



MAX PLANCK INSTITUTE  
FOR SOCIAL LAW AND SOCIAL POLICY

## Social Law Reports

Grega Strban

# **Novelties in Slovenian Social Security Law**

Reported Period: 2021/2022

Cite as: Social Law Report No. 6/2022

© Max Planck Institute for Social Law and Social Policy, Munich 2022.

Department of Foreign and International Social Law

All rights reserved.

ISSN 2366-7893

Max Planck Institute for Social Law and Social Policy

Amalienstraße 33, D-80799 Munich, Germany

Tel.: +49 (0)89 38602-0

Fax: +49 (0)89 38602-490

E-mail: [info@mpisoc.mpg.de](mailto:info@mpisoc.mpg.de)

<http://www.mpisoc.mpg.de>

## CONTENT OVERVIEW

<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. POLITICAL, ECONOMIC AND SOCIAL SITUATION.....</b>	<b>1</b>
2.1. POLITICAL DEVELOPMENTS .....	1
2.2. ECONOMIC SITUATION .....	3
2.3. SOCIAL SITUATION .....	4
<b>3. NOVELTIES IN THE MAIN BRANCHES OF SOCIAL SECURITY .....</b>	<b>6</b>
3.1. PENSION AND INVALIDITY INSURANCE .....	6
3.1.1. PURCHASE OF PENSION PERIODS .....	6
3.1.2. DISMISSAL AT RETIREMENT AGE? .....	7
3.1.3. INDEXATION OF PENSIONS .....	8
3.1.4. EMPLOYMENT OF PENSIONERS .....	9
3.2. MANDATORY HEALTH INSURANCE.....	9
3.2.1. SICKNESS CASH BENEFITS BETWEEN PRIVATE AND PUBLIC RESPONSIBILITY.....	9
3.2.2. CASE LAW ON MANDATORY HEALTH INSURANCE .....	10
3.3. INTRODUCTION OR MERE ANNOUNCEMENT OF LONG-TERM CARE INSURANCE?.....	11
3.4. UNEMPLOYMENT INSURANCE.....	13
3.5. FAMILY BENEFITS AND SOCIAL ASSISTANCE .....	14
<b>4. CONCLUDING REMARKS .....</b>	<b>15</b>
<b>5. SELECTED LITERATURE FROM 2021/2022.....</b>	<b>17</b>

## LIST OF ABBREVIATIONS

CDA	Communicable Diseases Act
CJEU	Court of Justice of the EU
EU	European Union
HIIS	Health Insurance Institute of Slovenia
IMAD	Institute of Macroeconomic Analysis and Development
MoveS	Free Movements of Workers and Social Security Coordination
MPISOC	Max Planck Institute for Social Law and Social Policy
PIIS	Pension and Invalidation Insurance Institute of Slovenia
RS	Republic of Slovenia
SURS	Statistical Office of the Republic of Slovenia
TFEU	Treaty on the Functioning of the European Union
ZDOsk	Long-term Care Act
ZDR-1	Labour Relations Act
ZOA	Personal Assistance Act
ZPIZ-2	Pension Insurance Act
ZSDP-1	Parental Protection and Family Benefits Act
ZUTD	Labour Market Regulation Act
ZZVZZ	Health Care and Health Insurance Act

## 1. INTRODUCTION

The present report<sup>1</sup> covers novelties introduced in the Slovenian social security law in 2021 and the reasons behind them. Some developments in the first half of 2022 are included as well, pointing to several so-called mini reforms or adjustments of social security law as a result of societal developments, inspired either by Constitutional Court decisions or by policy preferences of the legislature. It should be noted that only marginal attention is given to the social security and social compensation response following the outbreak of the coronavirus (COVID-19) pandemic. They are extensively discussed in the 2022 publication "[Protecting Livelihoods](#)"<sup>2</sup>.

## 2. POLITICAL, ECONOMIC AND SOCIAL SITUATION

### 2.1. Political Developments

Political developments were quite turbulent in the last couple of years. While the new government was appointed by the parliament in March 2020 (after the resignation of the former Prime Minister and reshuffling of political preferences of some political parties),<sup>3</sup> the President of the Republic decided to set the date for regular parliamentary elections as soon as possible. They were held on 24 April 2022, with an impressive voting participation of more than 70 percent of.<sup>4</sup> The reason for calling new elections was a rather autocratic governance of the former Prime Minister, especially passing rules and regulations without expressive legal basis. Unconstitutionality of such acts was recognised also by the Slovenian Constitutional Court.

For instance, in one of the decisions the Constitutional Court reviewed the constitutionality and legality of Article 10a of the Ordinance on the Manners of Complying with the Recovered-Vaccinated-Tested Requirement to Contain the Spread of Infection with the SARS-CoV-2 Virus<sup>5</sup> (hereafter the Ordinance), which determined that employees in the bodies of the state

---

<sup>1</sup> 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. In both texts, fundamental features of the Slovenian social security law are explained in greater detail. In the following years, annual updates informed about significant developments in Slovenian social security law. See Strban, Grega, *Systematisierung des slowenischen Rechts der sozialen Sicherheit im Vergleich zur Systematisierung des deutschen Sozialrechts*, Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS), Vol. 24/25, 2010/2011, No. 4, pp. 353-376 and Social Law Reports (SLR) 5/2015; 5/2016; 5/2017; 4/2018; 6/2020.

<sup>2</sup> See especially G. Strban, L. Mišič, Social Protection and the Pandemic in Slovenia: Between Income Protection, Social Policy and Politics, in: Ulrich Becker, Anika Seemann (Eds.), *Protecting Livelihoods, A Global Comparison of Social Law Responses to the COVID-19 Crisis*, Studien aus dem Max-Planck-Institut für Sozialrecht und Sozialpolitik, Vol. 77, Nomos, 2022, p. 472-452.

<sup>3</sup> See G. Strban, Social Law Reports, 6/2020.

<sup>4</sup> As many as 70.97 % of voters came to the elections (<https://volitve.dvk-rs.si/#/rezultati>, July 2022).

