| Chapter 6 |

Hungary: Social Challenges of an Aging Society

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ABSTRACT

One of the main challenges facing the Hungarian social security system is demographic change. The steadily shrinking labour force in a pre-ageing society will soon pose a problem for finance. In the current payments model, contributions should cover the entire expenditure side, which already works only with corrections. And changes in the structure of society will raise a host of issues for which the present legislator is not prepared. This study highlights these important issues such that, together, we can find good practices to prevent the demographic changes that are a harbinger of the future.

KEYWORDS

social rights, Constitutional Court, pension system, healthcare system, social security benefits, solidarity, green health, sustainability

1. Introduction—Place of social law in the national system

In Hungary, the following division of the system of social law is possible, which is the one most commonly used in the legal literature.[1]

The first group is the insurance system, the most important feature of which (and this is the basis for its name) is that the services are mostly covered by the contributions of the recipients, and these benefits are usually regulated by social security. People who participate in the insurance scheme and are exposed to the same risk form a community of risk. In the event of a risk situation, known as an insured event, the insured person receives benefits from the common property. In Hungary, social security covers health, accident, and pension insurance and, more broadly, unemployment benefits. The provision of services through this system constitutes the largest part of the state (social law) functions.

1 This dogmatics – shared by German and Austrian authors – is essentially the same system outlined by Katalin Szamel in one of her studies. Szamel, 1998, pp. 15–22; as well as Tamás Prugberger. Prugberger, 2008, pp. 413–430; Eichenhofer, 2004, p. 8.

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The second group is the so-called care or compensation system, where benefits are linked to objective life situations, with citizens becoming entitled to a service if this particular situation exists, without any other prior criteria. It also differs from the previous one in that it is not insurance-based. Essentially, these services are almost a citizen's right under the law, and since their purpose is not to meet a need for existence, they can be described as assuring a life worthy of human dignity. Such life situations include, child-rearing, participation in war and access to housing, and the state provides a corresponding service, such as family allowances and benefits for war victims. These benefits are covered by the state budget (i.e. the taxes paid by citizens).

The third type is the benefit system, characterised by means-tested benefits and is subsidiary in nature (i.e. the state only provides a service if the claimant has no other source of subsistence). Here as well, there is a life situation that gives rise to a claim for benefits. However, if there is a change in the life situation and the claimant is no longer entitled to benefits because the claimant claims benefits from another group, the claimant is excluded from that group. In essence, this type of scheme provides benefits for a transitional period according to the principle. These benefits are also funded from the state budget.

According to this grouping, the Hungarian social system is of a mixed nature, with insurance and benefit elements present and the insurance elements predominating. Based on the above criteria, benefits provided by social law institutions can be broadly grouped into three broad systems: social security benefits, family benefits and other benefits for families with children, and benefits provided by the social administration system. However, this division is not set in stone, and the dynamic nature of social law is constantly changing. Moreover, this system may change as the catalogue of protected values expands or contracts.[2]

2. Social rights in the Constitution

Social rights, together with economic and cultural rights, are generally referred to as the second generation of human rights, a group of rights that emerged in the second half of the 19th century. This categorisation suggests that social rights appeared later in constitutional theory and constitutional law than classical liberties.[3] Social rights were included in written constitutions about a hundred years later than liberties. While freedoms are a constraint on the state and have legal safeguards, social rights require the state to be active and have material guarantees. Social rights are referred to in the literature as 'participation' rights, while civil liberties are referred to as

2 Fabók and Prugbeger, 2009, p. 16; Tóth, 2008, pp. 403–425.

3 For more on the concepts and dilemmas of social rights, the social state, and the welfare state, see Sári, 2000, pp. 192–198.

'protective' rights.[4] International regulation aims to guarantee social rights by the state, but the limit to this is the economic capacity of the state concerned.[5]

It is now accepted[6] that social (economic, cultural) rights should be enshrined in the Constitution. Economic, social, and cultural rights can be divided into two groups according to whether the state's action is manifested in some positive behaviour. In the first category regarding so-called freedoms, such as the freedom of association, the state's action is aimed at toleration, its task being only to protect the exercise of the right. In the second group of economic, social, and cultural rights, the state's conduct is active, and the state is obliged to provide a service.[7] Beyond the classical first-generation rights, where non-intervention by the State is the regulating principle, social rights are characterised by the active role of the State.[8]

According to some authors,[9] only those social rights that are enforceable by the state have a place in the catalogue of citizens' rights in the Constitution, and this does not contradict the dogma that social rights induce the state to behave in an otherwise positive, active manner.[10] Thus, social security rights, such as the right to unemployment benefits, family allowances, social security, the right to social security benefits, and, among the broader social rights, the right to compulsory education, for example. Another group of social rights (according to the same author) are not considered civil rights, such as the right to work and the right to education; they are not 'pure' rights but are a mixture of state objectives and enforceability.

