

# Comparative Analysis of the Sustainability of the Social Security Systems in Central Europe

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## ABSTRACT

*This chapter presents a comparative analysis of the country chapters along the following themes: social security and social protection, the dogmatic issues of social law. This is followed by an analysis of the constitutional arrangements, since, in addition to the arguments for and against the inclusion of social rights in the constitution, it is a question of a choice of values: whether to accept the ‘message’ of social rights, namely that the individual, the citizen, (also) has duties towards the community, the state. The starting point for the preparation of this book is an examination of compliance with the relevant articles of the (Revised) European Social Charter. This document is the most prominent of all Central European countries in this respect. The subsections on sustainability and current regulatory issues have made it possible to present the information gathered in three separate subsections: good practices, sustainability issues and country-specific regulations.*

## KEYWORDS

social security and social protection, dogmatic of social law, level of the protection in the constitution, sustainability, best practices

## 1. Introduction

This chapter presents a comparative analysis of the country chapters along the following themes. It is important to highlight how Central-European authors write and think about social security and social protection. We will then summarise the dogmatic issues of social law in the countries studied. This summary is followed by an analysis of the constitutional arrangements, as, beyond the arguments for and against the inclusion of social rights in the constitution, it is a question of a choice of values: whether to accept the ‘message’ of social rights that the individual or citizen (also) has duties towards the community or state. Therefore, it is fundamentally a values debate, an ideological debate, to which it is never possible to give a clear-cut answer or provide the truth. It seems to be accepted in the literature that debates on the need to include social rights in the constitution are primarily political rather

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than legal, that the choice between different alternatives is primarily a matter of political decision, and that social philosophies, ideologies and value choices in this regard have (or should have) their place in the constitutional process rather than in the constitution. The starting point for the preparation of this book was an examination of compliance with the relevant articles of the (Revised) European Social Charter. This document was considered to be the most prominent of all Central-European countries in this respect. The subsections on sustainability and current regulatory issues have made it possible to present the information gathered in three separate subsections: good practices, sustainability issues, and country-specific regulations.

## 2. Social security and social protection

Social security is a quality of human life that can be understood in the context of well-being. It is the right of those whose quality of life is generally regarded as acceptable to all. In the world of social rights, the right to social security should not be mentioned for moral reasons, as long as the degree of social security is not also a constitutional guarantee of a secure human existence (well-being).<sup>1</sup> Meanwhile, the declaration of social rights or some form of regulation of social rights is a faithful reflection of the values and vision of humanity and the role of a particular state. Moreover, it is, generally, linked to prevailing political views and, of course, to the more narrowly defined conceptions of constitutional law.

The definition of social security is rarely found in international legal sources, while the social security system itself is most often defined in professional literature as ‘a set of all measures that should in certain cases (illness, accident at work, old age, death, birth of a child and unemployment) establish a disturbed balance’. In most cases, social security represents an umbrella concept—that is, the basic goal of the science of social law—which is achieved through various subsystems, such as social insurance systems and social protection systems. Consequently, social security can be a goal that society strives for to ensure decent living conditions and an existential minimum for as many residents as possible. The aforementioned goal will be achieved by the developed social insurance and social protection system, which will enable individuals to exercise their basic rights and receive appropriate protection in cases of occurrence of a certain social risk. Therefore, the state must create a valid normative framework that will regulate the procedure and conditions for exercising social security rights and providing social protection measures. Without developed legal and sub-legal legislation and a clear constitutional framework and appropriate measures of supervision over the implementation of the law, ensuring social security for citizens will be a challenging task for every state.<sup>2</sup>

1 Takács, 2011, p. 79.

2 Bojić, 2023.

Ravnić wonders what social security would encompass—individual subjective rights or something broader—while analysing German law, according to which social benefits and services include only those recognised by the public authorities responsible for public social benefits and services. Namely, social law regulated by state public law norms establishes a relationship between the individual and the state, where individuals are granted benefits and services regulated by public authorities. According to Ravnić, social content regulated by a contract, on a voluntary basis, unilaterally by a charitable institution, or even compulsorily determined by public authorities would be part of the content of social protection law as a gender concept comprising different forms of insurance and assistance for individuals and, to a lesser extent, for groups. Social protection in this sense is only part of social law and by no means represents its sole task. However, Ravnić clearly emphasises that the concept of social security has displaced the concept of social protection, and social security, seen as a system, encompasses social areas based on insured risks, social needs, and other insured cases, overlapping with the concept of social law or the right to social security. Objectively, social law is a set of norms, regulations, and rules that regulate legal and social relationships. Subjectively, it is a set of powers conferred by law to individuals and less frequently to groups to demand certain social benefits (provision or action) in a state of social need, if they meet certain conditions.<sup>3</sup>

One of the greatest Croatian labour law theorists, Nikola Tintić, criticised the ambiguity of the attribute ‘social’ and its usage in various meanings of the term. The term ‘social’ is seen as the totality of protective legislation *in favorem* workers; the limitation of the employer’s contractual dictate, particularly regarding vulnerable groups of workers (minor workers and women); a system of social assistance and protection in the broadest sense regarding members of society in a state of social need; provisions elevated in such cases to the level of specific social rights of individuals. Moreover, he clearly stated that social law and social security in different periods of history, social, political, and economic systems are based on different conditions, social relations, interests, possibilities, goals, and concepts. For such reflections on social law by Tintić, social policies become a significant instrument because, unlike static social law or social security law, they reflect a more dynamic nature and the ability to adapt to different social challenges, needs, and, ultimately, different programmes of political elites.<sup>4</sup>

Legal scholarship offers several definitions of social security law. Several from college textbooks can be cited. Koldinsky sees social security law as a set of legal norms that implement the rights formulated primarily in Articles 30 to 32 of the Charter of Fundamental Rights and Freedoms and respond to legally recognised social situations and constitute a system of social protection. Matlák stresses that social security law acts as a separate legal branch but is the subject of both pedagogical and scientific approaches and constitutes a scientific and pedagogical discipline.

3 Vinković, 2023.

4 Vinković, 2023.

He further states that social security law constitutes a set of legal norms regulating social, collective, and individual relations arising in social security and the application or implementation of social policy and social partnership of individual subjects of the social sphere. Galvas and Gregorova consider social security law to be a set of legal norms that regulate the behaviour of subjects in social relations arising in the provision of material security or other assistance to citizens who, as a result of social events accepted by law, need such benefits or assistance.<sup>5</sup>

Vieriu explains that social security is not only an activity, a concern of states but also a set of legal rules governing this activity, the protective measures, their specifics, and their beneficiaries. The legal rules governing social relations make up the branch of law known as social law. Just as labour law has separated from its parent discipline (civil law), social law has also separated from labour law to become an autonomous discipline and a new branch of law.<sup>6</sup>

### 3. Dogmatic of social law

Regarding the integration of social security law into the legal system, one can agree with the views that by its nature it is primarily a public law branch, with administrative law being the closest (especially in procedural norms), and similarities can also be found with financial law (the nature of insurance premiums in the social insurance system is similar to the tax system). Meanwhile, many private law elements can also be found in social security law (e.g. private law contracts concluded between the provider and the recipient of certain social or health services). Moreover, social security law has a special relationship with labour law, with several overlaps. There is a particular correlation in the protection of employees caring for children. The basic code of labour law provides these employees (and other groups) with special care and legal protection (e.g. interruptions at work, maternity leave, and paternity leave), which is supplemented by the financial security provided by the standards of social security law.<sup>7</sup>

In the Czech Republic social security law comprises insurance and provision subsystems. Insurance comprises pension, sickness, and health insurance. The unemployed are covered by the state employment policy, but it is not an insurance system. Support for families with dependent children is provided through state-funded state social assistance. The last part of social security law is social assistance, which comprises material needs assistance, social services, and benefits for persons with disabilities. Relatively recently, the regulation of substitute maintenance has come into force, whereby the State takes over the payment of part of the alimonies owed by

5 Dolobáč, 2023.

6 Vieriu, 2016, p. 113.

7 Dolobáč, 2023.

the child's parent. This system includes protection against all risks as calculated in international conventions binding the Czech Republic.<sup>8</sup>

In Slovenia, the social security system is grounded in the notion of a Bismarckian, employment-based social insurance scheme, linking one's economic activity to their obligation of insurance. As employees and self-employed persons are compulsorily insured in all social insurance branches, (i.e. health, pension and disability, unemployment, and parental protection insurance), all regulated by separate pieces of legislation, the link between social security law, an independent branch of public law, and labour law is clearly visible. Social insurance is insurance against the occurrence of a social risk of one's temporary or long-term loss of earnings. Traditional social risks, such as unemployment, sickness, and old age, covered by the Slovenian social insurance system, lead to a loss or reduction of one's salary or wage obtained from employment or other income obtained from self-employment. However, in some subsystems, such as the mandatory health insurance scheme, coverage is almost universal and the notion of economic activity transgressed. Additionally, social security law shares an important link with administrative law, more precisely, administrative procedure, as social rights and obligations are claimed and administered within the said procedure.<sup>9</sup>

The literature emphasises that social law occurs in Poland as an area of research and didactics. However, it is questionable whether social law constitutes a separate scientific discipline (e.g. this is the fact in Germany). This is partly caused in Poland by the lack of a legal definition of social law.

