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MODERNISATION OF SOCIAL SECURITY LAW IN SLOVENIA

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CONTENT OVERVIEW

INTRODUCTION

The initial report on developments, features and prospects of the Slovenian social security law was prepared for the Max-Planck-Institute for Social Law and Social Policy in March 2012. At the same time a comparative article on German and Slovenian social security law was published.[1] In both texts fundamental features of the Slovenian social security law are explained in a more detailed manner. In 2013, 2014 and 2015 annual reports on most significant developments in the Slovenian social security law were produced.

The present annual report covers the developments in the Slovenian social security law in the period between March 2015 and March 2016. In this period some important social security developments occurred, regarding in particular the pension and invalidity insurance schemes as well as parental care and the family benefits scheme.

1. CURRENT ECONOMIC, POLITICAL AND SOCIAL SITUATION

1.1. Political Development

The current new Slovenian government was elected mid-2014 and is headed by Prime Minister Dr. Miro Cerar, a full professor of the Faculty of Law of Ljubljana University. The coalition experienced some tensions, especially due to the large immigration wave from Syria and some other countries, but remained stable in 2015. It is still composed of the winning party SMC (Stranka modernega centra, party of the prime minister), Social Democrats (Socialni demokrati – SD) and Democratic Party of Pensioners of Slovenia (Demokratična stranka upokojencev Slovenije– DeSUS).
The opposition is divided into two right-wing and one left-wing parties. The former are the Slovenian Democratic Party (Slovenska demokratska stranka - SDS) and New Slovenia – Cristian Democrats (Nova Slovenija – Krščanski demokrati - NSi). The left wing party is United Left (Združena levica – ZL). Some members of the parliament have exited their party and formed the group of unaffiliated deputies. In addition, there are two representatives of the Italian and Hungarian national minority (one for each minority) in a 90 seats parliament.[2]

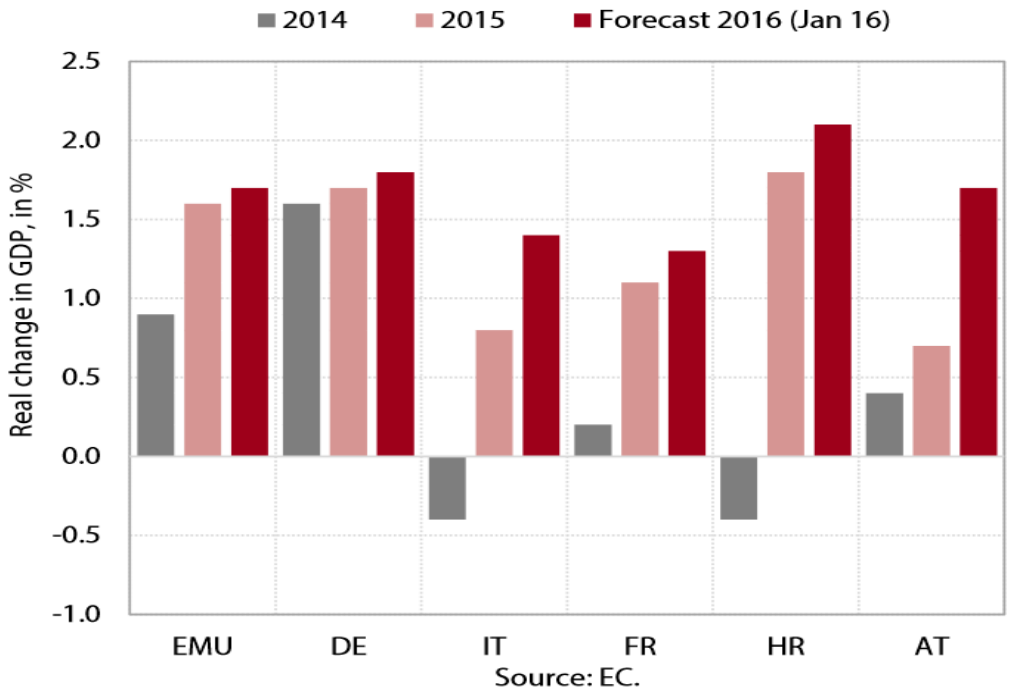
1.2. Economic Situation

At the end of 2015, Slovenia experienced deflation for the first time (-0.5%, in February 2016 it was at -0.7%,), largely owing to lower energy prices. With the oil price falling again on global markets, the negative contribution of liquid fuel prices was even more pronounced than in the preceding year. Prices of goods remained lower, but the prices of food (unprocessed food in particular) and services were up.[3]

[1] Strban, G.: Systematisierung des slowenischen Rechts der sozialen Sicherheit im Vergleich zur Systematisierung des deutschen Sozialrechts, Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS), Jahrgang 24/25, 2010/2011, Nr. 4, S. 353-376.
[2] More at https://www.dz-rs.si/wps/portal/en/Home, March 2016.
[3] IMAD, Slovenian Economic Mirror, December 2015.

In comparison with 2014, the deficit was lower, reflecting improvements in economic activity and labour market conditions, and government measures for increasing revenue and stemming expenditure. The main drivers of year-on-year (i.e. 2015, comparing to the same period a year ago, i.e. in 2014) revenue growth in the first ten months of 2015 were tax revenues, which increased across all main categories, and growth in social security contributions. Expenditure was slightly lower than a year before because of lower expenditures on investment, interest payments and subsidies.[4]

Economic growth in main trading partners expected to remain around last year's level in 2016



The labour market continued to recover in the last months of 2015; growth in average gross earnings was marked by wage movements in the private sector. The further growth of employment was mainly due to the pick-up in manufacturing. Having increased in most private sector activities, employment growth in the first ten months of 2015 was significantly stronger than in the same period of 2014. After falling for a prolonged period, registered unemployment rose in December 2015 (seasonally adjusted).[5] Towards the end of the year 2015, the number of employed persons continued to grow; in December 2015 and January 2016, the decline in the number of registered unemployed came to a halt. Employment growth reflected the strengthening in manufacturing and market services, consistent with higher activity in these sectors. Having declined since April 2014, registered unemployment rose at the end of 2015 (and was at 12.3 percent),[6] the main reason being a larger inflow into the unemployment register due to the termination of fixed-term contracts. The number of registered unemployed was nevertheless 4.9% lower than one year earlier.[7]

[4] IMAD, Slovenian Economic Mirror, December 2015.
[5] IMAD, Slovenian Economic Mirror, December 2015.
[6] Employment Service of Slovenia, www.ess.gov.si (March 2016).
[7] IMAD, Slovenian Economic Mirror, January 2016.

