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Understanding: The Social Security convention between Portugal & Mozambique

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One year after the Resolution no. 18/2016 of 30 December, which ratified the convention on social security between Mozambique and Portugal, signed in Lisbon on 30 April 2010, it is time to assess what has been achieved so far.

This document follows the platform for co-operation in several areas firmed between the two governments, with the main objective being to respond to the apparent social stability regarding the social security benefits and the migratory flow of workers between the two countries.

In Mozambique, social security is a right provided by the Constitution, where Article 95 lays down that all citizens are entitled to social assistance in case of disability and in old age.

According to the preamble of the decree that approved the convention drawn up in Portugal (decree 19/2011 of 6th December) the Convention aims primarily at:

- to co-ordinate the legislation on social security of both countries;
- to strengthen the social protection of migrant workers and their families on equal terms and on a reciprocal basis, as well as to maintain the already acquired rights and future entitlements.

This Convention is not aimed to exclude the application of the existing social security legislation in the contracting States, but rather to enhance the efficiency of the enforcement of those provisions in relation to citizens of Portuguese nationality working in Mozambique and citizens of Mozambican nationality working in Portugal.

It should be noted that the principle of equal treatment set forth in Article 3 provides that any foreign workers of a contracting State and their family members and survivors shall benefit of the same rights and shall be subject to the same obligations under the same conditions granted to national citizens of that contracting State. This means that, in Mozambique, Portuguese citizens may access to the regime applicable to all employees in general and to self-employed workers, as well as to the voluntary maintenance regime of contributions applied to illness, maternity, disability, oldness and death.

Under the terms of Article 4 (1) (a) of this Convention, the compulsory (and supplementary) social security regime and the voluntary maintenance regime of contributions in respect of illness, maternity, disability, oldness and death are applicable to Mozambique, with exception to the basic social security system.

It is also important to point out that this convention has not provided much innovation in what concerns the flexibility of the legislation on social security in Mozambique for foreign workers or for Mozambican workers abroad, insofar as Article 14 (4) and (5) of Law No. 4/2007 of 7 February (Social Security Law), already provided for the deviation from the rule concerning the possibility of compulsory registration with the Mozambican social security system of Mozambican workers posted abroad, as well as the registration of foreign workers covered by a social security system in another country, where bilateral agreements were already implemented.

It should also be noted that this convention has already being reflected in the new compulsory social security regulation, approved by Decree No. 52/2017 of 8 October (for example, the worker's domicile will no longer be the criteria to follow for the registration with the compulsory social security).

Furthermore, unlike the Mozambican legislation, the Convention provides for the possibility of payment of benefits, in case any national citizen of any of the contracting countries is resident in a third country.

In this sense, Article 8 of the Convention sets forth the general rule to be applicable to workers from the Contracting countries (whether employed or self-employed workers, defined as nationals, stateless persons or refugees residing in the territory of one of the Contracting States).

According to this article, all these workers shall be subject to the rights and obligations established by the social security legislation of the contracting state where they are posted, even if they are resident in another State or the employer has its registered office or domicile in that other State.

The Convention also lays down an exception to the above rule (Article 9), determining that, in case a posted worker in the territory of one of the Contracting States is transferred by the company that engaged him to work in another Contracting State, the social security applicable regime will be the same regime of the State of origin, provided that the expected duration of the work does not exceed 24 months and that he is not transferred to replace another worker who has completed his posting period.

The same situation applies when ever a worker usually carrying out an independent activity in one of the Contracting States is transferred to another Contracting State to perform the same activity and for the same periods of time.

As to the benefits, the Convention establishes a general rule applicable to any worker who has been subjected for successive or alternative periods of time to the legislation of the Contracting States, in order to ensure the entitlement, maintenance or recovery of the respective right to benefits, and so determines that the periods of insurance completed under of the legislation of any of the signatory States of the Convention must be aggregated and calculated as if such periods of time have been fulfilled under the legislation of that same State.

Concerning the death grant, Article 17 of the Convention provides that, for the purpose of entitlement, maintenance or recovery the right to death benefits, if the deceased worker has been, successively or alternatively subject to the legislation of the Contracting States, the periods of insurance completed under the legislation of one of the Contracting States shall be taken into account by the other Contracting State as if such periods had been completed in accordance with the legislation of that other State, whenever necessary and provided they will not overlap.

In what concerns the benefits for family expenses, disability and care allowance, Article 21 of the Convention lays down that workers covered by the Portuguese legislation, in relation to the family members residing in Mozambique, are entitled

to the benefits provided for in the Mozambican legislation for the workers residing in Portugal, providing that the Portuguese legislation requirements are respected.

As to the Mozambican workers covered by Portuguese legislation, in the event of work accidents and occupational diseases, they are entitled to the benefits resulting therefrom under the same conditions stipulated for Portuguese nationals. This is an important gain for the Mozambican nationals as bureaucracy is reduced and, in case of any occupational disease or accident at work, there will be no need to travel to Mozambique to start the process for the recognition of the respective rights.

Regarding the protection of workers' personal data, if requested by one of the Contracting States, it shall be covered by the legislation of the requesting country. The principle of confidentiality of the personal data is respected in Mozambique, except when the worker's personal data is necessary for the fulfillment of the rights and / or obligations of the worker.

Article 27 (2) of the Convention also provides a change concerning the administrative bureaucracy for the legalization of documents as it is no longer necessary to legalize documents in the diplomatic and consular services of the contracting states

Regarding litigation, any citizens of a Contracting State may file claims and/or appeals in one of the contracting States, within the deadline set out in their contracting State; the State receiving such complaint or appeal shall be bound to send it to the Contracting State concerned.

In the event of a debt to be payable in cash allowances by the competent institution to a beneficiary located in a territory other than that of the institution debtor, the beneficiary may request the payment in the legal currency used in the Contracting State where the beneficiary is domiciled. In this respect, the rights of the competent institutions before third parties are also recognized.

Under the principle of institutional cooperation, Article 32 provides that, in the event of overpayment to any beneficiary, the creditor institution may request another institution from the contracting state where the beneficiary is located to deduct the funds received in excess, in accordance with the respective legislation in force.

In conclusion:

This Convention has improved the legislation of the Contracting States concerning the social protection. In relation to Mozambique, it gave rise to a possible implementation of social protection for unemployment and solidarity, in accordance with Portuguese law.

By removing the residence clause, the calculation of the period of insurance is more flexible, being totalized irrespective of whether it has started and ended in different States, thereby ensuring the equal treatment and the acquired rights of the respective nationals.

From the administrative point of view, the Convention has softened the territorial constraints between Portugal and Mozambique under the principle of a mutual co-operation, namely in what concerns the administrative assessment of the acts to be carried out in both Contracting States.

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