<sup>5</sup> Official Gazette RS, Nos. 147/21, 149/21, 152/21, 155/21, 170/21, and 171/21.

administration must fulfil the recovered-vaccinated requirement to perform tasks of the state administration. It held that this was a condition under labour law and thus the situation was essentially comparable to situations where a vaccination is determined as a condition under labour law to perform various types of work and professions. The legal basis for regulating such a vaccination is the Communicable Diseases Act -CDA (*Zakon o nalezljivih boleznih – ZNB*),<sup>6</sup> which regulates different types of (mandatory) vaccinations. The Constitutional Court assessed that the challenged measure, which the Government adopted by the Ordinance and which applied to employees of the state administration, was not adopted in conformity with the statutory requirements of the CDA for the determination of the vaccination of employees. Therefore, the Ordinance was inconsistent with the Constitution, according to which administrative bodies perform their work independently within the framework and on the basis of the Constitution and laws.<sup>7</sup> The Constitutional Court did not adopt a position as to whether the assessed measure – had it been ordered on the correct statutory basis – would be constitutionally admissible from the viewpoint of the principle of proportionality and the principle of equality before the law. Hence, the Decision of the Constitutional Court does not entail that the vaccination of state employees as a condition for performing certain activities or professions is (necessarily) a disproportionate measure. However, it shall be regulated by a legislative act and not by a governmental ordinance.<sup>8</sup>

A similar decision was taken, when the fundamental freedom to free movement was restricted to local communities. The Constitutional Court established that the executive branch must not regulate questions falling under the original competence of the legislative branch, i.e. without a statutory authorisation. Whenever the legislature authorises the executive branch of power to adopt an implementing regulation, it must first by itself regulate the foundations of the content that is to be the subject of the implementing regulation, and determine the framework and guidelines for regulating the content in more detail by the implementing regulation. A blank (*bianco*) authorisation granted to the executive branch of power (i.e. an authorisation not containing substantive criteria) entails the legislature's failure to legislate statutory subject matters, which is inconsistent with the constitutional order.<sup>9</sup> Similar decisions were taken also concerning wearing a nose-mouth protecting mask and using hand disinfection.<sup>10</sup> The new government started the legislative procedure to amend the CDA only in June 2022. The aim is to limit the executive branch of power and provide for clear statutory provisions of its acting in the case of containing contagious diseases.

---

<sup>6</sup> Articles 22 and 25 CDA, Official Gazette RS, Nos. 33/06 – official consolidated text, 142/20, and 82/21.

<sup>7</sup> See second paragraph of Article 120 of the Constitution of the Republic of Slovenia, Official Gazette RS, Nos. 33/91-I, with later amendments.

<sup>8</sup> Slovenian Constitutional Court decision, No. U-I-210/21, 29.11.2021, SI:USRS:2021:U.I.210.21, Official Gazette RS, No. 157/2021 and Official Gazette RS, No. 191/2021.

<sup>9</sup> Slovenian Constitutional Court decision No. U-I-79/20, 13.05.2021, SI:USRS:2021:U.I.79.20, Official Gazette RS, No. 88/2021.

<sup>10</sup> Slovenian Constitutional Court decision No. U-I-132/21, 02.06.2022, SI:USRS:2022:U.I.132.21.

Against this background, it was not expected that the political parties in power would gain majority for continuing governing. As we have experienced in the past, Slovenian voters seem to be optimistic and give the majority of votes to political newcomers. With 34.45 percent, most votes in the 2022 elections were gained by the newly established political party Svoboda (Freedom). And the new Prime Minister Dr Robert Golob, also president of Svoboda, could compose a more left-wing government with the Social Democrats and the Left. Only two other, more right-wing parties managed to pass the parliamentary threshold, i.e. the Slovenian Democratic Party and New Slovenia-Christian Democrats.<sup>11</sup>

As the field of social security law is not only one of the youngest legal fields, but also one of the more dynamic, policy preferences play an important role in its (re)shaping.

## 2.2. Economic Situation

According to the Institute of Macroeconomic Analysis and Development (IMAD) Slovenian Economic Mirror, growth of domestic consumption remains high. The gradual easing of containment measures and the situation on the labour market with record high employment had a positive impact on the continued growth of household consumption in the first four months of 2022. However, household purchasing power is increasingly affected by rising prices, especially on energy and food, as inflation peaked in May 2022, reaching 8.1 percent. The price surge is mainly due to higher energy prices (21.1 percent), which are increasingly being passed on to final food prices, which increased by 11.1 percent year-on-year (i.e. compared to the same period in the previous year). Prices for services were also almost 5 percent higher. High prices for energy and other commodities as well as supply chain bottlenecks continue to drive the rise in Slovenian industrial producer prices, which reached 20.4 percent in April. All industrial sectors are affected by the increase, most significantly in the domestic market.

Construction activity picked up significantly in the first quarter of 2022, after a long period without growth also in non-residential construction; however, cost pressures in the construction sector are increasing. Business results of companies in 2021, which had deteriorated in the first year of the epidemic, improved significantly last year, also thanks to further government support measures.<sup>12</sup> In the export sector, which has been struggling with supply chain disruptions and rising costs for some time, growth slowed, with the situation exacerbated by the war in Ukraine. Amid great uncertainty in the international environment, economic sentiment deteriorated again in May 2022.

---

<sup>11</sup> More at <https://volitve.dvk-rs.si/#/rezultati>, July 2022.

<sup>12</sup> IMAD, Slovenian Economic Mirror 5/2022, July 2022.

### 2.3. Social Situation

According to the survey data, the already low unemployment level continued to fall in the first quarter of 2022. The number of unemployed decreased by 15.2 percent compared to the previous quarter (according to seasonally adjusted data) and by 21.4 percent year-on-year (according to original data). The survey unemployment rate decreased by 1.3 percent to 4.3 percent year-on-year. In early 2022, the number of people in employment increased by 5.6 percent compared to the previous year, with the volume of student work increasing by 56 percent, indicating a strong demand for all forms of work.<sup>13</sup> Massive layoffs during the COVID-19 epidemic are mirrored today by shortage of personnel in many industry and especially service sectors.



Source: SURS; calculations by IMAD.

Despite the constraints on the supply side, high employment growth continued, mainly on account of the hiring of foreign nationals, especially in construction (45 percent). The number of long-term unemployed also continued to decline and was a quarter lower than a year ago. Year-on-year growth in average gross wages in the private sector remains relatively high, which may already be an effect of labour shortages in some activities (accommodation and food service activities, transportation and storage, and construction). Wages in the public sector have been below the relatively high level of the previous year. This is due to allowances paid during the period when the epidemic was declared, which are no longer guaranteed in 2022.<sup>14</sup>

<sup>13</sup> IMAD, Slovenian Economic Mirror 5/2022, July 2022.

