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Chile 2022: A New Opportunity for Structural Change?

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LIST OF ABBREVIATIONS

| | |
|--------|-------------------------------------------------------|
| AFP | Pension Funds Administrator |
| CLP | Chilean Pesos |
| DL | Decree-Law |
| ENUSC | National Urban Survey on Citizen Security |
| FONASA | National Health Fund |
| INE | National Institute of Statistics |
| IPC | Consumer Price Index |
| IPSUSS | Institute for Public Health Policy |
| ISAPRE | Health Insurance Institutions |
| MAI | Institutional Care Modality |
| MLE | Free Choice Modality |
| MPISOC | Max Planck Institute for Social Law and Social Policy |
| PGU | Universal Guaranteed Pension |
| PNUD | United Nations Development Programme |
| RSH | Social Registry of Households |
| SERVEL | Chilean Electoral Service |
| UF | Unidad de Fomento |

1. INTRODUCTION

2022 was a year of many challenges for Chile. After the most critical period of the pandemic, the government's efforts focused on stabilising the economy and overcoming the multiple social problems that COVID had exacerbated. Despite the rejection of the proposed new Constitution, it seemed clear that Chile required profound institutional changes that would allow for the proper and timely channelling of social demands for greater equality in the country. Hence, a new constituent process began in December 2022, which will culminate in December 2023, while the government and the National Congress continue to push for social reforms at the same time, where the most pressing issues remain the old-age pension system and the health care system.

2. SOCIAL, POLITICAL AND ECONOMIC SITUATION

2.1. Social Situation

As coronavirus mortality declined, the year 2022 was marked by the end of quarantine measures and the gradual lifting of capacity limits. However, the progressive lifting of mobility restrictions imposed in 2020 and 2021 to address COVID-19 shed light on a number of social issues that had hitherto gone relatively unnoticed or whose true extent was unknown (PNUD, 2022). While these developments have been building up over several years and are not attributable to any particular administration, they have posed severe challenges to the health, justice, social security and education systems, while contributing to intensifying the already widespread polarisation of the population. Moreover, these developments have deepened the already existing distrust in institutions and created a fertile ground for the emergence of populist and authoritarian leaderships.

One of these issues was the migration crisis that had been brewing since 2020 in the northern and central regions of the country, as a result of an increased flow of people entering through unauthorised crossings (Gaete, 2022). This practice entails enormous risks, as it exposes migrants to transnational criminal organisations, with enormous risks to their physical and psychological integrity, notably sexual exploitation, forced labour and other dangers associated with human smuggling and trafficking. Most migrants come from countries in the Americas that have experienced socio-political fractures or environmental disasters, such as Venezuela, Bolivia, Colombia and Haiti. As their presence led to tensions in the areas of education, health, labour and public security, the institutional response has focused on repression and expulsion rather than integration and protection.

In addition, although the last ten years have seen an overall decrease in many serious criminal offenses, the following crimes were on the rise in 2022: homicide, rape, robbery with violence (with intimidation), robbery with force (motor vehicle robbery, robbery of a vehicle accessory, robbery in an inhabited place and robbery in a non-inhabited place), injuries and theft (García,

2023; Subsecretaría de Prevención del Delito, 2023). As could be expected, the public has negatively evaluated this situation, expressing a growing fear of becoming a victim of crime. Many people took measures to protect themselves, ranging from not leaving the house at certain times of day to carrying weapons (Fundación Paz Ciudadana, 2022). The fact that the municipalities most affected by the migration crisis are, at the same time, those that have experienced the most significant increases in crime rates has led to a large part of society blaming migrants for this phenomenon (Diario Constitucional, 2022).

The situation in the south of the country is particularly complex, due to the centuries-old conflict between the native Mapuche people and the Chilean State over unsatisfied demands for the restitution of ancestral lands, which are currently owned by agricultural and forestry companies (Salas, 2022). Violence in this area has been ongoing for decades but has been increasing in recent years – as evidenced by frequent arson attacks and roadblocks – and provoked military interventions in October 2021 by former president Sebastián Piñera. The new president, Gabriel Boric, promised during his campaign that he would withdraw the military from southern Chile and did so in March 2022, but increasing violence forced him to re-impose a state of emergency (Menéndez, 2022). Given the extraordinary gravity of the situation, the presence of the armed forces in the conflict zone is likely to be extended indefinitely. Meanwhile, other approaches to solutions centred on cultural integration, historical recognition, land restitution and fair and dignified treatment of the Mapuche are virtually absent from the public debate.

At the same time, Chile ranked 58th out of 163 in the Global Peace Index 2023 (Institute for Economics & Peace, 2023a), down from 55th position in 2022, which represents a slight worsening of its situation compared to 2022. Moreover, according to the Global Terrorism Index 2023, Chile climbed from 47th place among the countries with the highest levels of terrorism in 2020 to the 17th (Institute for Economics & Peace, 2023). Such figures suggest that Chilean criminal organisations reinvented themselves in the context of the restrictions on movement and economic activity imposed during the pandemic and that they shifted their activities and capital to new areas (Basaure, 2022). For the time being, there is little analysis of the causes of this situation or its connection to the 2019 protests against social inequality, and responses continue to focus on repression rather than addressing the structural causes of social problems.