At the end of February 2016 the number of registered unemployed declined again (on a monthly and annual basis). It amounted to 116.039 persons, which was 1.8 percent less than in January 2016 and as much as 5.3 percent less than in February 2015. The number of employed persons rose for 6.9 percent compared to the same period of last year. In the first two months of 2016 the majority of the workforce were employed in sales, unskilled work and the service industry (waiters and waitresses).[8]

Average gross earnings in the private sector stopped growing in 2015, which is attributable to the rising share of low-wage earners, companies' efforts to maintain competitiveness and the absence of price pressures.[9] In the public sector, earnings increased further in the first eleven months of 2015, on account of the payments of suspended promotion raises in 2014 and further growth in public companies.[10] Average salary remained at approximately the same level as in 2014 and 2015. In January 2016 it was at 1.559,79 EUR (gross) and 1.015,85 (net). It was a bit lower than in December 2015 due to Christmas bonuses and other extraordinary payments.[11]

Gross Domestic Product in the last quarter of 2015 grew for 3.3 percent (in comparison to the last quarter in 2014), and GDP per capita was raised to 18.093 EUR (in the year 2014, last available data). According to the available data, government deficit in 2014 was 5 percent of the GDP and public debt was 80.8 percent of the GDP.[12]

1.3. Social Situation

1.3.1. Real Property Tax

As mentioned in the previous report for 2014[13], the Slovenian Constitutional Court abrogated the Real Property Tax Act (*Zakon o davku na nepremičnine* – ZDavNepr) in March 2014.[14] It also held that the Real Property Mass Appraisal Act (*Zakon o množičnem vrednotenju nepremičnin* - ZMVN),[15] which should determine the value of real estate to be taxed was inconsistent with the Constitution. Until March 2016 no new legislative proposal on the real property state tax has been introduced. Hence the real property tax remains in the hand of the local communities.

1.3.2. Certain Austerity Measures

The provision that all kinds of pensions and other benefits will not be adjusted (indexed) by the end of 2015 was upheld.[16] The legislator has foreseen no pension adjustments also for the year 2016.[17] This means that pensions will continue to lose their value. The question might be raised whether

[8] Employment Service of Slovenia, www.ess.gov.si (March 2016).
[9] IMAD, Slovenian Economic Mirror, December 2015.
[10] IMAD, Slovenian Economic Mirror, January 2016.
[11] Statistical office of the Republic of Slovenia (www.stat.si, March 2016).
[12] Statistical office of the Republic of Slovenia (www.stat.si, March 2016).
[13] SLR 5/2015.
[14] ZDavNepr, Official Journal of the RS, Nr. 101/2013. Decision Nr. U-I-313/13, 25 March 2014, ECLI:SI:USRS:2014:U.I.313.13.
[15] ZMVN, Official Journal of the RS, Nos. 50/06 and 87/11.
[16] Article 56 of the Implementation of the Republic of Slovenia Budget for 2014 and 2015 Act (ZIPRS1415, Official Journal of the RS, Nr. 101/2013).
[17] Article 67 of the Implementation of the Republic of Slovenia Budget for 2016 and 2017 Act (ZIPRS1617, Official Journal of the RS, Nr. 96/2015).

non-adjustment of pensions is in line with the international social security standards. The ILO convention No. 102 on minimum standards of social security obliges the State to review the rates of current pensions (i.e. periodical payments in respect of old age, invalidity and death of breadwinner), following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.[18] Regardless of the rule, that pensions should not be adjusted in 2016, they were by way of exception adjusted in January 2016 (by only 0.7 percent).[19]
The general exception is also applied to the minimum income,[20] a kind of officially set poverty line. Hence it will be adjusted to the rise of living costs in 2016, of course only, if living costs will actually increase, which may not happen in the current period of deflation.

Also the yearly supplement for pensioners will be granted at the same amount as in 2015. There are four brackets and the supplement is paid from 140 to 390 euro.

More specifically

- for pensions below 414 euro the yearly supplement amounts to 390 euro;
- for pensions between 414,01 and 518 euro the yearly supplement amounts to 250 euro;
- for pensions between 518.01 and 622 euro the yearly supplement amounts to 190 euro;
- for pensions between 622.01 and 750 euro the yearly supplement amounts to 140 euro.

Pensioners with higher pensions are not entitled to the yearly supplement.[21] The Implementation of the Republic of Slovenia Budget for 2016 and 2017 Act is applied as the more recent and more specific act (*lex specialis*) in relation to the Pension and Invalidity Insurance Act (which in this case is *lex generalis*).

In addition, income inequality has remained low by and large during the crisis, also due to the well-functioning social security system, as attested by the OECD. Indeed, Slovenia ranks first among OECD countries according to Gini coefficient of app. 0.25[22] (at disposable income, after taxes and transfers), i.e. before Norway Iceland and Denmark. It ranks 11 (Gini coefficient before taxes and transfers).[23]

[18] Article 66 of the ILO Convention 102. This convention applies to Slovenia, due to ratification in 1955 (Official Journal of the RS – International Treaties No. 1/1955) and notification of succession by the Republic of Slovenia in 1992 (Official Journal of the RS - International Treaties No. 15/1992).
[19] Article 67 (paragraph 3) of the Implementation of the Republic of Slovenia Budget for 2016 and 2017 Act (ZIPRS1617, Official Journal of the RS, Nr. 96/2015).
[20] Ibidem, Art. 68.
[21] Ibidem, Art. 72.
[22] The Gini coefficient has a range from zero (everybody has identical incomes) to 1 (all income goes to only one person). Increasing values of the Gini coefficient thus indicate higher inequality in the distribution of income. Market income includes incomes from wages and salaries, self-employment income and cash property income together with occupational and private pensions. Disposable income is obtained by subtracting income tax and employees' social security contributions from gross income and adding transfers. Both income measures are adjusted to reflect differences in household needs depending on the number of persons in the household. Source: OECD Income Distribution and Poverty database.
[23] First being Korea, followed by Switzerland and Iceland. OECD Economic Surveys: Slovenia, May 2015, OECD 2015, p. 7.