<sup>14</sup> Ibid.



Registered unemployment also declined as of June 2022 and amounted to 5.9 percent. The overall unemployment rate from 2018 until mid-2022 is presented in the graph below.

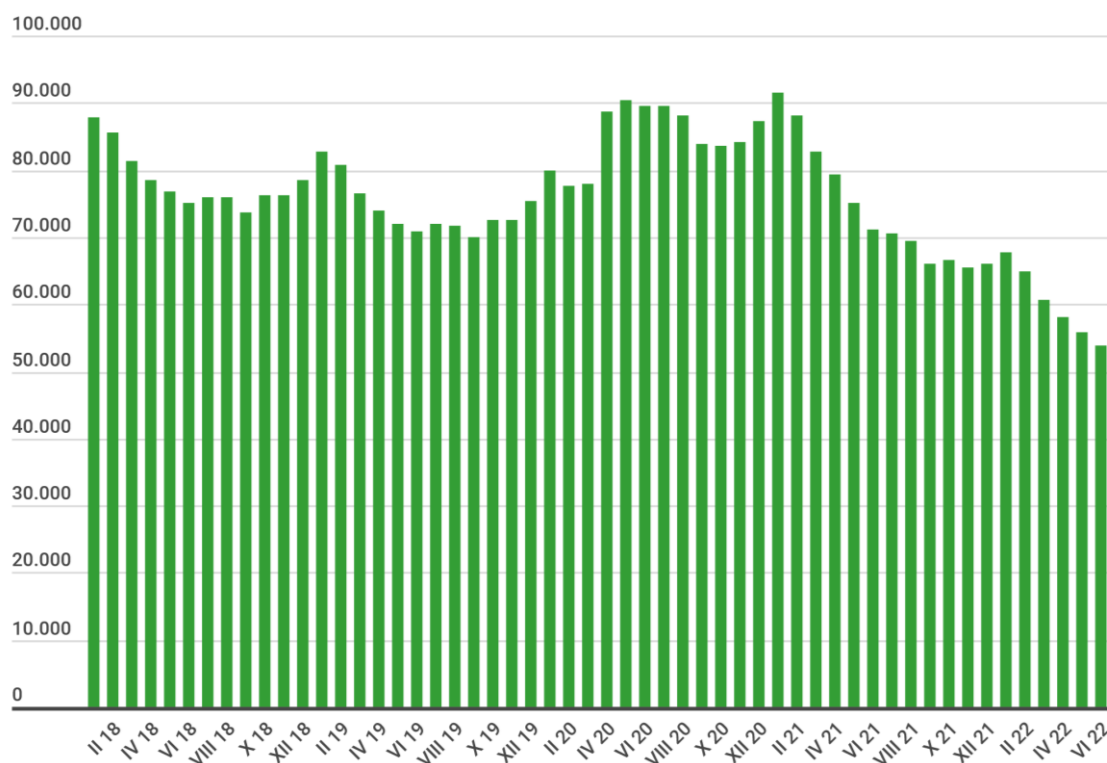


Table: registered unemployment, Employment service of Slovenia, July 2022.

Due to rather low wages, publicly perceived as too much burdened by taxes and social security contributions, the (now) former government had suggested the introduction of a so-called social cap on social security contributions at 6,000 € gross earnings per month. It was proposed in an ‘omnibus-law’ on de-bureaucratisation,<sup>15</sup> in which the modification of the social security contributions act was also foreseen.

However, there was a strong opposition against such ‘antisocial cap’ by the Health Insurance Institute of Slovenia, the Pension and invalidity Institute of Slovenia and the Slovenian Association of Labour and Social Security Law, publicly expressed in April 2021. It was argued that a general and overall limitation of social security contributions substantially modifies the basis of societal solidarity. Reducing social insurance revenues, without compensating them with subsidies from the State budget, at the same time leads to the limitation of social insurance rights and benefits. As a result, this might constitute a breach of the Constitution, especially its provisions that proclaim Slovenia to be a social state (Article 2 Constitution), the right to social security and the right to healthcare from public funds (Articles 50 and 51 Constitution). The Constitutional Court recognises a broad margin of discretion to the

<sup>15</sup> Proposal of the De-bureaucratisation Act (*Zakon o debirokratizaciji – ZDeb*), EVA 2021-14411-0001, EPA: 1759 – VIII.

legislature in specifying the social state principle. However, by doing so, the fundamental human right to social security, based also on (vertical) solidarity, should not be negatively affected. Other measures for enhancing the disposable income might be more suitable in this respect. Therefore, the (now former) government decided to withdraw the imposition of a cap on social security contributions.

### **3. NOVELTIES IN THE MAIN BRANCHES OF SOCIAL SECURITY**

Some modifications of the social insurance schemes were carried out in 2021 and early 2022. However, they are characterised by legally incomplete legislative attempts, relating especially to retirement and long-term care. Other minor modifications are also briefly touched upon.

#### **3.1. Pension and Invalidity Insurance**

In terms of the pension and invalidity insurance, the novelties introduced in the reported period relate mainly to the status of bought pension periods, (ab)using old-age (pension) as a reason for dismissal, indexation of pensions and employment of pensioners.

##### **3.1.1. Purchase of Pension Periods**

One of the amendments to the pension and invalidity insurance scheme concerns the legal status of a so-called purchased pension period. It refers to certain activities (like military service or studies) for which the insured person can "buy" insurance periods of up to five years for the old-age pension. The general minimum requirements for drawing a full old-age pension continue to be an age of 65 years and an insurance period of 15 years, or an age of 60 years and an insurance period of 40 years, in both cases without any purchased periods. For an early pension the same minimum condition of 60 years of age and 40 years of insurance applies, but the latter may also contain purchased periods. However, early pensions based on purchased insurance periods are reduced permanently by 0.3 percent for each month of retirement prior to reaching 65 years of age. Hence the reduction is 3.6 percent for each year; given a maximum of five years of purchased pension periods, the pension reduction may amount to as much as 18 percent. The question under consideration was how to treat purchased periods before the early pension was (re)introduced with ZPIZ-2, applicable since the beginning of 2013.