(...) practical, social, didactic and research considerations argue for the separateness of social law, for the recognition of its own research problems, which require the creation of its own theory. However, regardless of the further development of scientific concepts, it is possible today to treat social law as a separate field for research purposes, especially interdisciplinary research and teaching needs. It is to be hoped that further scientific endeavours will contribute to the identification of the identity of social law and its unquestionable recognition as an independent scientific discipline.

The way of defining social law and delimiting its research space is not uniform, and there is no shortage of highly different concepts. According to I. Sierpowska, this state of affairs is partly due to the lack of a legal definition of social law (in the rich literature dealing with social-legal issues, systemic studies are not common); one can even get the impression that 'the doctrine is reserved in defining social law, delimiting its object, scope and research methods'. There is little doubt in Polish legal science that labour law is outside the scope of social law. According to J. Jończyk, the proposal to combine labour law with social security institutions under the common name

<sup>8</sup> Štefko, 2023.

<sup>9</sup> Mišič and Strban, 2023.

of ‘social law’ has not been accepted in science. Meanwhile, the literature assumes ‘social security law focuses on the problem of benefit systems and the methods (techniques) and social risks attributed to them, which allows, it seems, to treat it as a component of social law’. Seeking an answer to the question of how social law differs from social security law reveals that ‘social law more broadly than social security law exposes the state’s concern for the social existence of citizens, which is also noted by researchers who do not advocate the separation of social law’.<sup>10</sup> The definitions in the Romanian literature are quite uniform, highlighting the same characteristics, and thus actually fit into the internationally accepted definition and characterisation of social law. For example, social law is interpreted as ‘all the legal rules governing social security relations’ or

...a set of cash and in-kind benefits provided to protect income in the event of social risks; a system of protection against loss of income or a system of rules ensuring solidarity with people facing loss of income from work or costs to prevent social risks

by Romanian authors.

Notably, the emphasis on the autonomous nature of social law is not as strong as in the case of labour law; however, social law as an autonomous field of law remains a clear leitmotif in the explanations of the concepts provided by Romanian scholars. The best example of this kind of approach is the very simple yet clear and traditional definition by Professor Athanasiu, who considers that social law is an autonomous branch of the legal system, made up of all the legal rules governing social security and social assistance relations.<sup>11</sup>

Serbian social law represents a relatively new branch of law, which began to develop rapidly after the Second World War in the territory of the Republic of Serbia. Even so, in the first decades of development, it was mostly related to the area of Labour Law, only working members of the population were mostly insured in this period. Nevertheless, in the last few decades, the social security system of the Republic of Serbia has rapidly changed, as certain concepts are accepted that are represented in modern European social security systems. Thus, today social law in Serbia is separate from Labour Law, and special regulations regulate basic rights, which are provided to the insured and other citizens given the realisation of some of the social risks.<sup>12</sup>

In Slovakia, social security law is a separate branch of law, with its own content and subject matter. The theoretical definition of any branch of law is always a sketch by which the author draws insight and a strict definition of the essential characteristics of that branch. As long as it is logically justified, it may also be considered

10 Barański, 2023.

11 Vallasek, 2023.

12 Bojić, 2023.

correct. There is, thus, no objection to the multiplicity of definitions.<sup>13</sup> In Croatia, we refer to Ravnić's interpretation of the objective and subjective sense of social law at the beginning of this chapter. In Hungary, social law is a separate branch of law, and the Hungarian social system is mixed, with both insurance and benefit elements present and the insurance elements predominating. Accordingly, benefits provided by social law institutions can be broadly grouped into three broad systems: social security benefits, family benefits and other benefits for families with children, and benefits provided by the social administration system. However, this division is not set in stone, and the dynamic nature of social law is constantly changing. Further, this system may change as the catalogue of protected values expands or contracts.<sup>14</sup>

#### 4. Level of protection in the constitution

Modern constitutions have overwhelmingly taken the view that there is a need for some level and type of regulation of social rights in general. The exercise of classical freedoms and social (existential) security are parts of human quality that are mutually dependent. In society, as a moral community, solidarity must be expressed in some form. The modern state must protect the individual against social impossibility. Truly, the extent of social rights depends on the capacity of the state to deliver, but this should not mean that constitutions do not enshrine some realistic system of support for the vulnerable. Indeed, where the line is drawn between economic policy decisions and constitutional decisions depends on the constitutionalisation of social rights and the quality of the regulation. If the provision of the necessary means of subsistence follows directly from the constitution (human dignity), whether to provide the necessary means of subsistence to the citizen is not an economic policy decision but a matter of fundamental rights.<sup>15</sup>

In the Czech Republic the constitutional frame of the State's duties to protect its citizens and other natural persons against social risks, such as unemployment, lack of healthcare, disability to work, ageing, and poverty, is not laid down in Act No. 1/1993 Collection (hereinafter 'the Constitution'). Rather, it is outlined in Articles 26, 30, 31, and 32 of the Charter of Fundamental Rights and Freedoms (hereinafter 'Charter'), which was declared as an appendix of the statute No. 23/1991 Collection. Although the protection against social risks is set forth in the Charter, it does not enjoy the absolute highest effect of laws within the Constitution. Article 9 of the Constitution establishes another tier of law, determining a fundamental immutable rule. It prescribes that the 'fundamental requirements of Czech *democratic* state bound by law cannot be changed even through amendments'. The words 'welfare state' are, however, absent in Article 9. Furthermore, the Charter's level of granted constitutional protection

13 Dolobáč, 2023.

14 Tóth and Mélypataki, 2023.

15 Téglási, 2019, p. 337.

to social security is reduced through two elements. First, according to the Charter, every natural person who is not a citizen of the Czech Republic is entitled to a limited number of rights (e.g. benefits in case of poverty and healthcare). The second restriction is the possibility of claiming the constitutional granted protection only within the frame of secondary Czech legislation (note Article 41 (I) of the Charter). The Constitutional Court justified this latter restriction because of the character of social rights. The Court reasoned that the State's obligations from social rights are expensive because they, in principle, demand long-term financial support from the State (*status positivus*). As the economy is naturally unstable, and the State's revenue from taxes and other payments is unpredictable, the range of social protection is better regulated through secondary legislation. Hence, there is, thus far, neither a guarantee contained in the Charter nor another constitutional law nor an obstacle derived or developed by the Constitutional Court to change current social security. Nevertheless, the provisions contained in the Charter are not completely without legal impact. They form constitutional ideas on the Czech legal system; the State itself, its administrative agencies, and courts are bound to follow and implement these ideas in their actions and decisions. According to the Court, mandatory requirements arising from the guarantee of social rights are usually of a long-term (permanent) financial support nature, thus requiring certain actions from the state. There is an obligation on the state to act (performance rights in the narrower sense). However, the state's revenues in the form of taxes and insurance premiums are entirely dependent on the performance of the national economy, which is a volatile factor in the long term. Thus, regulation via 'ordinary' laws is preferred for better legislation adaptability to the possibilities of the Czech economy and changing views of society.<sup>16</sup>

In Slovenia social security stems from Article 2 of the Constitution, stipulating the so-called social state principle, and Article 50, which stipulates the right to social security, guaranteeing citizens' the right to social security and the right to a pension, under conditions provided by law. The social insurance system is established regarding the traditional social risks stipulated in the ILO Convention No. 102, which comprises compulsory health, pension, disability, unemployment, and parental insurance, with the legislator authorised by the Constitution to regulate additional branches (e.g. long-term care insurance). The introduction of a new branch of insurance, like long-term care insurance, for example, does not require a Constitutional amendment. The Constitution contains no explicit mention of the right to social assistance or the right to minimum subsistence benefits. However, according to Article 34, everyone has the right to personal dignity and safety. Article 34 is commonly recognised as one of the constitutional cornerstones of the right to social assistance, even if, as mentioned, it is not explicitly part of the Constitution. Social assistance is considered to fall, as mentioned, within the wider notion of social security. Article 58 defines a social dispute as a legal dispute concerning rights, obligations, and legal benefits of natural, legal and other persons if they can be holders of rights and obligations derived from

16 Štefko, 2023.

the social security system for which the social courts are competent. It is the only provision in which the statutory legislation refers to the social security system. The social courts' competences are stipulated in Article 7 of the Labour and Social Courts Act, which includes social assistance benefits. Article 51, according to which everyone has the right to healthcare under conditions provided by law.<sup>17</sup>

In Poland, Article 68(1) of the Polish Constitution shows that it is necessary to derive the individual's subjective right to health protection, and the objective order for public authorities to take such measures as are essential for the due protection and realisation of this right. A subjective right is the citizen's right to equal access to publicly funded healthcare services,<sup>18</sup> which has a guaranteed character, and the right of children, pregnant women, disabled persons, and the elderly to healthcare.<sup>19</sup> According to Article 67(1) of the Polish Constitution 'a citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age'. Article 67 of the Polish Constitution also states a subjective public right to social assistance within a narrow scope. According to Article 69 of the Polish Constitution 'public authorities shall provide, in accordance with statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication'.<sup>20</sup> The State, in its social and economic policy, shall consider the good of the family. Article 72 describes the protection of children's rights.<sup>21</sup> Article 1 of the Romanian Constitution declares that

Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.