1.3.3. Gradual Equalisation of Hetero- and Same-sex Partners

At the beginning of March 2015 the National Assembly (of the Slovenian parliament)[24] voted for the amendments of the Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih* – ZZZDR, amendment D, i.e. ZZZDR-D),[25] with which family is no longer defined as a living community of husband and wife, but as a community of two persons (i.e. regardless of sex).[26]

Hence, this amendment intended to equalise the same-sex community with matrimonial relation of a man and a woman in all fields of societal activities. The same-sex community should have equal legal, economic and social possibilities as a marital (and extra-marital or cohabitation) community of heterosexual partners, including marriage and adoption of children. The issue of adoption was criticised the most among the opposition parties in the parliament, civil society and by the Roman Catholic Church. Therefore, a veto on the ZZZDR-D was proposed in the National Council (higher chamber of Slovenian parliament, which only has the right to veto a legislative act) by the interest group of local communities. However, a veto was not voted for (14 members out of 40 had voted in favour of a veto, and 23 against it).
The civil society collected sufficient signatures for an *ex post* legislative referendum, and the Roman Catholic Church has publicly and strongly supported such action, which was very much criticised in public.

However, the main question was, whether such referendum is admissible under Slovenian Constitution or not. It might be mentioned that the Slovenian Constitution was amended in 2013, restricting the possibility of a referendum (after a referendum had been declared admissible on the new Pension and Invalidity Insurance Act). According to the revised Article 90 of the Constitution (legislative referendum) the National Assembly may call a referendum on the entry into force of a law that it has adopted if so required by at least forty thousand voters (in the case of amendments to the ZZZDR, 80.518 signatures were delivered to the National Assembly).

The novelty of 2013 is limiting the right to a referendum. It may not be called on laws on urgent measures to ensure the defence of the state, security, or the elimination of the consequences of natural disasters; on laws on taxes, customs duties, and other compulsory charges, and on the law adopted for the implementation of the state budget; on laws on the ratification of treaties; on laws eliminating an unconstitutionality in the field of human rights and fundamental freedoms or any other unconstitutionality. Moreover, a double quorum has to be met. A law is rejected in a referendum if a majority of have voted against the law, but at least one fifth of all qualified voters must have voted against the law (in the past we had referendums where less that 20 percent of voters casted their vote). Referendum is regulated in a more detailed manner in a law passed in the National Assembly by a two-thirds majority vote of deputies present (i.e. by a relative majority).

[24] The Slovenian Parliament is composed of the National Assembly and National Council (which has a legislative veto on the lows passed by the National assembly). More at https://www.dz-rs.si and http://www.ds-rs.si/ (March 2016).
[25] ZZZDR, Official Journal of the RS, Nr. 15/1976 to 16/2004.
[26] With 51 votes for and 28 against (in 90 seats National Assembly).

The National Assembly concluded that a referendum on the amendments to the Marriage and Family Relations Act, i.e. ZZZDR-D is against the Slovenian Constitution and therefore it is not allowed.[27]

However, the Constitutional Court annulled this Conclusion. It argued that Article 90 of the Constitution should be construed in a manner that a referendum is forbidden only on those legislative acts which do away with such non-constitutionality as was previously established by the Constitutional Court, or on legislative acts which do away with violations of human rights as was established by a judgment of the European Court of Human Rights (ECtHR). The Constitutional Court further argued that the Constitution could not be interpreted in a way that a referendum is not admissible in cases when a legislative act is passed, that indirectly, with reflexive effects to other legal fields, does away with non-constitutionality, already established by the Constitutional Court or the European Court of Human Rights.[28]

This decision was not passed unanimously, but by a very tight 5:4 vote.[29] It was very much criticised by the general public and by legal professionals. Ad absurdum, this would mean that a referendum would be allowed, e.g. for expelling all people of other religion (with due respect to all religions), since this has not been established as against the constitution neither by the Constitutional Court nor against the ECHR by the ECtHR. The Constitutional Court should ask a preliminary question before taking such decision, whether the law itself would be against the constitution, if promulgated, publicised and enforced. On one side, the Constitutional Court has already established the unconstitutionality of differential treatment of hetero- and same-sex partnerships, e.g. in inheritance law[30] (even if a same-sex partnership is not registered, but has been established for a longer period of time),[31] and very recently at formalities to conclude such a partnership.[32] On the other side, it has allowed such a referendum for the second time.[33]

The Roman Catholic Church and several opposition parties pushed for a referendum to be held before Christmas. It was indeed held on the 20th of December 2015. The result of the referendum could be anticipated. Although only 36.38 percent of all those with a voting right actually voted, those against the ZZZDR-D presented a majority, i.e. 63.51 percent of those who casted a valid vote. Also a quorum was reached, since 23.03 percent (more than one fifth) of all voters voted against the

[27] This Conclusion was reached on the 26th of March 2015 and published in the Official Journal of the RS, no. 20/2015.
[28] Decision of the Slovenian Constitutional Court No. U-II-1/15, 28.9.2015, Official Journal of the RS, no. 80/2015.
[29] Ibidem.
[30] Decision of the Slovenian Constitutional Court No. U-I-425/06, 2.7.2009 Official Journal of the RS, no. 55/2009 and OdlUS XVIII, 29.
[31] Decision of the Slovenian Constitutional Court No. U-I-212/10, 14.3.2013, Official Journal of the RS, no. 31/2013 in OdlUS XX, 4.
[32] It may be consulted not only at the administrative unit, but also elsewhere (as can a heterosexual marriage). Decision of the Slovenian Constitutional Court No. U-I-255/13, 18.2.2016, Official Journal of the RS, no. 18/2016.
[33] The first time was in 2011, i.e. Decision of the Slovenian Constitutional Court No. U-II-3/11, 8.12.2011, Official Journal of the RS, no. 109/2011.

enforcement of the ZZZDR-D and hence against the full equalisation of hetero- and same-sex partnerships.[34]

Such a result, however, does not mean that both groups will not be treated equally. Such equalisation is going to continue in a more incremental manner. Either individual laws will be gradually modified or the (social) courts of law will apply the principle of equality. In the social security system same-sex partners are not treated equally as heterosexual partners (only in the mandatory health insurance). There are some indications that several cases are already pending before the social court.

2. EVOLUTION OF MAIN BRANCHES OF SOCIAL SECURITY

2.1. Promoting Employment of the Elderly

There is a clear relation between the employment market and social insurances. On one side, the situation on the labour market may influence the operation of the social insurances (when sufficient social insurance contributions are paid) and on the other side, social insurances have to be adapted to the new labour market situation (e.g. more part-time work and fixed-term contracts).

With the Intervention Measure for the Labour Market Act (*Zakon o interventnem ukrepu na področju trga dela* - ZIUPTD), passed in November 2015 and in force since the beginning of January 2016,[35] the legislator is promoting employment of elderly workers, by waiving the duty to pay social insurance contributions.

