pensioner works for a certain number of hours annually, temporary and limited employment is thus given preference over prolongation of regular employment.

If the concurrent payment of old-age pension is made conditional only upon the receipt of a limited amount of earnings or a cumulation of pension and earnings which must not exceed a certain limit, unskilled and badly paid occupations are in a more advantageous position, and qualified workers find themselves at a disadvantage.

Finally, if old-age pension is paid in a proportionately reduced amount and in direct dependence on effective earnings, permanent employees are thus given preferential treatment as against pensioners performing casual (seasonal) work. Pensioners lose interest in doing badly paid jobs which are often inappropriate to their qualification, if such jobs reduce their pensions.

The Czechoslovak regulations currently in force provide *de facto*, in addition to concurrence of pension and earnings, also for concurrence of pension and earnings from gainful activity of limited extent. While eligibility to old-age pension is economically qualified by retirement, or rather cessation of all gainful activity, the legislator permits exceptions when the amount of earnings is not taken into consideration. This applies mostly to casual earnings unlimited in their amount but limited by the time during which the pensioner receives them. Under Section 58 of the Act No. 101/1964, the Government may decide under what conditions and up to what amount old-age pension is granted during employment or occupational activity in agricultural co-operatives, during harvesting, seasonal or other short-term employment; the Government may also decide that a part of old-age pension is to be granted in order to facilitate the gradual retirement of workers who are employed beyond pensionable age, if old age has altered their working capacity to such an extent that

¹²⁵ International Labour Organisation Report IV to the European Regional Conference "Age and Retirement", Geneva, p. 144.

their earnings have dropped as a result of reduced hours of duty. The Government has made use of the first part of this authorization and provided for an exceptional grant of pensions to certain employed pensioners. The exceptions are granted according to whether such pensioners work for the first five years beyond pensionable age or after five years past eligibility to old-age pension. Recently the Government introduced the grant of reduced pensions in cases of partial retirement.

In the former case — where pensioners have been employed within the first five years since becoming eligible to old-age pension — there are different rules applying to manual and certain preferred casual jobs¹²⁶ than those applying to other jobs. In the preferred jobs a pensioner may work for a total of 120 working days per calendar year, while only 60 days (in the case of casual employment) or 400 working hours (in the case of employment with short hours of duty) are allowed for non-manual and non-preferred jobs. In the latter case only hours of effective work are counted, and where casual employment is concurrent with employment of small extent, eight working hours are considered as corresponding to one working day (i.e. 400 hours equal 50 working days).

Beginning with the sixth year after the fulfilment of the chronologically last qualifying condition for old-age pension,¹²⁷ pension may be paid up to a certain maximum amount which differs in the case of employees according to the individual work categories. Similar rules are in force for the payment of old-age pension in the case of work for agricultural co-operatives.

The aforesaid regulations are obviously unwieldy and casuistic. There is ground for concern that they will create pressure from various occupational groups to be included in the list of exceptions. Every society has

¹²⁶ E.g. underground work in coal mines; manual work during peak seasons in the food-processing industry; manual work in agriculture in peak seasons and in forestry at reforestation and forest clearing; work connected with the autumn peak season in transport; teaching (educational supervision) jobs in the education system, or health personnel work in public health service institutions; work in the service industry (except administrative jobs), in retail trade, including public eating and accommodation facilities, work in local industry and services, in producer co-operatives, work on housing repair and maintenance, stoking jobs for housing administration agencies of the local governmental councils during the winter season, work in public transport in Prague, Bratislava, Brno and Ostrava, and in spas and recreational centres during the season.

¹²⁷ Workers who became eligible to old-age pension from employment in the first work category before the age of sixty are granted pension after they reach this age; workers who become eligible to such pension after sixty are granted the pension as of the day they acquire eligibility; women who became eligible to old-age pension prior to the age of sixty are granted pension when they reach this age; women who became eligible to full old-age pension after they reach the age of fifty are granted pension as of the day of eligibility; other workers, co-operative farmers and self-employed persons, who have become eligible to old-age pension, are granted the pension after they reach the age of sixty-five.

occupations which have always been necessarily reserved for older and old people either because of the low pay they involve or because they do not involve day-long work (e.g. auxiliary work before and after a shift in factories), or because of other reasons. These are occupations which have always been considered exclusively or mostly as a supplementary source of income for pensioners and housewives. However, under the existing regulations pensioners refuse to take these jobs if the earnings derived from them would deprive them of their old-age pension. Since, however, these are jobs essential for our society (and not all of them have been included in the list of exceptions thus far), it may be expected that the responsible economic officials will force the extension of the exceptions. If further exceptions are allowed, the regulations in force will lose their original purpose. However, because we must not presume that we can find other sources of labour for these jobs, ways will be necessarily sought to circumvent the law in order to keep certain social institutions and facilities running; this endeavour is apparent at present.

The manner of allowing exceptions, where time is the decisive factor, is also rather doubtful. Strictly speaking, this manner runs somewhat counter to the principle "wage or pension": it does not matter how much a person earns but how long he works. The practical result of this rule is the fact that sham employment contracts are concluded, for one hour daily and for the maximum possible (permitted) hourly wage rate, or for a fee, although the required work cannot be performed in an hour. The outcome is a fictitious contract for pension security purpose, which covers up labour relations of quite a different scope and character. The system of measuring exceptions by the time of gainful activity can fully control the extent of the permitted work only if it is connected with a fixed limit set on the amount of earnings (a rule governing concurrence of pension and earnings). Otherwise it has all the disadvantages of a one-sided solution.

In the interest of completeness, it might be well to recall the main principles of the regulations which preceded the legal provisions currently in force in Czechoslovakia.

Concurrence of earnings and pension was governed on Czechoslovak territory between the two world wars only in the Social Insurance Act, No. 221/1924, as amended. In addition to the pension, it permitted an income representing one third and subsequently a half of "what a physically and mentally fit employee of the same occupation and with a similar training usually earns in the same district". The permissible extent of earnings was measured on the basis of the average earnings in the respective occupation, which was an extremely inexact and administratively complicated practice. This rule was in force basically

until 1942; those who remember it claim that it had never been found applicable in practice.

In the pension insurance scheme for non-manual workers and the commission insurance scheme for miners retirement was one of the qualifying conditions for old-age pension.

Whenever the national economy urgently needed labour within the past 25 years, cumulation of pension and earnings was used as the principal means of re-activating pensioners. It was used for the first time in 1942.