However, how should we understand the term 'social state' in this constitutional framework? In his work, professor Ion Deleanu considers that the meaning of this concept, often paired with the concept of the rule of law, is straightforward: it does mean the involvement of the state in the social and economic sphere. Despite declaring Romania a social state by the first Article of the Constitution, only a few other articles deal specifically with the issue of social security, and we must say that, in fact, they do that only tangentially.<sup>22</sup>

The Constitution of the Republic of Serbia from 2006 undisputedly represents the foundation for the construction of the social security system in our law. The Constitution contains several provisions guaranteeing certain social rights. These

17 Mišić and Strban, 2023.

18 Article 68(2) of the Polish Constitution.

19 Article 68(3) of the Polish Constitution.

20 Article 71(1) of the Polish Constitution.

21 Barański, 2023.

22 Vallasek, 2023.

provisions are foreseen in the second part of the Constitution, which regulates basic human rights and freedoms and guarantees the right to social protection, the right to healthcare, and the right to pension insurance. The right to social protection is guaranteed within a special Article of the Constitution. However, the name of this article seems quite incoherent with its content, and, in addition to the rights realised in the social protection system, rights from social insurance are also guaranteed. The first paragraph posits that

...citizens and families who need social assistance in order to overcome social and life difficulties and create conditions for meeting basic life needs, have the right to social protection, the provision of which is based on the principles of social justice, humanism and respect for human dignity.

It is also provided that employees have the right to compensation in case of temporary incapacity for work and the right to compensation in case of temporary unemployment. It is also stated that disabled persons, war veterans and war victims are provided with special protection per the law, and social insurance funds are established per special regulations.<sup>23</sup> Analysing this Article of the Constitution of the Republic of Serbia, it seems that it would be much more appropriate if it was titled social security rather than social protection because, beyond rights from social protection, certain rights from social insurance are also guaranteed. Article 68 of the Constitution guarantees the right to healthcare and proclaims that everyone, including children, pregnant women, mothers during maternity leave, single parents with children up to the age of seven, and the elderly receive healthcare from public revenues, has the right to protect their physical and mental health if they do not achieve it in another way.

Pension insurance is guaranteed by a special Article of the Constitution. There, the constitution maker does not go into details but only states that pension insurance is regulated by law and that the Republic of Serbia takes care of the economic security of pensioners. This article often creates certain doubts in practice. When one initiative started the procedure of constitutionality and compliance with the confirmed international treaties of the Law on temporary regulation of the pension payment method, the Constitutional Court took the position that Article 70 of the Constitution did not determine the content of that right and that the Constitution to citizens guaranteed pension insurance, as a form of social insurance, but specific rights from pension insurance are not rights guaranteed by the Constitution but are rights established by law.<sup>24</sup>

The Constitution of the Slovak Republic states in Article 1 that the Slovak Republic is a democratic state governed by the rule of law, whose economy, as per Article 55, is based on the principles of a socially and ecologically oriented market economy. Regarding the social rights enshrined in the Constitution of the Slovak Republic, it should first be noted that the adoption of the Constitution materially incorporated the

23 Constitution of the Republic of Serbia, Article 69 (4–5).

24 Bojić, 2023.

Charter of Fundamental Rights and Freedoms into the text of the Constitution. The protection of human rights and fundamental freedoms based on their natural-law understanding has, thus, reached, at least, the level of the current international standard. The text of the constitutional regulation of fundamental rights and freedoms contained in the Charter is comparable, but not identical, to the text of the constitutional regulation of fundamental rights and freedoms contained in Title II of the Constitution.<sup>25</sup>

Croatia is defined *inter alia* as a social state in Article 1 of the Constitution. In Article 3, social justice is elevated to one of the highest values of the constitutional order and the foundation for interpreting the Constitution. Constitutional experts highlight that the Croatian Constitution maker, by constitutionalising the concept of a welfare state, has placed the Constitution of the Republic of Croatia in the group of socially sensitive European constitutions, obliging the legislator to care for the general social welfare and the development of social rights. The Croatian social welfare system undoubtedly belongs to the Bismarck model of the social state, but it has also inherited the system of social assistance and social welfare from the socialist era of the former Yugoslavia. Ravnić argues that, pursuant to the Croatian Constitution, social law comprises social security and social insurance, as Article 57 specifies that the right of employees and their family members to social security and social insurance shall be regulated by law and collective agreements, while Article 58 guarantees that the state shall ensure the right to assistance for weak, infirm, or other persons unable to meet their basic subsistence needs, given their unemployment or incapacity for work. This article also mentions that the state shall devote special care to the protection of persons with disabilities, Croatian war veterans, disabled Croatian war veterans, and the widows, parents and children of fallen Croatian war veterans. The Constitution guarantees everyone the right to healthcare in conformity with the law, which stipulates that the family shall enjoy the special protection of the state (with marriage defined as a union between a man and a woman), and emphasises state protection of maternity, children, and the youth, by creating social, cultural, educational, material and other conditions that promote the realisation of the right to a dignified life.<sup>26</sup>

In Hungary, the Fundamental Law of Hungary, which entered into force on 1 January 2012, significantly amended the fundamental right to social rights. The current Fundamental Law has lowered the level of protection of social security by not providing social security but only seeking it. Thus, it defined the establishment of a social security system as a state objective: ‘Hungary shall endeavour to provide social security for all its citizens’. As the Constitutional Court stated in a 2012 decision, ‘Article XIX of the Fundamental Law on Social Security does not provide for rights, but rather for obligations and objectives of the state’. The legislation in force before 2012 contained a stronger state role. It should be noted that the Fundamental Law is also characterised by the fact that it sets out other state objectives as aspirations;

25 Dolobáč, 2023.

26 Vinković, 2023.

for example, it only seeks to ensure decent housing. In a decision, the Constitutional Court considered that, when drafting the above new concept of the Fundamental Law, it was necessary to reduce the previous entitlements because of ‘sustainable economic development and the gradually deteriorating demographic situation’ and ‘changed economic circumstances’. The positive economic changes in the period that has elapsed have not yet prompted the legislator to amend the Fundamental Law, and the reasoning of the Constitutional Court is, thus, questionable.<sup>27</sup>

## 5. Compliance with the provisions of the European Social charter

As A. Binaś notes, guaranteeing the rights under the European Social Charter admittedly requires increased spending from the state budget. However, in the long term, this outlay can be compensated for economic growth, improvement of citizens’ quality of life, activation of groups at risk of exclusion or disadvantage in the labour market, and increased confidence in government.<sup>28</sup> Although the European Social Rights Committee performs control over compliance with the Charter, the Committee’s interpretation of the Charter’s provisions does not constitute an authentic interpretation of the treaty, as this can only be done by the Charter states parties (the Committee’s assessment is only a guideline for the interpretation of the Charter’s provisions and has no binding force in this regard).<sup>29</sup>

The Czech Republic is bound by Articles 11 (1, 2, 3), 12 (1, 2, 3, 4), 13 (1, 2, 3, 4), 14 (1 and 2), 15 (2), 16, and 17 of the European Social Charter. The Czech Republic publishes reports on its policies, in which it is stated that the Czech Republic fulfils all its obligations. Such a statement can be found in those reports regularly from 2000 onwards. Granted, those statements are somewhat misleading. In its recent conclusions, the European Committee of Social Rights found that the Czech Republic is in non-conformity with Articles 11 (1, 2, 3), 12 (1), 13 (1), and 14 (1). Regarding the other six situations related to, among others, Articles 12 (4) and 13 (1), the Committee mentioned that it needs further information to examine the situation. The Czech Republic has been subject to several complaints. The Committee considered that the situation in the Czech Republic was not in conformity with the European Social Charter as the minimum level of old age and unemployment insurance benefits fell below 40% of the Eurostat median equivalised income. A long-standing problem is the obligation of foreigners to take out commercial health insurance, which not only does not provide the same coverage as public health insurance but is also significantly more expensive. Another major problem is the virtually non-existent regulation of social housing and the very poor state housing policy.<sup>30</sup>

27 Tóth and Mélypataki, 2023.

28 Binaś, 2022, p. 73.

29 Ibid.

30 Štefko, 2023.

One of the most important measures in the implementation of the European Social Charter in Poland was also the formation of the Children's Ombudsman, which upholds children's rights as defined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other laws, respecting the responsibilities, rights and duties of parents. In matters of children, the Children's Ombudsman cooperates with the Ombudsman (the latter is generally responsible for protecting the rights of citizens, including social rights). Poland is constantly working to improve the living standards and protection of its citizens' social rights per the assumptions outlined in the European Social Charter. The implementation of the European Social Charter in Poland took place in stages through the introduction of various laws and changes in the legal system. Amendments were made, for example, to the Act of 28 November 2003 on family benefits, the Act of 17 December 1998 on pensions from the Social Insurance Fund, or the Act of 15 April 2011 on medical activity. Unfortunately, in Poland, as the above analysis has shown, the state of observance of social rights still does not partially correspond to the standards established by the Council of Europe. Meanwhile, the cyclical negative assessment of the European Committee of Social Rights regarding Poland's realisation of social rights may indicate the low effectiveness of the mechanism for monitoring compliance with the European Social Charter.<sup>31</sup>

In Romania, a closer look at Articles 34, 47, 49 and 50 of the Romanian Constitution leads to the conclusion that their provisions reflect the spirit of the European Social Charter. Although the constitutional articles do not contain the full range of rights listed in Articles 11–17 of the Charter, they do outline its general framework. Based on the conclusions of the European Committee of Social Rights 2021 concerning Romania, thematic group 'health, social security, and social protection', Romania was facing conclusions of conformity regarding Article 12 (2) and Article 13 (3) and conclusions of non-conformity for Article 11 (1 and 3), Article 12 (1, 3, 4) and Article 13 (1). Regarding the situation of Article 11 (2), the Committee mentioned that it needed further information to examine the situation. Meanwhile, the conclusions of the European Committee of Social Rights concerning Romania from 2020 on the thematic group of 'employment, training, and equal opportunities' also mention the non-conformity of Article 15 (1 and 2). Finally, the 2019 Conclusions on the thematic group 'children, families, and migrants' show non-conformity regarding Article 16 and Article 17 (2) and the need for further information for Article 17 (1. In conclusion, although Romania has ratified most of the articles relevant to our study, it still faces compliance problems in most of them, even though it has made significant progress in the years since its adoption.<sup>32</sup>

The Republic of Serbia ratified the Revised European Social Charter in 2009. During the ratification, 29 basic principles of the Charter were accepted, which guarantee various social and economic rights, most often referred to in the literature

31 Barański, 2023.

32 Vallasek, 2023.

as the rights of the second generation of human rights. Articles 11 to 17 were also ratified.