On 14 October 2021, the Act amending the Pension and Invalidity Insurance Act (*Zakon o spremembah in dopolnitvah zakona o pokojninskem in invalidskem zavarovanju, ZPIZ-2K*)<sup>16</sup> entered into force. Periods which once counted as purchased periods now count as periods in which no pension years were bought. However, this applies only to purchased periods before

---

<sup>16</sup> Official Gazette RS, No. 162/2021.

the end of 2012 and periods of voluntary insurance (which also count as purchased periods, except for farmers), which commenced before the end of 2012. This way, legal expectations based on the rules for early pensions in force at the time of purchasing pension periods are safeguarded.

### 3.1.2. Dismissal at Retirement Age?

One of the main novelties related to the social risk of old-age did not concern the Pension and Invalidity Insurance, but the termination of the employment relationship due to old-age. Essentially, it was a measure of forced retirement. The Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (*Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije COVID-19, ZIUPOPDVE*)<sup>17</sup> amended, among others, the Employment Relationship Act (*Zakon o delovnih razmerjih, ZDR-1*)<sup>18</sup> in order to allow employers to unilaterally dismiss workers who meet the requirements for an old-age pension without the existence of any justifiable reason, like business reason or incapacity to work or reason of fault, but with a guaranteed severance payment for the worker. This amendment, aimed at reducing employers costs during the COVID-19 epidemic and its aftermath, whilst said to offer better possibilities for the employment of younger workers, was highly disputed from the viewpoint of (i) age discrimination and ageism, (ii) lack of respect for the worker and his autonomy, and (iii) the fact that the amendment is systemically inconsistent with (even recently amended) pension legislation, which was adopted to ensure a much higher participation of older workers in the labour market in the coming years. Similar provisions applied to civil servants as well.

Such clauses were subject to constitutional review by the Slovenian Constitutional Court in 2021. The request for a constitutional review was lodged by seven representative trade unions and concerned the provisions of the Employment Relationship Act and the Public Servants Act, on the basis of which an employer or a superior could terminate the employment contract of an employee or public servant for business reasons without having to justify the business reason in any way, provided that the employee meets the requirements for an old-age pension. A request for constitutional review of the regulations in question was also filed by the Advocate of the Principle of Equality, alleging age discrimination. The applicants argued, inter alia, that the new regulation is inconsistent with Article 4 of ILO Convention No. 158 on the Termination of Employment at the Initiative of the Employer and Article 24 of the Revised European Social Charter in conjunction with Article 8 of the Constitution (direct application of ratified instruments of international law), in so far as it allowed for the possibility of the unsubstantiated termination of an employment contract without any serious or justified reason, but rather on the fulfilment of retirement conditions and the employer's subjective

---

<sup>17</sup> Official Gazette RS, No. 203/20.

<sup>18</sup> Official Gazette RS, No. 21/13 - 203/20.

decision. After a preliminary decision which had suspended the enforcement of the new rules, the Constitutional Court abrogated the described provisions.<sup>19</sup>

In its assessment of the contested statutory regulation, the Constitutional Court emphasised that in order to terminate an employment contract on the initiative of the employer, according to the two aforementioned international instruments, there must exist a valid reason related to the employee's capacity or conduct or to the operational requirements of the respective employer that justifies the termination of the employment contract. Therefore, in order to protect the employee from unjustified dismissal, the contract's termination has to be justified accordingly. If the statutory reason for the termination of an employment contract does not satisfy these substantive requirements, it cannot constitute a valid reason for dismissal in the concrete case within the meaning of Article 4 of ILO Convention No. 158 and Article 24 of the Revised European Social Charter.

The Constitutional Court held that the arguments of the legislature, namely that the fulfilment of the eligibility requirements for an old-age pension would constitute a valid reason for terminating an employment contract on business grounds, without the employer concerned being required to justify the termination, as this would entail an administrative burden for the employer, do not satisfy these substantive requirements. The exclusion of the employer's obligation to substantiate the operational reason also deprives employees who would have been dismissed under this regulation of sufficient protection under labour law in the event of termination of the employment relationship, since the challenged regulation does not allow for a substantive review of the justification of the reason for dismissal. The Court concluded that the regulation is thus inconsistent with Art. 4 of ILO Convention No. 158 and Art. 24 of the Revised European Social Charter, and consequently with Art. 8 of the Constitution.

### 3.1.3. Indexation of Pensions

Pensions are indexed once a year to 60% of the increase in the average gross salary and to 40% of inflation. Due to austerity measures adopted during the economic and financial crisis, pensions have lagged wage growth. To bridge the persisting gap between pensions and wages caused by the austerity measures, an “irregular” one-off adjustment on top of the scheduled annual pension increase was introduced.

On 13 January 2022, the Act Amending the Pension and Invalidity Insurance Act (*Zakon o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju, ZPIZ-2L*)<sup>20</sup>, was passed, entering into force the day after. It provides a tiered additional (positive) indexation of the majority of old-age and invalidity benefits: Pensions of those who retired

---

<sup>19</sup> Decision in joint cases U-I-16/21, U-I-27/21, 18.11.2021, SI:USRS:2021:U.I.16.21, Official Gazette RS, No. 28/2021 and Official Gazette RS, No. 202/2021.

<sup>20</sup> Official Gazette RS, No. 10/2022.

before the end of 2010 will increase by 3.5%, those who retired in 2011 by 1.7%, and all others by 1%.

On 1 March 2022, the Act Amending the Pension and Disability Insurance Act (*Zakon o dopolnitvah in spremembah Zakona o pokojninskem in invalidskem zavarovanju, ZPIZ-2M*)<sup>21</sup> entered into force. The amendment introduced, among other, a more favourable calculation of survivors' and invalidity benefits.

### 3.1.4. Employment of Pensioners

The question of employment of pensioners on various legal bases remains high on the agenda. Of Slovenia's 2,107,180 inhabitants,<sup>22</sup> there are as many as 469,053 persons receiving an old-age pension (out of 626,710 persons receiving any kind of pension, including disability, widow/er's and family pensions). Average retirement age is 61 years and 6 months (women) and 62 years 8 months (men). The average old-age pension amounts to € 881.83 per month (€ 976.96 with 40 or more years of insurance),<sup>23</sup> while the minimum wage is set at € 1,074.43 and the average wage amounts to € 2,001.93 (all in gross terms). Therefore, many pensioners are still able and willing to perform some sort of paid work (although it might not be for a full working time anymore).