The Act No. 99/1948 restricted the concurrence of pension and earnings by allowing earnings lower than the average annual earnings. If the cumulation of pension and earnings of a gainfully occupied pensioner exceeded 42,000 crowns annually, the pension was reduced by one half of the amount by which the cumulated income exceeded the amount of 42,000 crowns, but not by more than half of the earnings.¹²⁸ We have already noted that this method of reducing pensions was criticized for its cumbersome character in 1956. What was especially criticized was the method of granting exceptions and the individual considerations and decisions "which did not offer the workers security and understanding of one of the constitutionally guaranteed rights" (see the previously quoted introductory reports on the Act No. 55/1956 — footnote No. 109).

This method of reducing pensions could not be in keeping with the socialist principle of remuneration according to work because irrespective of the quality of the work performed, the income derived from employment beyond pensionable age merely helped to reduce pensions to the same level, which certainly did not promote the interest of qualified and better paid employees to stay on their jobs beyond pensionable age. The only ones who profited from this rule were workers with low pensions.

In 1956, the aforesaid system of reducing pensions was replaced by:

a) payment of lump-sum, one-third pensions and deferred retirement increments amounting to 4% of the average annual earnings for each year of deferral in the first five years following the fulfilment of the last qualifying condition for old-age pension;

b) payment of the full pension and the usual deferred retirement increments (1, 1.5 and 2% respectively) after the expiration of the first five years following the fulfilment of the last qualifying condition.

In 1959, these regulations were amended so that the cumulation rule

¹²⁸ Prior to the amendment put into effect by the Act No. 269/1949, the rule for reducing the pension read as follows: "If the pensioner has earnings and the cumulation of pension and earnings exceeds 18,000 crowns annually, the pension shall be reduced by one half of the amount whereby the cumulation exceeds 18,000 crowns, but not more than by one half of the earnings." At the time of the currency reform (the Act No. 42/1953) this amount was adjusted to 10,800 crowns.

applicable to the third work category during the first five years of pension was made an alternative choice, a ceiling was placed on the one-third pension, and full pension was paid in the case of employment exceeding five years beyond pensionable age. This situation served as the basis for the legal regulations adopted in 1964, amended in 1966, and currently in force.

Among the socialist countries the one which recently introduced a particularly interesting system is the *Soviet Union*.¹²⁹ The Council of Ministers of the USSR adopted a Decree concerning material incentives for pensioners in productive work. As of April 1, 1964, 50% of the pension (in the case of pensioners who retired previously at least 50% of the pension to which they would have been entitled under the latest legal provisions) is paid besides the wage to pensioners who enter employment at the request of the management of a socialist organization in work which is needed for production purposes. This provision applies, for example, to manual workers, engineers and technical personnel in industrial enterprises, construction, assembly and similar organizations, mining and transport enterprises (except railway, road and municipal transport, maritime and river transport, and domestic civil air transport), enterprises of the service industry and housing administration; it also applies to physicians, nurses and other health service personnel in therapeutic, preventive and pediatric institutions, and homes for retired people, as well as to pharmaceutical workers, teachers at schools of general education and other educational and teacher-training organizations. Pensioners working in the aforesaid jobs in the Ural Mountains and the Far East are paid 75% of their pension. Full pension is paid to pensioners who work as manual workers in mines and underground at the request of the management and with the consent of the local trade union organization. The Council of Ministers also decided to pay pension to individuals employed in agricultural work at state and co-operative farms, cattle-, pig-, sheep- and poultry-breeding enterprises, stud farms, poultry farms, and other state agricultural enterprises. These measures are designed to help eliminate the chronic shortage of labour in these fields and are to be temporarily in force until 1968.

For similar reasons, full old-age pension is also paid in *Bulgaria* (1961) to persons working in agriculture, mining and the construction industry, although a strict economic condition is in force otherwise. In *Poland*, too, the law has set the principle of concurrence of earnings and pension, and the government is authorized to provide exceptions; it did

¹²⁹ Based on information supplied to the author by the Ministry of Social Security of the RSFSR.

so in a decree dated May 6, 1958 [published in *Dzennik ustaw* No. 26 of May 13, 1958], which lists the occupations (jobs) in which pensions are not reduced at all, as well as occupations where pensions are reduced. Greatly varied rules apply to the individual occupations (jobs). In *Hungary* (1959) old-age pension is not paid if the pensioner earns in employment more than 500 forints monthly.

In the *West European countries* pensions are reduced in the case of employment beyond pensionable age under some pension schemes of the social welfare and social insurance types.

Among the social insurance systems, interesting rules in force Austria, Belgium, Israel and Italy. Belgium allows earnings from work representing 50 hours per month, provided they are based hourly wage rates. Austria permits monthly earnings of 600 shillings; the pension is reduced by the amount by which cumulated pension and earnings exceed 1800 shillings monthly. In Italy, a pensioner who is gainfully active beyond pensionable age has his pension reduced down to two thirds of its original amount, and after he finally retires, he receives a supplement for the newly paid contributions; however, the pensioner may also waive the payment of the partial pension, in which case he is paid, after effective retirement, a pension increased on the basis of the newly paid contributions. Israel considerably lessened the economic condition in 1957. Casual employment and limited employment were allowed, provided they were not contrary to the principle of retirement, i.e. if the income derived from such employment did not exceed one quarter (and, if the pensioner had dependants to support, one third) of the maximum amount of the decisive earnings. This rule applies only for the first five years following the fulfilment of the qualifying conditions for old-age pension. After that period, the full pension is paid irrespective of any additional earnings.

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The above survey shows that, in substance, three methods can be used for regulating concurrence of pension with gainful activity:

i) an administrative method, when the payment of pension (or its part) is tied to such formally legal indices or factors as a certain occupation etc.;

ii) a combined administrative and economic method, when the payment of pension (or its part) is tied to such formally legal indices as a certain occupation, but also economic yardsticks (the amount of permissible earnings, the scope of working hours) are used for defining the scope of exceptions;

iii) an economic method, when the payment of pension (or its part) is

tied to economic factors, in particular the amount of income from gainful activity, etc.

In the case of the first two methods the administrative operations are very simple because they are limited to the ascertainment, whether the respective condition has been met or not. The use of the economic method is administratively more demanding because it requires the keeping of records of earnings and pensions, i.e. ascertainment of extra earnings and reduction of the pension.

Let us yet sum up the advantages and disadvantages of the individual methods.