The Slovak Republic has not ratified the following provisions of the Charter: Article 13(4) (right to social and medical assistance for nationals of other contracting parties per the obligations under the European Convention on Social and Medical Assistance signed in Paris on 11 December 1953); Article 15(3) (to promote the full social integration of persons with disabilities, in particular through measures, including technical assistance, to overcome communication and mobility barriers and enable them to access transport, housing, cultural activities, and leisure time); Article 18(3) (relax the right to work rules for individuals and groups governing the employment of foreign workers); Article 19(2), (3), (4)(c), (8), (10) and (12) (limitation of the right of migrant workers and their families to protection and assistance); and Article 31(1), (2) and (3) (right to housing). As regards social security law, the 11th report, which was submitted on 27 November 2020, concerns the accepted provisions of the thematic group ‘health, social security and social protection’ (Articles 3, 11, 12, 13, 14, 23, and 30). Conclusions on these provisions have been published in March 2022. Here again, the European Choice for Social Rights has assessed the inadequacy of the legislation in several areas. Although the list of shortcomings seems excessive, the Slovak Republic is not out of the average in this respect. The European Committee on Social Rights’ observation of shortcomings in the observance of the Revised European Social Charter is not unique, even in the cases of other countries, and it is not, a priori, a finding of non-observance of fundamental rights and freedoms. The monitoring mechanism is intended to strengthen and improve the protection of human rights, including social rights. In the meantime, the Slovak Republic has adopted several measures within the framework of social policy aimed at eliminating the alleged shortcomings. Examples include the adoption of several laws and regulations on minimum safety and health requirements at work, covering most of the relevant risks (i.e. those related to health protection at work with ionising radiations, carcinogens, biological and chemical agents, asbestos, noise and vibrations), and minimum safety and health requirements for the use of work equipment and the manual handling of loads at work.<sup>33</sup>

Croatia ratified the European Social Charter of the Council of Europe as a kind of counterpart to the European Convention on Human Rights and Fundamental Freedoms in the field of economic and social rights. In this context, it should be regarded as a country that, in its political, economic, and democratic post-transitional development as an EU Member State, follows a similar evolutionary path and faces similar challenges as its Central-European counterparts. Croatia ratified the following articles that are important for this discussion: Article 11 – The right to protection of health; Article 12 – The right to social security; Article 13 – The right to social and medical assistance; Article 14 – The right to benefit from social welfare services; Article 15 – The right of persons with disabilities to independence, social integration, and participation in the life of the community; Article 16 – The right of the family

to social, legal, and economic protection; and Article 17 – The right of children and young persons to social, legal, and economic protection. Notably, pursuant to Article 20 of the Charter, which regulates the obligations of the contracting parties, it is *expressis verbis* stated that states have the option to undertake from the *à la carte* system at least five out of the following seven Articles (1, 5, 6, 12, 13, 16, and 19). By ratifying the Additional Protocol Providing for a System of Collective Complaints, Croatia became one of the 16 contracting parties that recognise the quasi-judicial role of the European Committee of Social Rights in the process of deciding on submitted collective complaints. However, it has not allowed the submission of such complaints by national non-governmental organisations through a separate declaration *per se*. Moreover, although Croatia ratified the 1961 European Social Charter and signed the revised European Social Charter of 1996, it has not yet ratified the revised version, placing itself among the smaller number of Member States still bound by the original text of the Charter.<sup>34</sup>

In Slovenia, the European Committee of Social Rights' conclusions regarding the benefits were the following: 'The Committee concludes that the situation in Slovenia is not in conformity with Article 12§1 of the Charter on the ground that the duration of unemployment benefit for the insurance period of 10 months to five years is too short'. Regarding Article 23, the decision remains pending. The Committee also requires additional information regarding Article 3 (2 and 3) and Article 11 (3). Three conclusions on non-conformity were reached regarding Article 3 (4), Article 12 (1), and Article 12 (4).<sup>35</sup>

Hungary has accepted all provisions from the noted group, except Article 12 (2 and 3) and Articles 23 and 30. The reference period was from 1 January 2016 to 31 December 2019. The conclusions regarding Hungary concern 10 situations: One conclusion of conformity: Article 3 (1); and six conclusions of non-conformity: Article 3 (2 and 3), Article 11 (1), Article 12 (1), Article 13 (1), and Article 14 (1). On the other three situations regarding Article 11 (2 and 3) and Article 14 (2), the Committee needs further information to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Hungary under the Revised Charter.<sup>36</sup>

## 6. Best practices

In the Czech Republic, regarding the interest in the social integration of handicapped persons, principal attention concentrates on their employment and all measures enhancing such employment, particularly their working rehabilitation. Instruments used in the framework of state employment policy for the promotion

34 Vinković, 2023.

35 European Committee of Social Rights, 2022a, pp. 27–28.

36 European Committee of Social Rights, 2022b.

of the employment of the handicapped comprise economic incentives or administrative measures. A strong instrument is the possibility for an employer who employs people with disabilities to significantly reduce their income tax base. The tax rate of employers employing more than 50% handicapped from the total number of their employees is further reduced. Every employer who employs more than 25 employees must employ people with disabilities. The obligatory quota is 4% of handicapped employees of the total number of employees. Beyond employment of handicapped persons, employers may satisfy this obligation by purchasing products or services from special institutions employing more than 50% handicapped by commissioning certain production programmes to relevant organisations or buying products from sheltered workshops operated by citizen cooperatives or owned by the state, a church, or a religious assembly or by placing orders with the subjects or buying products or services from self-employed persons with a physical handicap. Another way to fulfil the obligation of employing handicapped persons is paying 2.5 times the average monthly wage within the national economy to the state budget for each person with a physical handicap who should be employed. The individual variants may be combined. However, should the employer not comply with the imposed obligation through one of these three forms, he would be sanctioned by a fine. Current trends explicitly prefer that the handicapped should live in a family environment that provides better possibilities for their social integration. Act No. 108/2006 Coll., on social services, regulates social care services provided to people with a certain level of dependency. According to this Act, a person shall be considered dependent on the assistance of another physical person according to four degrees (slight, medium-strong, strong and total dependence) and their health status, as examined by a physician of the district social security administration, which narrowly collaborates with the Labour Office of the Czech Republic and decides on the degree of dependency for the care allowance. Social care services are provided as stay-in, ambulatory, or field services. There are several types of social care services, defined by the Social Services Act. For example, social care services help persons arrange for their physical and mental self-sufficiency to enable them to integrate with the common social life to the maximum possible extent and, when their health condition excludes such a possibility, to arrange for them a dignified environment and treatment.<sup>37</sup> State administration of state social support benefits is exercised by the Labour Office of the Czech Republic. The Ministry of Labour and Social Affairs is authorised by law to perform inspections. Social assistance, similarly to state social support, as a system of non-contributory benefits, is administrated by the Labour Office of the Czech Republic. All non-contributory benefits were entrusted to the Labour Office of the Czech Republic for efficiency and better control and to combat the misuse of benefits, especially social assistance benefits.<sup>38</sup>

37 Štefko, 2023.

38 Štefko, 2023.

In Serbia, regarding Article 15 of the Revised European Social Charter on the right of persons with disabilities to independence, social integration, and participation in the life of the community, the Law on Professional Rehabilitation and Employment of Persons with Disabilities was adopted in 2009. It governs incentives for employment to create conditions for the equal inclusion of persons with disabilities in the labour market, assessment of work abilities, professional rehabilitation, and the obligation to employ persons with disabilities and conditions for establishing and conducting activities of firms for professional rehabilitation and employment of persons with disabilities and other special forms of employment, including other important issues of importance for professional rehabilitation and employment of persons with disabilities. This regulation introduced an affirmative measure into our system; more precisely, the quota system of employment of persons with disabilities, which is based on the obligation for all employers with at least 20 employees to establish a working relationship with a certain number of persons with disabilities. Given this obligation, an employer who employs between 20 and 49 employees will be obliged to employ at least one person with a disability, while an employer who employs more than 50 employees will be obliged to employ at least one more person with a disability, and so on for every next 50 employees. If the employer does not fulfil the stated obligation (i.e. if he does not employ the required number of persons with disabilities), he will be obliged to pay the amount of 50% of the average salary per employee in the Republic of Serbia. In Serbia, it seems that the adoption of the new Law on Health Insurance and the new Law on Healthcare has improved the healthcare system in their law. The same is true with the unemployment insurance system, which is increasingly oriented towards work orientation instead of social security because, as Professor Šunderić states,

...unemployment rights should not demotivate in relation to work and monetary compensation is not permanent, but a time-limited right for the period until a vacancy is offered on the labour market or until conditions are created for the insured to switch to another form of protection.

