
Benefit Guarantees in the Informal Entrepreneur Worker Insurance System

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Abstract: In the year 1991 the Colombian State constitutes a new constitutional order and modifies the structure of the State, generating significant changes, among which the model of assurance is highlighted, becoming history the old national system of health. The centralized country makes way for the autonomy of the regions and thus the social policies of the state are oriented to satisfy the pluralism of the regions, to the search of solutions in a particular way, Not being oblivious to this principle the approach of securing in a country full of demands and expectations to solve, arising in a very special way the new model prestacional, regulating through the Law 100 of the 1993. The new constitutional model of the guarantor of rights, seeks among others to guarantee on an equal basis the performance rights of all workers of the national territory at the time of exercising an activity, however in the development From this work we will analyze whether the constitutional principle of guarantees orientated and granted to offer equality of conditions performance to the informal worker compared to those acquired and enjoyed by the formal worker, They are developed in a comprehensive and timely manner, or if on the contrary the infringement of rights evidence the inability of the models and public policies to comply with this constitutional principle of universality of the right to work, to health and its protection in Full equality conditions

Objectives: Effective application of benefit guarantees in the insurance system for informal entrepreneurial workers in Colombia.

Methods: This scientific paper with a quantitative approach seeks to understand the benefit situation of the informal worker since the implementation of Law 100 of 1993 on the social security system, through a cross-sectional study. It uses a socio-legal method that correlates the application of current regulations with the context of informal worker entrepreneurs. The sources of information include primary and secondary texts, and data will be collected through content analysis and field diary, using bibliographic cards to organise doctrinal information and references.

Results: The analysis of the insurance model in Colombia reveals that, although progress has been made towards almost universal coverage in the health system through the contributory and subsidised schemes, significant differences persist in terms of employment benefits between formal and informal workers. The implementation of a system inspired by the Bismarck and Beveridge models has allowed for mixed financing based on wage and tax contributions. However, informal workers face difficulties in accessing equitable benefits due to their limited ability to contribute regularly to the system, which aggravates the gap in occupational risk coverage. The current system fails to effectively integrate the needs of these workers, affecting their access to benefits and protection against occupational hazards

Conclusions: The Colombian insurance model, although robust in terms of health coverage, has serious shortcomings in terms of equity in labour benefits for informal workers. The lack of savings and the economic instability that characterises this sector prevent them from contributing regularly to the system, making it difficult for them to access the same guarantees that formal workers have. To overcome this gap, it is necessary to strengthen solidarity within the system by implementing policies that partially subsidise the contributions of informal workers with a lower capacity to pay, in the style of the Beveridge model. In addition, it is essential to develop public policies that promote savings with incentives to ensure greater social protection and inclusive access to labour and pension security.

Keywords: informal work, social security, Informal worker, law, equality

1. Introduction

Since the promulgation of the new Political Constitution of Colombia in 1991, the organisational structure of the state has undergone significant changes, especially the health model applied until that year, and the old health system, with its centralised and protectionist characteristics, is considered contrary to the expectations of a country that has changed and demands new actions that represent a real satisfaction to the citizens.

Faced with the demands of a diverse nation, it became necessary to create a system that would satisfy the needs of the population in a comprehensive manner. Thus, the old National Health System was repealed and gave way to a new model in a new constitutional order; this new model was called the General System of Social Security in Health, which established a substantial change in the comprehensive protection of social security and labour, developing a constitutional principle in Law 100 of 1993.

The new law establishes the structure and functioning of a model aimed at comprehensively guaranteeing the social security of all the inhabitants of the territory, especially informal workers, among others, whose effective application will be the subject of this scientific paper, although it is true that our constitutional model is in the spirit of guaranteeing rights, nevertheless, there are many facts that constitute violations in the area of benefits.

In this paper we will analyse the rights enshrined in Law 100 of 1993, when it comes to informal enterprising workers carrying out their activities in conditions of informality and precariousness, determining whether the new model enshrined in the legal system contributes to the protection of the right that is intended to be guaranteed by the new model of the Social Security System.

