



MAX PLANCK INSTITUTE
FOR SOCIAL LAW AND SOCIAL POLICY

Social Law Reports

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SOCIAL SECURITY LAW IN SLOVENIA – REFORMS AND REFORM PROPOSALS

Reported Period: March 2016 - March 2017

Cite as: Social Law Reports 5/2017

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Department of Foreign and International Social Law

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ISSN 2366-7893

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INTRODUCTION

The initial (basic) 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 subsequent years annual reports on most significant developments in the Slovenian social security law were produced.

The present report covers the most recent modifications in Slovenian social security law between March 2016 and March 2017, and the reasons behind them. The report aims to highlight some important social developments as well as constitutional court decisions and social security reform proposals, in particular the proposal for a new health insurance scheme.

1. CURRENT ECONOMIC, POLITICAL AND SOCIAL SITUATION

1.1. Political Development and Constitutional Amendment

The current 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 tensions in the past, especially due to the large immigration wave, the pending decision on Piran Bay, which is expected to set the sea border between Slovenia and Croatia, the protection of the geographical wine name of Teran that should not be used by Croatian wine producers, the health insurance reform, which had to be presented by the end of 2016, but was a bit delayed, and some other issues. Nevertheless, it remained stable in 2016. It is still composed of the winning party SMC (*Stranka modernega centra*, party of the prime minister), the Social Democrats (*Socialni demokrati* – SD) and the Democratic Party of Pensioners of Slovenia (*Demokratska 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 parliament left their party and formed the group of unaffiliated deputies. In addition, there are two representatives of Italian and Hungarian national minority (one for each minority) in a 90 seats parliament.²

There are several non-parliamentary parties, among them the 'peoples' party'. In March 2017 two new (more right-wing) political parties have been formed, one as the 'Voice for children and families' and the other as 'ReSET'. The latter was established by unsatisfied Slovenian frontier workers in Austria, who had to pay tax in Austria and in addition the difference to the higher Slovenian tax level

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 2017.

in Slovenia (actually, to the same level as Slovenian nationals, as established by the Constitutional Court).³

At the end of 2016 an amendment to the Slovenian Constitution⁴ concerning the Right to Drinking Water was proposed. Earlier initiatives - made by the National Council⁵ in 2013, and by a deputy in 2014⁶ - were not successful due to the dissolution of the National Assembly in 2014 which ended the constitutional amendment procedure formally. Later the amendment was re-proposed and the Constitutional expert commission (appointed in mid-2015) issued its expert opinion in March 2016.⁷ The experts cited several international documents, among others Article 25 of the Universal Declaration of Human Rights (UDHR), which guarantees everyone the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services (and continues with the right to social security, also enshrined in Art. 22 UDHR). Other documents emphasising the right to life and healthy living environment were cited.

It was feared that water supply could become fully privatised, in particular as concessions for water exploitation had already been given to multinational corporations. This issue materialised especially, when Heineken bought the two largest Slovenian breweries, i.e. Laško and Union,⁸ also in order to get access to fresh water supply, which is perceived of being of very high quality in Slovenia. It was also emphasised that the so called Troika had requested privatisation of water-supply companies in Greece, Spain and Portugal, which had resulted in higher prices, lower quality, reduction in investment and higher gains of private companies.

These arguments, next to the one that the constitutional right to a healthy living environment would not provide sufficient guarantees, led the Constitutional expert commission to support the insertion of the right to drinking water into the Slovenian Constitution. The text of the amendment itself was proposed, but later modified in the constitution amendment procedure (which is more demanding than the regular legislative procedure, requiring an absolute qualified majority, i.e. two thirds of all deputies, meaning at least 60 out of 90).⁹

The Constitution was amended at the end of 2016 and the new article 70a was inserted.¹⁰ It guarantees that 'everyone has the right to drinking water. Water resources shall be a public good managed by the State. As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity. The supply of the population with drinking water and water for household use shall be ensured by the State directly through self-governing local communities and on a not-for-profit basis.'

³ Decision U-I-147/12, SI:USRS:2013:U.I.147.12.

⁴ Official Gazette RS, No. 33/1991-I, last amendment 75/2016 – UZ70a).

⁵ Decision No 802-01/13-6 from 15.5.2013.

⁶ No EPA 1861-VI.

⁷ No. 001-02/15-4/28, from 9.3.2016

⁸ <http://www.pivovarnalaskounion.com/>, March 2017.

⁹ The constitutional amendment was passed by 64 votes in favour and none against.

¹⁰ Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, adopted on 25 November 2016 and entered into force at the same day, Official Gazette of the Republic of Slovenia No. 75/2016.

It is argued that by this constitutional amendment, Slovenia is among the first EU Member States to constitutionally guaranty the right to drinking water.¹¹

1.2. Economic Situation

Economic activity in Slovenia continues to strengthen as a result of exports and household consumption. Foreign demand and the improving competitive position of Slovenian companies on foreign markets continue to strengthen exports, which remain among the main drivers of economic growth. Export-related manufacturing production exceeded pre-crisis levels in mid-2016. The situation is also improving in most service activities, particularly tourism-related segments. There has been a stronger rebound in private consumption amid a significant improvement in labour market conditions and increased consumer optimism, which is also reflected in the increase in some prices. Private investment continues to strengthen, while public investment is lower than a year ago owing to a standstill in the absorption of EU funds upon the transition to the new financial perspective. Despite recording considerably higher GDP growth than the euro area average in the last few years, Slovenia remains among the group of countries with their GDP lagging the most behind pre-crisis levels.¹² The GDP growth was 2.3 percent in 2015 and 2016 and is expected to remain high.¹³ However, more importantly, this should be reflected also in the living standard of people in Slovenia.

The labour market is recovering faster than last year. Reflecting broad-based growth in economic activity, the number of employed persons increased more in the first nine months of this year than in the same period last year. The number of unemployed persons is also shrinking, with this figure being one-tenth lower at the end of November 2016, compared to November 2015.