The unlimited duration of the benefit would lead to a situation where users neglect the obligation to actively seek employment and rely on benefits provided by the state.<sup>39</sup>

Regarding the deinstitutionalisation measures highlighted by the Committee, in Croatia, the Social Welfare Act of 1997 laid the foundation for non-governmental organisations and private individuals to register and open family homes (under certain conditions) for the accommodation of beneficiaries, primarily from the social welfare system. However, today, such a system of family homes and foster care has expanded to include persons with disabilities and other protected categories, mainly supplementing insufficient public capacities and infrastructure. The

39 Bojić, 2023.

role of personal assistants will be regulated by the Personal Assistance Act, which is expected to enter into force on 1 July 2023. Hence, the role of personal assistants, who assist persons with disabilities in their daily lives, would be regulated by law and funded by the state budget, rather than primarily relying on programme and project funds financed by the EU.<sup>40</sup>

In Poland, the Social Insurance Institution received awards for 11 projects submitted for the ISSA Good Practice Awards. The award ceremony occurred on 2 May 2022 at the ISSA Regional Social Security Forum in Tallinn. The projects that received certificates with special mention include 1) automated granting of benefits to families in Poland, 2) digitisation of ZUS documentation (efficient access to electronic documents using innovative solutions), 3) enabling customers self-service data confirmations on the ZUS Electronic Services Platform (automation of the process to issue certificates required by other institutions), 4) implementation of e-visit in ZUS, 5) ZUS statistical portal as a platform for universal data sharing, 6) Anti-Crisis Shield, 7) handling of the Polish Tourist Voucher, 8) increasing efficiency and improving the quality of external customer service by identifying and developing competencies of ZUS employees, 9) optimisation of the process of granting reliefs and remissions through specialised counsellors, and 10) transformation of the Department for Employee Affairs into the Human Resources Management Department.<sup>41</sup>

In Slovakia, substantial support for the employment of persons with disabilities is found in the Act on Employment Services, which regulates financial incentives for employment and enshrines the so-called false quota system. According to the law, if an employer employs at least 20 employees and if the relevant Labour, Social Affairs, and Family Office keeps citizens with disabilities in the register of job seekers, the employer is obliged to employ citizens with disabilities in a number corresponding to 3.2% of the total number of its employees, whereas a disabled people who, given a long-term adverse health condition, has a low ability to engage in gainful activity of more than 70% shall be counted as three such employees for the purpose of fulfilling the established mandatory proportion of employment of disabled employees. An employer who does not employ the statutory mandatory share of the number of employees with disabilities or meet the replacement obligation by awarding a contract or taking products or services is required to make a mandatory levy on behalf of the Labour Office for each citizen who falls short of meeting the mandatory share. Such an approach accords with EU anti-discrimination law, which is characterised by the fact that its application is not limited to compliance with the prohibition of discriminatory practices but focuses more on positive action to compensate for the handicaps of persons to ensure formal and material equality.<sup>42</sup>

40 Vinković, 2023.

41 International Social Security Association, 2022.

42 Dolobáč, 2023.

## 7. (Un)Sustainability issues

Social security law is specific in that it covers social events that occur to individuals, and legislation must consider the overall social policy, social protection, and challenges of society as a whole. The scope of the provision of social security and social services is historically and economically determined. The social safety net in any given country is determined by political, economic, and, as a direct consequence, legislative conditions. Given the noted social conditions, it is the legislation of social security and social assistance that particularly comes to the forefront of political interest. Speaking of crises, in the long term, one of the greatest challenges is undoubtedly to deal with the demographic crisis, which is defined by low birth rates and an ageing population.<sup>43</sup>

Given the numerous social factors that affect the functioning of the social security system, most modern pension systems, whose main source of financing are contributions for mandatory pension and disability insurance, cannot smoothly ensure the payment of benefits without the appropriate intervention of the state, which covers deficit in pension systems. In the fifties of the 20th century, the Federal People's Republic of Yugoslavia (FPR Yugoslavia) spent 11.04% of its national income on social benefits, which do not include only allocations for pensions. In the Netherlands, 13.6% of GDP is allocated; in Italy, 13.5%; in Greece, 12.7%; in France, 12.2%; in Sweden, 10.3%; and in Germany, 10.3%. The second group includes countries that set aside between 8% and 10% of GDP for the sustainability of pension systems: Spain (9.4%), the United Kingdom (8.9%), Poland (8.5%), and New Zealand (8.2%). The third category includes countries that allocate between 3% and 7% – the United States of America (6.6%), Chile (6%), Japan (5.5%), Canada (4.8%), Australia (4.6%), Argentina (3.6%), Turkey (3.3%). The fourth group includes countries that spend between 1% and 3% of GDP: China (2.6%), Brazil (2.4%), Egypt (2.3%), Tunisia (2.3%), Costa Rica (2.0%) and Singapore (1.4%). In the last group are countries, mostly developing countries, that allocate less than 1% of GDP for the sustainability of pension systems: Kenya (0.4%), Zambia (0.4%), Pakistan (0.3%), Mexico (0.3%) and Nigeria (0.0%). These data are from the 90s of the last century, though recent statistics indicate that there have been no major changes, but allocations for pensions given numerous demographic changes, especially the extension of the average life expectancy, are higher than before. Most authors believe that the ideal proportion for the sustainability of a country's pension system is four employees who will pay contributions for pension and disability insurance per one pension beneficiary.<sup>44</sup>

Regarding the sustainability of pension systems, instead of constantly tightening the conditions for the old-age pension, the noted report of the Committee for Social Protection of the European Union should be considered to find an alternative

43 Dolobáč, 2023.

44 Bojić, 2023.

model, instead of strictly tightening the conditions for the old-age pension and other benefits, which are provided within the Pension and Disability Insurance System. The appropriate proposals are those related to the sustainability of the appropriate amount of pension, which would ensure an adequate level of social security, ensure intergenerational fairness, maintain the idea of solidarity within the pension system, and maintain a balance between rights and obligations.<sup>45</sup>

In the Czech Republic, in March 2023, the president signed an amendment that diminished the valorisation of old-age pensions. This piece of legislation was published under No. 71/2003 Coll. and came into force on 20 March 2023. In the Czech Republic, there is a pluralistic system of health insurance companies, which, however, shows serious distortions given its still relatively short-lived existence. This fact can be traced to the markedly servicing trend in both countries. Indeed, the long-term trend in the public health insurance market is clearly towards merging health insurance companies. However, the question is whether it is appropriate to intervene politically and, if so, to what extent, to hasten the merger of two or more health insurance companies. For greater financial stability of social insurance, it is necessary to consider unifying the collection of public health insurance premiums with social security premiums and contributions to state employment policy. Hence, considerable administrative costs associated with the operation of these systems can be saved. Recently, the practice has continued that when a problem arises, a separate solution is adopted, regardless of the existing legislation (e.g. substitute maintenance). The idea that sick, elderly, or immobile beneficiaries can successfully defend their rights on their own is further weakened by the complexity of the legislation. The *de lege ferenda* idea aims to unify administrative decision-making and remedies in all sectors of social insurance and social security by introducing a two-stage administrative procedure and non-independent administrative tribunals as a second administrative instance body deciding on appeals against decisions of the Czech Social Security Administration and the Social Security Administration. Citizens' participation in decision-making on social security benefits should be strengthened, not only for insurance benefits.<sup>46</sup>

45 Bojić, 2023. The Committee for Social Protection of the European Union, based on the submitted reports of the Member States of the community, issued a special report in which the issue of the sustainability of pension systems is addressed, and the Member States previously agreed on 10 common goals for future pension reforms: 1. Sustainability of a more appropriate pension amount; 2. Ensuring intergenerational equity; 3. Maintaining the idea of solidarity within pension systems; 4. Maintaining a balance between rights and obligations; 5. Ensuring that pension systems support equality between men and women; 6. Ensuring transparency and predictability; 7. Ensuring that pension systems are even more flexible in light of constant social changes; 8. Facilitating the adaptability of the labour market; 9. Ensuring the consistency of pension schemes in general pension systems; and 10. Ensuring the sustainability of public finances.