An employer, who concludes an employment contract in the years 2016 and 2017 with an unemployed person, older than 55 years of age, and registered as unemployed for six months, is relieved from paying all social insurance contributions for two years. Hence, he is not paying contributions for pension and invalidity, mandatory health, unemployment and parental care insurances. There are certain additional conditions, concerning the liquidity of the employer, who has not dismissed workers in the past several months and is regularly paying salaries and social insurance contributions.
This measure of active employment policy has no influence on the benefits of the insured person. He or she is entitled to all social insurance benefits, as if all the contributions were paid. However, there is no direct provision in the ZIUPTD that the loss of contributions has to be covered by the state budget, as for all other active employment measures. If this loss has to be covered by social insurances, it is a burden they are not supposed to take. In addition, the State will have to cover the losses of social insurances, possibly arguing that they are malfunctioning and that they have to be replaced (by private insurances, by which the right to social security cannot be provided).

[34] More on the site of the State Election Commission http://www.dvk-rs.si/index.php/si/arhiv-referendumi/ZZZDR-D-2015 (March 2016).
[35] ZIUPTD, Official Journal of the RS, No. 90/2015.

2.2. Pension and Invalidity Insurance

2.2.1. White Book on Pensions

The Ministry of Labour, Family, Social Affairs and Equal Opportunities is preparing a White Book on Pensions, which should be published in April or May 2016.
The effects of the 2012 pension reform should be assessed and new measures proposed, especially for the period beyond 2020. It is expected that the principles of solidarity and self-responsibility will be in the focus of the discussion, as well as the principles of the rule of law and the social nature of the Slovenian State.

According to statistical information, the average pensionable age has remained at app. the same level in 2015 as in 2014. It was 59 years for women and 61 years (and a month) for men. However, the average pension period reached at retirement was prolonged for women for as many as 11 months and for men for four months.

The last pension reform shows positive economic results for the Pension and Invalidity Insurance Institute of Slovenia (and the State, which has to cover the losses). The expenditure for pensions was 11.85 percent of the GDP in 2013, decreased to 11.5 percent in 2014, and for 2015 it is expected to be at 10.89 percent of the GDP (further estimates are for 2016 at 10.7 and for 2017 at 10.66 percent of the GDP).[36] Also the ratio between pensioners and insured persons remained at the level of 1.37 in 2015, i.e. one pensioner on 1.37 insured persons.[37]

2.2.2. Economic Activities of Pensioners

Reportedly, the number of pensioners remains high. There were 613.978 recipients of (all kinds of) pensions in February 2016. Among them, there were 71.1 percent (or 436.425 recipients) of old-age pensions[38] (in a population of 2.064.632 people in October 2015).[39]

Moreover, the level of pensions remains low. The average pension in February 2016 was just above 600 euro, and the average old-age pension for 40 years or more of the pension insurance period was just above 800 euro (both gross and net amounts are similar).[40] Many pensioners are still capable and willing to work. In the previous report[41] the possibilities of pensioners to work was mentioned.
In 2015, however, the possibility of staying active and receive part of the pension was broadened. With the amendment to the Pension and Invalidity Insurance Act (ZPIZ-2B),[42] in force since the beginning of 2016, the possibility of receiving part of the pension in addition to a salary is no longer limited, neither as to the category of workers, nor as to the age limit of 65 years.

[36] More at http://www.rtvslo.si/slovenija/vladni-dokument-pokojninska-reforma-je-obrodila-sadove/389252 (March 2016).
[37] ZPIZ, Monthly statistical overview, February 2016, p. 5.
[38] Ibidem, p. 3.
[39] More at http://www.stat.si/statweb (March 2016).
[40] Average gross pension was 815.24, average net pension 807.20 euro, cf. ZPIZ, Monthly statistical overview, February 2016, p. 7.
[41] Strban, G.: Development of Social Security Law in Slovenia 2014/2015, SLR 5/2015.
[42] ZPIZ-2B, Official Journal of the RS, No. 102/2015.

All insured persons, i.e. workers and self-employed (and other) persons, who continue to work in full-time employment or self-employment are entitled to receive 20 percent of the old-age or early pension. The condition is that they remain insured as a full-time worker or with an equivalent full-time insurance as self-employed.[43]

Even before extending the possibilities for cumulating wage and pension, this right was very much contested for several reasons. Among them is the reason that this payment of 20 percent does not constitute a pension. A pension should be an income replacement benefit, when due to old-age insured persons are no longer able (or expected) to work or be otherwise economically active. According to ZPIZ-2 there should be no reduction of the economic activity and hence no reduction of income. Moreover, the payment of 20 percent is according to its legal nature a measure of active employment policy for the elderly. The legal consequence of such definition is that it should be financed by the State, not by the insured persons. However, it seems that economic reasoning has prevailed, i.e. it is better to pay 20 percent than a full pension.

2.3. Mandatory Health Insurance

2.3.1. Documents on the Modernisation of Mandatory Health Insurance

Studies

The Ministry of Health commissioned a study to the WHO on Evaluating Health Financing. The report was ready in October 2015.[44] The conclusions of the study are that Slovenia's mandatory health insurance relies heavily reliance on social security contributions, which may not be financially sustainable. There is also a long term problem through a shift of the population into lower contribution categories for social insurance and a rapidly aging population promising a future problem in funding long-term care.

It is in this context that additional general taxation support to mandatory health insurance looks inevitable to cope with economic cycles and the ageing population. Next to modifying contributions for certain groups of insured persons, some scope might exist for revenues from non-payroll income and property taxes to be earmarked for health care.

Further use of co-payments is not recommended, and the current benefit package should not be restricted or divided, but there could be a renewed focus on quality of care and appropriate pathways within the benefit package.[45]

Another report was made on Making Sense of Complementary Health Insurance (CHI), which is widespread and covers the broad system of co-payments.[46] It was found from current health system performance that CHI provides good protection from co-payments and a safety valve for public financing. It achieves very high coverage and premiums appear to be largely affordable. Nevertheless, it is complex and regressively financed (premium is equal for all, hence a higher burden

[43] Article 39.a ZPIZ-2.
[44] Thomas/Evetovits/Thomson: Evaluating Health Financing, Final Report, October 2015.
[45] Ibidem, p. 22.
[46] Thomas/Evetovits/Thomson: Analysis of the Health System in Slovenia, Making Sense of Complementary Health Insurance Final Report October 2015.

for those with lower income) and the number of subscribers has fallen in recent years (the State covers co-payments for the social assistance recipients), while transactions costs and insurer profits have risen. It is also lacking in transparency.