The first (administrative) method is used, for example, in the Soviet Union where — as already stated — a list of occupations was drawn up, to which the economic condition of continued eligibility to old-age pension does not apply. This regulates the flow of labour into those branches of the economy and into those occupations, which suffer from a chronic labour shortage; this extra labour is drawn from the only true reserve sources available to socialist society, besides adolescents and housewives, and can be used immediately. The economic disadvantage of this method has already been mentioned. Let us merely recall that a complete prohibition of gainful activity reduces the participation of pensioners in the productive process, unless it is outbalanced by material incentives.

The combined administrative and economic system, which is used in Czechoslovakia, for example, is more efficient and economically rather more effective than the purely administrative method. The shortcomings of this method have also been outlined. Both methods proceed from a similar, basic consideration: pension is either granted or not granted irrespective of differences in the level of gainful activity. The pension (or its part) is a constant, and the fulfilment of the economic condition does not affect "what we give" but merely determines whether "we give or not". These are methods which are administratively efficient but have contradictory consequences.

The third method has all the advantage of a direct economic incentive. In addition, it permits a consistent application of the principle "wage or pension" — that is also part of the pension for a part of the wage, as envisaged in the aforesaid Section 58, par. 1, subpar. 2, of the Act No. 101/1964. However, with a centralized system of administration of the pension scheme it is an administratively extremely demanding method.

Nevertheless, even if we preserve a centralized pension administration, it is possible to decentralize the administrative operations, necessitated by the application of the rule concerning concurrence of pension with earnings, by making use of the Soviet system of paying pensions through

enterprises and other socialist organizations. This method of administration would not require an expansion of the administrative apparatus. Only one record would have to be kept. This would meet the objection that the method of reducing pensions under the National Insurance Act, No. 99/1948, was among other deficiencies, too complicated.

The second main objection raised against the system of reducing pensions, introduced in 1948, was the fact that it reduced pensions to the same level and did not offer to qualified workers a true material incentive for staying in gainful activity beyond pensionable age. The method of calculation was so involved that wage accountants could hardly be entrusted with it. It would therefore not be proper to revert to this method.

The system of reducing pensions should

- promote direct material interest of pensioners in the quantity and quality of their work and the amount of remuneration for it,
- basically proceed from the principle “wage or pension” and at the same time leave a part of the pension to the pensioner as an economic incentive for prolonging his occupational activity,
- be so simple, that it could be carried out by wage accountants,
- require the least possible administrative control,
- take into account that pensioners are often engaged in several concurrent gainful activities.

The concurrence of pension and earnings would be supplemented by a system of permissible, casual, in particular seasonal, employment without reduction of pension.

An especially complex problem is presented by the payment of pensions in agriculture. In view of the chronic shortage of labour and the fact that the pensions of co-operative farmers are lower than those of employees, as previously explained, it should be reconsidered, whether it is reasonable and useful to apply consistently the principle “wage or pension” in the social security scheme for co-operative farmers. Because of the high average age of workers engaged in agriculture, it would be perhaps useful to grant a partial pension also in the course of the first five years after attainment of pensionable age and the fulfilment of the chronologically last qualifying condition for old-age pension. Let us recall that the past development has fixed the tradition under which the payment of pension is conditional upon continued work in the agricultural co-operative, which is a tradition of payment of the full pension in addition to earnings. It is proper to abandon this tradition where the pensions scheme for co-operative farmers is being brought ever closer to the pension scheme for employees (i.e. in agricultural co-operatives with a higher level of economic operation). In the case of other co-operative

formers, who continue to have their pensions assessed according to a scale of income categories, there seem to be no sufficient economic grounds for changing the existing rules governing continuation of eligibility to old-age pension. On the contrary, in view of the current shortage of labour, economic practice will force circumventions of this rule, giving rise to another sphere of breaches of socialist legality, against which the pension administration will be rather helpless.

IN PLACE OF CONCLUSION

There is no doubt that the payment of old-age pension is a form of substitute distribution in a socialist society in that it provides compensation for an innocent loss of participation in distribution according to work performed. However, when designing a theoretical model of old-age security, we must not forget that old-age pension also expresses a certain social convention, a certain tradition, and a certain relation between the life-long endeavour of man and his civil rights in old age. We must also bear in mind that the decision whether all the conditions set by law will or will not be met is in fact left up to the entitled person, and social policy can influence it only indirectly. All these facts tend to make a straightforward and simple application of the principle "wage or pension" difficult. The choice of concrete forms through which this principle should be implemented is also made difficult by the clash of different social interests, such as those of obtaining additional labour force through prolongation of active working life, but also that of having certain categories of persons retire, the interest in an appropriate protection of old individuals, but also that of reducing the costs of old-age security, etc. To this we must add such considerations, as the concern, whether the savings achieved from unpaid old-age pensions are in fact higher than the increased costs of administrative control over the observance of the rules governing reductions of pension, etc. Thus, although it is theoretically correct and exact to consider old-age pension as a compensation for the loss of income from gainful activity, it is not always useful to apply in practical pension policy unconditionally the principle, which is defined in simplified form by the words "wage or pension".

УСЛОВИЯ ВОЗНИКНОВЕНИЯ ПРАВА НА
ПЕНСИЮ ПО СТАРОСТИ

Законы № 101/1964 а 103/1964 СЗ о социальном обеспечении, подготовленные на основании постановления XII съезда КПЧ, имели целью изменить пенсионное обеспечение так, чтобы оно лучше соответствовало экономическим возможностям и дальнейшему развитию социалистического общества и помогало продлению трудовой активности. Целью этой работы явилось исследование именно с этой точки зрения действующего правового регулирования условий возникновения и существования права на пенсию по старости и его связи с потребностями социалистического общества с учетом опыта, приобретенного у нас и во всем мире.

Можно подвести следующие основные итоги работы.

1. При распределении национального дохода социалистическое общество должно принять во внимание и обеспечение потребностей тех своих членов, которые в связи с преклонным возрастом не могут вообще или могут лишь частично участвовать в распределении по труду. Потребности биологической репродукции этих граждан социалистическое общество удовлетворяет из средства общественных фондов потребления в мере, отвечающей достигнутому среднему жизненному уровню в обществе и соответствующей экономическим возможностям общества. Эти средства распределяются между гражданами, имеющими право на пенсию, в соответствии с их прошлыми заслугами.

Социалистическая конституция гарантирует престарелым гражданам право на материальное обеспечение. Это право стало неотъемлемой частью гражданских прав при социализме.