At the end of February 2017, there were 101.339 registered unemployed persons, which is 2.3 percent less than in January and 12.7 percent less than in February 2016.¹⁴ The level of registered unemployment in January 2017 was 11.2 percent among active population.¹⁵

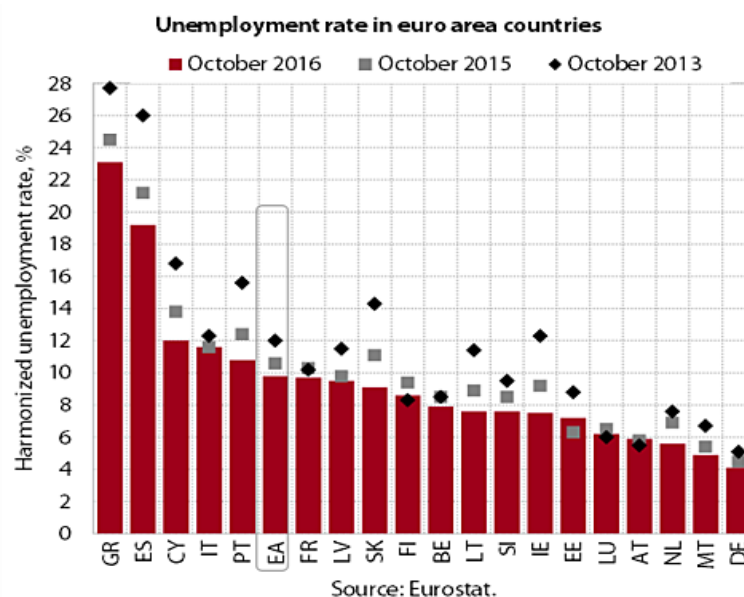
¹¹ The first one seemed to be the Slovak Republic. According to its Constitution, Article 4: »Natural wealth, caves, underground water, natural medicinal springs, and waterways are in the ownership of the Slovak Republic.« See Constitutional Court of the Slovak Republic, <https://www.ustavnysud.sk/en/ustava-slovenskej-republiky>. March 2017.

¹² Institute of Macroeconomic Analysis and Development (IMAD), News, 14.12.2016, http://www.umar.gov.si/en/public-info/news/release/news/ekonomsko-ogledalo-gospodarska-rast-v-sloveniji-se-nadalje-krepi/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=2c7f7c9ac20db0c1b5ee89eb5c832e5a, March 2017.

¹³ Autumn Forecast of Economic Trends 2016, IMAD, Ljubljana, September 2016, p. 5.

¹⁴ Employment Service of Slovenia (ESS), Press release February 2017, https://www.ess.gov.si/_files/9668/Trg_dela_februar_2017.pdf, March 2017.

¹⁵ ESS, https://www.ess.gov.si/trg_dela/trg_dela_v_stevilkah/stopnja_registrirane_brezposelnosti, March 2017.



Source: Slovenian Economic Mirror No 1/2017¹⁶

The growth of average gross earnings in the public and private sectors was also higher in 2016 than 2015. In the public sector, this was due to the partial relaxation of austerity measures and, in the private sector, this was a result of the rebound in economic activity.¹⁷ Average salary remained at approximately the same level as in 2016. In January 2017 it amounted to 1.592,15 EUR (gross) and 1.039,12 (net).¹⁸

It might be interesting to note that a survey of the employment agency Manpower revealed that Slovenian employers were among the most optimistic ones in the second quarter of 2017. It seems that they are the most optimistic ones in Europe and third in the World, lagging only behind Taiwan and Japan.¹⁹

1.3. Social Situation

At the beginning of March 2015 the National Assembly (of the Slovenian parliament)²⁰ had 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),²¹ according to which 'family' would no longer be

¹⁶ IMAD, http://www.umar.gov.si/en/public-info/news/release/news/ekonomsko-ogledalo-st-12017/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=7a965d69266ce6aba7b3022834e7b734, March, 2017

¹⁷ Institute of Macroeconomic Analysis and Development (IMAD), News, 14.12.2016, http://www.umar.gov.si/en/public-info/news/release/news/ekonomsko-ogledalo-gospodarska-rast-v-sloveniji-se-nadalje-krepi/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=2c7f7c9ac20db0c1b5ee89eb5c832e5a, March 2017.

¹⁸ Statistical office of the Republic of Slovenia (www.stat.si, March 2017).

¹⁹ The least optimistic employers in that period seemed to be the ones in Brazil, Italy, Belgium and Switzerland. <http://www.rtvsllo.si/gospodarstvo/anketa-tretjina-delodajalcev-nacrtuje-rast-zaposlovanja/417253>, March 2017.

²⁰ Slovenian parliament is composed of the National Assembly and the National Council (which has a legislative veto on the laws passed by the National Assembly). More at <https://www.dz-rs.si> and <http://www.ds-rs.si/> (March 2017).

²¹ ZZZDR, Official Journal of the RS, Nr. 15/1976 to 16/2004.

defined as a living community of husband and wife, but as a community of two persons (i.e. regardless of sex). However, the Constitutional Court ruled that a referendum on this Act was admissible, and enforcement of the Act was stopped by a majority of voters. Although only 36.38 percent of all those entitled to vote actually voted, the voters against the ZZZDR-D represented a majority, i.e. 63.51 percent of those who casted a valid vote. Also the quorum was reached, since 23.03 percent (more than one fifth) of all voters voted against the enforcement of the ZZZDR-D and hence against the full equalisation of hetero- and same-sex partnerships.²²

Nevertheless, one of the deputies lodged a distinctive proposal on the Civil Union Act (*Zakon o partnerski zvezi* – ZPZ). It was argued that the Slovenian Constitutional Court had already granted equal status in some legal positions of hetero- and same-sex partnerships, especially in the area of housing law²³ and inheritance law,²⁴ where there should be no distinction based on sexual orientation. It had even allowed equal status for civil unions between hetero- and same-sex partners (again only in the field of inheritance law, since this was the case at hand).²⁵

ZPZ was passed in April 2016, entered into force in May 2016, but became applicable only at the end of February 2017.²⁶ It contains only 10 articles. Nevertheless, it introduces general equalisation (equal status) between marriage and registered same-sex partnership (which was already the case before)²⁷, as well as equalisation between (longer lasting, genuine) heterosexual partnership and non-registered same-sex partnership. However, in either case of same-sex partnerships, i.e. registered or not, adoption and bio-medically-assisted procreation are still not allowed. Conversely, the Personal Name Act (*Zakon o osebnem imenu* – ZOI-1)²⁸ now applies equally to all types of same-sex partnerships.

Moreover, in March 2017 the new Family Code (*Družinski zakonik* – DZ) was passed. The National Council did not propose to vote for a veto, nor have there been any initiatives to collect signatures for a referendum, which would prevent the Code from being published and enforced. Hence, the new Family Code was published at the end March 2017,²⁹ entered into force by mid-April 2017 and will be fully applicable two years after that. Exceptions as to the entry into force apply for provisions on family policy (e.g. the Resolution on family policy, the establishment of the Council of the Republic of Slovenia for Family and Children, programs for supporting family and associations in public interest in the field of family policy, all of which became applicable as of the day of publication of the Family Code). The new provisions on entering into a marriage will also become applicable earlier, i.e. at the beginning of 2018.