On the other hand, during the pandemic, the Chilean education system was severely strained. Structural inequalities in internet access, especially in isolated or poor areas, along with other social inequalities in housing and education, deepened existing learning gaps and contributed to the deterioration of students' mental health (España, 2022). After two years of confinement and other mobility restrictions, face-to-face classes finally resumed in Chile in March 2022. When more than 80% of school and university students were already fully vaccinated, capacity restrictions were lifted in all spaces within educational establishments, but with the request for social distancing in everyday activities. While this measure represented a step in the right

direction, addressing the educational consequences of the pandemic will surely require sustained efforts in the years to come.

2.2. Political Situation

After winning the second round of elections in December 2021, Gabriel Boric took office as President of the Republic in March 2022. His government promised to respond to demands for political and social change, including formalising and increasing employment, reducing the working week to 40 hours, raising the minimum wage to CLP\$500,000 (approximately 511.34 Euro), reforming the pension system and legally recognising multi-level collective bargaining (Apruebo Dignidad, 2021). However, many of these promises required cross-cutting political agreements, which were not very plausible given the composition of the National Congress, or simply exceeded the capacities of the executive in the Chilean constitutional system and depended on the approval of the new constitutional text. Indeed, if the proposal had been approved in the referendum scheduled for September 2022, the government would have had the possibility to implement its programme and design public policies that previously would most likely not have been constitutional.

The draft new Constitution introduced far-reaching and apparently positive reforms in line with the citizens' demands expressed during the social outbreak of 2019, guaranteeing a stronger role for the State in the management of the economy and ensuring universal access to public education and health. For the first time in the country's constitutional history, it declared Chile a plurinational State and recognised the rights of indigenous peoples, including their language, form of social organisation and legal system. The proposal also introduced a gender parity rule in various elected and non-elected public offices and explicitly enshrined sexual and reproductive rights. It also assigned nature the status of a rights holder and established State duties of protection and stewardship of natural resources.

While the proposal was widely praised by some as a breakthrough in safeguarding the rights of historically marginalised groups and protecting the environment (Huneeus, 2022), others harshly questioned its radicalism and disconnection with reality (The Economist, 2022). The close links between Boric's government programme and the Constitutional Convention suggested that the referendum to approve or reject the constitutional draft could de facto act as a vote to approve or reject the president's administration (Lissardy, 2022). Ultimately, the polarisation generated by the proposal, together with communication errors by some members of the Constitutional Convention and disinformation campaigns, led to a surprising result: The 'reject' option won with 61.89% of the votes, while the 'approve' option only achieved 38.11% (SERVEL, 2022).

The citizens' open rejection of this proposal in the referendum held in September 2022 raises a series of questions about the reasonableness and intensity of the reforms included in the draft and, more generally, about the viability of promoting structural changes in the future.

However, a new constitutional text is not yet a foregone conclusion. In December 2022, 14 of the 16 political parties represented in the National Congress¹ signed the 'Agreement for Chile' which laid the foundations for initiating a new constituent process (Congreso Nacional, 2022). This 'Agreement', in turn, led to a constitutional reform (Act N° 21.533, 17 January 2023) that created the institutions in charge of drafting a new constitutional proposal and defined the procedure to be followed.

One of the most novel aspects of the new procedure is the establishment of twelve bases or minimum contents to be incorporated into the proposal, including the democratic and unitary character of the Chilean State, as well as its commitment to the promotion of social rights, subject to the principle of fiscal responsibility and through State and private institutions. In March 2023, a group of appointed experts will convene to prepare a draft of a new Constitution. Then, in May 2023, elections will be held to choose the members of the Constitutional Council, the body in charge of formulating additions, modifications or deletions to the draft prepared by the experts. A referendum is scheduled for December 2023, in which the public will be asked whether it accepts or rejects the Constitutional Council's final proposal.

In addition to this new constitution-making process, another of the government's major challenges will be to engage in dialogue with an opposition that is increasingly leaning to the extreme right of the political spectrum, especially given the emergence of the Republican Party and of the Party of the People – both right-wing and populist parties – in Congress after the 2021 elections (SERVEL, 2021). It is yet to be seen whether the various opposition parties will be able to come together to achieve a unity of purpose, and to what extent this articulation will entail assuming an obstructionist role. For the time being, everything suggests that the government will play a much more modest role than expected and that, instead of leading profound social, political and economic transformations, it will be more of a transitional administration. Against this background, it seems highly likely that Congress will resort to a strategy of blocking the executive's agenda, potentially exacerbating the current crisis of legitimacy of democratic institutions.