Между правом гражданина на материальное обеспечение в социалистическом обществе и возможностями общества предоставить такое обеспечение возникает потенциальное противоречие. В определенных условиях это потенциальное противоречие может превратиться и в противоречие реальное, которое обществом преодолевается путем изменений правового регулирования пенсии по старости. Изменения в правовой регламентации вызываются также процессом внедрения социалистических принципов социального обеспечения и их усовершенствования в соответствии с возможностями и потребностями развития социалистического общества.

2. Персональный и предметный объем социального обеспечения при социализме обусловлен экономически и исторически. Экономически он зависит от степени развития производительных сил и производственных отношений, которые определяют возможности и потребности общества на данном этапе развития; исторически он зависит, в частности, от требований, предъявляемых рабочим классом в классовой борьбе против капитализма и от традиций, прежде всего, от предыдущего развития соответствующего института социального обеспечения. В переходный период, когда отжившие производственные отношения превращаются в отношения социалистические, а потом коммунистические, когда социалистическое общество еще не способно производить необходимое количество продуктов, оно должно проводить дифференциацию в уровне материального обеспечения своих престарелых граждан. Эта экономическая дифференциация вытекает из многообразия производственных отношений в первой фазе строительства коммунистического общества и проявляется в классовой дифференциации социального обеспечения в соответствии с характером работы граждан, характером их потребностей в старости и общественным интересом в их удовлетворении. Поэтому исторически возникают разные пенсионные системы для работников, находящихся в трудовых отношениях, для крестьян-членов сельскохозяйственных кооперативов и для лиц, зарабатывающих частным путем. По мере развития социалистических производственных отношений и их перерастания в коммунистические, а также в результате ликвидации разли-

чий между городом и деревней различия между отдельными системами регулирования будут стираться и возникнет единая система обеспечения граждан в старости.

С точки зрения ускорения общественного развития необходимо поэтому поддерживать те экономические факторы, которые сближают положение отдельных группы граждан в системе социального обеспечения.

3. Наряду с дифференциацией, основанной на характере выполняемой работы, в чехословацком социальном обеспечении по старости применяется и дифференциация согласно степени тяжести работы (по этому признаку различаются три трудовые категории). Эта дифференциация на первой фазе развития коммунистического общества обусловлена противоречием между высоким уровнем производственных отношений и более низким, но весьма быстро развивающимся уровнем производительных сил, которое проявляется также как противоречие между правом трудящихся на здоровую и безопасную работу и недостаточным уровнем техники безопасности. Разделение работников на три трудовые категории имеет целью прежде всего помочь преодолеть это противоречие частичной компенсацией фиктивного и действительного вреда, причиненного здоровью трудящихся недостаточным уровнем техники безопасности на работе и плохими трудовыми условиями. Таким образом, это влияет как определенный фактор, компенсирующий общественные заслуги трудящегося в связи с тем, что он выбрал профессию первой и второй трудовой категории. Что касается работы в горнопромышленности, здесь влияют также традиции и остатки сословной дифференциации со времен капитализма. Преимущества, связанные с указанными трудовыми категориями, не являются, следовательно, институтом, который будет развиваться по мере развития общества. С развитием техники их значение будет постепенно снижаться, пока наконец не потеряет смысл. Разделение на трудовые категории обеспечивает данной категории лиц более высокие пенсии в тот период, когда общество не может предоставить больше средств для обеспечения всех граждан. Трудовые категории будут постепенно отмирать таким образом, что пенсии всех трудящихся будут приближаться к уровню пенсий в трудовых категориях, имеющих преимущества, и причем такими темпами, какими будет распределение по труду перестать в коммунистическое распределение по потребности.

4. Выбор условий возникновения и существования права на пенсию по старости отличается от намерения, которое общество преследует, и от характера сохранившейся жизненной потенции престарелого человека, в особенности от его способности полностью или частично участвовать в дальнейшем трудовом процессе. Этим обосновывается существование двойного понимания характера пенсии по старости — презумпция заслуг и фикция инвалидности — и вытекающие из этого три концепции конструкции условий возникновения права на пенсию по старости: концепция социальной нуждемости, концепция заслуг и концепция эквивалентности. Различие двух понятий и трех концепций является результатом определенной степени научной абстракции; ни в одной конкретной пенсионной системе они не существуют в чистой форме, а как исторически и экономически обусловленная степень компромисса всех этих концепций.

Большинство социалистических стран при установлении условий возникновения и существования права на пенсию по старости исходит из концепции заслуг. В виде категорического экономического условия или в виде строгого определения максимального размера пенсии появляются в пенсионных системах иногда и элементы концепции социальной нуждемости. Наконец, там, где возникновение права на пенсию и его размер обуславливаются сроком страхования, проявляются и некоторые элементы концепции эквивалентности.

5. Основными условиями возникновения и существования права на пенсию по старости являются следующие:

1. существование правового отношения или персонального статуса, обуславливающего возникновение права на пенсию по старости (лица, на которое распространяется социальное обеспечение);

2. достижение определенного биологического возраста (пенсионный возраст);
3. наличие определенного общества срока предусмотренной законом деятельности (стаж работы).

Кроме того, могут быть предусмотрены и другие условия, в частности, правовые условия, лишающие (полностью или частично) некоторые категории лиц, на которые распространяется социальное обеспечение, либо виды деятельности права на пенсию по старости или же экономические условия (уход на пенсию, прекращение работы и т. д.). Экономическое условие является, как правило, условием выплаты пенсии по старости, которое в некоторых правовых системах формулируется как условие возникновения права на пенсию.

6. До тех пор пока существуют разные системы обеспечения в старости, необходимой предпосылкой возникновения права на пенсию по старости является наличие определенного трудового правового отношения или сельскохозяйственно-кооперативного правоотношения или определенной персональной квалификации (персональный статус). После создания единой системы обеспечения в старости это условие не будет нужным, так как все граждане будут иметь одинаковую обязанность честно трудиться и размер пенсии по старости первоначально будет зависеть от заслуг (выраженных определенной долей при распределении национального дохода по труду), позже от потребностей членов социалистического, а потом коммунистического общества.