The new Family Code introduced a novel definition of what constitutes a family. It is a living community comprising a child, regardless of his or her age, with one or both parents or other adult person, if this person cares for the child and has certain obligations and rights towards the child according to the Family Code. Hence it is no longer only a living community of parents and children.

²² More on the site of the State Election Commission <http://www.dvk-rs.si/index.php/si/arhiv-referendumi/ZZZDR-D-2015> (March 2017).

²³ Decision Up-259/01, SI:USRS:2003:Up.259.01.

²⁴ Decision Up-425/06, SI:USRS:2009:U.I.425.06.

²⁵ Decision U-I-212/10, SI:USRS:2013:U.I.212.10.

²⁶ Official Gazette RS, No. 20/2006.

²⁷ See Civil Partnership Registration Act (*Zakon o registraciji istospolne partnerske skupnosti*-ZRIPS from 2005), which (almost entirely) ceased to apply.

²⁸ Official Gazette RS, No. 33/2016.

²⁹ Official Gazette RS, No. 15/2017.

However, it is still due to the best interests of the child that the family is granted special protection by the state.³⁰

The new Family Code also changed the provisions on the delimitation of responsibility between the centres for social work and the law courts. More and more decisions concerning children fall under the courts' competence. The Family Code transfers this competence to the courts also in divorce cases involving children (if there is no consensual divorce) and in lawsuits concerning the contact rights of the divorced (or absent) parent who is not living with the children.

2. EVOLUTION OF THE MAIN BRANCHES OF SOCIAL SECURITY

2.1. Pension and Invalidity Insurance

2.1.1. Transitional Period

The new Pension and Invalidity Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju* – ZPIZ-2) was passed at the end of 2012 and became applicable at the beginning of 2013.³¹ Nevertheless, the transition period has not ended yet. Hence, in 2017, the calculation of the pension is based on the 23 best consecutive years. Pensionable ages and insurance periods are also raised, especially for women, in order to be equalised after the transition period.

However, even after completing it, the calculation of a pension will remain distinct for women and men, e.g. with an insurance period of 40 years, men are entitled to 57.25 percent and women to 60.25 percent of the calculation basis.³² The question remains, whether this is fully in line with the Directive 79/7/EEC.³³ It would be interesting to know how the Slovenian Social Court would decide the case, if a man would claim a higher pension by three percentage points, at the same level he would get had he been a woman. Reportedly, no such case has been decided yet.

There were no major modifications of the ZPIZ-2 in 2016 and beginning of 2017. However, as a rule, when new pension legislation is passed or amended, the number of constitutional complaints rises. Therefore, there were some important decisions of the Slovenian Constitutional Court, which approved some of the ZPIZ-2 provisions.

³⁰ Article 2 of the Family Code.

³¹ Official Gazette RS, No. 96/2012 as later amended.

³² The reason is that women start with a higher pension, i.e. 29 percent for the minimum insurance period of 15 years, whereas men start with 26 percent for the same period. Article ZPIZ-2.

³³ This exception is not explicitly mentioned in its Article 7. The CJEU argued that Article 7(1)(a) of the Directive entitles the Member State concerned to calculate the amount of pension differently depending on the worker's sex, if national legislation has maintained a different pensionable ages for women and men. Distinctive calculation has to be necessary and objectively linked to the difference in retirement age (which is an express exemption under the Directive). However, when national legislation has abolished the difference in pensionable ages, Member States are no longer authorised to maintain a difference based on sex in the method of calculating the pension. Joined Cases *De Vriendt and Others* C-377/96 to C-384/96, EU:C:1998:183 and Case *Van Cant* C-154/92, EU:C:1993:282.

2.1.2. Decisions of the Constitutional Court

The Constitutional Court had no easy task in establishing whether the new Pension and Invalidity Insurance Act (ZPIZ-2 from 2012, applicable as of 2013) breached the legal expectations of some insured persons who had purchased insurance periods according to the former legislation, in order to retire earlier or to receive a higher pension.³⁴ Minimum retirement conditions according to ZPIZ-2 are the age of 65 with at least 15 years of insurance period or the age of 60 with an insurance period of at least 40 years without purchased periods (periods of voluntary inclusion count as such purchased periods as well, farmers being the only exception, i.e. if farmers are voluntarily insured such insurance periods do not count as purchased periods).

If the conditions of a minimum age of 60 years and of an insurance period of 40 years are met with (partially) purchased periods, only the entitlement to an early pension exists. In this case there is a permanent malus (of up to 18 percent for a maximum of five years between the ages of 60 and 65). Such reduction in pensions was introduced by ZPIZ-2 and intruded legal expectations of insured persons who had purchased pension periods before 2013 and counted on an unreduced pension.

The Constitutional Court did not find a violation of the Slovenian Constitution. It argued that the legislator had made a distinction between insured persons who were mandatorily insured and those, who are affiliated on a voluntary basis. Since the criteria of working activity and the level of contribution were used, both of which lie at the core of the mandatory pension system, there was no breach of the equality principle, enshrined in Article 14 of the Constitution.

Moreover, the legislator had also hampered legal expectations of unemployed and part-time working insured persons who had become members of the pension and invalidity insurance voluntarily. The Court held that the legislative decision was grounded in overwhelming and legitimate public interest, which had forced the adoption of a pension reform and was hence not against the principle of trust into law, as one of the principles of the rule of law.

It has to be mentioned that purchased periods are not only relevant when establishing the minimum retirement conditions, but also when calculating a pension. In the latter case, purchased periods were not completely overlooked. This is one of the reasons why the trade unions first considered to bring action also before the European Court of Human Rights for breaching the right to property, but this idea was abandoned later.

In another decision, the Slovenian Constitutional Court emphasised the importance of procedural law, enabling procedural access to the right to a pension.³⁵ It argued that the former ZPIZ-1 contained the provision that for procedural matters the general administrative procedural law was applicable. The legislator assumed that the specific characteristics of the right to a pension did not require a special procedure nor a special legal remedy to revoke the decision, even in case of serious procedural flaws during the procedure of recognising the claim to a pension *ex nunc* (for the future). The Constitutional Court ruled that there are no reasonable arguments for not adjusting the legislative norms to the specific nature of the right to a pension. It found a violation of Article 50 of the Constitution, regulating the Right to Social Security (and which included the right to a pension),

³⁴ Decision U-I-246/13, SI:USRS:2016:U.I.246.13.

³⁵ Decision Up-195/13, U-I-67/16, SI:USRS:2017:Up.195.13.

annulled the decisions of the (social) courts and returned the procedure before the first instance social court, requesting to take into account the adjusted provisions of the new ZPIZ-2.