Following a lack of personnel in many industry and especially service sectors, also due to massive layoffs during the COVID-19 period, the legislature passed the Act on Intervention Measures Concerning the Labour Market (*Zakon o interventnih ukrepih za podpora trgu, ZIUPTD1*).<sup>24</sup> It entered in force on 3 March 2022 and increases the number of temporary and occasional work hours that may be performed by persons entitled to such employment arrangements, including pensioners. It was followed by the Act Amending the Market Regulation Act (*Zakon o spremembah in dopolnitvah Zakona o urejanju trga dela, ZUTD-G*)<sup>25</sup> that increased the minimum hour remuneration for temporary and occasional work, including the one of pensioners. It entered into force on 21 April 2022.

## 3.2. Mandatory Health Insurance

### 3.2.1. Sickness Cash Benefits Between Private and Public Responsibility

The relationship between public and private responsibility for health, one of the fundamental goods of every human being and every human society, can be detected at various levels. Such a relationship can be shaped by defining health as a social (or private) risk, deciding on health

---

<sup>21</sup> Official Gazette RS, No. 29/2022.

<sup>22</sup> Statistical office of RS, <https://www.stat.si/statweb>, July 2022.

<sup>23</sup> PIIS monthly statistical overview, 5/2022, <https://www.zpiz.si/cms/content2019/-mesecestatisticnipregled-koledar-objav>, July 2022.

<sup>24</sup> Official Gazette RS, No. 29/2022.

<sup>25</sup> Official Gazette RS, No. 54/2022.

care provision and determining the solidarity community of statutory health insurance, its financing and administration as well as all types and levels of benefits.

The latest changes to this relationship in Slovenia concern the responsibility for the payment of sickness cash benefits as one of the pillars of mandatory health insurance (in addition to health care as sickness benefits in kind). On 10 February 2022, the Act Amending the Health Care and Health Insurance Act (*Zakon o spremembah in dopolnitvah Zakona o zdravstvenem varstvu in zdravstvenem zavarovanju, ZZVZZ-R*)<sup>26</sup> was published and became applicable as of 1 March 2022. It provides a financial relief to employers by reducing the period during which employers have to carry the costs of sickness cash benefits for their employees from 30 to 20 days. The amendment applies only to private, not work-related contingencies of injury or disease. In the case of an occupational injury or accident at work, the responsibility of employers remains stricter, i.e. they have to cover 30 days of sick pay. The obligation of the Health Insurance Institute of Slovenia (HIIS) starts only after this period. As a side-note, the problem of self-employed persons, not having an employer, remains open. They have to live on their own resources for the first 20 days. However, since the period has been shortened, sickness cash benefits for them from the mandatory health insurance are available earlier than before.

The health insurance reform was accompanied by an amendment to the Labour Relationship Act (*Zakon o spremembah in dopolnitvah Zakona o delovnih razmerjih, ZDR-1C*)<sup>27</sup> which entered into force simultaneously on 1 March 2022. According to the said amendment, the employer pays for the first 20 (and no longer for the first 30) days of the worker's sick leave, up to a maximum of 80 days per year (no longer up to a maximum of 120 days per year). After this period, the costs are born by the mandatory health insurance.

Moreover, minimum sickness benefit from the mandatory health insurance was set at a minimum level of 60 percent of the minimum wage.<sup>28</sup> The reason was that the notion of the so-called guaranteed wage was still used, while the guaranteed wage itself was no longer legally regulated. The 2022 amendment now provides for a higher minimum level than before and abolished the reference to the guaranteed wage.

### **3.2.2. Case Law on Mandatory Health Insurance**

Slovenian courts (in addition to CJEU) continue construing the national law of mandatory health insurance. For instance, the Supreme Court of Slovenia overturned the decisions of the Social Courts of first and second instance and denied the claimant's right to reimbursement of medical expenses for treatment abroad. The treatment was provided in the USA, hence, only Slovenian legislation and not EU law was applicable. The argument was that the costs

---

<sup>26</sup> Official Gazette RS, No. 15/2022.

<sup>27</sup> Official Gazette RS, No. 15/2022.

<sup>28</sup> ZZVZZ-S, Official Gazette RS, No. 43/2022.

were not borne by the plaintiff but were covered by a charitable organisation (Red Cross). Reimbursement would result in unjust enrichment of the claimant (insured person), as he could be entitled to payment by a charitable organisation and to reimbursement of the costs by the mandatory health insurance.<sup>29</sup>

This decision raised a more fundamental question about the legal nature of the mandatory health insurance. Of course, persons should not be able to use their health condition to financially enrich themselves. However, is it primarily the task of the mandatory health insurance to ensure the highest attainable standard of health (as emphasised by international standards) or is this task only secondary if no one else is covering the costs? In the case referred to the Supreme Court, a final decision on the reimbursement of costs was already issued by the mandatory health insurance, but the amount paid was reclaimed later on. If the mandatory health insurance would be primarily responsible for guaranteeing (also economic) access to healthcare, the funds collected by charitable organisations could have been used for other services not covered by the social insurance schemes.

Not only the Supreme Court, but also the Slovenian Constitutional Court interprets the constitutional rights to social security, including health insurance (Article 50 Slovenian Constitution) and the right to healthcare (Article 51 Slovenian Constitution). Due to only partial regulation of the mandatory health insurance in a legislative act - and the rest in the Rules issued by the mandatory health insurance -,<sup>30</sup> it is a rather simple task for the Constitutional Court to determine the unconstitutionality of these provisions which also contain normative material. Hence, the Constitutional Court repealed the provision of the Rules, which limited access to artificial insemination services to women under the age of 43.<sup>31</sup> Therefore, the plaintiff who had sought treatment abroad claimed the reimbursement of costs from the health insurance. However, the claim was rejected on the grounds that she did not meet the age conditions under the provisions of the Slovenian Rules. The Constitutional Court held that the provisions of the Rules, which have a by-law nature (or an autonomous act passed when exercising public authority), cannot restrict the rights provided for by a legislative Act. The relevant legislation<sup>32</sup> only requires that the recipient of assisted, artificial insemination be of the appropriate age to give birth.