2.3. Economic Situation

2022 was a year of normalisation for the Chilean economy. After a sharp decline of 6.1% in 2020, followed by a rise of 11.7% in 2021, national GDP grew by 2.4% (Banco Central de Chile, 2023, p. 4). This number turned out to be lower than the Central Bank's original projection of 2.7%, due to the incorporation of information in the fourth quarter that affected the estimate of value added for transport services. The main driver behind the growth recorded in this

¹ Unión Demócrata Independiente, Renovación Nacional, Evopoli, Partido Demócrata Cristiano, Partido Radical, Partido Liberal, Partido Socialista, Partido Comunista, Partido por la Democracia, Partido Comunes, Partido Federación Regionalista Verde Social, Convergencia Social, Revolución Democrática y Acción Humanista, and the movements Amarillos por Chile, Demócrata and Unir.

period was services, particularly personal, business and transport services, a performance that is explained by the increased mobility of people. In contrast, goods production exhibited a decline, with mining and manufacturing having the largest impact on this result. These outcomes stemmed mainly from a decline in copper mining due to lower ore grades, while the decline in the production of chemicals, petroleum, rubber and plastics was mostly a consequence of lower fuel refining. Meanwhile, commercial activity also declined, consistently with the fall in the consumption of goods.

Domestic demand registered a rising trend during 2022, accumulating growth of 2.3% for the period (Banco Central de Chile, 2023, p. 4). Private consumption was the main driver, followed by gross fixed capital formation and government consumption. The increase in household consumption (2.9%) was driven by higher spending on services, in line with the lifting of health restrictions. Government consumption expanded by 4.1%, driven by a higher provision of education services (Banco Central de Chile, 2023, p. 12).

In 2022, inflation rose to an all-time high, reaching 12.8% (INE, 2023). This is the highest since 1992, when it reached 12.7%. It is also the second consecutive period with record-high inflation rates, well above the inflation target range of 2-4%. For this reason, the Central Bank of Chile adopted strict measures and quickly withdrew the monetary stimulus it had applied at the start of the pandemic in March 2020. Among the twelve product categories that make up the Consumer Price Index basket, eleven had a positive impact on the year-on-year change in the index (food and non-alcoholic beverages, with 24.7%; alcoholic beverages and tobacco, with 13.3%; clothing and footwear, with 0.6%; housing and basic services, with 9.6%; household equipment and maintenance, with 6.7%; health, with 5.7%; transport, with 18.3%; recreation and culture, with 5.1%; education, with 7%; restaurants and hotels, with 16.5%; and miscellaneous goods and services, with 13.8%), while only one had a negative impact (communications, with -5.6%) (INE, 2023).

Chile ended 2022 with an employment and labour force participation rate of 61.9%, one of the lowest in the OECD (Santillán, 2023). In the fourth quarter of 2022, 379,715 people joined the labour force, representing a total increase of 4.1% over twelve months, while employment grew by 3.3%, with 286,943 new jobs. Employment was highest in transport, up by 11.6%; households as employers, up by 15.2%; and teaching, up by 5.4%. A breakdown of this indicator by gender over the same period shows that the female employment rate rose to 66%, while male participation reached 80.6%. However, the unemployment rate stood at 7.9% in the October-December 2022 mobile quarter, registering an increase of 0.7 percentage points with respect to the same period in the previous year.

Finally, it is worth noting that during 2022 there was a historic drop in the income poverty rate (6.5%, equivalent to 1,292,521 people), compared to 2020 (10.7%) and 2017 (8.5%) (Observatorio Social – Ministerio de Desarrollo Social y Familia, 2022). The income poverty rate of 2022 is composed of 2% of people in extreme poverty (397,963) and 4.5% of people in

non-extreme poverty (894,558). Inequality also declined, with the Gini Index falling from 0.509 in 2020 to 0.470 in 2022, the best result in the historical measurement. This implies that the 20% of households with the highest income earn 8.2% more than the 20% of households with the lowest income.

3. SOCIAL LAW AND SOCIAL POLICY DEVELOPMENT

3.1. Pension System

Act 21.419 (29 January 2022) introduced one of the most profound reforms to the solidarity pillar of the Chilean old-age and disability pension system since its creation in 2008: the Universal Guaranteed Pension (*Pensión Garantizada Universal* – PGU). The purpose of this reform was to increase the coverage of the solidarity pillar, incorporating hundreds of thousands of people who were receiving low pensions or no pension at all and who were not receiving any support from the State because they were not in the most economically vulnerable deciles of the population. The PGU is a non-contributory benefit, paid monthly, which can be accessed by people who meet the following requirements:

- a) have reached 65 years of age;
- b) are not part of a family group belonging to the richest 10% of the national population aged 65 or over²;
- c) provide proof of residence in the national territory for at least 20 continuous or discontinuous years, counted from the time the applicant reached the age of 20; and, in any case, for at least four years of residence in the last five years immediately prior to the date of submission of the application for the PGU;
- d) have a base pension lower than CLP\$1,000,000 (approximately EUR 1,020 Euro). For these purposes, the base pension is calculated by adding to the applicant's self-financed pension the survivor's pensions that they may be receiving pursuant to DL 3.500 or Act 16.744 and the pensions granted for any reason under the regimes administered by the Social Security Institute (IPS).