7. При дифференциации уровня пенсии по старости согласно пожизненному характеру или занятию лица, имеющего право на пенсию, решающим является не только факт наличия определенного правового отношения или адекватного отношения во время исполнения последнего условия возникновения права на пенсию по старости, но и срок существования этого отношения (стаж работы). Это условие является прежде всего выражением классовой дифференциации права на получение пенсии в переходном периоде, когда лица, у которых существуют условия для возникновения права на пенсию по старости, отработали большую часть требуемого срока при капитализме. Достижение определенного стажа работы в обществе, в котором эксплуатация противоречит конституции, а все граждане обязаны честно трудиться, не является какой-либо необычной заслугой. Все граждане будут выполнять в течение своей жизни необходимую меру труда. В условиях развитого социалистического общества, строящего коммунизм (как например, в СССР), трудовой стаж нельзя считать критерием заслуг при распределении. С наступлением определенного срока лицо, имеющее право на пенсию, получает право на более высокую пенсию не потому, что оно эту пенсию заслужило, а потому, что ее отработало и это является определенным образом выражением классовой дифференциации между правом отдельным классов и групп трудящихся. Это также является остатком сословных систем социального страхования (концепция эквивалентности). С ликвидацией классовой дифференциации и преодолением остатков концепций социального страхования в нашем мышлении мы можем постепенно устранять продолжительный трудовой стаж для возникновения права на пенсию. Зависимость размера дохода от средней заработной платы за определенный более продолжительный срок в достаточной мере гарантирует выдачу пенсии лишь гражданам, имеющим заработок, т. е. трудящимся гражданам.

8. Установление пенсионного возраста является прежде всего проблемой общественного характера. Старость становится общественной проблемой лишь тогда, когда она препятствует гражданину участвовать полностью в общественном процессе распределения по труду. Институт пенсионного возраста помогает разрешить потенциальное противоречие между интересами отдельного лица и общества в условиях социалистического распределения по труду. Коммунистическое распределение по потребности это противоречие отстранить полностью. Определение пределов общего пенсионного возраста обусловлено потребностями и возможностями общества и потребностями отдельного лица, а также избранной исходной концепцией (см. п. 4); пенсионный возраст является более высоким там, где предполагается

фиктивная инвалидность и где имеет место социальная нуждаемость, а более низкой там, где исходят из презумпции заслуг.

9. Потенциальное противоречие между действительностью и правовой фикцией, вытекающее из дифференциации между процессом старения у отдельных граждан и общим пенсионным возрастом, вынуждает решение путем перехода от прежнего единого биологического возрастного предела к установлению возрастных поясов. Система возрастных поясов позволяет, чтобы отдельные граждане уходили на пенсию в соответствии с условиями и действительным процессом старения, и эта система одновременно сохраняет одинаковые правовые условия для возникновения права на пенсию по старости. Двойной возрастной предел дает гражданину возможность выбирать между уходом на пенсию раньше с более низкой пенсией или же продолжением трудовой деятельности с получением позднее более высокой пенсии.

10. Функция пенсии по старости в социалистическом обществе заключается в том, чтобы дать возможность престарелым гражданам снова включаться в трудовой процесс и общественную жизнь, т. е. создать экономические условия для того, чтобы граждане не должны были выключаться из общественной жизни. Продление активного возраста человека путем участия в трудовом процессе и во всей общественной жизни в существенной мере помогает продлить жизнеспособность организма и замедляет дегенеративные процессы. Участие в трудовом процессе и в общественной жизни должно соответствовать возможностям стареющего организма. Уровень обеспечения в старости должна поэтому отвечать степени неспособности (в независимости от того обусловлено ли это объективными или субъективными факторами) включиться в эти процессы. В этом проявляется элемент коммунистического распределения по потребности в системе условий возникновения и существования права на пенсию по старости. Анализ показывает, что это должно было проявиться в практике правового регулирования путем закрепления возможности постепенного перехода от трудовой деятельности на пенсию — в прямой зависимости размера пенсии по старости от изменений в работе престарелого трудящегося гражданина.

Эту функцию не может выполнять пенсия по частичной инвалидности. В отличие от частичной инвалидной пенсии постепенный уход на пенсию по старости позволяет оценить и субъективную сторону (психологическую и общественную) и не ограничивается лишь физическим состоянием здоровья престарелого гражданина, имеющего право на пенсию. Определенное значение имеет и волевая сторона: как лицо, имеющее право на пенсию, чувствует себя и какое примет решение. Указанное обстоятельство дает возможность гражданам, которые чувствуют себя частично истощенными, и которые не являются инвалидами, чтобы они продолжали работать, но в ограниченных пределах.

Введение постепенного ухода на пенсию и установление поясов пенсионного возраста позволило бы фактически продлить пенсионный возраст на 5 лет (до 65 лет), не отменив завоеванное рабочим классом право гражданина на уход на пенсию в 60 лет. Однако следовало бы провести необходимые изменения и в размерах пенсии и в правилах параллельности или конкуренции между заработком и пенсией. Последний вопрос, однако, выходит за рамки этой работы.

11. Общество может, наконец, регулировать размер предоставления пенсии по старости установлением остальных правовых условий, которые имеют скорее дискриминационный характер. Целью этих условий, как и всех правовых условий, является сужение круга лиц, которые отвечают всем условиям возникновения права на пенсию по старости. В условиях социалистического общества они носят временный характер. Основную тенденцию развития нашего общества характеризует, кроме того, развитие государства диктатуры пролетариата во всенародное государство. Все более подчеркивается то, что трудящихся объединяет то, что является общим для отдельных классов и групп, что помогает устранить различия между классами и группами трудящихся; этот процесс, однако, должен соответствовать разви-

тию социалистических производственных отношений. Теория обостряющейся классовой борьбы и подчеркивание различий между отдельными группами членов социалистического общества были типичными для периода догматизма.

12. Экономическое условие (уход на пенсию, окончание или ограничение трудовой деятельности), не является существенным в понятии пенсии по старости. В нынешнем регулировании условий возникновения права на пенсию по старости является, однако, *conditio sine qua non* для выдачи пенсии по старости.

13. Социалистическое общество, хотя и способно предоставить достаточно высокую пенсию по старости, не может, однако, исходя из принципа вознаграждения по труду, выплачивать полную пенсию наряду с заработком, не нарушая этим принципа распределения по труду. Пенсии, в том числе и пенсия по старости, являются лишь средством возмещающего распределения для тех граждан, которые не могут полностью принять участие в распределении по труду. Этот факт выражается в принципе: заработная плата или пенсия.

14. Как каждый принцип и этот принцип является упрощенным отражением потребностей социалистического общества. Формалистическое применение принципа заработная плата или пенсия создает опасность возникновения противоречий между правовым регулированием и действительной потребностью социалистического общества продолжить трудовую активность и между интересом отдельных граждан оставаться в трудовом процессе. Формалистическое регулирование, исходящее из упрощенного толкования этого правильного принципа, может, наоборот, стать стимулом ухода на пенсию. Правильное применение принципа заработная плата или пенсия не исключает выплату части пенсии с потерей части заработной платы (постепенный уход на пенсию) или же выплату части пенсии наряду с заработной платой после достижения предельного возраста (это является наиболее действенным стимулом для продолжения трудовой активности). Существенную часть пенсии нужно было бы выплачивать, в частности после достижения более высокого возраста, также и потому, что в современных условиях средняя степень инвалидности отдельных граждан исключает большее участие в трудовом процессе лиц, возраст которых превышает 65 лет.