46 One of the key questions that has been repeatedly raised in the Czech Republic in this context is a change in the structure of the organisation of this insurance. In fact, two options are conceivable. In a Bismarckian system, both a single insurance carrier and a plurality of health insurance companies are possible. Each of these options has its advantages. If the plurality model guarantees the possibility of free choice and competition, which should result in

In Slovenia, the explicit mention of the right to a pension, which found its way into the text of the Slovenian Constitution as a political commitment against the challenges of an ageing society in 2004, is controversial. In Slovenia, there has been a recent debate on reorganising the healthcare system to introduce several social insurance carriers, instead of a single one, which would supposedly act as market competitors, thus contributing to the long-term financial sustainability of public healthcare by lowering the costs of provided services, drugs, and medical equipment. Indeed, in a country with less than two million insured persons, it is somewhat pointless to talk about an effective, market-based competition of several social insurance carriers. Furthermore, it is for this exact reason all insured persons, regardless of their employment status (e.g. employees, self-employed persons, civil servants, and public officials are mandatorily insured with the same social insurance carrier), each one in their branch of social insurance. Mišič and Strban also note that regarding the most pressing challenges of ageing societies, however, the constitutional review concerning future amendments and the enforcement of the human right to social security certainly seems more important than ordinary judicial review. From this perspective, it is important that the right to social security, protected by Article 50 of the Slovenian Constitution, can, alongside several other social (human) rights, be enforced before the Constitutional Court. Following the exhaustion of domestic legal remedies, a motion can be filed before the European Court of Human Rights whenever any social right protected by the Council of Europe can be merged with a breach of a Convention right.<sup>47</sup>

In Slovenia, several measures have been taken towards the sustainability of the pension system: a person who retires prematurely may experience a 15% reduction in the level of their calculation percentage, limitation of public expenditure in the field of pensions is the regulation of a limited calculation but unlimited contributory base, and the years of salaried employment, which make up the pension base are still limited. According to Article 30 ZPIZ-2,<sup>48</sup> the most favourable 24 consecutive years of insurance are considered when forming one's calculation base. In this regard a major legislative shift from public to private responsibility for income protection in old-age would generally interfere with the constitutionally protected core of the right to social security and the explicitly mentioned right to an (old-age) pension, making such amendment unconstitutional. Furthermore, such regulation would interfere with one's property rights by requiring one to save or invest in private insurance schemes, while the state must guarantee a minimum insured return on investment for all mandatorily insured persons, now both within the first and second pension pillar. The interplay between public and private health insurance or public and private income protection at the time the sickness and injury occurred will be

an improvement in the quality of services for the insured and the healthcare provider, then theoretically significantly lower costs of the system and easier control by the insured and the state speak in favour of the existence of a single carrier. Štefko, 2023.

47 Mišič and Strban, 2023.

48 Pension and Disability Insurance Act.

crucial in the future to ensure the long-term financial sustainability of public health-care and health insurance, especially occupation-based social insurance schemes developed approximately 150 years ago. The interdependence between public and private insurance, whenever prescribed by law, may reduce public expenditure in a given field of social security, while still importantly limiting the disposable income of compulsorily insured persons, especially those who must conclude such insurance on behalf of their dependent family members. It may, thus, lead to unequal access to public healthcare, especially on grounds of one's socio-economic position while being overall more suited to the better-informed insured persons, especially when deciding on a premium-dependent insurance package, not simply concluding a supplementary or other health insurance type that is unified, provided separately, and under the same conditions for all mandatorily insured persons by the force of law.<sup>49</sup>

The most critical factors contributing to demographic ageing in Poland are falling fertility rates and increasing life expectancy. Moreover, a factor affecting the demographic ageing of the population in Poland is the ageing of the vintages of the post-war baby boomers. It is also worth signalling the low labour force participation of older age groups, which consequently means that the number of pensioners in Poland is higher than the demographic situation would indicate. All such phenomena undoubtedly pose a challenge to Poland's social security and healthcare systems. In 2013–2017, as a result of the pension reform, the process of gradually increasing and equalising the universal retirement age for both sexes to the ceiling of 67 years was underway in Poland. The method used to raise the retirement age slowly meant that the indicated retirement age limit was to be reached by men in 2020 and women in 2040. The introduced changes in the retirement age affected the legal regulation of other social benefits:

they increased the age that determines the status of an unemployed person and, thus, enlarged the population potentially eligible for unemployment benefits. They extended the period for collecting pre-retirement benefits, periodic capital pensions, bridging pensions, teacher's compensation benefits, and nursing benefits for the care of a disabled child. They raised the age at which a permanent benefit due to age-related inability to work can be obtained from social assistance.<sup>50</sup>

In Romania, the basic aim of all the laws on the state pension pillar that have been drafted up to now was to tighten the conditions for pension eligibility and introduce and apply a points-based calculation of pensions, which can now be considered the most successful step of the Romanian pension reform. This Romanian public pension system is complemented by parallel social security schemes for certain state-recognised churches and lawyers. In the field of long-term care, Romania has serious shortcomings in terms of both the appropriate legal framework and the appropriate institutional framework. This can be seen in the strategy document for 2023–2030,<sup>51</sup>

49 Mišić and Strban, 2023.

50 Barański, 2023.

51 National strategy on long-term care and active ageing for the period 2023–2030.

approved by Government Decision 1492/2022. It is not yet possible to analyse the practical implementation of the strategy, as it was published only in the last days of December 2022, and the implementation of the targets has not even started. The Strategy itself indicates that the current regulation must be corrected, and of course, sufficient funding sources must be allocated. Among the most important drawbacks, also noted by the Strategy, is the non-existence of continuity and synergy in covering all dimensions of the concept of long-term care in the legislation governing the social care system, the long-term care system, and the healthcare system. Meanwhile, there are overlaps and inequalities in the social services system, including long-term care services. One of the consequences of this situation is the massive migration of dependent older people into the disability care system. The methodology for assessing dependency status and personal care needs currently used is challenging to implement in practice given the lack of specialised staff (social workers and doctors) and the lack of funds to support this activity. However, overall we can whiteness an acute shortage of staff in the long-term care domain. This lack of personnel is leading to

...the increased risk of burnout, stress and exhaustion is one of the major challenges related to the geriatrics workforce in Romania. Even though many of these effects have been informally reported for long periods of time, the policy responses lacked to address them properly.<sup>52</sup>

The Federal People's Republic of Yugoslavia had the largest allocations from the public expenditure on the pension system, but one must consider the large number of war-disabled soldiers and unsecured families of persons who lost their lives during the Second World War. Professor Rakonjac Antić states that

...according to the data of the Federal Bureau of Statistics, the share of expenditures for pension disability insurance in the national product was 6.3%, in 1981 it was 6.8%, and in 1991 it increased to a worrying 13.7%, while according to data for 2004, this share increased to 14%.

High unemployment rates, demographic changes, and the increase in life expectancy are just some of the factors that cause a deficit in funds and require the intervention of the state. Statistics show that until recently, 14% of GDP was allocated annually to the Republic of Serbia for the sustainability of the pension fund. However, in the Serbian national system of pension and disability insurance, the legislator decided to equalise the years of the life of men and women when prescribing new conditions for exercising the right to an old-age pension, which was introduced by amendments to the Law on Pension and Disability Insurance from 2014, yielding the conclusion that the European model of life expectancy equalisation is accepted in Serbia. Current legal regulations on pension and disability insurance provide that the right to a full

<sup>52</sup> Vallasek, 2023.

old-age pension will be exercised by an insured person who has reached the age of 65, with a minimum of 15 years of insurance experience or 45 years of insurance experience, regardless of age. Today, with similarly set conditions (i.e. 60 years of age and 40 years of previous insurance experience), the insured can only exercise the right to an early old-age pension, where a permanent reduction of the pension amount by 0.34% is foreseen for each month before reaching 65 years of age. Therefore, the question arises as to whether the Republic of Serbia can face demographic changes and whether this is the right way for the sustainability of the pension system. Hence, it should be noted that the Republic of Serbia did not accept the three-pillar model of the World Bank, which is accepted in many European countries, although this idea was considered at the beginning of this century, and is foreseen with mandatory pension and disability insurance and the possibility of contracting voluntary pension and disability insurance. In most modern countries, the number of employees who support the number of existing pensioners is unsustainably small given the policy of full employment from the period of socialism and the possibility of early retirement during the period of the transition process. A similar situation is observed in Serbia, where there are currently 1.4 insured persons for one pension beneficiary, with a tendency to further shift these proportions. This situation is one of the main reasons certain budget funds are allocated for the sustainability of the social security system in the Republic of Serbia.<sup>53</sup>

In Slovakia, recent efforts were highlighted by the legislature to boost fertility by increasing financial support for pregnant women (pregnancy allowance, increasing maternity pay) and subsequently for families (e.g. tax bonus, increased childbirth allowance). It is up to the judgment of sociologists, economists and, ultimately, statisticians to determine whether this increased financial support is sufficiently attractive for young people to start families. The support should be broader, the state should, in addition to direct and fiscal financial incentives, promote the possibility of taking time off work and insist on the prohibition of discrimination on the grounds of childcare in the legal text (most recently, the work-life balance directive has been transposed) and in real practice. Pre-primary childcare should be increased.<sup>54</sup>

In Croatia, for a system that rests dominantly on intergenerational solidarity regarding pension insurance (by which current pensions are provided exclusively by the work of currently employed people and transfers from the state budget), with an unfavourable ratio of actively employed persons or insured persons, where the number of pensioners (which amounts to almost 1:1) does not offer hope for optimism, Bismarck's model of social security (with undoubted Beveridge elements) posits a collapse.<sup>55</sup>

In Hungary, the sustainability of the pension system is also a key issue in light of the recent increase in the number of people aged 65 and over in Hungary from 16.6% to 19.9%. The EU average increase was about 3%. Beyond the number of retired