The original amount of this monthly pension was a maximum of CLP\$185,000 (approximately 188.70 Euro). This value is automatically readjusted on 1 February of each year, by one hundred percent of the variation experienced by the Consumer Price Index determined by the National Institute of Statistics in the calendar year prior to the readjustment, provided that such variation is positive. However, if the variation is negative, the readjustment of the value

² From April 2023, the requirement is not to be part of a family group belonging to the richest 10% of Chile's population.

of the following calendar year shall consider the accumulated inflation of both periods, or previous periods, until it is fully compensated. Beneficiaries with a base pension less than or equal to CLP\$630.000 (approximately 642.60 Euro) receive the maximum amount of the PGU. In turn, beneficiaries with a base pension of more than CLP\$630,000 but less than CLP\$1,000,000 receive a progressively decreasing PGU.

A second reform to the pension system introduced in 2022 took place through Act 21.455 (13 June 2022), which established a legal framework to address the challenges posed by climate change, with the aim of achieving and maintaining greenhouse gas emission neutrality by 2050. Among other things, this Act creates management instruments for climate change at national, regional and local levels as well as a corresponding environmental institutional framework. However, what is of interest in this regulation in terms of its impact on the pension system is that it imposes certain limitations on pension fund administrators. Thus, these entities must incorporate in their respective policies the way in which the fund administrators will take environmental factors into account, in particular information on environmental impacts and climate change as well as in their strategy, corporate governance, risk management and investment and diversification decisions. For these purposes, the Superintendence of Pensions should set national or international standards or recommendations on the matter.

Finally, Act 21.484 (7 September 2022) amended Act 14.908 (5 October 1962) to extend the funds in which maintenance debts may be pursued and established a special procedure for their collection. The Act specified that payment of the debt may be made from the funds that the maintenance debtor has in their bank accounts or other financial or investment instruments and, exceptionally, if there are no such funds or if they are insufficient, it may be made from the funds available in the individual capitalisation account of compulsory contributions for the financing of their old-age pension. In the latter case, the percentage of the resources accumulated in the maintenance debtor's individual capitalisation account that may be used for the payment of maintenance varies according to how close (s)he is to reaching the statutory retirement age. Thus, no more than 50% of their funds may be used for this purpose if they have 15 years or less remaining; no more than 80% if they have more than 15 and less than 30 years remaining; and no more than 90% if they have more than 30 years remaining.

3.2. Healthcare System

In the area of healthcare, the most relevant innovation in 2022 was introduced by Resolution N° 1.112 Exenta (29 August 2022), which modifies the tariff of benefits in Institutional Care Modality (MAI) for FONASA beneficiaries.³ This Resolution creates the so-called 'Zero Copayment Plan,' which defines a series of health benefits that will have a 100% State

³ See Ponce de León Solís, 2023, p. 29.

contribution for all FONASA beneficiaries who receive care in the public health system and that, therefore, become free of charge. The purpose is to reduce beneficiaries' out-of-pocket expenses. The Resolution involves assuming the cost of approximately 21 billion pesos per year and it benefits 5,388,907 people under 60 years of age (FONASA, 2022).

For a better understanding of the scope of this Resolution, it should be borne in mind that about 76% of Chileans are FONASA beneficiaries, while about 15% are affiliated to an ISAPRE (Acuña & Hernando, 2022).⁴ FONASA beneficiaries are categorised into four groups – A, B, C and D – according to the socio-economic segment to which they belong.⁵ Prior to the issuance of this Resolution, tranches A and B were already insured free of charge for all services in MAI, while tranches C and D had partial State coverage for their services in MAI – 90 and 80 percent, respectively –, and had to make a co-payment out of their own pockets. Thus, in practical terms, the Zero Co-payment Plan leads to all MAI care for FONASA beneficiaries being entirely free of charge.⁶ Despite the standardisation of all tariffs, the socio-economic segmentation of FONASA beneficiaries into groups is nevertheless maintained, for better targeting of health policies.

The co-payment subsists for ISAPRE affiliates, in accordance with the stipulations of the respective contract, and for FONASA affiliates who receive care under the Free Choice Modality (MLE), according to the tariffs of the respective provider.

3.3. Family Benefits System

Act 21.441 (9 May 2022) extended the duration of leave for workers in the event of the death of a parent and established the same leave in the event of the death of a sibling. Originally, the extension of this leave was three days and is increased by one, reaching four days in total. These leave days cannot be compensated in money. The bill had also envisaged an extension of the leave in the event of the death of a child during pregnancy, but this aspect of the proposal was not approved by Congress. In any case, the purpose of this Act was to grant workers the necessary time to grieve and to carry out the formalities arising from the death, based on the International Labour Organisation's concept of 'decent work' (OIT, 2004). This concept urges States to provide protection to workers in situations of vulnerability and in the face of unforeseen events or, in general, when workers are affected.