Условие зависимости размера пенсии от трудовой деятельности можно выразить двояким образом: сроком позволенной трудовой деятельности или уменьшением пенсии при одновременном получении заработной платы. Сокращение пенсии может быть обусловлено сложением заработка и пенсии или только размером заработка. В условиях социалистического распределения последовательное применения принципа пенсия или заработная плата для возрастных категорий до 65 лет предполагает установление прямой зависимости между заработком (или же отсутствием заработка или потерей заработка) и размером пенсии по старости; причем выплатой пенсии можно повысить материальную заинтересованность в продолжении трудовой активности. В системе условий возникновения и существования права на пенсию было бы необходимым заменить условие ухода на пенсию условием потери или же ограничения трудовой деятельности. Формулировка этого условия должна была бы исходить из потребности общества дать возможность постепенного ухода на пенсию. Некоторым группам граждан, достигшим более, чем 65 лет, должна была бы выплачиваться пенсия наряду с заработной платой полностью или частично.

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Правовая регламентация условий и существования права на пенсию по старости, осуществленная законом № 110 и 103/1964 СЗ, является лишь временной веховой в развитии социалистического социального обеспечения. Регулирование пенсии по старости потребует еще дальнейших изменений, пока не будет полностью достигнуто соответствия между потребностями и возможностями социалистического общества и интересами престарелых граждан.

Smyslem zákonů č. 101/1964 a 103/1964 Sb. o sociálním zabezpečení, vypracovaných na základě usnesení XII. sjezdu KSČ, bylo pozměnit důchodové zabezpečení tak, aby lépe odpovídalo ekonomickým možnostem a dalšímu rozvoji socialistické společnosti a podporovalo prodlužování pracovní aktivity. Úkolem této práce bylo prozkoumat z tohoto hlediska současnou právní úpravu podmínek pro vznik a trvání nároku na starobní důchod a její vztah k potřebám socialistické společnosti, s přihlédnutím ke zkušenostem získaným u nás i ve světě.

Základní poznatky práce lze shrnout takto:

1. Při rozdělování národního důchodu musí socialistická společnost počítat i se zajištěním spotřeby těch svých příslušníků, kteří se pro vysoký věk (postprodukční) nemohou buď vůbec nebo jen částečně, podílet na rozdělování podle práce. Potřeby biologické reprodukce těchto občanů uspokojuje socialistická společnost z prostředků společenských spotřebních fondů v míře přiměřené stupni dosažené průměrné životní úrovně ve společnosti a odpovídající ekonomickým možnostem společnosti. Tyto prostředky se rozdělují mezi oprávněné občany podle jejich minulých zásluh.

Socialistická ústava zaručuje starým občanům právo na hmotné zabezpečení. To'o právo se stalo integrální součástí občanských práv za socialismu.

Mezi právem občana na hmotné zabezpečení v socialistické společnosti a možnostmi společnosti toto zabezpečení poskytnout vzniká potencionální rozpor. Za určitých podmínek se tento potencionální rozpor může změnit i v rozpor skutečný, jemuž pak společnost čelí změnami v právní úpravě starobního důchodu. Změny v právní úpravě vyvolává též proces prosazování socialistických principů sociálního zabezpečení a jejich zdokonalování podle možností a potřeb rozvoje socialistické společnosti.

2. Osobní a věcný rozsah sociálního zabezpečení za socialismu je podmíněn ekonomicky a historicky; ekonomicky závisí na stupni vývoje výrobních sil a výrobních vztahů, které určují i možnosti a potřeby společnosti na daném stupni rozvoje, historicky zejména na požadavcích dělnické třídy v třídním zápase proti kapitalismu a na tradici, především na dosavadním vývoji příslušné instituce sociálního zabezpečení. Po přechodné období přeměny přežívajících výrobních vztahů ve vztahy socialistické a posléze komunistické, a po dobu, po kterou není s to vyrábět potřebnou hojnost statků, musí socialistická společnost diferencovat v úrovni hmotného zabezpečení svých starých občanů. Tato ekonomická diferenciací vyvěrá z rozmanitosti výrobních vztahů v první fázi budování komunistické společnosti a projevuje se v třídní diferenciaci sociálního zabezpečení podle celoživotního charakteru výdělečné činnosti občanů, povahy jejich potřeb ve stáří a společenského zájmu na jejich uspokojování. Historicky proto vznikají různé důchodové soustavy pro pracovníky v pracovním poměru, pro družstevní rolníky a pro osoby *samostatně výdělečně činné*. S postupným rozvojem socialistických výrobních vztahů a jejich přerůstáním v komunistické a odstraňováním rozdílů mezi městem a venkovem, budou se rozdíly mezi jednotlivými úpravami stírat a vznikne jednotná soustava zabezpečení občanů ve stáří. Z hlediska urychlení společenského vývoje je proto třeba podporovat ekonomické činitele, které sbližují postavení jednotlivých skupin občanů v sociálním zabezpečení.

3. Vedle diferenciací založené na charakteru vykonávané činnosti, uplatňuje se v československém sociálním zabezpečení ve stáří i diferenciací podle obtížnosti povolání, zařazených do tří pracovních kategorií. Tato diferenciací souvisí v nižší fázi vývoje komunistické společnosti, s rozporem mezi vysokou úrovní výrobních vztahů a nižším

ale velmi rychle se rozvíjejícím stavem výrobních sil, který se také projevuje jako rozpor mezi právem pracujících na zdravou a bezpečnou práci a nedostatečnou úrovní bezpečnostní techniky. Zařazení pracovníků do tří pracovních tříd má především pomoci překonat tento rozpor částečnou kompenzací fiktivních i skutečných škod způsobených na zdraví pracujících nedostatečnou bezpečností při práci a špatnými pracovními podmínkami, a tak konec konců i působit jako určitý faktor kompenzace společenské zásluhy pracujících za to, že si vybral povolání první a druhé pracovní kategorie. Pokud jde o práci v hornictví, působí tu i tradice a pozůstatky stavovské diferenciace z dob kapitalismu. Preference podle pracovních kategorií není tedy institucí, která by se měla s rozvojem společnosti rozvíjet. S rozvojem techniky bude její význam postupně ustupovat, až nakonec ztratí smysl. Rozdělení do pracovních kategorií zajišťuje celé skupině osob vyšší důchody v době, kdy společnost nemůže poskytnout více prostředků na zabezpečení všech občanů. Pracovní kategorie budou postupně odumírat tak, že důchody všech pracujících se budou přibližovat k důchodům v preferovaných pracovních kategoriích, a to tempem, jakým bude rozdělování podle práce přerůstat v komunistické rozdělování podle potřeb.