The suggestion is, if the government feels that radical reform is needed to meet national health policy objectives, then it could consider removing the need for people to buy CHI covering co-payments. This could be done by abolishing co-payments[47] or replacing CHI with a public compulsory prepayment option.[48] However, there might be a problem with the latter option, in the sense that such special payment should be fitted into the existing system of taxes or social security contributions. Alternatively, better regulation and oversight of the CHI market is proposed.[49]

Resolution

The National Assembly adopted on the 30th of March 2016 the Resolution on the National Plan of Healthcare 2016-2025 "Together for the Society of Health" (*Resolucija o nacionalnem planu zdravstvenega varstva 2016–2025 »Skupaj za družbo zdravja«*).[50]

It takes into account all the studies and documents of international organisations. Among them is the Communication of the EU Commission on effective, accessible and resilient health systems.[51] It focuses on actions to: 1. Strengthen the effectiveness of health systems, 2. Increase the accessibility of healthcare and 3. Improve the resilience of health systems.

The Resolution pictures the existing situation in healthcare (including mandatory health insurance) and proposes action for the future. The goals emphasised in the resolution are solidarity, universality, equality, equitable financing and all kinds of access (i.e. geographical, timely and financial access) to healthcare. At the same time responsibility of all stakeholders is emphasised.

The broadest goals of the Resolution are better health and wellbeing and less inequality in health; an accessible, successful and stable healthcare system, which is effectively adapted to the health needs of inhabitants; satisfied patients and healthcare providers; better contribution of healthcare to the development of Slovenia.

The Resolution is a valuable political document showing the path the present government is trying to take. It is one of the documents on which the modernisation of the Health Care and Health Insurance Act (from 1992, last amended in 2013) will be based.

2.3.2. Discussion on Modernising the Complaint Procedure in Healthcare Matters

It is perceived as a problem that patients sometimes initiate supervisory mechanisms (at the Medical Chambers of Slovenia, the Ministry of Health or the Health Insurance Institute of Slovenia-HIIS,

[47] As in Germany where the so called *Praxisgebühr* has been abolished since 2013.
[48] Ibidem, p. 14.
[49] Ibidem, p. 15.
[50] https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=A2855B8613497637C1257F8600299826&db=pre_akt&mandat=VII (March 2016).
[51] Brussels, 4.4.2014, COM(2014) 215 final.

exercising professional, administrative, legal and financial supervision), but they are neither party in such proceedings, nor are such proceedings suited to decide on patients' (substantive or procedural) rights in a concrete case. Therefore, effective complaint procedures have to be legally regulated as well.

Complaint procedures

It is essential to provide speedy, professional complaint proceedings, before the possibility of initiating judicial court action. If judicial review is available only for medical malpractice this might lead to defensive medicine and more expenditure for the solidarity community (e.g. due to extra tests and investigations).[52] Only with a legally well-regulated complaint procedure equal access to health care can be provided.

The possibility to freely substitute a chosen personal physician (after a certain period of time, where he or she is acting as a 'gate-keeper', like in Slovenia), or receive a referral to specialist treatment (which is no right of a patient, especially if issuing such referral is not medically indicated), cannot be considered as sufficient.

According to Slovenian legislation the legal position of socially insured patients is well protected, when an administrative decision is taken by the appointed (HIIS) physician. However, it is rather limited and available only in cases of spa treatment, some (more expensive) medicinal goods and (possibly) in case of cross-border healthcare. In these cases complaint is possible to the Health Commission, which will have to issue an administrative decision in a rather short period of time.
Neither an appointed physician nor the Health Commission have competence to decide on the suitability of concrete preventive, diagnostic, therapeutic or rehabilitative measures ordered by a competent physician (elected personal physician or a referred medical specialist). However, there are quite numerous professional procedural paths that a patient may (but is not obliged to) take with respect to healthcare provision.

The General Agreement between the HIIS, the State and healthcare providers obliges the latter to organise internal complaint procedures, with their internal legal statutes. Such internal procedures, i.e. within the same healthcare provider, might not be fully unbiased and they are not possible with private, single self-employed physicians.

The Patient's rights Act (*Zakon o pacientovih pravicah*, ZPacP)[53], adopted in 2008, englobes several procedural rights, in case of patient-physician disagreement. Among them is the right to a second opinion. Sometimes, patient's procedural rights might differ considerably for private and socially insured patients. For instance, a private patient enjoys an unlimited right to a second opinion, of course, if he or she is ready to finance it.

Conversely, for socially insured patient there are many limitations. He or she is allowed to exercise this right only on the secondary (hospital and specialist) and tertiary (clinics) level. *Argumentum a contrario* this means, that there is no possibility on the primary level, i.e. to test the decisions of the

[52] Bennet, S.: The Mystique of Markets: Public and Private Health Care in Developing Countries (London: London School of Hygiene and Tropical Medicine), 1991, p. 42.
[53] ZPacP, Official Journal of the RS, No. 15/2008.

chosen personal physician. Moreover, he or she may only do so once for the same medical condition, and only for the future medical procedures (hence, it cannot be considered as an appeal in legal terms). Before exercising this right a socially insured patient has to discuss the reasons, purpose and necessity of the second opinion with the attending physician,[54] whose opinion he or she already knows. It is not completely clear, why the legislator fully respects the autonomy of physicians, while at the same time doubts the autonomy of patients.

Moreover, the second opinion will be given by the same healthcare provider, i.e. a colleague of the treating physician, which might raise a question of bias. Only if this is not possible another healthcare provider within the public network may give the second opinion. Therefore, it could be argued that such right to a second opinion might actually deter patients from exercising it. As a result, the law is more to the benefit of physicians than to the benefit of patients, whose position should actually be protected by the ZPacP.

It might be better, if the right to a second opinion would be shaped as an appeal procedure, available also against the (past) decisions of a personal physician. Such solution was proposed in a draft ZPacP, but was never adopted. In this case, the second opinion could be given by a specialised physician, with more profound knowledge in a specific field (hence, procedurally on the second instance). It seems that a similar solution is adopted in Norway.[55]

In addition, there is a right to review a breach of patient's rights, which may be exercised in several phases. At first, the ZPacP defines a disagreement between a patient and a healthcare provider as ‘misunderstanding’. It should be settled immediately with additional explanations and other measures.[56] Only, if this is not possible must a healthcare provider, in accordance with the principle of information and support of a patient, in an understandable manner inform a patient of a right to initiate a process on the breach of patient’s rights.