In addition, two temporary measures in response to the pandemic were implemented in 2022:

Act 21.474 (27 July 2022) extended the postnatal parental leave provided for in the Labour Code, with the purpose of safeguarding the health and sanitary safety of the children causing

⁴ The remaining 9% are covered by the insurance of the Armed and Law Enforcement Forces and other insurances.

⁵ See Ponce de León Solís, 2023, p. 23.

⁶ However, not all imaginable interventions and health benefits are available in MAI. The list of included services is periodically reviewed by means of a Resolution of the Ministry of Health.

the leave. The ordinary parental leave period lasts for twelve weeks following the postnatal period, which also lasts for twelve weeks, with the right to an allowance in lieu of payment.⁷ Act 21.474 extended this leave for workers whose ordinary parental leave ended between 1 May and 30 September 2022 up to a maximum of 60 continuous days. This extended leave was only available on a full-time basis.⁸ During the extension, the allowance in lieu of payment continued to be paid, under the same conditions applicable to the ordinary leave, and the leave was extended for a period equivalent to the actual extension of the ordinary postnatal parental leave. If both parents had been on postnatal parental leave, either parent, at the mother's choice, could make use of this extension.

Later, Act 21.510 (24 November 2022) temporarily extended for a second time the postnatal parental leave, thus expanding the coverage of Act 21.474, in order to allow workers to combine childcare, protect their sources of employment and their reintegration, in the face of the health and economic consequences that the COVID-19 pandemic continued to cause in the country. The benefit introduced by Act 21.510 was to establish the right of workers whose ordinary parental leave ended between 1 October and 30 December 2022, to request its extension, while receiving the same allowance as indicated above. In the event that the leave was extended, it also had to be exercised on a full-time basis from the day following the end of the postnatal parental leave until 31 December 2022.

3.4. Protection of Vulnerable and Low-Income Groups

Act 21.430 (15 March 2022) established a statute for the guarantee and comprehensive protection of the rights of children and adolescents, with the aim of enabling their effective enjoyment and exercise, emphasising those human rights recognised in the Political Constitution, the Convention on the Rights of the Child, other international treaties ratified by Chile, and in the laws.⁹ To this end, a System of Guarantees and Comprehensive Protection of the Rights of Children and Adolescents is created, which will be made up of a set of policies, institutions and regulations aimed at respecting, promoting and protecting the physical, mental, spiritual, moral, cultural and social development of children and adolescents, to the

⁷ The amount of this allowance cannot exceed the average wage earned by the worker during the three months prior to the beginning of the seventh month of pregnancy, which is when the prenatal leave starts.

⁸ While the ordinary parental leave allows for some flexibility in how to use the leave, and allows part-time work/part-time leave, entailing an extension of the leave period by six weeks to a total of 18 weeks (see Ponce de León Solís, 2023, p. 43), the extraordinary special leave is possible only as full-time leave.

⁹ This Act also introduced an amendment to Act 20.595 (17 May 2012) that established the subsystem of social protection and promotion *Seguridades y Oportunidades*, which is part of the *Sistema Intersectorial de Protección Social*. Originally, the users of the subsystem included minors whose primary adult carer was deprived of liberty and the caregivers of such minors. However, with the modification, these users were excluded, as they were already covered by the subsystem *Protección Integral de la Infancia - Chile Crece Contigo*. Likewise, the modification specified that although the *Seguridades y Oportunidades* subsystem also included homeless people, homeless children and adolescents would be excluded and their protection would become the responsibility of the National Service for the Specialised Protection of Children and Adolescents.

maximum extent of the resources available to the State. It also brings existing legislation into line with this new statute.

Beyond this structural reform, there are three pandemic-related temporary changes worth mentioning. First, Act 21.423 (11 February 2022) provided for a mechanism for deferring and prorating debts for sanitation, electricity and gas network services incurred during the period from 18 March 2020 to 31 December 2021. This Act also established temporary tax subsidies, for a maximum period of 48 months from February 2022. The beneficiaries of this measure were residential or domiciliary users, hospitals and health centres, prisons and penitentiaries, homes for minors at social risk, abandoned or involved in crime, homes and long-stay establishments for the elderly, firefighters, non-profit organisations and micro-enterprises, who had an average monthly consumption during 2021 of no more than 15 cubic metres of drinking water per month and no more than 250 kilowatt hours per month, for sanitation and electricity services, respectively.

Second, Act 21.456 (26 May 2022) established two subsidies targeted at economically vulnerable groups in the face of the impact of the pandemic. The first subsidy was intended to contribute to the payment of the minimum monthly income. It was a temporary benefit, charged on a monthly basis and paid only once. The beneficiaries were natural and legal persons, including cooperatives, who had reported the start of activities in the first tax category to the Internal Revenue Service, and whose annual income from sales and services was more than 0.01 and no more than 100,000 UF.¹⁰ The second subsidy was intended to compensate for the increase in the price of the Basic Food Basket.¹¹ This subsidy consisted of a monthly contribution, disbursed from 1 May 2022 until 30 April 2023 to those who were entitled to the family and maternity allowance of the Unified System of Family Benefits, as well as to families who, as of 31 December 2021, were beneficiaries of the *Seguridades y Oportunidades* subsystem, regardless of whether they receive monetary transfers for this reason, and families who, as of the same date, were participating in the *Chile Solidario* subsystem.¹²

Third, Act 21.474 (27 July 2022) created the extraordinary *Chile Apoya* Winter Bonus, which is a government-funded benefit to help its beneficiaries cope with the rise in food prices and basic services such as water, electricity, and gas. The bonus is aimed at the following groups of people: family allowance recipients, recipients of the family and maternity allowance of the

¹⁰ *Unidad de Fomento* (UF) is a unit of account used in Chile, adjusted daily in line with inflation. One UF is equivalent to about €36 (2023).