2.1.3. Relieving the Austerity Measures

As the GDP is growing again, the austerity measures should be relieved and enable decent living also to pensioners. According to the Implementation of the Republic of Slovenia's Budget for 2017 and 2018 Act (*Zakon o izvrševanju proračunov Republike Slovenije za leti 2017 in 2018*, ZIPRS1718)³⁶ pensions were indexed at the level of 1.15 percent³⁷ (according to the rules of indexation, taking into account prices and raise of wages in the proportion of 40:60), which is a bit higher than the regular indexation would have been.

Nevertheless, the yearly supplement is still not paid to every retired person, as it should be according to ZPIZ-2. As in 2016, the yearly supplement in 2017 will vary between a maximum amount of 390 euro for those with pensions below 414 euro, down to 140 euro for pensions up to 750 euro, while for those with higher pensions no yearly supplement is foreseen.³⁸ Hence it is still a measure providing most support for those with the lowest pensions. Quite a similar measure is in the course of legislative procedure, i.e. the proposal to raise the minimum pension in case of a full pension period.

2.1.4. Proposal for Raising Minimum Pensions for a Full Pension Period

The government has made a proposal to raise the minimum pension of pensioners with longer pensionable periods, who have not purchased any insurance periods.³⁹ The aim is to avoid them being dependent on social assistance, more specifically on the supplementary allowance for the elderly (and disabled).

There is evidence that certain pensions are below 500 euro, which is hardly enough to survive. Hence persons, who have worked for 40 years (or less, according to minimum retirement conditions at the time of retirement, but have fulfilled regular/full retirement conditions) should have a pension of at least 500 euro.

Reasons for very low pensions are no or only a limited indexation of pensions for the years during the recent economic recession, which has a permanent influence on the level of pensions, and very low salaries of pensioners during their active period: as a consequence their pensions were calculated from the minimum pension calculation base, so they end up with an old-age pension below the level of social assistance benefits. The proposal to increment such pensions was evaluated positively and approved by the parliamentary committee for labour at the beginning of April 2017 and most certainly will be adopted by parliament in the future.

The proposal to raise *all* minimum pensions, regardless of pension insurance periods, was rejected, since at the time of retirement the insured persons knew whether they met full pension conditions or not. Moreover, the question is whether pensions should really have the function to correct labour

³⁶ Official Gazette RS, No. 80/2016.

³⁷ Article 68 ZPIRS1718.

³⁸ Article 74 ZPIRS1718.

³⁹ https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=F6D721C214D4F60BC1258092004DA305&db=pre_zak&mandat=VII&tip=doc, April 2017.

market outcomes, or whether they should be a mere reflection of it. Pensions are based on the principles of solidarity and reciprocity. Hence, the pensions above the minimum in pension insurance should be covered by the State, as a form of social assistance for the elderly, and not by other insured persons. Inequalities at the labour market should be fought against at their source, i.e. at the labour market, and not in social pension insurance.

2.2. Mandatory Health Insurance

2.2.1. Proposal of the New Legislative Act in Public Discussion

The Ministry of Health has introduced to public discussion a long expected law on health care and health insurance (*Predlog Zakona o zdravstvenem varstvu in zdravstvenem zavarovanju – ZZVZZ-1*). It is one of the major projects of the governing coalition. So far, it seems that no one is fully satisfied with the proposal, but there is also no strong opposition against it.

One of the new features is mentioning the leading principles and goals of (public) health care and (mandatory) health insurance. They are the principles of universality, accessibility (including geographical, timely, financial, informational and procedural access), solidarity (meaning everyone is contributing according to economic capability and receiving healthcare according to the needs of health condition), reciprocity, equality, non-profit making and providing high quality health care, by well-educated and equipped providers, who aim to achieve one of the goals of treatment according to the developed treatment plan.

Moreover, further legislative provisions concerning insured persons, their rights and obligations (of financing mandatory health insurance) and modifications of the administrative organisation have been proposed.

Insured persons and insurance carrier

The legislative proposal mentioned all groups of insured persons more specifically and provides for coverage of all children, regardless of their status. As to the social insurance relation between insured persons and insurance carrier, it is proposed to modify the structure of the Health Insurance Institute of Slovenia. The two-tier self-government (now with self-governing managing board and assembly) should be replaced by a one-tier self-government consisting of a Council. It should be composed of 9 members, instead of presently 45 members of the assembly (i.e. 20 employers and 25 insured persons) and 11 members in the management board. However, its structure might be more important than the number of its members.

It is proposed that the Council is composed of five representatives of the insured persons (two for employees, two for retirees and one representing disabled persons), three representatives of employers (two members for employers' associations and one for the government as the largest employer) and one member of the government (as the one responsible for co-financing mandatory health insurance). It seems important that insured persons keep the majority of votes, since it is about their rights (to healthcare and sickness cash benefit).

Health care rights

What might be even more essential is that the proposed ZZVZZ-1 regulates all the rights stemming from mandatory health insurance, which at the moment is not the case. The scope of the rights is enshrined in the Rules of mandatory health insurance (*Pravila obveznega zdravstvenega zavarovanja*),⁴⁰ which was quite often held to be of legislative substance. This situation is not in conformity with the Constitution, as only a legislative act may regulate rights and their scope (including limitations of the rights). Lower legal acts (rules and regulations) may not modify or independently regulate rights and duties. Legislative norms may be further regulated only as long as the rights and obligations are not touched upon and not narrowed.⁴¹ This can involve rules on concrete professional, medical and technical issues and substance that are not appropriate for legislative regulation.

Moreover, it is proposed to abolish cost-sharing. One of the characteristics of Slovenian health insurance are large co-payments (from zero to 90 percent of healthcare cost), and the majority of persons covered by mandatory insurance take out private health insurance against these co-payments (for social assistance recipients co-payments are covered by the State). They all pay the same amount (of direct payment or private supplementary health insurance premium), regardless of not only age or sex but also of income, which is perceived as unjust, hitting the most those with lower income. There is also no evidence that co-payments contribute to reduce the total healthcare expenditure. Part of the financial burden is being shifted from mandatory health insurance to the patients (and their families).⁴²

Not only the introduction of co-payments, but especially the many (complex) exceptions based on concerns of equity and equitable access to healthcare, may cause rather expensive cost-sharing arrangements.⁴³ Moreover, private insurance companies use the collected funds for their administration and promotion, funds, which could be used for healthcare.