53 Bojić, 2023.

54 Dolobáč, 2023.

55 Vinković, 2023.

people, the replacement rate and the income conditions underpinning the pension are important considerations for pensions. If we analyse income relations in more detail, we can see that a significant part of the workforce is registered as minimum wage earners. Some of the workers employed on the minimum wage receive wages above the minimum wage ‘in the black’; thus, neither the insured nor employer pays contributions or taxes on this part of their income. It is also the case that an amount higher than the minimum wage is the worker’s official income, and the excess is received ‘in the black’ (e.g. in the health sector, this is also the case for healthcare gratuities, the acceptance and provision of which will be a criminal offence under the new law that will enter into force from 2021. However, in practice this institution continues to operate and is a major problem for the healthcare system). This may mean that these large numbers of minimum wage workers will subsequently only be entitled to a basic pension. It is also a problem because it will preserve a certain income situation that will lead to the phenomenon of poverty in old age. This can be argued in light of the fact that the minimum total pension that can be received in Hungary is 28,500 gross. Ft. The amount of this pension has remained unchanged for about 15 years, which could be a problem in the current economic situation, as the Hungarian economy is struggling with high inflation. The Ministry of Human Resources published the Healthy Hungary 2021–2027 Sector Strategy for Health in January 2021. The measures outlined in the strategy are increasingly shifting towards centralisation. Some elements, such as the reform of the on-call doctor system, the plan to change the boundaries of general practitioner districts, and the adoption of uneconomic practices are in preparation, are already in place. There are also plans to set up a national primary care professional centre. In the context of the transformation of chronic care, the strategy notes that, given Hungary’s demographic situation and morbidity, a more economically efficient care system can make a greater contribution to improving population health indicators, which supports demographic and competitiveness objectives.<sup>56</sup>

## 8. Country-specific issues

In the Czech Republic on the last day of 2022, came into force to primarily make a vivid mark, following the Czech communistic past in the previous century. The Act has condemned the communist era of Czechoslovakia and reduced the retirement pensions of communist leaders by CZK 300 for each year in office. Symbolically, Act 455/2022 Coll. was passed by the Parliament in which the Communistic Party has not even one Member. The reduction of the old-age pension hinges on the period spent in high office before November 1989 and will be reflected for the first time in the March 2024 instalment of the old-age pension. If someone becomes entitled to the old-age pension only after that date, the percentage will be calculated first and then

<sup>56</sup> Tóth and Mélypataki, 2023.

an adequate reduction will be made. The reduction will not be made for people currently on disability pensions. The reduction will only be considered when the former official applies for a retirement pension. Reduction of pensions was chosen because high communist officials had received a retirement pension, which was often above average.<sup>57</sup>

In Slovenia, according to the first paragraph of Article 67 of the Constitution on property, how property is acquired and enjoyed shall be established by law to ensure its economic, social, and environmental function. Its social function is of course exercised first and foremost through the Slovenian social security system, grounded in the redistribution of social insurance carriers' funds and the redistribution of societal wealth, concerning tax-funded social assistance rights. Interestingly, Article 33 is part of the chapter on human rights and basic freedoms, while Article 67 belongs to the chapter on economic and social relations. Both articles are also relevant from the sustainability perspective. Article 33 should limit disproportionate interference with one's possessions (e.g. in times of a recession triggering a decrease of pension rights or the imposition of additional public duties), while Article 67 explicitly refers to the environmental function of property. There has, for example, been a recent talk of changing how the Health Insurance Institute of Slovenia is managed. Currently, the social insurance carrier is operated by the general assembly comprising 25 insured person and 20 employer representatives. According to the proposal, the number of members of the assembly would decrease significantly; however, the insured person would still hold the majority. Nevertheless, with the proposed legislation, they would be appointed by the Slovenian Economic and Social Council, a tripartite social dialogue body, and no longer by individual representative groups of civil society. Additionally, a three-person board of directors would establish a two-tier system of governance. In 2021, the government proposed the introduction of a managing board in which the executive branch would have a majority, but the competent ministry would also hold a veto against any of the decisions made. The amendment from 2021 may be considered unconstitutional, as it undermined the fundamental idea of social insurance (i.e. the principle of mutuality and the principle of self-administration) (germ. *Selbstverwaltung*), according to which the rights and obligations within the insurance scheme are determined by the general legislator and the community of insured persons as primary funders of the scheme and as central holders of rights. The amendment, if it had been enacted, would have moved the system away from the notion of social insurance, as explicitly stipulated in Article 50 (2) of the Slovenian Constitution, closer to the system of a state-organised and state-executed national health service.<sup>58</sup>

Regarding lowering the costs of health insurance, there have been numerous cases of Croatian economic emigrants who arrived from Ireland in Croatia on extended weekends by using low-cost airlines, underwent medical examinations, and

57 Štefko, 2023.

58 Mišič and Strban, 2023.

consumed public health services. Meanwhile, they also visited their relatives, spent money to get their hair and nails done, and paid for other services, spending way less money than if they had paid for the same healthcare services or partially participated in these services in Ireland. The recent amendments to the Mandatory Health Insurance Act, which came into effect on 1 April 2023, aim to address such absurd situations. Pursuant to these amendments, insured persons who are not registered as unemployed individuals with the Croatian Employment Service (and are not entitled to mandatory health insurance based on some other basis but have regulated mandatory health insurance status) must personally report to the Employment Service every three months to verify the circumstances in which their insured person status is based. Otherwise, they will be deregistered from mandatory health insurance *ex officio*. It seems these legislative changes are neither a response to public outrage and the absurdity of the situation nor a reduction of rights for economic emigrants who have emigrated from Croatia and who were once intentionally or unintentionally provided with a certain level of health insurance in their homeland. They are a necessary consequence of the lack of responsibility towards spending (public) money and inadequate interconnection of national records, which could prevent obvious abuse.<sup>59</sup>

A few years ago, the Slovenian Parliament introduced new grounds for dismissal, leading to less favourable and unjustified unequal treatment of workers on grounds of (old) age, with a fictitious aim of enabling labour-market access for junior workers. However, it is more likely that the true aim of the never-enacted legislative amendment was a further flexibilisation of the Slovenian labour market. Even if bound by the ILO Convention No. 158 concerning the termination of employment at the initiative of the employer and the European Social Charter, the legislator introduced a new cause of dismissal by which an employer could one-sidedly terminate an employment contract if the worker fulfilled old-age retirement criteria. No genuine reason for dismissal, either on the side of the employee or the employer (e.g. a business reason) had to be established according to the legislative amendment. Interestingly, the Constitutional Court did not investigate the substance of the matter at all but grounded its decision solely in the fact that the legislator breached its international labour law obligations.<sup>60</sup>

In 2021, the long-awaited Long-Term Care Act was passed in Slovenia; however, it never entered into force, as its enactment was postponed until 2024 and 2025 given the almost immediate amendment of some of its provisions by the newly elected government in 2022. Considering the constitutional principle of adapting the legislation to the everchanging conditions in society, the introduction of a uniform long-term care scheme in Slovenia seems necessary. The fragmentation of the current rules on long-term care benefits and the heteronomous ways of their financing with important financial participation by the beneficiary commonly required, regarding social and domestic care services, could make the scheme administratively, financially, and

59 Vinković, 2023.

60 Mišič and Strban, 2023.

legally unsustainable in the face of the growing number of the elderly population requiring such care. This situation could have an irreversible impact on their constitutional right to social security and other rights like the right to personal dignity and safety (Article 34) and their private autonomy and personal rights protected by Article 35 of the Slovenian Constitution. According to the broad margin of appreciation in the field of social security enjoyed by the legislator, the scheme does not have to be established in the form of a social insurance scheme. This would, however, follow the well-established and, after all, constitutional tradition in the field of social protection. If, however, the introduction of a uniform long-term care insurance scheme would lower the public expenditure in some fields of social security (e.g. in the field of healthcare) it would generally lead to an overall increase. Thus, the question of combining public and private insurance schemes becomes relevant in light of long-term financial sustainability demands of the general state budget and specific budgets of specific social insurance carriers, bringing forward the already discussed issues of economic inaccessibility or unequal access to social security benefits, especially benefits in kind provided by care homes for the elderly and daycare centres.<sup>61</sup>

Perhaps one of the most striking characteristics of health insurance is that, unlike pension insurance, for example, it is only partially insurance-based. While the cash benefits of health insurance are only available against actual contributions, the solidarity principle is much stronger for health benefits. Another important feature of Romanian health insurance is that it does not cover all health services, only those listed by the law. The law sets out the rights and obligations of the parties. Insured persons are entitled to a basic package of services under the terms of the Law on health insurance reform. The concrete rights and the content of the basic service package are determined by the multiannual framework contract published in the form of a Government Decision. Insured persons are entitled to the services of the legal basic package from the first day of illness. According to the legal definition contained in Article 219 of the Law on health insurance reform, social health insurance is the main system of financing the healthcare of the population, ensuring access to a package of basic services for the insured. It is compulsory and quasi-universal, covering virtually the entire population of the country. Meanwhile, according to Article 219 (4), it may operate in various special situations, along with other forms of health insurance. They are, of course, not compulsory and may be offered voluntarily by insurance bodies authorised by law. Thus, health insurance in Romania can be compulsory or voluntary, the voluntary insurance complementing the compulsory basic one. The purpose of private, voluntary health insurance is to finance access to a higher level or, where applicable, a wider range of health services. However, as a general rule, voluntary insurance does not cover the risk of occupational accidents and occupational diseases. According to the law, any Romanian citizen, foreign citizen, or stateless person who is a member of the compulsory health insurance system is entitled to private health insurance. Article 349 of the law defines two forms of voluntary private