As a consequence of the above, the purpose of this paper is to describe and analyse the Social Security System in Colombia from a legal point of view, focusing specifically on the issue of the constitutional guarantees of protection of the informal worker within the aforementioned system.

In this way it can be said that the proposed work will be developed from a legal approach and a practical approach, that is, through the analysis and description of norms, review of existing jurisprudence on the subject studied, and the preparation of reports in

relation to entrepreneurial workers covered, protected and guaranteed by the system of social security benefits.

2. Methods

This scientific document is of a quantitative documentary nature, taking into account that it seeks to understand the benefit situation of the informal worker from the normative issue of the social security system, contained in Law 100 of 1993, by means of a transversal study of the subject.

Its method will be socio-legal, developed through the correlation of the application of the current regulation in an applicable context delimited by the researchers, as is the case of informal entrepreneurial workers.

The sources used for the development of this research will be primary and secondary. Data collection will be carried out by means of content analysis of texts (articles in scientific journals, legal and related regulations) and field diaries. The instruments to be used are bibliographic cards to relate the thematic content developed in the doctrine and quotations or references.

3. Results

Frame of reference:

Social Security, arises then as that need generated in the post-war period, in which it is intended to compensate the soldiers affected on the occasion of the war conflicts, referring to the works of Rengifo. (1989) and Rodríguez (2011), which take as a fundamental basis of their study, the attention of these people generated after the affectation in their life and integrity after intervening in the war, in order to seek a solid reconciliation.

After accepting the first conception, the social welfare was extended to all those economically disadvantaged people in order to welcome and help from a human sense to all those who were in circumstances of manifest weakness from the economic perspective, in the understanding of their incomes. This gave rise to civil society initiatives through the help of religious communities, lodges or even mutual aid groups made up of people who provided help.

When the government intervened as a participating actor in the provision of pension services, it gave way to the application of solidarity principles to groups of destitute people such as the elderly and orphaned children (Armenta and Vencé, 2012, 9-10). For the

specific case of the Republic of Colombia, the focus is on the guarantees provided to informal workers, established in Law 100 of 1993, within the framework of a New Social Security Model in Colombia from the perspective of informal workers and their precarious insurance status, taking into account the recommendations of the ILO on the subject.

One of the first conceptual sketches that were made in Latin America to understand the socio-economic reality was the concept of marginality. This term, according to Fernando Cortés, ‘attempts to describe the process through which a series of social actors who had been included in the fruits of development (...) are excluded (especially from the labour market)’ (Quoted by Alexei Guerra, 2007:25).

Different authors explained the phenomenon of marginality and subculture of the poor population that had migrated from the countryside to the cities in the following way: the phenomenon was caused by a social structure that implied a strong concentration of wealth. These rural migrants, unable to be absorbed by the modern sector of the economy, had to develop activities that would allow them to earn an income and at the same time maintain ties of solidarity, as they were also excluded from the systems of social production.

Within the same approaches, this sector of society was referred to as being excluded from society as a whole. In other words, it was thought that society was divided into two sectors: a modern one and a traditional one that was excluded or marginalised from progress, a division of concepts that, over time, translated into formality and informality in the ways of exercising employment and this in relation to the guarantees that a legal system could provide in equal conditions.

Theoretical concepts of informal work and entrepreneurship

The main focus of the research is to analyse the effective enjoyment of all the guarantees offered to informal workers, established in the new Social Security model in Colombia regulated by Law 100 of 1993, from the perspective of informal workers and their precarious insurance status, taking into account the recommendations of the ILO on the subject of informal work.

Background to informal work

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the concept of marginality. This term, according to Fernando Cortés, ‘attempts to describe the process through which a series of social actors who had been included in the fruits of development (...) are excluded (especially from the labour market) ...’ (Alexi Guerra, 2007: 25). Different authors explained the phenomenon of marginality and subculture of the poor population that had migrated from the countryside to the cities in the following way: the phenomenon was caused by a social structure that implied a strong concentration of wealth (in particular land). These rural migrants, unable to be absorbed by the modern sector of the economy, had to develop activities that would allow them to earn an income and at the same time maintain ties of solidarity, as they were also excluded from the systems of social production.