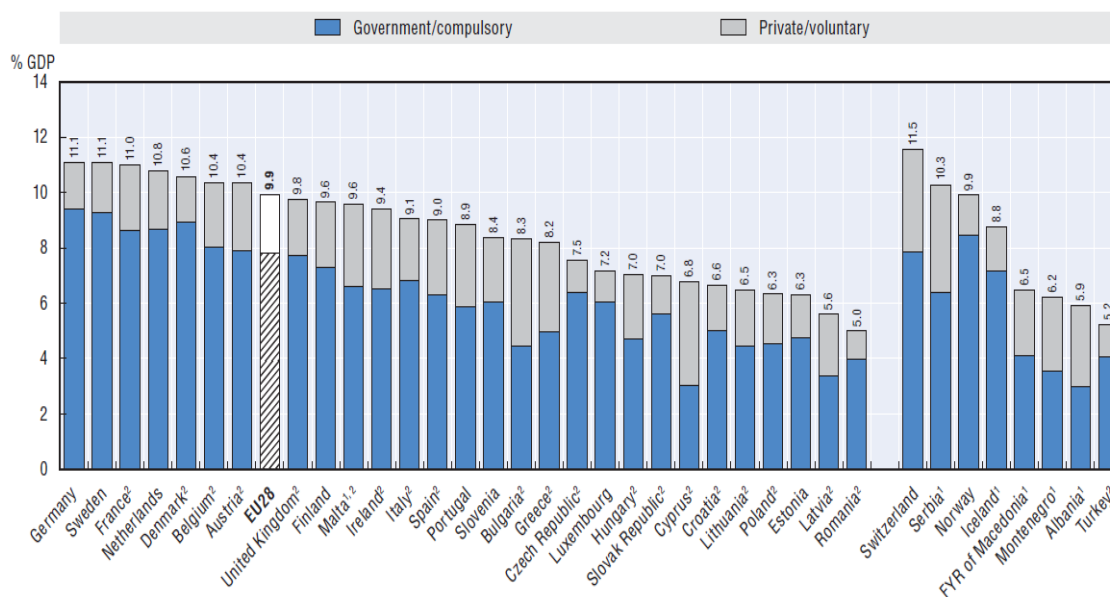
⁴⁰ Official Gazette RS, No. 79/1994, last amendment in 85/2014.

⁴¹ Decision U-I-125/97, SI:USRS:1998:U.I.125.97, one of the latest decisions is Decision Up-1303/11, U-I-25/14, SI:USRS:2014:Up.1303.11.

⁴² Van Langendonck J., Health care between efficiency and quality, in: Bosco, A and Hutsebaut M (eds), Social Protection in Europe, Facing up to Changes and Challenges, ETUC-ETUI, 1997, p. 348. In addition, wealthier users in some countries might be convinced that more expensive healthcare (where user charges are higher) is better, since not everyone can afford it, and increasingly ask for it. Hence the goal of discouraging overuse of care and reducing unnecessary demand might not be achieved either in this case.

⁴³ In Germany, co-payment in the form of a consultation fee (*Praxisgebühr*) of EUR 10 per quarter at the first visit to the physician (excluded for certain medical check-ups) was abolished from the beginning of 2013. While such co-payments did not contribute to a significant reduction in visits, they deterred those with lower income from visiting physicians. It was a burden for patients and providers (due to bureaucratic procedures) and the revenue was rather low (one per cent of social health insurance expenditure. *Beschlussempfehlung und Bericht des Bundestagsausschusses für Gesundheit*, Bundestags-Drucksache 17/11396, 7 November 2012. More on the *Gesetz zur Regelung des Assistenzpflegebedarfs in stationären Vorsorge- oder Rehabilitationseinrichtungen* at <http://www.bmg.bund.de/ministerium/presse/pressemitteilungen/2012-04/bundestag-ende-der-praxisgebuehr.html>, accessed in April 2014

The following table shows the share of private funds, linked to private supplementary health insurance in Slovenia:



1. Includes investments.

2. OECD estimate.

Source: OECD Health Statistics 2016; Eurostat Database; WHO, Global Health Expenditure Database.

It is argued that there are alternatives to cost-sharing. The objectives of direct cost sharing and supplementary private insurance for user charges (as a kind of indirect cost sharing) might not be fully achieved. Other measures might therefore be used to raise cost awareness, steering the consumption/demand (away from overuse and unnecessary benefits in kind), and collecting additional revenue for healthcare systems.

For instance, raising awareness of healthcare costs could also (or more effectively) be achieved with invoices including the actual costs of care provided, which could be handed out after receiving the treatment or pharmaceutical. It should be clearly stated how much the social protection system has had to pay for healthcare and the amount of any user charge.⁴⁴

Better methods for reducing healthcare costs might also be found on the supply side, rather than on the demand side. Among these methods are improved care coordination and gatekeeping. Coordination between distinct levels of care, i.e. primary, secondary and tertiary care, but also between health and long-term care and other social services could be improved. By the way, long-term care insurance should be introduced or at least proposed soon after the new ZZVZZ-1 is adopted by the Slovenian Parliament.

General practitioners may act as gatekeepers in order to prevent direct, more costly and uncontrolled use of specialists' services. So-called *doctor (s)hopping*, which may prove to be rather costly, should be prevented.⁴⁵ Medical practitioners should also be discouraged from recommending

⁴⁴ This is already the case in some MISSOC countries (e.g. in Slovenia for pharmaceuticals). However, the behaviour of individual patients might not be the same. Some would start living healthier lives after noticing the amount social protection had to pay for care, but others might be unaffected by this.

⁴⁵ Doctor hopping is when there is no requirement to consult a primary care physician, but a patient can consult a specialist directly, a practice which is close to doctor shopping.

excessive treatment. This may ensure that patients are kept out of high-cost institutional (hospital) environments as much as possible. In-patient treatment in hospital should then be the solution of last resort (*ultimum remedium*).

There are also other ways of controlling the cost of health care. Among them are regulating prices and wages, restraining prices of pharmaceuticals (for instance through negotiations, setting cost ceilings for specific drugs or therapeutic groups, promoting the use of generics), budgetary caps and constraints (which might not always be respected), modifying methods of payment (e.g., lump sum according to diagnosis-related groups (DRGs), capitation fee, modified with a fee for service), cost control in a decentralised environment, using incentives to improve supply-side performance (and cost efficiency).