Overall, the most crucial question in raising social rights to the level of a fundamental constitutional right is whether they can be legally enforced or whether they can only be codified as a state objective. The incorporation of social rights into the Constitution suggests the former: the rules governing the exercise of most of these rights are contained in lower-level legislation, and it is the task of the Constitutional Court to prevent the legislature from infringing social rights when enacting legislation of this kind, a task which the Constitutional Court has fulfilled in several decisions.[11]

4 Takács, 2011, pp. 76–86.
5 Drinóczi, 2018, pp. 27–28.
6 Some posit that social rights have no place in the Constitution. According to Szamel's later revised view, 'Economic, social, cultural rights – if it is possible to speak of such 'rights' at all – have always been the most sensitive categories of human rights, the least legally comprehensible'. Szamel, 1993, pp. 27–42. See Sajó, 1995, pp. 5–12.
7 Thus, the most important feature of these rights is the provision of services by the state. Someone else could provide these services, but there is not much demand for it, given the lack of financial resources and the (never) return on investment. However, the state provides these services within the financial means at its disposal, which can change constantly. Thus, the nature of the services is not constant. See Kardos, 2003, pp. 1279–1283; Kardos, 1996, pp. 20–32.
8 See Sári, 1997, pp. 217–220.
9 These two types of constitutional concepts can be read in Schmidt, 1994, pp. 3–9.
10 János Sári agrees with this position. See Sári, 1997, pp. 217–220.
11 See Szamel, 1998, pp. 15–22. See, *inter alia*, CC Decision 64/1993 (XII.22.); CC Decision 11/1991 (III.29.); CC Decision 26/1993 (IV.29.); CC Decision 43/1995 (VI.30.); CC Decision 56/1995 (IX.15.).

2.1. Social rights in the Constitution (1989-2012)

The Hungarian legislature reorganised the Constitution from 23 October 1989 with Act XXXI of 1989. The Praembulum contained the objective of establishing a social market economy:[12] '...in order to facilitate the peaceful political transition to a state based on the rule of law and realising a social market economy...'. However, the Constitutional Court emphasised in a decision[13] that the declaration of the Praembulum does not imply a declaration of the principle of the social state based on the rule of law and that the achievement of the social market economy as formulated here is only a state objective.[14] According to Article 2(1) of the Hungarian Constitution: 'The Republic of Hungary is an independent, democratic state governed by the rule of law'—that is, the Constitutional Court stated in its 1990 decision that this concept of the rule of law does not refer to social rights and that it is not necessary to make social security a characteristic of the rule of law for it to be guaranteed.

According to the explanatory memorandum of the constitutional amendment, the regulation considers the fact that Hungary has recognised the content of the relevant international conventions, such as the Universal Declaration of Human Rights, the ICESCR and the International Covenants on Civil and Political Rights, and its obligation to uphold them. Given the amendment to the Constitution, two chapters of the Constitution have been amended to include social measures and social rights. One set of provisions on social matters set out the objectives and tasks of the State, while the other set out the rights of subjects. The former group is highlighted in Chapter I of the Constitution, under the heading of General Provisions and should be mentioned as including support for young people and the needy.[15] Regarding these provisions, the Constitutional Court has held that the establishment of these provisions as a State objective does not give rise to a subjective right and does not imply that the legislator is required to establish specific forms of assistance or legal institutions.[16] Among the fundamental social (economic, cultural) rights, Chapter XII of the Constitution included the equality of women and men, support for mothers, children's rights, the right to work, the right to health, social security, and education.[17]

12 In Czúcz's view, however, the presence of the social adjective in the preamble of our former Constitution is of purely symbolic significance, since it is not possible to derive a constitutional right from the preamble, but its presence may indicate the social sensitivity of the state. See Czúcz, 1996, pp. 177–187.

13 CC Decision 772/B/1990/5.

14 CC Decision 33/1993 (I. 28.); see for further details Rácz, 2008, pp. 129–149.

15 Article 16 of the Constitution: 'the Republic of Hungary shall pay special attention to the security, education and upbringing of youth, and shall protect the interests of youth'.

16 CC Decision 652/G/1994.

17 Articles 66–67 of the Constitution The right to work and the right to education are not included among the social rights in the narrow sense. See also Rab, 2008, pp. 1–4.