¹¹ The value of the poverty line and the extreme income poverty line in Chile are measured on the basis of the Basic Food Basket, made up of a set of food goods, the value of which is the same throughout the country. A requirement threshold of 2,000 average daily calories per person is considered. The value of the Basket is updated monthly according to the price development of the products that compose it in the Consumer Price Index (IPC), discounting the food consumed outside the home.

¹² The *Chile Solidario* subsystem is also a part of the *Sistema Intersectorial de Protección Social*. This subsystem has been replaced by the *Seguridades y Oportunidades* subsystem, but is still being phased out.

Unified System of Family Benefits, beneficiaries of the Winter Bonus granted by Acts 21.405 and 21.419, beneficiaries of the Solidarity Pension Contribution for Disability and Basic Solidarity Disability Pension, pensioners under Act 20.255,¹³ families that are users of the *Seguridades y Oportunidades* subsystem,¹⁴ and households belonging to the most vulnerable 60 percent of the population as of 1 August 2022, according to the Social Registry of Households (*Registro Social de Hogares* - RSH).¹⁵ The amount of the extraordinary bonus was CLP\$120,000 (approximately 122.40 Euro) per person, even if the beneficiaries fell into more than one of the categories listed in the Act, and was paid in a single instalment.

3.5. Extension of Social Security Coverage

Act 21.431 (11 March 2022) regulates for the first time the contract of workers of digital service platform companies. Along with this, it establishes a series of rights for dependent and independent digital platform workers, such as the employer's duty of protection, regulated working hours, remuneration or fees, the right to disconnection, and prior notice of termination of the contract, among other contractual aspects. In addition, it specifies the common rules that apply to dependent and independent digital platform workers, including the obligation to inform about the service offered, transparency and the right to information, prohibition of discrimination by automated decision-making mechanisms, training and protection elements, the basis for calculating legal compensations and the collective rights of digital platform workers.

Among the most noteworthy contents of this Act is the right of independent digital platform workers to access social security coverage and the obligation to contribute 10% and 7% of their annual taxable income to finance their old-age, disability and survivor's pension and health benefits, respectively. However, they may also make additional voluntary contributions. Consequently, these workers are entitled to health benefits, old-age pensions, recognition of family responsibilities, occupational accident and occupational disease insurance, disability and survivor insurance, and insurance to accompany children affected by a serious health condition, as well as other applicable benefits in accordance with the regulations in force.

Moreover, in the area of work accidents and occupational safety, this Act prescribes that digital platform service companies must provide their workers with adequate and timely

¹³ That is, people entitled to the Basic Old-Age Solidarity Pension and the Solidarity Old-Age Pension Contribution. See Ponce de León Solís, 2023, p. 13.

¹⁴ The *Seguridades y Oportunidades* subsystem designed to promote access to better living conditions for families and individuals by overcoming conditions of extreme poverty and social vulnerability that affect them, as well as to guarantee the exercise of their rights throughout the life cycle, with small income support for up to 24 months. This subsystem is part of a larger national social protection system, the *Sistema Intersectorial de Protección Social*.

¹⁵ The RSH is a functional database for the storage and processing of self-reported information, as well as information from administrative databases, which is used for the socioeconomic characterisation of the target population of social assistance in Chile.

training that considers the safety and health criteria defined by the competent authority for the activity being performed. Likewise, these companies must supply a protective helmet, knee and elbow pads for digital platform workers who use a bicycle or motorbike to perform their services, which must comply with the certifications and regulations in force. The worker must return these items to the company at the end of the services, as agreed. Finally, these companies must offer the worker a damage insurance that insures the personal property used by the latter in the provision of the service, with a minimum annual coverage of 50 UF.

In a similar vein, Act 21.436 (9 April 2022) requires the conclusion of an employment contract between professional sports limited liability companies and the sportswomen who take part in the national women's football championship. The purpose of the Act is to professionalise the activity of women's football and to give legal recognition to the participants in their employment relationship, as well as to bring it into line with the regulations applicable to their male counterparts. The most important consequence of the recognition of this employment relationship is that the aforementioned limited companies assume the obligation to pay the social security contributions of their workers, for the financing of the old age pension, health benefits, disability and survival insurance, occupational accident insurance and unemployment insurance of the sportswomen.