Moreover, it could be argued that the idea that individuals will be better off because they are paying higher prices can hardly be accepted. It is the use of available resources that is important, and there is no particular reason that they should be provided by patients. User charges say absolutely nothing about the quality of services. What is most important is that only good quality health and long-term care is paid for by the social protection system. Then every euro spent on such care would be a euro well spent and there would be hardly any need for other measures to contain expenditure. Conversely, every euro spent on bad quality care is one euro spent too much and should be eliminated.⁴⁶

However, due to abolishing co-payments, there would be lack of funds, now collected at private insurance companies. The Ministry of Health has proposed a rather unorthodox solution. A so called 'health substitute payment', in Slovenian '*zdravstveno nadomestilo*' should substitute the existing private supplementary health insurance. Another proposal is to rename it 'supplementary health contribution'. It should be progressive, with eight groups, i.e. ranging from 20 to 75 euro per month (insurance premium for current private supplementary health insurance is approximately 30 euro). A rather new feature is that insured persons would be grouped into these eight brackets according to their entire income (active and passive, i.e. from capital yields or renting apartments, interests etc.). This feature is based on the leading principles that everyone should contribute according to economic capacity and receive healthcare according to the needs of his or her health situation.

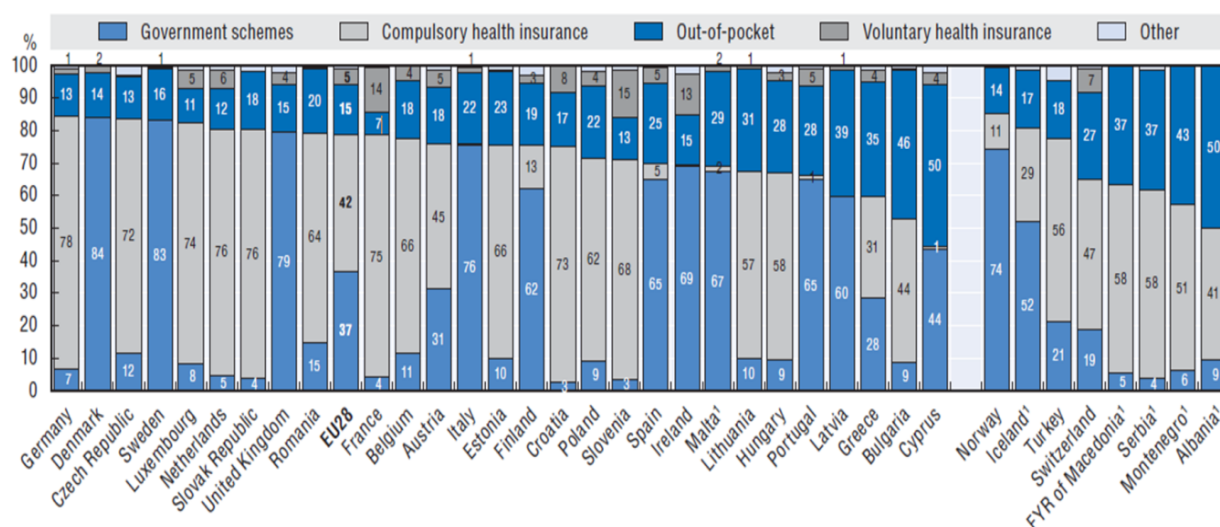
Such health substitute payment would be paid from net income. It should be mandatory, but would not be considered as part of taxes or social security contributions. This is outside of the current system, in which mandatory payments are either taxes or contributions. Moreover, the basis should be income from one or in certain cases two years ago, which might not correspond to present income of an insured person. The question of legal consequences, if such payment is actually not paid might be raised, since there is a clear duty to pay taxes and social security contributions (and this payment is part of neither of them). It seems that the Ministry of Finance agreed with such solution at first, but is now reconsidering. One of the reasons is that high income earners have been exonerated to a certain extent in tax law rather recently. However, this does not mean that they have to be exonerated a second time, this time in mandatory health insurance.

⁴⁶ More, also with further references, G. Strban, Cost sharing for Health and Long-term Care Benefits in Kind, MISSOC Analysis 2014/1, MISSOC Secretariat, For the European Commission, DG Employment, Social Affairs & Inclusion, Contract, 2014, 39 p.

Nevertheless, it seems that the 'health substitute payment' is not the best solution. It would be much more equitable to raise contributions to mandatory health insurance (the contribution base could be broadened and/or the contribution rate modified). Reducing the need for healthcare through prevention and health promotion measures, as well as better communication between patients and care providers, could also prove to be more effective in ensuring financially sustainable healthcare in the long run than user charges. Moreover, rising of the contribution level would be more progressive and hence a fairer solution than the proposed 'health substitute payment', which actually presents a certain 'social cap' on income from which contributions should be paid. Such a cap is clearly more beneficial for high income earners and private insurance companies who might offer additional insurance.

Next to social security contributions, tax revenue should be used more in funding mandatory health insurance. It is argued that budgetary financing (and finding budgetary space for it) may have anticyclical effects during the economic crisis with dropping levels of social security contributions, due to higher unemployment rates. For the moment, Slovenian mandatory health insurance is still exposed to the economic crisis, since it is predominantly financed out of social insurance contributions, based on economic activity. Therefore, more funding should be provided by the state budget, and maybe by earmarked taxes (for health purposes), for example on sweet drinks as currently discussed. Higher taxes have been introduced already on tobacco, among others, in order to tackle this problem.

The table below shows the relatively low funding from the State budget in Slovenia (amounting to only three percent of total health expenditure).



Note: Countries are ranked by government schemes and compulsory health insurance as a share of current health expenditure.

1. Includes investments.

Source: OECD Health Statistics 2016; Eurostat Database; WHO, Global Health Expenditure Database.

Cross-border healthcare

The proposed ZZVZZ-1 regulated also the right to cross-border healthcare according to all three legal bases, i.e. national legislation, Regulation (EC) 883/2004 on the coordination of social security systems and Directive 2011/24/EU on the application of patients' rights in cross-border healthcare.

One of the measures aimed at shortening the waiting times could be to enable access to purely private healthcare providers also in Slovenia, since such access already exists in cross-border cases on the basis of Directive 2011/24/EU. However, it was decided that cost reimbursement (of 80 percent of actual costs, or even 60 or 50 percent) for purely private healthcare could undermine the mandatory health insurance, especially on the expenditure side. It is argued that there are two legal regimes, i.e. the Slovenian and the EU regime on free movement of services. The latter does not influence internal (Slovenian) patients and healthcare providers, but becomes applicable only at cross-border movement.⁴⁷

Also, some practical problems may be detected in cross-border movements. For instance, if the same healthcare providers offer public and private healthcare, mobile patients might lack information (asymmetry of information in healthcare is even more emphasised in cross-border healthcare) to make an informed choice between the Regulation (EC) 883/2004 and Directive 2011/24/EU as two distinct legal paths. In many Member States public providers may offer private healthcare and *vice versa*, private providers may be included in the public healthcare provision, while at the same time they are allowed to offer private services as well. The latter are as a rule guaranteed without waiting lists, but with higher tariffs and direct payment. Therefore, it is 'easier' for healthcare providers to treat mobile patients as private patients. Nevertheless, such steering is not allowed and is supervised and sanctioned in some Member States. Nevertheless, the actual behaviour of mobile patients is decisive in choosing the legal path.