The request for a first hearing concerning a breach may be lodged at the responsible person of the same healthcare provider where the alleged breach occurred. It is an informal, professional procedure. The competent person may conduct a conversation with a patient and may even conclude a settlement. It may be on apologising to the patient, acquiring of a second opinion (although this is a right of a patient) and damages for up to certain amount. Again, it seems that this procedure might be more to the benefit of the healthcare provider, who may rather quickly, with mild measures and no high financial impact, solve the patient-physician disagreement.

If a patient does not agree with an offered settlement of a dispute, a second hearing of a breach of patient’s rights might be initiated. It is decided by a special, independent, professional and unbiased body, i.e. the Commission of the Republic of Slovenia for the protection of patient’s rights. Its president is appointed by the government and its members by the minister of health. The procedure is formalised and the general administrative procedure should be applied.[57].

[54] Article 40 ZPacP.
[55] Ivanc, in Balažic, J., Korošec, D., Novak, B., Brulc, U., Ivanc, B., Kralj, K., Pirc Musar, N. & Robida, A. (2009) Zakon o pacientovih pravicah s komentarjem (Ljubljana: GV založba). 2009, p. 200.
[56] Article 56 ZPacP.
[57] Strban, G.: Supervision of medical activities, Medicine, Law & Society, Vol 9, No 1 (2016), p 53.

According to the report of the president of this Commission,[58] the number of claims is rising. However, the Commission is confronted with serious administrative obstacles (administrative support should be provided by the ministry of health), and even the exact number of cases handled in 2014 is not known. The Commission also observed that the Medical Chamber shows a lack of interest, even when directly contacted.

Another informal possibility is that a patient could be assisted or even represented by patients' advocates. Such an advocate may lodge a formal complaint or informally intervene with a healthcare provider, in order to come to a speedy solution. Assistance is free for patients and provided to patients covered by private insurance or social insurance.

However, this does not diminish the right of patients covered by social insurance to claim professional and legal assistance from the mandatory health insurance carrier (HIIS). To ensure the provision of healthcare paid by the mandatory health insurance HIIS may use guidelines, advice, and intervene in the activities of the healthcare providers, especially if they restrict access to healthcare, prolong waiting period, ask for direct payments, or treat patients unfairly. HIIS is obliged to verify all the claims, but has some margin of appreciation in deciding upon which claims it will act.[59]
Moreover, one of the substitutes of the Ombudsperson also acts as an ombudsperson for patients' rights. Again, it is an informal procedure for patients that may lodge complaints.

Judicial Review

Already according to the Slovenian Constitution,[60] the right to judicial protection is one of the fundamental human rights. Everyone has the right to have a decision taken by an independent and impartial court of law without undue delay on every right, duty, and any charges brought against him or her. This implies a possibility of judicial review also when exercising the rights to medical benefits under mandatory health insurance or when acting as a private patient.

Moreover, judicial review may be requested, even if no complaint procedure for establishing a breach of patient's rights before the (same) healthcare provider has been instigated. Hence, if a socially insured patient does not want to discuss a matter with a physician, a claim before the social court may be lodged (or a civil court for private patients). Such information should be publicly available to patients in the premises of healthcare providers as well.

The question might be what constitutes a decision of a physician, against which a claim could be lodged. As argued above, only exceptionally will an administrative decision be issued by the HIIS. Nevertheless, a decision on the diagnosis and treatment inserted in the medical documentation should be considered as a formal decision (or at least its operative part). Even more so, if a prescription for a pharmaceutical was issued, since administrative decisions might come in various forms.

[58] Šikovec Ušaj, L., Poročilo Komisije RS za varstvo pacientovih pravic za leto 2014. (Ljubljana: Komisija RS za varstvo pacientovih pravic) 2015.
[59] Strban, G.: Supervision of medical activities, Medicine, Law & Society, Vol 9, No 1 (2016), p. 54.
[60] Article 23 of the Constitution.

Social dispute resolution proceedings are decided by specialised social judges. The procedure must be conducted in a speedy manner and should be more claimant friendly that than under the civil law procedure.

Outcome

It is argued that numerous professional complaints proceedings, with possible assistance of patients' advocates and ombudsperson, might not be the most effective solution and might raise the question of partiality and bias. The absence of a clear delineation between various complaint procedures might cause confusion, which does not contribute to the foreseeability of behaviour, a cornerstone of legal certainty and the rule of law.

Hence, formal complaint proceedings should be stipulated for private and even more for socially insured patients. For the latter, a decision of a board of physicians, composed of representatives of the attending physician, the mandatory health insurance carrier, and an impartial physician, could be a reasonable solution. Also the option of a special public institute for medical expertise might be further investigated.

So far, there was hardly any debate on the supervisory mechanisms and procedures for enforcing healthcare rights. Future reforms in Slovenia will have to focus on regulating more precisely the provision of healthcare and enforcement of (socially insured) patients' rights in special, legally formalised proceedings, before the judicial review is requested. Moreover, also for the judicial social disputes resolution, it should be clear that a judicial review is admissible against all medical decisions.

2.4. Changes in the Unemployment Insurance

The provisions of Labour Market Regulation Act (*Zakon o urejanju trga dela* – ZUTD)[61] providing unemployment insurance benefits to unemployed persons stayed in force also in 2015 and 2016. It has not been modified, but some other provisions have influenced certain employment measures.

Among them was the adoption of the Employment, Self-employment and Work of Foreigners Act (*Zakon o zaposlovanju, samozaposlovanju in delu tujcev* – ZZSDT).[62] In addition, access to the Slovenian employment market remains restricted for Croatian citizens. This is regulated in the Extending the Transitional Period for Free Movement of Citizens of the Republic of Croatia and their Family Members Act (*Zakon o podaljšanju prehodnega obdobja na področju prostega gibanja državljanov Republike Hrvaške in njihovih družinskih članov* - ZPPOPGHR), passed in 2015.[63] Croatian citizens may gain access to the Slovenian labour market after two years of residence. There are also some exceptions, where this specific period of residence is not required.

Active employment measures for the elderly in the form of waiving the payment of social insurance contributions (with ZIUPTD) and broadening of the right to receive 20 percent of an old-age 'pension' fi remaining in full-time employment were already mentioned above.

[61] ZUTD, Official Journal of the RS, No. 80/2010 to 100/2013.
[62] ZZSDT, Official Journal of the RS, No. 47/2015.
[63] ZPPOPGHR, Official Journal of the RS, No. 46/2015.