### **3.3. Introduction or Mere Announcement of Long-Term Care Insurance?**

When the social insurance was introduced in Slovenia at the end of 19<sup>th</sup> century, there was hardly any discussion on the inclusion of a long-term care insurance. Reliance on long-term care was not perceived as a general social phenomenon. The medicine at that time allowed

---

<sup>29</sup> Decision No. VIII Ips 30/2020, 2.2.2021, SI:VSRS:2021:VIII.IPS.30.2020. See also similar decisions (all taken on the same day) in cases VIII Ips 43/2020, 2.2.2021, SI:VSRS:2021:VIII.IPS.43.2020, VIII Ips 29/2020, 2.2.2021, SI:VSRS:2021:VIII.IPS.29.2020

<sup>30</sup> *Pravila obveznega zdravstvenega zavarovanja*, Official Gazette RS, No. 79/1994 as amended.

<sup>31</sup> Decision Up-459/17, U-I-307/19, 21.1.2021, SI:USRS:2021:Up.459.17, Official Gazette RS, No. 42/2021.

<sup>32</sup> Healthcare and health insurance act, Official Gazette RS, No. 9/1992, as amended.

for a longer life only in few cases of more complicated diseases, injuries and irregularities in the functioning of the human body where there was a need for long-term care. Life expectancy was much lower than it is today and (long-term) care could be provided within larger families. With the ageing of the population and higher life expectancy (at birth), we live longer, which is also a reflection of welfare and quality of life that should be maintained at the highest attainable level also when the reliance on care in old-age occurs. Moreover, there are fewer family or household members available to deliver such care. Traditional family structure of two or even three generations living together is not common anymore. As the population ages, more people live in smaller households, increasingly consisting of a single person (mostly elderly women with a low pension). Also the labour force participation of women - most of whom not only receive, but also provide long-term care services – is traditionally high in Slovenia.<sup>33</sup>

Therefore, after a long discussion, which had begun already in 2006, the Long-term Care Act (*Zakon o dolgotrajni oskrbi* – ZDOsk) was passed at the end of 2021.<sup>34</sup> The reason for its adoption was the difficulty of making sound social policy when long-term care benefits are scattered across the field of social security law and beyond.<sup>35</sup> The intention was to introduce a new social insurance branch, i.e. the long-term care insurance. At first glance, it seems like an important improvement and extension of the Slovenian social security system to the benefit of insured persons. However, a closer look at the ZDOsk reveals that it is a rather imperfect legislative act. Not only is the wording used not in line with the basic legal language - further regulation is left to by-laws or future legislative acts. In fact, long-term care insurance has not yet been introduced. It seems that the former government just wanted to score some political points by rushing to adopt a long-term care act.

ZDOsk links long-term care insurance with mandatory health insurance. HIIS shall be the carrier of both insurances. Insured persons are mainly those above the age of 18 years and their family members. The benefits shall be adjusted to the degree of reliance on long-term care and encompass cash benefits as well as benefits in kind. The latter include institutional long-term care, long-term care at home and care by a family member.

However, many of the provisions shall only become applicable in the years to come, and long-term care insurance is to be introduced with a separate legislative act by 30 June 2025. Moreover, the sources of financing of long-term care have yet to be determined. Some provisions of the legislative acts relating to invalidity and mandatory health insurance and social assistance shall cease to apply. However, the Personal Assistance Act (*Zakon o osebni*

---

<sup>33</sup> Of all economically active people aged 15 and more in 2021, there was 54% men and 46% women, <https://www.stat.si/StatWeb/News/Index/10259>, July 2022.

<sup>34</sup> On 9 December 2021, the Parliament passed the long-awaited Long-Term Care Act (*Zakon o dolgotrajni oskrbi*, ZDOsk, Official Gazette RS, No. 196/21).

<sup>35</sup> More G. Strban, Legal aspects of long-term care in Slovenia, in: Ulrich Becker, Hans-Joachim Reinhard (eds.): Long-Term Care in Europe: A Juridical Approach, Springer 2018, p. 415-460.



*asistenci* – ZOA)<sup>36</sup> shall remain in force. The argument is that with (family or professional) carer the responsibility lies with the caring person, while with a personal assistant the responsibility for all activities lies with the person reliant on long-term care.

### 3.4. Unemployment Insurance

Under the (now) former government the legislature amended the Labour Market Regulation Act (*Zakon o urejanju trga dela* - ZUTD).<sup>37</sup> The amendment of 9 April 2021 establishes special rules for cross-border workers with permanent residence in Slovenia (the majority being, of course, Slovenian nationals), who were previously employed in another EU Member State, predominately in Austria. These workers are entitled to a special maximum amount of unemployment benefits under Slovenian legislation. While the general ceiling for unemployment benefits (for workers and self-employed persons losing employment in Slovenia) is set at € 892.50, the maximum amount for cross-border workers who have lost employment in another EU Member State is € 1,785, as the costs of such benefits are borne by the Member State of last employment, with no additional costs for Slovenia as the competent Member State (if it is a richer Member State paying higher unemployment benefits than Slovenia).

Since the vast majority of Slovenian-resident frontier workers are employed in Austria, the highest attainable amount of unemployment benefits under the amendment basically coincides with the general ceiling under Austrian legislation, so that Austria, most commonly the Member State of last employment for Slovenian frontier workers, covers the costs of now much higher unemployment benefits (up to 1,785 EUR).

In cases where the Member State of last employment pays lower unemployment benefits (less than € 1,785, e.g. Italy), Slovenian employment services have to make up the difference for high-earners up to the ceiling of € 1,785.

The change in law is the result of a request by the Slovenian Trade Union of Migrant Workers. It claimed that frontier workers are being stripped of their acquired social rights back in Slovenia. From this perspective, the proposal displays a strong property understanding of unemployment benefits, which are to be treated as one's private property after the conditions for their obtainment are fulfilled. According to the Trade Union, frontier workers have to pay higher (rates of) contributions in their Member State of employment (the Trade Union referred to Austria as an example here), whilst being entitled only to much less favourable unemployment benefits under Slovenian law. The Trade Union argued that this *de facto* limits the EU free movement rights of persons who should be treated equally under different domestic legislations. Importantly, the Trade Union highlighted that Slovenia would not incur additional costs due to the proposed amendments since the costs of higher unemployment

---

<sup>36</sup> Official Gazette RS, No. 10/2017 as amended.