4. Volba podmínek pro vznik a trvání nároku na starobní důchod se liší podle záměru, který společnost sleduje a podle povahy zbývajících životní potence starého člověka, zejména podle schopnosti účastnit se plně nebo částečně dalšího pracovního procesu. Tím je odůvodněna existence dvojího pojetí povahy starobního důchodu — presumpce a inkce invalidity — a z toho vyvěrajících tří koncepcí konstrukce podmínek pro vznik nároku na starobní důchod — koncepce sociální *potřebnosti*, koncepce ekvivalence a koncepce zásluh. Rozlišení dvojího pojetí a trojí koncepce je výsledek určitého stupně vědecké abstrakce; v žádné konkrétní důchodové soustavě se nevyskytují v čisté formě, nýbrž jako historicky a ekonomicky podmíněný stupeň kompromisu všech těchto koncepcí.

Většina socialistických zemí vychází při stanovení podmínek vzniku a trvání nároku na starobní důchod z koncepce zásluhové. V podobě kategorické hospodářské podmínky nebo velmi přísné maximalizace výše nároku, se ale v důchodových schemech občas objevují i prvky koncepce sociální potřebnosti. Konečně tam, kde vznik nároku a jeho výše podmiňují dobu pojištění, projevují se i některé prvky koncepce ekvivalence.

5. Základní podmínky pro vznik a trvání nároku na starobní důchod (essencialia) jsou:

- existence právního poměru nebo osobního statutu podmiňujícího vznik nároku na starobní důchod (zabezpečené osoby),
 - dosažení určitého chronologického věku (důchodový věk),
 - splnění určité souhrnné doby předepsaných činností (čekací doba).
- Vedle toho mohou být předepsány i další podmínky, zejména
- právní podmínky vylučující (úplně nebo částečně) z nároku na starobní důchod některé skupiny zabezpečených osob nebo činností a
 - hospodářská podmínka (odchod do důchodu, zanechání výdělečné činnosti atd.).

Hospodářská podmínka je zpravidla podmínkou výplaty starobního důchodu, která se v některých právních systémech formuluje jako podmínka vzniku nároku.

6. Dokud existují různé soustavy zabezpečení ve stáří, je existence určitého pracovního poměru nebo zemědělskodružstevního právního poměru, resp. určité osobní kvalifikace (osobní statut), nezbytným předpokladem pro vznik nároku na starobní důchod. Po vytvoření jednotné soustavy zabezpečení ve stáří nebude tato podmínka nezbytná, protože všichni občané budou mít stejnou povinnost žít se poctivou prací a výše starobního důchodu bude závislá zprvu na zásluhách (vyjádřených podílem na rozdělování národního důchodu podle práce), později na potřebách příslušníků socialistické a později komunistické společnosti.

7. Při diferenciaci úrovně starobního důchodu podle *celoživotního* charakteru či *výdělečné činnosti* zabezpečené osoby není rozhodná jen okolnost existence určitého právního poměru nebo jeho adekvátu v době splnění poslední podmínky pro vznik nároku na starobní důchod, nýbrž i doba trvání tohoto poměru (čekací doba). Tato podmínka je především projevem třídní diferenciace v nárocích zabezpečených osob v přechodném období, kdy osoby splňující podmínky vzniku nároku na starobní důchod odpracovaly důležitou část požadované doby v podmínkách kapitalistických výrobních vztahů. Naplnění určitého počtu služebních let ve společnosti, kde vykořisťování odporuje ústavě a všichni občané jsou povinni žít se poctivou prací, není žádnou výraznou zásluhou. Všichni občané budou plnit svou životní míru práce. Čekací dobu v podmínkách rozvinuté socialistické společnosti budující komunismus (jako např. v SSSR) pak nelze považovat za kritérium zásluh pro rozdělování. Splněním určité doby získává oprávněná osoba nárok na vyšší důchod ne proto, že si jej zasloužila, nýbrž proto, že si jej vysloužila, což je svým způsobem výrazem třídní diferenciace mezi nároky jednotlivých tříd a skupin pracujících. Je to i pozůstatek stavovských sociálně pojišťovacích soustav (koncepte ekvivalence). S odstraněním třídní diferenciace a s překonáním zbytků sociálně pojišťovacích koncepcí v našem myšlení můžeme pozvolna odstranit dlouhé čekací doby pro vznik nároku na důchod. Vazba výše důchodu na průměrný výdělek za určitou delší dobu dostatečně zajišťuje, že důchod bude vyplácen jen *výdělečně činným*, tedy jen pracujícím občanům.

8. Stanovení důchodového věku je především problém společenský. Stárí se stává společenským problémem jen znemožňuje-li občanovi plně se podílet na společenském procesu rozdělování podle práce. Instituce důchodového věku pomáhá řešit potenciaální rozpor mezi zájmy jednotlivce a společnosti v podmínkách socialistického rozdělování podle práce. Komunistické rozdělování podle potřeb tento rozpor úplně odstraní. Výše časově stanovené hranice obecného důchodového věku je podmíněna potřebami a možnostmi společnosti i potřebami jednotlivce a zvolenou výchozí koncepcí (viz bod 4); důchodový věk je vyšší tam, kde se předpokládá fiktivní invalidita a kde se vyžaduje sociální potřebnost a nižší tam, kde se vychází z presumpce zásluh.

9. Potenciaální rozpor mezi realitou a právní fikcí plynoucí z diferenciace mezi průběhem procesu stárnutí u jednotlivých občanů a obecným důchodovým věkem, si vynucuje řešení přechodem od dosavadní jednotné chronologické věkové hranice ke stanovení věkového pásma. Systém věkového pásma umožňuje, aby jednotliví občané odcházeli do důchodu podle podmínek a skutečného průběhu procesu stárnutí a zároveň zachovává rovné právní podmínky pro vznik nároku na starobní důchod. Dvojí věková hranice dává občanům na vybranou mezi dřívějším odchodem do důchodu s nižším důchodem nebo prodloužením pracovní aktivity a pozdějším vyšším důchodem.