Slovenia was (as were other Member States of the EU) included in the study on the possibility of introducing the European unemployment benefit scheme (EUBS). The goal was to assess the feasibility and the value added of introducing such EUBS. This would be a specific form of a supranational automatic stabiliser which, with its focus on the labour market and its link to cyclical developments, could help to achieve macro-economic stabilisation and social outcomes in case of economic shocks, particularly if these are asymmetric, i.e. sustained by only a few countries.

Two options were tested, i.e. an equivalent and genuine EUBS, mainly from the viewpoint of their constitutionality and possible obstacles in national law and administrative practice. An equivalent EUBS involves financial transfers between the supranational fund, which manages the EUBS, and the Member States. In these schemes, there are no direct transfers between the Fund and unemployed individuals; these EUBS receive contributions from and pay out to Member States, only when unemployment exceeds a certain volume in a specific Member State.

A genuine EUBS involves direct transfers from the supranational fund to unemployed citizens. Truly supranational systems are only those which receive contributions from and pay out to citizens. These schemes should be activated for any eligible worker that becomes unemployed. A distinction is made between a basic and a top-up genuine EUBS. A basic genuine EUBS pays out a common provision for every eligible unemployed person in Europe, which the Member States are free to top-up by a national provision at their own expense. A top-up genuine EUBS, on the other hand, guarantees that every eligible unemployed gets a common provision. However, only when the national provision is less generous, the supranational provision tops it up.[64]

For Slovenia, it is established that there would be no major obstacle in introducing any kind of EUBS. However, the question was raised, whether a EUBS would entail some kind of EU-wide solidarity, or would it be only a fund as an additional organisational (and financial) structure, where payments and benefits should be equalised for each of the Member States (at least in the medium run). In the latter case EUBS might not be required.

2.5. Postponed Application of the New Parental Care and Family Benefits Scheme

In the previous report[65] it was mentioned that Parliament passed the new Parental Care and Family Benefits Act (Zakon o starševskem varstvu in družinskih prejemkih – ZSDP-1) in 2014.

According to the transitional provisions, the application of many rules (and the full realisation of many benefits) was deferred to the period of higher economic growth (year following the year in which GDP grows for more than 2 or 2.5 percent). The informal intention of the legislator was to fulfil the obligations of the Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC,[66] but at the same time leaving the real situation more or less unchanged.

[64] Coucheir, M. (ed.); Strban G.; Hauben, H.: Feasibility and Added Value of a European Unemployment Benefit Scheme" Third Interim Report – 15 March 2016, Annex Horizontal report on legal/operational feasibility of the EUBS at national level, not yet published.
[65] Strban, G.: Development of Social Security Law in Slovenia 2014/2015, SLR 5/2015.
[66] OJ L 68/13, 18.3.2010.

Nevertheless, the economic growth already in 2014 exceeded 2.5 percent of the GDP, which was a bit of surprise at the time. In order for the new ZSDP-1 to become fully applicable, the government had to confirm that such growth indeed happened,[67] and ZSDP-1 should fully apply as of January 2016.

However, the ZSDP-1 was modified shortly after the government concluded that GDP growth was exceeding 2.5 percent. A new condition for full applicability was added, i.e. the growth of working activity in the age group of 20 to 64 years has to exceed 1.3 percent.[68] This has not yet happened and the ZSDP-1 is still not fully applicable (although some parts, e.g. on prolonging the parental leave and benefit, are being prolonged in a certain transition period). Therefore, the question of (ab)using the form of al legislative act in order to promise certain benefits in the future remains open.

2.6. Social Assistance Scheme

From the beginning of 2016 the austerity restrictions ceased to apply to the social assistance scheme. The basic amount of the minimum income (a kind of officially set relative poverty line) is now set at the level prescribed before the crisis by the Financial Social Assistance Act, i.e. at 288.81 euro per month. This amount is also the amount of social assistance for an individual recipient without any other income. In case of an income, social assistance is a differential benefit in the amount of the difference between own income and (officially set) minimum income.

If the applicant has a family, then minimum income, to which family income is compared, is calculated according to complex rules, taking into account the status of different family members, whether they are adult or children, active or not. According to the Financial Social Assistance Act, modified in 2015,[69] for each family member the MIA is determined on the basis of different ponders/weights (in relation to the basic income):

The first adult person in the family has a weight of 1 (one basic income is taken into account).
If the first adult person in the family is economically active, i.e., working at least sixty hours per month, than the weight amounts to 1.28 (0.28 supplement as a reward for activity, actually not reducing social assistance and providing a 'trampoline out of poverty'). If more than 128 hours of work per month has been done, then the weight amounts to 1.56.

Single unemployed persons between 18 and 26 years of age, living with the parents, who have sufficient income, have a weight of 0.7. If a single person is unemployable and older than 63 (a women) or 65 (a man), and living in the same household with other persons, who are not their relatives, the weight is 0.76.

[67] This was done by the governmental conclusion in September 2015, published in the Official Journal of the RS, No. 69/2015.
[68] Amendments and modifications of the ZSDP-1 Act (*Zakon o spremembah in dopolnitvah Zakona o starševskem varstvu in družinskih prejemkih*, ZSDP-1A), Official Journal of the RS, No. 90/2015.
[69] Act Amending the Financial Social Assistance Act (*Zakon o spremembah Zakona o socialno varstvenih prejemkih*, ZSVarPre-D), Official Journal of the RS, No. 90/2015.

A subsequent adult person within the family amounts to additional 0.57 basic income each, the ponder is raised by the supplement if a person is economically active, amounting to 0.71 for 60 to 128 hours of work or 0.85 for more than 128 hours of work per month.
The first child of the applicant has a weight of 0.76 of the basic income, and any subsequent child 0.66 of the basic income.

All weights of the basic income are summed up for the entire family. For instance, in January 2016, minimum income for two adults, both working for more than 128 hours per month is calculated in the following way: 1.56 + 0.85 = 2.41 basic income = EUR 696.03 per month. Another example could be a family with two adults without employment: 1 + 0.57 = 1.57 of the basic income = EUR 453.43 per month. For a family with two adults not working and having two children 4 and 6 years of age the minimum income would be: 1 + 0.57 + 0.76 + 0.66 = 2.99 of the basic income = EUR 863.54 per month.