61 Mišić and Strban, 2023.

insurance: the voluntary complementary health insurance to pay the reimbursement fee from the voluntary insurance and the voluntary supplementary health insurance, which may be applied for the full or partial reimbursement of the costs of the health services not included in the basic health package, the choice of a certain healthcare provider or doctor, the reimbursement of the costs of an additional expert opinion, the reimbursement of accommodation costs required for medical treatments, or the reimbursement of the costs of other medical services specified in the contract.<sup>62</sup>

In Romania, the second major wave of pension reform of the public pension pillar seemed to have come to an end in 2010, with the entry into force of Law 263/2010. However, from 2015 onwards, we have witnessed a process of regression, with new, in our opinion, fundamentally ill-considered and harmful provisions being introduced into several elements of the pension system, which was designed to be sustainable. It abolished the universality of the public pension system by introducing separate legislation for military, police, and law enforcement personnel and reintroducing the so-called 'special pensions' for certain professional categories, such as prosecutors, judges, members of parliament and senators, and local government officials. The impact of this process and the direction that this process will take remain uncertain, and, unfortunately, the issue of the medium- and long-term sustainable development of the pension system has become a political battleground, the fierce but empty discussions often shifting attention from the more pressing issues of obtaining and maintaining a sustainable pension system. From year 2008 onwards, the mandatory public pension pillar was complemented by a mandatory private pension pillar and an optional private pension pillar, creating a three-pillar mixed-funded pension system. This system was supplemented by a fourth pillar quite recently, by introducing an occupational pension scheme regulated by Law No. 1/2020.<sup>63</sup> In Serbia as Professor Lubarda puts it,

...in domestic law, to the prevention and protection of employees contributes the employer's obligation established in several special collective labour agreements to, in addition to the collective insurance of all employees in the event of death, injury at work, occupational disease, reduction or loss of work ability, additionally insure employees who work at workplaces with an increased risk in an increased amount of injuries at work and occupational diseases.

In the aforementioned case, the financial resources are borne by the employer and are determined per the level of risk of injury or occupational disease and the working environment. The most open questions remain with pension and disability insurance, where, unlike other branches of insurance, conditions are most often changed (i.e. tightened) for the sustainability of pension systems. Therefore, it should be

62 Vallasek, 2023.

63 Vallasek, 2023.

considered, the re-establishment of the second and third degrees of disability, which have not been foreseen in our regulations since the adoption of the Law on Pension and Disability Insurance in 2003, should be considered. It is also necessary to review the overly strict conditions, especially those related to the previous insurance period of 40 years of service, which are foreseen for exercising the right to an early old-age pension and which prevent many insured persons from exercising this right.<sup>64</sup>

The Slovakian parental pension is an additional pension that seniors can receive alongside the old-age pension, the invalidity pension and the retirement pension. A recipient of an old-age pension is entitled to a parental pension and is entitled to its payment, if he or she is the child's parent (own or adopted child) and the child was insured for a pension (compulsorily as an employee or compulsorily as a self-employed person or voluntarily insured) in the two years preceding the calendar year in question and did not declare that the parent (pensioner) should not be entitled to a parental pension on reaching retirement age.

The entitlement to a parental pension and its payment accrues automatically to the child's parent (including the adoptive parent) (this somewhat contradicts the ideas of the drafters of the constitutional text). Conversely, the surrogate parent of a child who has brought up that child is only entitled to it based on the child's affirmative declaration within the statutory period. Meanwhile, the legislation allows for the child to declare that the parent should not be entitled to a parental pension (opt out). In such a case, the child's possibility to declare consent to the entitlement to the parental pension in any subsequent year (reinstatement of the parental pension) is preserved. The automatic vesting of own and adoptive children has been modified given the large number of persons concerned or to ensure administrative enforceability. The social security institution will, therefore, pay it automatically, according to the data in the register of natural persons for the natural parent and the adopter.<sup>65</sup>

In Poland, the size of the pension depends on two basic parameters: the sum of contributions accumulated in the insured's account (possibly supplemented by initial capital) and life expectancy (the general rule for determining the monthly pension amount is to divide the sum of indexed contributions by life expectancy). Therefore, lowering the retirement age will significantly impact the monthly pension in the future, as it will reduce the number of accumulated contributions given increasing life expectancy. It means an increase in the number of people in the future who will become entitled to a guaranteed payment of the lowest pension, financed from the state budget. The possible positive effects of current family policies, yielding an increase in the fertility rate, cannot change trends, and their mitigating effects will not appear in the labour market until 20 years from now at the earliest. Meanwhile, the demographic changes facing Poland are so significant that even a renewed increase in the retirement age cannot halt the decline in the number of working-age people. In none of the considered variants of forecasts does the Polish pension system reach

64 Bojić, 2023.

65 Dolobáč, 2023.

total capacity in the 2060 perspective. The restoration of the previous retirement age has, therefore, worsened the system's dependency ratio and the financial prospects of the pension fund.<sup>66</sup>

In Hungary, another aspect that we must consider for pensions is the European Union's strategy, which embraces the idea of active ageing. Ageing policy should not just be about the level of pension provision we are thinking about, whether at the Member State or EU level, but also about developing strategies and implementing programmes that specifically promote active ageing. This includes legal measures to allow and promote employment during retirement. In the Hungarian social policy system, this includes the public interest pensioners' cooperative, which aims to keep retired persons in the labour market and reintegrate them into the labour market. However, for the sustainability of the pension system, we must also talk about the implementation of the Women 40 programme. As noted, it means that if a woman has 40 years of qualifying service, she is entitled to a pension regardless of her age, and if she has 32 years of earnings-tested service out of these 40 years, she is entitled to a full pension regardless of her age. The introduction of this pension could result in a significant proportion of women disappearing from the labour market. Meanwhile, it is necessary to consider that women who retire under the Women in 40 scheme can expect, on average, lower pension amounts than if they claim pension benefits at retirement age. There was also a political initiative to allow men to retire after 40 years of service, but the referendum initiative was annulled by the Constitutional Court because a state referendum cannot be held on matters covered by the Budget Law.<sup>67</sup>

## 9. Closing remarks

The country reports on sustainability issues allowed the information gathered to be presented in three separate sub-chapters: good practices, sustainability issues, and country-specific regulations. The lessons learned can be summarised as follows. Most good practices have been related to the employment and rehabilitation of people with disabilities, which undoubtedly has a positive impact on the sustainability of the social security system. The social security system would be largely steered towards sustainability by the development and implementation of long-term care rules. We have paid special attention to this in the country chapters, but beyond the Slovenian and Romanian examples, no progress has been made in the region so far.

The Czech proposal is to ensure the greater financial stability of social insurance. It is necessary to consider unifying the collection of public health insurance premiums with social security premiums and contributions to state employment policy. Thus, considerable administrative costs associated with the operation of these systems can be saved. The idea *de lege ferenda* is also to unify administrative decision-making

<sup>66</sup> Barański, 2023.

<sup>67</sup> Tóth and Mélypataki, 2023.

and remedies in all sectors of social insurance and social security by introducing a two-stage administrative procedure, by introducing non-independent administrative tribunals as a second administrative instance body deciding on appeals against decisions.

According to the Slovenian proposal, the constitutional review concerning future amendments and the enforcement of the human right to social security certainly seems more important than ordinary judicial review. From this perspective, it is important that the right to social security, protected by Article 50 of the Slovenian Constitution, can, alongside several other social (human) rights, be enforced before the Constitutional Court. Following the exhaustion of domestic legal remedies, a motion can be filed before the European Court of Human Rights whenever any social right protected by the Council of Europe can be merged with a breach of a Convention right. Furthermore, the interplay between public and private health insurance or public and private income protection at the time the sickness and injury occurred will be crucial in the future to ensure the long-term financial sustainability of public healthcare and health insurance, especially occupation-based social insurance schemes developed approximately 150 years ago.

Several measures have been taken towards the sustainability of the pension system: a person who retires prematurely may experience a 15% reduction in the level of their calculation percentage, limitation of public expenditure in the field of pensions is the regulation of a limited calculation but unlimited contributory base, and the years of salaried employment, which make up the pension base are still limited. Moreover, the process of gradually increasing and equalising the universal retirement age for both sexes tightens the conditions for pension eligibility and introduces and applies a points-based calculation of pensions.

In most modern countries the number of employees who support the number of existing pensioners is unsustainably small given the policy of full employment from the period of socialism and the possibility of early retirement during the period of the transition process. This dependency ratio can be improved by boosting fertility and increasing financial support for pregnant women (pregnancy allowance, increasing maternity pay) and families (tax bonus, increased childbirth allowance, etc.).

We would like to stress that the sense of vulnerability could be overcome by strengthening economic resilience. There will be no well-functioning social system without a well-functioning economy. The challenge is combining the economic and social aspects in a balanced manner. In this dilemma, how to finance social security is crucial. The public expenditure spent on social protection is high; therefore, in times of demographic challenges, be it migration or an ageing society, it is crucial to find sustainable ways of financing social. In this book, we have tried to provide some solutions to the great challenges our region faces.

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