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The Social Security System created by Law 100 of 1993 has been defined as the set of public and private entities, norms and procedures aimed at preventing, protecting and caring for workers from the effects of illnesses and accidents that may occur on occasion of or as a consequence of their work and their pensions. The aforementioned System has undergone major changes over the years, among the most important of which are those introduced by Law 776 of 2002, which regulated everything concerning the organisation, administration and benefits of the system, also modifying the economic benefits established therein, other changes of great importance were introduced with the issuance of Law 1562 of 2012, which includes the possibility for self-employed workers to be affiliated to the Occupational Risks System, being one of the great advances incorporated in this new constitutional order that gave rise to the new social security model, since it means the inclusion of a number of principles that clearly protect workers' rights.

Constitution of informal work

Informality in its origins stems from a concern with poverty, i.e. the way in which the poorest families earn a living without participating fully and with rights in the world of waged work. The first to describe the phenomenon comprehensively is Hart, who in the early 1970s studies the composition of informal income and employment in the city of Accra, Ghana, distinguishing between formal and informal income, referring to informal economic activity as ‘... the way of doing things characterised by: 1) ease of entry, 2) reliance on local resources, 3) family ownership of resources, 4) small-scale operation, 5) intensive labour force and adapted technology, 6) skills acquired outside the formal education system, and 7) unregulated competitive markets.’ (Hart, 1973).

Subsequently the ILO building on the ideas of Hart Keith in 1972 published a report (International Labour Organisation, 1972), focusing particularly on a sector of marginal street activities, the existence of small home-based workshops, self-employed artisans and small shops in Kenya, drawing attention to those people providing services and producing goods that were socially necessary, even though these activities were socially unrecognised or repressed. Studies prior to the 1972 report were able to put forward concepts such as informal income opportunities, traditional sector, unorganised sector, unstructured, unprotected, etc., which attempted to approach the question of informal activity from the dualism observed in the urban economies of developing countries. These concepts established that the absence of opportunities in the formal sector and the lack of training were the factors that explained the incorporation of individuals into the informal sector and that this contributed to encourage rural-urban migration (Sethuraman, 1976).

For Tokman, the ILO report on Kenya was the ‘initial enunciation’ of the concept of informality by the ILO, also inspired by the need to understand and address urban poverty. This report asserts that informal activities are ‘a way of doing’ characterised by: ease of entry; reliance on indigenous resources; family ownership of enterprises; small scale of operations; labour-intensive and adapted technology; skills acquired outside the formal school system; and unregulated and competitive markets. The employment strategy developed reinforces the idea that employment policies should recognise, include and address the development of the urban informal sector, recognising its contribution to production.

Several ILO instruments refer to the informal sector, but the first attempt to describe its nature is found in the ILO Employment Policy Recommendation 1984, which deals with ‘economic activities carried out outside institutionalised economic structures’.

Differences between self-employed, dependent and informal worker entrepreneurship insurance context.

Various definitions of informal workers have been proposed. Some are based on legal concepts and tend to consider informal workers as all those who are engaged in small economic activities outside the law; others, from a structuralist perspective, consider them to be part of a system of self-employment that arises as a survival strategy in societies that have a surplus of labour force; or from a cultural approach to the problem, informal workers are considered an expression of the traditions, values, knowledge, behaviour, skills and technological level of backward societies (Borja, 2001).

However, it is extremely important to define and differentiate between dependent, independent and informal workers, because depending on the approach taken, different interpretations can be given; we find that it has been doctrinally considered that the independent worker, for tax purposes, is the natural person who, without having an employment relationship with an employer or a legal or regulatory relationship, provides a personal service and receives remuneration in return (Dirección de Impuestos y Aduanas Nacionales, 2016).

It can be inferred, then, that the natural person contractor who provides services directly is an independent worker because he or she performs a personal service which may require technical, technological or professional knowledge; on the other hand, as a dependent worker we find one who, according to labour law, provides his or her services personally, with subordination and receives remuneration for the work performed, while the informal worker for the purposes of this document was assumed as a concept that goes out on the street to get by, without having a contract or employment stability, without income that ensures a decent and dignified life, and without social protection.