<sup>37</sup> ZUTD-F, Official Gazette RS, No. 54/2021. It entered into force on 24 May 2021.

benefits – a sort of a frontier workers’ supplement - would be borne entirely by the Member State of last employment.

In its proposal, the Trade Union pointed to the well-known shortcomings of current EU legislation, which allows wealthier Member States of last employment that collect higher amounts of social security benefits to benefit from the rules on applicable legislation. Changes to the social security coordination Regulation, which would establish the exclusive competence of the Member State of last employment, have already been proposed many years ago, but have not yet been adopted. However, can a Member State like Slovenia, whose frontier workers mostly become unemployed in high-income Member States such as Austria, change its domestic legislation to mitigate the negative effects of the social security coordination Regulation (to its advantage) without breaching EU law?<sup>38</sup>

Moreover, is it not unjustified unequal treatment (discrimination) of Slovenian unemployed persons, who have worked in another (wealthier) EU Member State yet without qualifying as frontier or generally cross-border workers? They all ought to be subject to the same (Slovenian) unemployment insurance scheme, but although both groups of workers might have paid the same (high) rates of social security contributions, only those with cross-border employment record may benefit from the higher maximum amount. If not breaching EU law, such rules might be against the basic equity principle under the constitution, i.e. equal treatment.

### 3.5. Family Benefits and Social Assistance

Recently there have been no major developments in the social assistance scheme, apart from abolishing a long-term care supplement for social assistance recipients, when Long-term Care Act (ZDOsk) mentioned above becomes applicable. There were some minor amendments to family benefits, though.

On 1 January 2021, some of the Amendments to the Parental Protection and Family Benefits Act (*Zakon o starševskem varstvu in družinskih prejemkih*, ZSDP-1),<sup>39</sup> adopted in December 2019 and in October 2020, became effective, containing changes in the calculation base for income-replacement benefits for parents who work part-time due to child-care. Instead of a proportionate amount of the minimum wage, a proportionate amount of previous earnings is now used.

Besides, in two decisions of June 2022, the Slovenian Constitutional Court found that the statutory regulation which determines that marriage may only be contracted by two persons of different sexes, and the provisions excluding same-sex partners living in a formal civil union

---

<sup>38</sup> More L. Mišič, Unemployment benefits in the EU: Is Slovenia fighting the good fight or just trying to get away with a free lunch?, 7 April 2021, <https://europeanlawblog.eu/2021/04/07/unemployment-benefits-in-the-eu-is-slovenia-fighting-the-good-fight-or-just-trying-to-get-away-with-a-free-lunch/>, July 2022.

<sup>39</sup> ZSDP-1D, Official Gazette RS, No. 158/2020.

from jointly adopting a child, are inconsistent with the Slovenian Constitution.<sup>40</sup> In the decision regarding joint adoption, the Constitutional Court stated that child protection laws must take into account the constitutional prohibition of discrimination and allow for the inclusion of same-sex partners in the register of candidates for joint adoption, in order to offer special protection to children who are not (or no longer) cared for by their birth parents and therefore cannot live with their family of origin. In any case, the selection of the most suitable adoptive parents for a given child is made by a social service on whose proposal a court decides on the adoption, taking into account the best interests of the child. This decision may also have implications for social security, especially family and survivors' benefits.

The Constitutional Court obliged the legislature to remedy the established unconstitutionality within six months. In addition, it held that until the unconstitutionality is remedied, it shall be deemed that marriage constitutes a life union of two persons regardless of their sex, and same-sex partners living in a formal civil union may jointly adopt a child under the same conditions as spouses. Hence the Court actually acted as a positive norm-giver (annulling provisions of the legislative act under review). The new Minister of Labour already announced that the new law will be prepared rather soon.

#### **4. CONCLUDING REMARKS**

The reported period was a turbulent one. As the society is constantly subject of change, so is the law of social security. However, in the last couple of years the most prominent role was played by the Slovenian Constitutional Court, defending the rule of law principle and solidarity as a connecting tissue among the members of the society.

The Constitutional Court annulled certain by-laws, passed by the government without express legislative authorisation. Moreover, it abolished the possibility of no-reason dismissal when meeting the retirement conditions, which would give too much power to the employers and conflict with the Slovenian Constitution and ratified international standards. In addition, it has significantly improved the legal position of same-sex partners in the absence of legislative action.

The former government did not just have the intention to rule without the parliament and favour employers, but wanted to reconstruct social relations in favour of wealthier members of the society, inter alia by proposing a so-called social cap on the level of social insurance contributions. Just before the elections, it also wanted to score some political points by

---

<sup>40</sup> Decision No. U-I-486/20, Up-572/18, Official Gazette RS, No. 94/2022, 16.06.2022, SI:USRS:2022:U.I.486.20; Decision No. U-I-91/21, Up-675/19, Official Gazette RS, No. 94/2022, 16.06.2022, SI:USRS:2022:U.I.91.21.

introducing a long-term care act. However, it is a legally hollow legislative act. More effort is required to really introduce a long-term care insurance as a separate branch of social security.

Dissatisfaction with such decisions was expressed at the elections in April 2022. The new government seems to have a better instinct not only for the rule of law and democracy, but also for social solidarity as one of the cornerstones of social security. However, the review of measures (still to be) adopted will be possible only in the next social law report.