It should be emphasised that all legal rules pertaining to cross-border healthcare and their interpretation should be to the benefit of mobile and national patients. All mobile patients should have equal access to cross-border healthcare of the highest quality. At the same time, based on EU citizenship, the same should apply to patients who are (for one reason or other) not moving within the EU.⁴⁸

2.2.2. Proposals to Amend the Patient's Rights Act

Approximately at the same time as proposing the new ZZVZZ-1, the Ministry of Health sent to public discussion modifications of the Patients' Rights Act (*Zakon o pacientovih pravicah*, ZPacP).⁴⁹ The main purpose is to abolish unnecessary waiting times, which is considered as one of the problems of healthcare provision in Slovenia.

It is proposed that the waiting list is kept by the service and by the healthcare provider, and that additional information should be available on the reasons for modifying the waiting list, for deleting a patient from the list and that there should be an indication of patients' preferences. All (private and public) patients have the right to choose their healthcare provider freely. However, if (*ad absurdum*) all patients would want to wait for a specific healthcare provider this cannot be counted as an unreasonable waiting time, if other equally specialised providers are available. The patient can be

⁴⁷ C.f. Article 1, paragraph 4 of the Directive 2011/24/EU, stating that »...nothing in this Directive obliges a Member State to reimburse costs of healthcare provided by healthcare providers established on its own territory if those providers are not part of the social security system or public health system of that Member State.

⁴⁸ More in G. Strban (ed.) et al., Access to healthcare in cross-border situations, Analytical Report 2016, Report prepared under Contract No VC/2015/0940 - FreSso, January 2017

⁴⁹ Official Gazette RS, No. 15/2008.

only on one list at the time for the same service, whereas up until now patients could be in more than one list.

2.2.3. Amendments and Proposals of Modifying Healthcare Provision Rules

The Ministry of Health has proposed a comprehensive healthcare reform, including modifications to the Health Services Act (*Zakon o zdravstveni dejavnosti*, ZZDej)⁵⁰ and to the Medical Practitioners Act (*Zakon o zdravniški službi*, ZZdrS).⁵¹

One of the main concerns is the payment of public and private providers, which are now paid equally for the same healthcare program. This might seem justified. However, they do not have the same costs. Private providers conclude private law contracts with physicians, which are far less costly than employing them. Hence payment should be more adjusted to real healthcare costs of distinct providers.

Now, many physicians work also privately, accept patients without any waiting time, but requesting direct payment. When they have a diagnosis, they ask the patients to come and visit them in a public healthcare institution in order to provide a service. Such a mixture of public and private provision is unwanted, since it prolongs the waiting times for patients who cannot afford to visit private physician first and get the diagnosis without waiting time. Healthcare is characterised with asymmetry of information (physicians always knowing more than patients) and such steering of patients is much easier if the same provider offers public and private healthcare.

Moreover, also a new legislative act on quality and safety is being discussed and prepared for public discussion.

2.2.4. Further Restrictions on the Use of Tobacco

After quite some discussion, fuelled also by tobacco companies, the new law on Restriction on the Use of Tobacco and Related Products Act (*Zakon o omejevanju uporabe tobačnih in povezanih izdelkov*, ZOUTPI)⁵² was passed in February 2017.

It is prescribed how the cigarette should look like (not to be made too attractive), and that they should not contain any aromas or additives, and most importantly clear medical warnings of certain dimension should be on every package. Similar rules now apply to smokeless cigarettes, electronic cigarettes and certain herbal cigarettes; and selling tobacco for oral use is prohibited. Moreover, places for smokers are regulated more strictly. They are not allowed in healthcare facilities, and where they are allowed, bringing in food and drinks is prohibited.

Clear intention of the legislator is to further limit the use of tobacco as part of a primary and generally effective (i.e. for the entire population) preventive measure. All the measures should be in line with the Directive 2014/40/EU on the approximation of the laws, regulations and administrative

⁵⁰ Official Gazette RS, No. 9/1992, last amended in 88/2016.

⁵¹ Official Gazette RS, No. 98/1999, last amended in 88/2016.

⁵² Official Gazette RS, No. 9/2017.

provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.⁵³

2.3. Unemployment Insurance and Labour Market Issues

There were no modifications of the unemployment insurance scheme in the reported period between beginning of 2016 and beginning of 2017.

Nevertheless, a new legislative act was passed, i.e. Transnational Provision of Services Act (*Zakon o čezmejnem izvajanju storitev*, ZČmIS).⁵⁴ With this law the posting Directive 96/71/EC⁵⁵ and the posting enforcement Directive 2014/67/EU⁵⁶ were transposed into the Slovenian legal system.

It might be interesting to note, from the social security point of view, that there are new rules on issuing (when persons provide services in another Member State) and controlling (when persons provide services from other member States in Slovenia) of A1 form on applicable legislation, according to the Regulation (EC) 883/2004 on coordination of the social security systems.⁵⁷

A new legislative act (ZČmIS) envisages prior notification of an employer who wants to perform services in Slovenia. As it is now, it should be done with the Employment Service of Slovenia, who issues a certificate.

A foreign employer has to make sure that during service provision all relevant documents (including posting certificate A1) are kept and produced to the inspection bodies. Some documents have to be translated, but there is no such provision for a unified posting certificate A1. The inspection body can ask for all relevant documents during the service provision and for up to 24 months after conclusion of the service provision in Slovenia.

Cross-border collaboration among all relevant bodies and sanctions enforcement is regulated in a more detailed manner. Slovenian bodies could notify their partner bodies and suggest withdrawal of a posting certificate A1 in case of irregularities. There is no alternative to posting certificate A1 in case of short-notice posting foreseen and A1 should be always produced.

There is a special official website dedicated to the posting of workers (in SI, EN, DE and HR languages), i.e. <http://www.napotenidelavci.si/de/>.

⁵³ OJ L 127, 29.4.2014, p. 1-38.

⁵⁴ Official Gazette RS, No. 10/2017.

⁵⁵ Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, p. 1-6.

⁵⁶ Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') OJ L 159, 28.5.2014, p. 11–31

⁵⁷ OJ L 166, 30.4.2004, p. 1-123, as amended.