Generally, these businesses, jobs or activities are carried out in an established place and their income depends on that place and the resources found there, for example, a neighbourhood or a sector. Also, the

businesses or enterprises are owned by a single person or family, and in most cases do not comply with wage, tax and health regulations, etc. These workers are characterised by low levels of education, little experience and access to casual employment in which street vending predominates.

They carry out activities that are not based on viable business projects, have little added value, use rudimentary technologies and are primarily oriented towards trade and services. They carry out their activity as a temporary refuge or as an alternative means of employment in order to obtain the economic benefits that allow them to sustain themselves, regardless of their living conditions and quality of life. They are outside the labour guarantees of Social Security in Health, Pension and Occupational Risks, all of which are related to work, being solely responsible for the obligations arising from the coverage of all risks and insurance.

Among their main sources of financing (informal and even illegal) are personal and family sources, which are associated with usury and abusive speculation by moneylenders, whose high interest rates represent high operating costs that are difficult to meet with the low profitability of their occupation.

Informal Entrepreneurial Work Object of Special Protection and Assurance in Public Policies of the State.

The political constitution of 1991 establishes that Colombia is a social State of law, which implies not only the strengthening of services and guarantees of rights but the fight for the eradication of existing social inequalities, especially those who are in a situation of economic precariousness, there is an obligation to design and execute public policies that allow achieving real and effective equality.

However, these measures cannot be regressive nor can they further aggravate the situation of marginalization of the most vulnerable population; "policies, programs or positive measures aimed at achieving real equality of conditions and opportunities among partners must be adopted and implemented, thus fulfilling their international and constitutional obligations to fight poverty and progressively satisfy the basic economic, social and cultural rights of the population, in application of what constitutional jurisprudence has called "clause for the eradication of present injustices."

Therefore, it must refrain from advancing, promoting or implementing policies, programs or measures that are ostensibly regressive in terms of economic, social and cultural rights, which do not clearly and directly lead to generating more poverty than that which currently afflicts the country, and aggravate the situation of exclusion or marginalization of certain sectors of society, especially those who are in precarious economic conditions; much more so if, as a consequence of such policies, programs or measures, the material situation of those who are already in extreme subsistence circumstances ends up worsening." (Cepeda, 2003).

Colombia as a member country of the ILO since 1919, while it is true that it has ratified a large number of recommendations issued by the International Labor Organization, these ratifications becoming international treaties with binding force, by virtue of being part of the block of constitutionality, it is very striking that Convention C-122 of 1964 does not appear ratified by Colombia, almost half a century later it would be understood that the bases of a decent job established in that convention held in the city of Philadelphia, in which the central issues to be addressed were unemployment, wage guarantees, the impact of state policies on the minimum guarantees that a worker should enjoy in conditions of equality, such as material well-being, decent wages, decent working conditions. If this agreement on public policies regarding work, which seeks to guarantee minimum conditions such as freedom, dignity, equality and well-being, has not been ratified, the Colombian legal system over time, despite what is established in the Political Constitution, would be understood to not be completely in line with the international legal system on labor issues, based on some fundamental minimums already discussed in the Philadelphia Convention in 1964.

The same occurs with Convention C 155, which deals with the safety and health of workers in their work environment, which came into force on August 11, 1983, and which Colombia has not ratified to date. These are very important issues in the work environment, which in the internal order in the new Political Constitution established a new model of comprehensive social security, regulated in Law 100 of 1993, in which some general principles were established, of which the one established in Article 5, paragraph two, which states, "Guarantee economic and health benefits to those who have an employment

relationship or sufficient economic capacity to join the system.”

The ILO Convention C-102 of 1952, which deals with social security, and which is oriented towards the protection of minimum standards for workers, is also not ratified by Colombia as a member country of the International Labour Organization, but the objectives established in Law 100 of 1993, include the generalities of this Convention C-102 of 1952.

To date, Colombia has ratified 8 fundamental conventions out of 8 in total, 3 governance conventions (priority) out of 4, 50 technical conventions out of 177 issued by the ILO, and Colombia currently has 61 conventions ratified by the International Labour Organization, of which 55 are in force, of which 6 have been denounced. This condition of Colombia before the international organization and the will of a state to be in accordance with global demands regarding working conditions, represent a poor response.