10. Funkcí starobního důchodu v socialistické společnosti je umožnit reintegraci starých občanů do pracovního procesu a společenského života, čili vytvořit hospodářské podmínky pro to, aby občan ze společenského života nemusel odejít. Prodloužování aktivního věku účastí v pracovním procesu i v celém společenském životě podstatně pomáhá prodloužit životnost organismu a zpomaluje degenerační procesy. Účast na pracovním procesu a na společenském životě však musí být úměrná možnostem stárnoucího organismu. Stupeň zabezpečení ve stáří musí proto také odpovídat stupni neschopnosti (ať již podmíněné objektivními nebo subjektivními činiteli) zapojit se do těchto procesů. V tom se projevuje prvek komunistického rozdělování podle potřeb v konstrukci podmínek vzniku a trvání nároku na starobní důchod. Rozbory ukazují, že v praktické právní úpravě by se to mělo projevit možností postupného přechodu z výdělečné činnosti do důchodu — v přímé závislosti výše starobního důchodu na změnách ve výdělečné činnosti starého pracujícího občana.

Tuto funkci nemůže plnit částečný invalidní důchod. Na rozdíl od částečného inva-

lidního důchodu umožňuje postupný odchod do důchodu zhodnotit i subjektivní stránku (psychologickou a společenskou) a neomezuje se jen na fyzický zdravotní stav zabezpečené staré osoby. Významná je i volní stránka — jak se zabezpečená osoba cítí a jak se rozhodne. Dává občanům, kteří se cítí částečně vyčerpáni a nejsou nutně invalidní, možnost, aby pokračovali v pracovní činnosti omezeného rozsahu.

Zavedení postupného odchodu do důchodu a pásmového stanovení důchodového věku by umožnilo fakticky posunout důchodový věk o 5 let (na 65 let), aniž by se zrušilo dělnickou třídou vybojované právo občana na odchod do důchodu v 60 letech. Bylo by však třeba uskutečnit i příslušné změny ve výši důchodu a v pravidlech o souběhu resp. konkurenci výdělků a důchodu. Poslední otázka však přerůstá rámec této práce.

11. Společnost může konečně regulovat rozsah poskytování starobního důchodu staovením dalších podmínek právní povahy, které mají spíše diskriminující povahu. Účelem těchto podmínek, jako konečně všech právních podmínek, je omezit okruh osob, jež mohou splnit všechny podmínky vzniku nároku na starobní důchod. V podmínkách socialistické společnosti mohou mít jen přechodnou povahu. Základní tendenci rozvoje naší společnosti charakterizuje mimo jiné vývoj našeho státu diktatury proletariátu ve stát všelidový. Zdůrazňuje se čím dál více to, co pracující lid sjednocuje, co je jednotlivým třídám a skupinám společné, co pomáhá odstraňovat rozdíly mezi třídami a skupinami pracujícího lidu; tento proces však musí postupovat v souladu s rozvojem socialistických výrobních vztahů. Teorie zostřujícího se třídního boje a zdůrazňování rozdílů mezi skupinami občanů socialistické společnosti byly typické pro období dogmatismu.

12. Hospodářská podmínka (odchod do důchodu, skončení nebo omezení výdělečné činnosti) není esenciálně pojmu starobního důchodu. V dnešní československé úpravě podmínek vzniku nároku na starobní důchod je však *conditio sine que non* pro výplatu starobního důchodu.

13. Socialistická společnost vycházející ze zásady odměňování podle práce nemůže, pokud je s to poskytnout dostatečně vysoké starobní důchody, vyplácet plné důchody vedle výdělků, aniž by tím nenarušovala zásadu rozdělování podle práce. Důchody, včetně starobních, jsou jen prostředky náhradního rozdělování — pro ty občany, kteří se nemohou plně účastnit rozdělování podle práce. Tato skutečnost je vyjádřena heslem mzda nebo důchod.

14. Jako každé heslo, je i tato zásada určitým zjednodušeným výrazem potřeb socialistické společnosti. Formalistické uplatňování zásady mzda nebo důchod vytváří nebezpečí rozporu mezi právní úpravou, skutečnou potřebou socialistické společnosti prodlužovat pracovní aktivitu, a mezi zájmem jednotlivých občanů setrvat v pracovním procesu. Formalistická úprava vycházející se zjednodušeného výkladu tohoto správného hesla se může naopak stát stimulem odchodu do důchodu. Správné uplatnění zásady mzda nebo důchod vylučuje výplatu části důchodu při ztrátě části mzdy (postupný odchod do důchodu), ani výplatu části důchodu vedle výdělků po dosažení věkové hranice (je to nejúčinnější stimul pro prodlužování pracovní aktivity). Podstatná část starobního důchodu by měla být vyplacena zejména po dosažení vyššího věku mimo jiné také proto, že za současných životních podmínek vylučuje průměrný stupeň invalidizace jednotlivých občanů podstatnější účast osob starších 65 let v pracovním procesu.

Podmínku závislosti výše důchodu na výdělečné činnosti lze vyjádřit trojím způsobem: časovým rozsahem povolené práce nebo krácením důchodu při souběhu se mzdou. Krácení důchodu může být podmíněno součtem výdělků a důchodu nebo jen výší výdělků.

V podmínkách socialistického rozdělování předpokládá důsledné uplatnění hesla důchod nebo mzda pro věkové kategorie do 65 let stanovení přímé závislosti mezi výděl-

kem (resp. nevýdělkem nebo ztrátou výdělku) a výši starobního důchodu; přitom výplatu části důchodu lze zvýšit hmotný zájem na prodlužování pracovní aktivity. Ve schématu podmínek vzniku a trvání nároku na důchod by bylo nutno zaměnit podmínku odchodu do důchodu podmínkou ztráty resp. omezení výdělečné činnosti. Formulace této podmínky by musela vycházet z potřeb společnosti umožnit postupný přechod do důchodu. Některým skupinám občanů starším 65 let by se měla vyplácet plná nebo podstatná část důchodu vedle výdělku.

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Poslední právní úprava podmínek vzniku a trvání nároku na starobní důchod provedená zákony č. 101 a 103/1964 Sb. je jen přechodným mezníkem v budování socialistického sociálního zabezpečení. Úprava starobního důchodu si vyžádá ještě další změny, než bude plně vyhovovat souladu mezi potřebami a možnostmi socialistické společnosti a zájmy starých občanů.