4. MAJOR SOCIAL LAW AND SOCIAL POLICY CHANGES IN PROSPECT

As noted above, in December 2022, 14 of the 16 political parties represented in the National Congress signed the 'Agreement for Chile' which laid the foundations for initiating a new constituent process (Congreso Nacional, 2022). This agreement established the twelve institutional and fundamental bases on which the drafting of a new Constitution, to be elaborated during 2023, should be based. Among them, the relevant one for the purposes of this report is number 5, according to which 'Chile is a social and democratic State governed by the rule of law, whose purpose is to promote the common good; which recognises fundamental rights and freedoms; and which promotes the progressive development of social rights, subject to the principle of fiscal responsibility; and through State and private institutions'.

While this basis could take different expressions in the proposed new Constitution, it is to be expected that it will imply changes in the constitutional regulation of the right to social security and health, as well as in the mechanisms to guarantee their progressive development. However, it is difficult to anticipate the precise scope of these changes. This will depend, on the one hand, on the political composition of the bodies in charge of drafting the proposal and, on the other hand, on how much the vote against the draft new Constitution of 2022 can operate as a deterrent to profound constitutional changes.

In addition, in his State of the Nation Address 2022, the President announced that he would promote two bills that were part of the government programme he presented during his presidential campaign (Apruebo Dignidad, 2021) and would, if approved, represent structural changes in the area of social law and social policy.

The first is a bill to create a Universal Health Fund, 'with the aim of generating greater equity in access to services, improving care, increasing solidarity in the financing of the system and reducing household spending' (Gobierno de Chile, 2022, pp. 12-13). This Fund would be responsible for collecting and administering workers' contributions, as well as State contributions, and would act 'as a single administrator of resources, through the universalisation of FONASA coverage to all persons residing in the country' (Apruebo Dignidad, 2021, p. 115). The purpose of this reform would be 'to end the ISAPRE business, which will be transformed into voluntary complementary insurance, allowing for a more efficient and equitable administration' (Apruebo Dignidad, 2021, p. 115). In other words, the bill would mean ensuring the continuity of ISAPREs, but as voluntary health insurers that would no longer be in charge of administering beneficiaries' mandatory contributions (Senado, 2022).

The second announcement worth highlighting is the presentation of a bill 'that will structurally reform the pension system, learning, of course, from the debates we have had before and which will be the result of a process of broad social dialogue, in which all the relevant actors will participate' (Gobierno de Chile, 2022, p. 12). The commitment made by the President is that, if the project is approved and once the reform is in force, 'every inhabitant of our country, aged 65 and over, will have the right to a basic pension guaranteed by the State of at least 250,000 pesos' (Gobierno de Chile, 2022, p. 12). As specified in the President's government programme, the reform would imply the creation of 'a modern, tripartite, solidarity-based, public and sufficient system, with international standards, that is sustainable over time' (Apruebo Dignidad, 2021, p. 110).

5. CASE LAW DEVELOPMENTS

In 1 December 2022, the Supreme Court granted a series of writs of protection (roles N°16.630-2022; 25.570-2022; 14.513-2022 and 13.979-2022) against ISAPREs. To contextualise the situation, Chilean legislation provides for the power of ISAPREs to unilaterally modify, once a year, the base price of health plans, under general conditions applicable to all members of the same plan. The writs demanded that ISAPREs refrain from applying factor tables established by themselves to determine the prices of their health plans, in which the risk factors of health plan beneficiaries were defined on the basis of discriminatory criteria. They also requested the Court to fix a single price for the health plans offered by the challenged ISAPREs and to prohibit any distinction between factors such as age, sex and the number of family members.

The judgments at issue reasoned on the lawfulness and reasonableness of four practices developed by the challenged ISAPREs:

- a) First, the Court highlighted that the value of the contribution to be paid for each individual health contract is determined by multiplying the value of a base plan by the sum of the risk factors of its beneficiaries. Consequently, the value of the base plan does not vary according to the number of dependents the contributor has.
- b) Second, while ISAPREs are authorised to apply a table of risk factors to determine the prices of health plans, this table cannot introduce distinctions by sex and age, as this would be contrary to the right to equality before the law.¹⁶ Moreover, the tables drawn up by the ISAPREs themselves differ from the one ordered to be applied by the Superintendence of Health, in its Circular IF/N°343 (11 December 2019).
- c) Third, the ruling holds that the table of factors designed by the Superintendence of Health applies only when the contributor joins the ISAPRE system, and is unchangeable over time, unless it is beneficial to the contributor.
- d) Fourth, the ruling also referred to the increase in the price of health plans for the incorporation of unborn children and children under 2 years of age and held that increases could not be applied, since in this case the respective benefits were entirely covered by the Explicit Health Guarantees (*Garantías Explícitas de Salud - GES*).¹⁷

As a result, the Court ruled that the prices of the individual contracts of the affected appellant contributors must be adapted to the Single Table of Factors contained in Circular IF/N° 343 of the Superintendence of Health. Within the framework of this adjustment, an increase in the final price of these contracts is only authorised when it is based on the incorporation of new dependents or beneficiaries and the sum of the risk factors of the family group provided for therein so determines. In any case, the payment of this increase must be suspended until the new dependant reaches the age of two years in the case of unborn children or children under that age. The ruling also mandates the Superintendence of Health, in the exercise of its supervisory powers and within a period of six months, to determine how to make effective the adjustment of the final price of all health contracts administered by the challenged ISAPREs to the terms of the Single Table of Factors. To this end, the Superintendence must provide for administrative measures so that, in the event that the application of the Single Table of Factors results in a final contract price lower than that charged and received by the ISAPREs, the amounts received in excess and the collection of which is not yet time-barred will be reimbursed as surplus contributions.