Social assistance is calculated as a difference between such minimum income (of a family) and own income (of a family).[70]

3. INTERNATIONAL AGREEMENTS IN SOCIAL SECURITY

There were no new bi- or multilateral social security agreements concluded or ratified by Slovenia in the year of 2015 and the beginning of 2016. It seems that the negotiations on a bilateral social security agreement are progressing well with the USA and South Korea.

In 2015 Slovenia has ratified the Act Ratifying the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (*Zakon o ratifikaciji Konvencije Sveta Evrope o preprečevanju nasilja nad ženskami in nasilja v družini ter o boju proti njima*, MKPNZND).[71] It is applicable as of June 2015. Among others, it stipulates that the Parties of this convention have to take the necessary legislative or other measures to ensure that victims have access to health care and social services, and that services are adequately funded, and professionals are trained to assist victims and refer them to the appropriate services. Hence, it only partially relates also to social security (mandatory health insurance and social services).[72]

4. IMPORTANT ACTS PASSED OR AMENDED IN 2015/2016

4.1. Legislative Acts

Intervention Measure for the Labour Market Act (Zakon o interventnem ukrepu na področju trga dela - ZIUPTD), Official Journal of the RS, No. 90/2015.

[70] More info at the webpage of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, http://www.mddsz.gov.si/si/delovna_podrocja/sociala/denarna_socialna_pomoc/, March 2016.
[71] MKPNZND, Official Journal of the RS-International Agreements, No. 1/2015.
[72] Article 20 of the Convention.

Act on Modifying and Amending the Pension and Invalidity Insurance Act (Zakon o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju - ZPIZ-2B), Official Journal of the RS, No. 102/2015)

Act amending the Social Assistance Benefits Act (*Zakon o spremembah Zakona o socialno varstvenih prejemkih*, ZSVarPre-D), Official Journal of the RS, No. 90/2015.

Act Modifying and Amending the Exercise of Rights from Public Funds Act (Zakon o uveljavljanju pravic iz javnih sredstev – ZUPJS-E), Official Journal of the RS, No. 90/2015.

Amendments and modifications of the ZSDP-1 Act (*Zakon o spremembah in dopolnitvah Zakona o starševskem varstvu in družinskih prejemkih*, ZSDP-1A), Official Journal of the RS, No. 90/2015

Employment, Self-employment and Work of Foreigners Act (*Zakon o zaposlovanju, samozaposlovanju in delu tujcev* – ZZSDT), Official Journal of the RS, No. 47/2015.

Extending the Transitional Period for Free Movement of Citizens of the Republic of Croatia and their Family Members Act (*Zakon o podaljšanju prehodnega obdobja na področju prostega gibanja državljanov Republike Hrvaške in njihovih družinskih članov* - ZPPOPGHR), Official Journal of the RS, No. 46/2015.

4.2. Rules and Regulations

Rules on the standards and norms for social services (Pravilnik o standardih in normativih socialnovarstvenih storitev), Official Journal of the RS, No. 45/2010, last amended 102/2015.

4.3. Resolutions

Resolution on the National Plan of Healthcare 2016-2025 “Together for the Society of Health” (*Resolucija o nacionalnem planu zdravstvenega varstva 2016–2025 »Skupaj za družbo zdravja«*), March 2016, not yet published.

5. SELECTED IMPORTANT MONOGRAPHS AND ARTICLES IN 2015/2016

5.1. Books and Book Chapters

Mihalič, Renata; Strban, Grega, Univerzalni temeljni dohodek (*Universal basic Income*), GV Založba, Ljubljana, 2015, 256 p.

Kresal, Barbara; Kresal Šoltes Katarina; Strban Grega: Social Security law in Slovenia, Second Edition, Kluwer Law International, Alphen aan den Rijn, 2014, 246 p.

Strban, Grega: Analyse des slowenischen Sozialrechts - Einfluss der Wirtschaftskrise und des Rechts der Europäischen Union auf deren Entwicklung, in María Aurora de la Concepcíon Lacavex Berumen, Yolanda Sosa y Silva García, Jesús Rodríguez Cebreros (Compiladores), La Asistencia Social en el Derecho Social, Universidad Autónoma de Baja California, Cuerpo Académico de »Estudios Jurídicos«, Facultad de Derecho Mexicali, 2015, pp. 137-165.

Strban, Grega: Socialne pravice v dobrobit otroka : povečanje ali zmanjšanje njihovega obsega v času recesije? (*Social benefits in favour of children, enhancing or reducing their scope in the times of recession?*), in: Šelih, Alenka (ed.), Filipčič, Katja (ed.). Otrokove pravice v Sloveniji: sedanje stanje in izzivi za prihodnost, (Razprave, 29). Ljubljana: Slovenska akademija znanosti in umetnosti, 2015, pp. 49-70.

5.2. Journals

Rataj, Primož Kumulacija pokojnine in dohodkov iz opravljanja dela oziroma dejavnosti (Cummulation of pension and income from gainful activity), Delavci in delodajalci, Vol. XV, 2015, No. 4, pp. 501-523.

Strban, Grega: Supervision of medical activities, Medicine, Law & Society, Vol 9, No 1 (2016), pp. 41-58.

Strban, Grega: Lastninsko varstvo socialnih pravic (*Property protection of social rights*), Podjetje in delo, Vol. 41, 2015, No. 6-7, pp. 1251-1266.

Strban, Grega; Mihalič, Renata: Prednosti in pomanjkljivosti različnih oblik univerzalnega temeljnega dohodka (*Advantages and shortcomings of distinctive forms of universal basic income*), Delavci in delodajalci, Vol. XVI, 2016, No. 1, pp. 9-38.

Strban, Grega: Vpliv nadzornih inštitucij na uresničevanje pravice do socialne varnosti – imamo v Sloveniji (ne)ustrezne dajatve? (*Influence of the supervisory institutions on the implementation of the right to social security – are benefits in Slovenia (in)adequate?*), Delavci in delodajalci, Vol. XV, 2015, No. 4, pp. 477-499.

5.3. Studies

Coucheir, Michael (ed.); Strban Grega; Hauben, Harald: Feasibility and Added Value of a European Unemployment Benefit Scheme" Third Interim Report – 15 March 2016, Annex Horizontal report on legal/operational feasibility of the EUBS at national level, not yet published.

Thomas, Steve; Evetovits, Tamás; Thomson; Sarah: Evaluating Health Financing, Final Report, October 2015.

Thomas, Steve; Evetovits, Tamás; Thomson; Sarah: Analysis of the Health System in Slovenia, Making Sense of Complementary Health Insurance Final Report October 2015.

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