In view of this situation, it is important to analyze whether the internal legal conditions are sufficient to achieve effective protection of the working conditions of informal work in Colombia, and in light of the international agreements in force, how to resolve our internal deficiencies. This analysis must include, from the fundamental principles established in the Philadelphia Convention, the agreements and recommendations that have been produced over time for the protection of decent work, the responses of the State as public policies and our current legal system, a set of agreements and regulations aimed in a special way at the protection and minimum guarantees of freedom, well-being, dignity and equality of the worker in conditions of informality and precariousness, in a context of constitutional guarantees.

Tensions Between Guarantees for the Formal Worker and the Entrepreneurial Informal Worker Within the Social Security Code

The Constitution has determined that work “is a right and a social obligation and enjoys, in all its forms, the special protection of the State. Every person has the right to work in decent and fair conditions,” therefore, no distinction is made between formal or informal employment.

The State must guarantee a minimum to protect them. For this reason, in Colombia it has been defined that Social Security is an inalienable right of every citizen.

The Ministry of Health and Social Protection considers that work cannot be isolated from human dignity and, therefore, the responsibility of the State goes beyond guaranteeing the right to have a job, but that the employee is in conditions of security, tranquility, stability, equality, fair remuneration. These elements lead to supporting a decent job that guarantees the worker the fullest possible satisfaction of all his rights.

Guaranteeing these conditions to achieve decent work is the appropriate means to “achieve equitable, inclusive and sustainable development” (Ministry of Social Protection, 2016). However, at the national level, another panorama of great inequality is observed. According to the statistical monitoring carried out by DANE regarding formal and informal employment in urban areas in the 23 main metropolitan areas between 2001 and 2010, informality has represented approximately 50%, a situation that has not changed substantially in the report on the working population of the informal sector for the quarter November 2014-January 2015 (Dane, 2015), which was 49.3%, similar to the same quarter of the previous year. In this sector, there is a significant group of informal sector workers for subsistence who, unlike other workers, carry out an activity to be able to guarantee their minimum living wage, they do not have a precarious labor contract, or any other type. In this sector of the Colombian economy, the great majority of the population is not under the protection of the Labor Risk System, despite the existence of a basis of principles from international agreements and the National Constitution that determines Social Security as a fundamental right.

This reality is far from the ideal of insurance under the General Social Security System, since there is a lack of protection, mainly in occupational risks and pensions, which means that informal employment is left out of preventive actions for occupational health, today called safety and health at work, increasing the occupational risks to which they are exposed. In health care, they are covered by the subsidized regime, which, according to data from a local study, is approximately 82% of informal sector workers who sell on the streets and sidewalks of the city of Medellín (Garzón, 2009).

This system has taken on the burden of care for adverse events generated by work, whether it is an accident or occupational disease, which ultimately means that those who contribute to the Contributory Social Security System in Health are the ones who are financing the care of these events that should be

covered by the Occupational Risk System, with aggravating factors such as untimely care and without the economic benefits to which they would be entitled if they were linked to the Occupational Risk System.

Law 1562 of 2012 allows independent workers in the informal sector to join the Occupational Risk System as long as they pay into the contributory health regime, without any other conditions, which opens up the possibility of joining an ARL, but there is no information on the percentage of affiliations that have been achieved with this measure, although it can be deduced that it is a minority, either due to the economic difficulties of assuming the payment of health and occupational risk contributions by the informal or independent worker, or due to the difficulties that the ARLs present for their affiliation.

In effect, the ARLs can argue what is regulated by Decree 723 of 2013 on affiliation to the Occupational Risk System, and require formal work contracts of more than one month or that they are independent workers who carry out activities classified as high risk.

Taking into account these two norms, it can be observed that there is a great possibility for the informal and independent working population to join the Labor Risk System, under Law 1562 of 2012. Likewise, Decree 2616 of 2013 allows access to the labor risk system and pension for informal sector workers, considering that a significant sector of dependent workers who are currently informal and who, because they earn less than a minimum wage, are generally not integrated into the social security system.