2.4. Proposals for the Full Application of the Parental Care and Family Benefits Act

The new Parental Care and Family Benefits Act (*Zakon o starševskem varstvu in družinskih prejemkih*, ZSDP-1)⁵⁸ from 2014 still refers to certain austerity measures, which are restricting certain benefits, including the child benefit.

There is a proposal from one of the opposition parties to remove the provisions relating to austerity measures and apply the ZSDP-1 in its full scope. Such proposal for amending the ZSDP-1 was lodged and legislative procedure was initiated. Its outcome can hardly be predicted. However, when the recent economic recession comes to an end, then people should benefit from it, also with respect to the restrictions of rights under the parental care insurance and the family benefits scheme.

2.5. Social Assistance Scheme

The Ministry of Labour, Family, Social Affairs and Equal Opportunities still construes the social assistance legislation in a way that prevents long term social assistance recipients who own real estate to sell it during their lifetime. The intention is, to prevent family member of deceased social assistance recipients of being enriched by such decease. The problem is that this applies also to young social assistance recipients, who may later on become employed and never apply for social assistance again. The interpretation is that they have to repay the received social assistance, with interest, before they can sell the real estate (e.g. a small apartment in order to buy a more suitable one when forming a family). There is no legal ground to maintain the prohibition of selling real estate once a person is no longer a social assistance recipient. However, there are no (social) court cases on this subject.

Nevertheless, the Ministry has introduced more lenient measures in 2016.⁵⁹ One of them removed the prohibition related to the sale of real estate, if its value does not amount to more than 120.000 euro. This uniform amount might be perceived as unfair, since apartments in the capital city of Ljubljana (and in the coastal region) are much more expensive than in other parts of Slovenia. It would be better to link the exemption to the appropriate size of the real estate, rather than to its price.

Moreover, it is recognised that the structure of 62 regional centres for social work does no longer correspond to the real needs of the population. During the times of economic recession the number of social assistance recipients has increased, new forms of addictions, distinctive forms of violence and other social problems have emerged. Therefore a new structure has been proposed, i.e. 16 additional regional centres for social work should be established. Moreover, the decision-making process should be speeded-up (by issuing automated informative decisions for certain rights, without the need for lodging the claim every year, which become administrative decisions if nobody complains).⁶⁰

⁵⁸ Official Gazette RS, No. 26/2014, last amended 90/2015.

⁵⁹ See modifications to the Social Assistance Benefits Act (*Zakon o spremembah in dopolnitvah Zakona o socialno varstvenih prejemkih*, ZSVarPre-E), Official Gazette RS, No. 88/2016.

⁶⁰ Ministry of Labour, Family, Social Affairs and Equal Opportunities, http://www.mddsz.gov.si/si/delovna_podrocja/sociala/reorganizacija_centrov_za_socialno_delo/, April 2017.

3. INTERNATIONAL AGREEMENTS IN SOCIAL SECURITY

The negotiations on a bilateral social security agreement between Slovenia and the USA were successfully concluded and a bilateral agreement was signed in January 2017 by the Minister of Labour, Family, Social Affairs and Equal Opportunities of Slovenia and the Ambassador of the USA.

This agreement should ease the access to pension and invalidity insurance rights for citizens of both contracting parties and at the same time ensure a high level of data protection. For instance, in order to acquire pension rights in the USA, an insured person will have to collect a minimum of 18 months of insurance there, instead of now 10 years. Of course, insurance periods will be totalised and pension will be paid *pro rata temporis*, i.e. in accordance with the insurance periods in each of the contracting party.

It is assumed that this would enable the return of many Slovenian nationals, who would like to return to Slovenia after several years of working in the USA. This would include also many young, high-skilled experts and researchers, who can be of great importance for the future development in Slovenia and who cherish very much the freedom of movement.

The bilateral agreement should also enable posting of workers to another contracting party, for a period of up to five years. This will prevent double contribution payment for posted workers. It is expected that business environment will become more competitive and open to investment in Slovenia as well as ease the provision of services of Slovenian companies in the USA.

Moreover, the pension rights will be exported from one contracting party to another. This is important for Slovenia, since the USA was the last country where larger groups of Slovenian nationals live, with which there was no bilateral agreement.⁶¹

The negotiations for the bilateral agreement with South Korea and another one with Russia seem to be still ongoing.

4. IMPORTANT ACTS PASSED OR AMENDED IN 2016/2017

Transnational Provision of Services Act (*Zakon o čezmejnem izvajanju storitev - ZČmIS*), Official Gazette RS, No. 10/2017

Act amending certain acts in the field of health services (*Zakon o spremembah in dopolnitvah določenih zakonov s področja zdravstvene dejavnosti – ZdZPZD*), Official Gazette RS, No. 88/2016.

Act amending the Social Assistance Benefits Act (*Zakon o spremembah Zakona o socialno varstvenih prejemkih, ZSVarPre-E*), Official Gazette RS, No. 88/2016

Act Modifying and Amending the Exercise of Rights from Public Funds Act (*Zakon o spremembi in dopolnitvi Zakona o uveljavljanju pravic iz javnih sredstev– ZUPJS-F*), Official Gazette RS, No. 88/2016

⁶¹ http://www.mddsz.gov.si/nc/si/medijsko_sredisce/novica/article//8082/, March 2017.

Act Modifying and Amending the Social Assistance Act (*Zakon o spremembah in dopolnitvah Zakona o socialnem varstvu ZSV-F*), (Uradni list RS, št. 39/16) Official Gazette RS, No. 39/2016

5. SELECTED BOOKS AND ARTICLES IN 2016/2017

5.1. Books and Book Chapters

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- Strban, Grega: Constitutional protection of the right to social security in Slovenia, in: Egorov, Alexandre, Wujczyk, Marcin (eds.), The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice. ILO Global Study, Volume 1: Europe. International Labour Organisation, Geneva 2016, p. 243-260 [ISBN 978-92-2-130400-5 (print), ISBN 978-92-2-130401-2 (web pdf)]
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5.2. Journals

- Becker, Ulrich: Organisation and Financing of the German Health Insurance, Delavci in delodajalci, Vol. XVI, 2016, Nr. 4, p. 539-554. [ISSN 1580-6316]
- Mišič, Luka: Socialna država, svoboda in vprašanje privatizacije socialnih tveganj skozi zasebna zavarovanja (Welfare state, freedom and the issue of privatizing social risks through the use of private insurance), Delavci in delodajalci, Vol. XVI, 2016, Nr. 1, p. 61-81 [ISSN 1580-6316]
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