## 5. SELECTED LITERATURE FROM 2021/2022

- Bagari, Sara: Univerzalni temeljni dohodek kot možna nadomestitev socialnega varstva in socialne varnosti? [Universal basic income as possible replacement of social assistance and social security?], *Podjetje in delo*, 2021, Vol. 47, No. 6/7, pp. 1036-1046.
- Bagari, Sara: Uporaba algoritmov na področju delovnih razmerij in socialne varnosti [Use of algorithms in the field of labour law and social security], *Delavci in delodajalci*, 2022, Vol. 22, No. 1, pp. 41-56.
- Bagari, Sara; Sagmeister, Maria: Economic dependence and parental protection: a comparative analysis of Austrian and Slovenian labour and social security rights of economically dependent self-employed parents, *European Labour Law Journal*, 2022, Vol. 13, No. 1, pp. 86-107.
- Bagari, Sara; Strban, Grega: Delovno- in socialnopravna vprašanja "prisilne upokojitve" [Labour and social questions of 'forced retirement'], *Delavci in delodajalci*, 2021, Vol. 21, No. 1, pp. 9-29.
- Mišič, Luka: Izbrani izzivi pravnega urejanja medicinske triaže [Selected challenges of medical triage legal regulation], in: Renata Salecl (ed.), *Koga reševati v času pandemije?: etični, medicinski in kazenskopravni vidiki triaže* [Who to save in the times of pandemic?: ethical, medical and criminal points of triage], Inštitut za kriminologijo pri Pravni fakulteti, Ljubljana, 2021, pp. 89-111, 321-322, 329-330.
- Mišič, Luka: Pravni in etični vidiki pravice do zdravljenja v času epidemije [Legal and ethical points of the right to healthcare in epidemic times], *Delavci in delodajalci*, 2021, Vol. 21, No. 2/3, pp. 137-169.
- Mišič, Luka: The Slovenian Old Age Security System in 2020, in: Simone M. Schneider, Teodora Petrova, Ulrich Becker (eds.), *Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond*, 2nd ed., Munich: Max Planck Institute for Social Law and Social Policy, 2021, pp. 380-387.
- Mišič, Luka; Bagari, Sara: Koordinacija dajatev za brezposelnost v Evropski uniji: kdo pije, kdo plača? [Coordination of unemployment benefits in the EU; who drinks and who pays?], *Podjetje in delo*, 2021, Vol. 47, No. 1, pp. 80-104.
- Mišič, Luka; Strban, Grega: ESL in EKČP: bremena človekovih pravic druge generacije in kako jih preseči [ESC and ECHR: burdens of the second generation human rights and how to overcome them]. *Delavci in delodajalci*, 2021, Vol. 21, No. 4, pp. 515-536.
- Mišič, Luka; Strban, Grega: Functional and Systemic Impacts of COVID-19 on European Social Law and Social Policy, in: Ewoud Hondius et al. (eds.), *Coronavirus and the Law in Europe*. Cambridge; Antwerp; Chicago: Intersentia, 2021, pp. 973-988.
- Mišič, Luka; Strban, Grega: Regulation of Triage in Times of a Pandemic: Experiences from Slovenia (and Beyond), *Medicine Law & Society*, 2021, Vol. 14, No. 2, pp. 189-207.
- Mišič, Luka: Sistematična analiza PKP ukrepov s področja socialne varnosti: med pravom in (socialno) politico [Systemic analysis of anti-epidemic measures: between law and (social) policy], *Delavci in delodajalci*, 2022, Vol. 22, No. 2/3, pp. 187-206.

- Strban, Grega: Metodologija primerjalne razlage prava socialne varnosti [Methodology of social security comparison], in: Aleš Novak, Marijan Pavčnik (eds.), *Pravne panoge in metodologija razlage prava* [Legal fields and methodology of law interpretation], Lexpera GV Založba, Zbirka Pravna obzorja, 2022, No. 58, pp. 197-229.
- Strban, Grega: Reliance on Long-term Care, in: Susanne Auer-Mayer, Elias Felten, Rudolf Mosler, Birgit Schratlbauer (eds.), *Festschrift für Walter J. Pfeil*, Wien: MANZ Verlag, 2022, pp. 603-611.
- Strban, Grega: Social Law 4.0 and the Future of Social Security Coordination, in: Ulrich Becker, Olga Chesalina (eds.), *Social Law 4.0, New Approaches for Ensuring and Financing Social Security in the Digital Age*, Studien aus dem Max-Planck-Institut für Sozialrecht und Sozialpolitik, Vol. 74, Baden-Baden: Nomos, 2021, pp. 335-361.
- Strban, Grega: Family and family benefits in the EU in: Gerald G. Sander, Ana Pošćić, Adrijana Martinović (eds.), *Exploring the Social Dimension of Europe, Essays in Honour of Nada Bodiřoga-Vukobrat*, Studien zur Rechtswissenschaft, vol. 455, Hamburg 2021, p. 55-66.
- Strban, Grega: Social Risk, in: Franz Marhold, Ulrich Becker, Eberhard Eichenhofer, Gerhard Igl, Giulio Prosperetti, *Arbeits- und Sozialrecht für Europa*, Festschrift für Maximilian Fuchs, Baden-Baden: Nomos, 2020 pp. 741-756.
- Strban, Grega; Mišič, Luka: Social Protection and the Pandemic in Slovenia: Between Income Protection, Social Policy and Politics, in: Becker, Ulrich, Seemann, Anika (eds.), *Protecting Livelihoods – A Global Comparison of Social Law Responses to the COVID-19 Crisis*, Studien aus dem Max-Planck-Institut für Sozialrecht und Sozialpolitik, Vol. 77, Baden-Baden: Nomos, 2022, pp. 427-451.
- Strban, Grega; Mišič, Luka; Balažic, Jože; Gradišek, Anton: Pravni vidiki nadomeščanja v zdravstvu [Legal aspects of substituting healthcare workers], *Zdravniški Vestnik*, 2021, Vol. 90, No. 11/12, pp. 637-650.
- Strban, Grega; Mpedi, Letlhokwa George: The Right to Healthcare: Slovenian, South African and Cross-border Perspectives, in: Kramberger Škerl, Jerca; Fourie, Elmarie (eds.), *Universality of the Rule of Law, Slovenian and South African Perspectives*, Stellenbosch: African Sun Media, SUN PReSS, 2021, pp. 165-189.
- Strban, Grega: Solidarity and self-responsibility as pivotal elements of social security, *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS)*, 2022, Vol. 36, No. 1, pp. 145-152.
- Strban, Grega: Pravna narava socialnega varstva v sistemu socialne varnosti [Legal nature of social assistance in the system of social security], *Podjetje in delo*, 2021, Vol. 47, No. 6-7, pp. 1010-1020.

Prof. Dr. Grega Strban  
Faculty of Law  
University of Ljubljana  
Ljubljana, Slovenia

---