¹⁶ Constitutional Court, Role N°1.710-10-INA (6 August 2010).

¹⁷ GES ensures patient care from screening, suspected or confirmed diagnosis to treatment, and subsequent aftercare or rehabilitation, as required, for up to 87 pathologies (in 2023).

In Chile, in general, court rulings only have relative effects, i.e. they only reach the parties to the litigation. Hence, what is striking about the writs of protection under discussion is that the Court expressly extends the effects of its decision to all those affected by the application of the tables of factors used by the challenged ISAPREs to their health plans and contracts. This is the aspect of the ruling that has attracted the most media attention, not only because it raises questions from the perspective of the separation of powers in a country with a civil law tradition, but also because of the practical effects it may have on the health system as a whole (IPSUSS, 2022; Lyd, 2023).

Gonzalo Simón, President of the Association of ISAPREs estimates that the exclusion of children under 2 years of age from the final price of health plans will result in a decline of the system's income by 40 billion pesos each year, 'which will damage the already complicated financial situation of the ISAPREs, which has generated losses of 270 billion pesos in the last two years' (Senado, 2022b). Moreover, just a few months before these rulings were handed down, Simón had declared that 'all the ISAPREs are at risk of going bankrupt in a few months'. Adding 2021 and the first half of 2022, the system had a deficit of 222 billion pesos, (Reid, 2022).

The origin of this deficit dates back to 2020, when a group of ISAPREs expressed to the Superintendence of Health their intention to postpone the collection of the increase in the base price of their health plans for the first three months of the 2020/2021 adequacy process, in order to provide financial relief to ISAPRE beneficiaries in the context of the COVID-19 pandemic. The already complex situation of ISAPREs became critical when in September 2022 the Supreme Court upheld another group of writs of protection ordering a halt to the annual increase in health plans – also with general effect, applicable to all health plans – when it had been carried out without providing affiliates with enough background information to justify the increase.¹⁸

The judgements cited at the beginning of this section may also have a considerable impact on the healthcare system as a whole. In particular, the insolvency of ISAPREs could lead to a massive displacement of more than three million people to the public system – FONASA – which is already substantially overburdened. Indeed, FONASA already has 300,000 people on the waiting list for surgery and two million for specialised consultations in public clinics and hospitals (IPSUSS, 2022). Given the seriousness of the situation, the Senate Health Commission reached an agreement to bring the ISAPREs and the Executive closer together, so that the latter can present a bill, or introduce modifications to bills already in the pipeline, to

¹⁸ According to the legislation in force, the increase in the prices of the health plans must be communicated to the affiliates, expressing: i) the variation in the costs of the health benefits granted by the respondent; ii) the variation in the frequency of use experienced by the same; iii) the variation in the cost of work incapacity subsidies paid by the respondent; iv) the cost of the new benefits it has incorporated; v) the variation in the frequency of use of the benefits, which are provided under FONASA's free choice modality; and vi) the elements that have served as an incentive to contain the costs of health expenditure.

ensure the continuity and stability of the healthcare system (Senate, 2022b).¹⁹ Against this background, a comprehensive reform of the private healthcare insurance system is to be expected in the near future.

6. CONCLUSION

Overall, 2022 presented advances and setbacks in terms of law and social policy in Chile. On the one hand, against the backdrop of economic recovery and after the first signs of overcoming the worst effects of the pandemic, the main milestones in the reporting period were the creation of the Universal Guaranteed Pension and the elimination of the co-payment for FONASA users in MAI. On the other hand, there is still a strong crisis due to polarisation and political distrust, exacerbated by the potential collapse of the ISAPRE system and the ripple effect this could have on the public healthcare system.

For the time being, the authorities have not yet been able to achieve the structural reforms necessary to ensure universal and sustainable access to social security benefits. This is partly due to shortcomings in the political system itself, leading to a persistent blockage of the legislative process. However, it is also an expression of a profound tension between the political class and the citizens with regard to market-based provision of social rights on the one hand and the aspiration for more solidarity in the social security system on the other. While the new emerging constitutional process and the crisis of the ISAPRE system could provide the necessary impetus to reconcile this tension and overcome the deadlock, a sense of uncertainty and scepticism reigns in the country.

¹⁹ According to Article 65 N° 6 of the Chilean Constitution, the President of the Republic has the exclusive initiative for all bills establishing, modifying or affecting social security regulations, both in the public and private sectors.

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