This norm has allowed a large informal working population, who are beneficiaries of the subsidized health regime, to join an ARL and a Pension Fund, without losing their status as beneficiaries of the subsidized health regime. In answering the question: ¿does the system of occupational risks in Colombia really protect workers in the informal sector?, the authors consider that it does, from an ideal perspective, since there is a Constitution that protects decent work, regardless of whether it is formal or informal, and that also establishes as a fundamental right social security that covers not only health, but also occupational risks and pensions.

The State has enacted a series of regulations that have benefited the working population of the informal sector in entering the system of occupational risks, such as Law 1562 of 2012, which allows voluntary affiliation to the System of Occupational Risks under the

condition of contributing to the Health System; Decree 723 of 2013, which only regulates mandatory membership in this System for those who are linked to a formal contract for the provision of services for more than one month or for independent workers who work in activities classified as high risk, and Decree 2616 of 2013, which allows membership in occupational risks for those who work with a contract for less than one month and who earn less than the current legal monthly minimum wage.

But the reality of the informal population is different, since they are characterized by low productivity, precarious jobs and, in many cases, subsistence jobs, with low social security coverage for pensions and occupational risks, since in health they are protected by the subsidized regime.

For this same reason, informal employment is outside the preventive actions of occupational health, today called safety and health at work, increasing the occupational risks to which they are exposed, among other reasons because they cannot identify them or because they will not know how to minimize them, leading to an increase in the prevalence of occupational diseases and accidents that will ultimately become a burden for the health system of the subsidized or contributory regime (Ocampo, 2015).

4. Conclusions:

The new insurance model in Colombia is based on a minimum contribution to the system, which allows formal and informal workers to enjoy certain benefits. This insurance is fully constituted by a legal framework since before the new political constitution was promulgated. However, the political constitution of 1991 transformed the old national health system into a new model that guarantees the possibilities of accessing the system with greater coverage, universality of guarantees and the enjoyment of all benefits and contingencies generated by work activity, both for formal and informal workers.

Taking into account the model that inspires the Colombian benefit system, we find a mixture of the German model of Bismarck, which is based on the savings of low-income workers and financing based on salary, and a bit of the English model created by Beveridge in which taxes subsidize the financing of the uninsured population, these two models aimed at resolving all contingencies generated by daily work activity.

The Colombian model is a mixture of two forms of structuring insurance, in which the different contributions, contributions and individual collections lead the health sector to establish itself in two large systems, the contributory and subsidized, which allow the almost universal insurance of the population to the health system.

But with regard to the benefits derived from the insurance of all contingencies caused by work activity, there is a notable gap between formal work and informal work. It would be necessary to delve into the model created by Beveridge, to partially finance the contributions of those informal workers with reduced capacity to pay the minimum contribution to the system, in order to be able to enjoy in equal conditions all contingencies generated by work and its benefits in equal conditions with the formal worker, although it is true that the same economic activity of the worker forces him to use his daily income to cover his basic daily needs, generating an impossibility of saving as a culture in order to cover his individual obligations to the insurance system.

Among the public policies, the constant promotion of savings with additional benefits is essential, to promote self-support and contribution, which guarantee the protection of work, and to achieve the development of self-care in the absence of a work safety policy in informal environments; to articulate the system of insurance of occupational risk from formal to informal work in which the worker is his insurer, his jointly responsible for himself, without the burden of responsibility for any work accident being transferred to him.

On the other hand, inclusive coverage of the pension system is essential for those workers whose income does not even reach a minimum wage per month, in view of which it is of utmost importance and great interest to determine legal, social and economic policies, which allow to contribute to the pension with an income that does not exceed the minimum wage and in the face of this, to also propose a solidarity already given in the health system, thus offering the informal worker a financing of his obligation in a shared manner when his payment capacity is very low; This could be a populist proposal, but given the observed reality, solidarity would be an alternative solution, in addition to strengthening the occupational risk system aimed at informality, as already applied to the health system in

the subsidized regime, which is financially based on solidarity.

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