Social rights in the narrower sense are regulated in the Constitution in two broad areas: the right to mental and physical health,[18] including the right to healthcare, and the right to social security. According to Article 70/D (1) of the Constitution, people living in the territory of the Republic of Hungary have the right to the highest possible level of physical and mental health, while (2) of the same article stipulates how the state organises the institutions to ensure this right: 'The Republic of Hungary shall implement this right by organising occupational safety, healthcare institutions and medical care, by ensuring regular physical exercise, and by protecting the built and natural environment'.[19]

The other major area of social rights, the right to social security, was defined in Article 70/E of the Constitution, which listed the insured events in the event of which the state provides assistance: 'Citizens of the Republic of Hungary have the right to social security; in the event of old age, sickness, disability, widowhood, orphanhood and unemployment through no fault of their own, they are entitled to the benefits necessary for their subsistence'. The Constitution has specified the institutions through which services are provided. Social security was interpreted by the Constitutional Court in a 1991 decision in a civil law case, which stated that

> ...social security does not mean either a guaranteed income or that the standard of living once achieved by citizens cannot be reduced as a result of unfavourable economic conditions. The State's obligations with regard to the social security of its citizens are set out in general terms in Article 70/E paragraph (1) of the Constitution.[20]

The Constitutional Court has examined, *inter alia*, the extent of the State's obligation to ensure the application of this principle. In this context, the Constitutional Court has ruled in several decisions that it is the responsibility of the State to organise the provision of social security and to operate the social security and social assistance system.[21] However, it has also stated that 'social security does not operate exclusively on the basis of market principles'—that is, the right to a pension is not a right acquired by the insured person based on the principle of a right to be bought, as there is no genuine insurance but a mixed insurance system with social elements in Hungary. As early as 1993, the Constitutional Court saw the need for a modernisation and complete overhaul of social security. Regarding vested rights, such as family allowances, the

18 The Constitutional Court explained that the right to health, which is not in fact a civil right, 'cannot be interpreted as a subjective right in itself, it is formulated as a state obligation under Article 70/D(2) of the Constitution, which includes the obligation for the legislator to define subjective rights in certain areas of physical and mental health'. CC Decision 54/1996 (XI.30.).
19 The institutions included as a guarantee of the right to health are listed in the second paragraph, the current text of which was adopted by Parliament in 1990, and regular physical exercise has been included as a means of protecting this right. See Act XL of 1990.
20 CC Decision 32/1991 (VI. 6.).
21 CC Decision 26/1993 (IV.29.), CC Decision 43/1995 (VI.30.).

Constitutional Court took the view that they should be protected and that, in the event of their conversion – a change in the scope of entitlement – adequate time should be allowed for their introduction.[22]

2.2. Social rights in the Fundamental Law after 2012—Provisions in force

The Fundamental Law of Hungary, which entered into force on 1 January 2012, significantly amended the fundamental right to social rights. The current Fundamental Law has lowered the level of protection of social security by not providing social security but only seeking it. In doing so, it defined the establishment of a social security system as a state objective: 'Hungary shall endeavour to provide social security for all its citizens'.[23] As the Constitutional Court stated in a 2012 decision, 'Article XIX of the Fundamental Law on Social Security does not provide for rights, but rather for obligations and objectives of the state'.[24] The legislation in force before 2012 contained a stronger state role. Notably, the Fundamental Law is also characterised by the fact that it sets out other state objectives as aspirations; for example, it only seeks to ensure decent housing.[25] In a decision, the Constitutional Court considered that, when drafting the above new concept of the Fundamental Law, it was necessary to reduce the previous entitlements because of 'sustainable economic development and the gradually deteriorating demographic situation' and 'changed economic circumstances'.[26] The positive economic changes in the period that has elapsed have not yet prompted the legislator to amend the Fundamental Law, and the reasoning of the Constitutional Court is, therefore, questionable.

In situations in life where individuals cannot meet their needs, the state provides support. Article XIX of the Fundamental Law identifies seven situations in which an individual is entitled to state assistance: maternity, sickness, disability, invalidity, widowhood, orphanhood, and involuntary unemployment. The Constitutional arrangements previously in force have been extended to include two insured events, disability, and maternity. It is a positive change, but the taxonomy of insurance events does not allow the legislator to further expand the list, which is not a positive change.[27] The Fundamental Law guarantees entitlement to 'statutory benefits' upon the occurrence of an insured event, a definition interpreted as a subjective entitlement by the noted Constitutional Court decision.[28] Another Constitutional Court decision went beyond this, noting that the protection of property continues to apply in the case of social security services.[29]

22 CC Decision 56/1995 (IX.15.); Hoffman, 2018, p. 22.
23 Article XIX (1) of the Fundamental Law.
24 CC Decision 40/2012 (XII.6.).
25 Article XXII (2) of the Fundamental Law.
26 CC Decision 23/2013 (IX.25.). Several authors have criticised the decision of the Constitutional Court, see Téglási, 2019, p. 335. They even see them as a more restrictive interpretation of social entitlements. Kiss, 2016, p. 362.
27 Hajdú, 2015, pp. 37–38.
28 Szatmári, 2018, pp. 65–66.
29 CC Decision 4/2016 (III.1.).

By introducing two more new elements, the literature analysis shows that the Hungarian social benefit system, which considers Bismarckian insurance principles, is more similar to the Anglo-Saxon system. This system is characterised by the limited role of the state and the 'compulsory' self-care of the individual. In this model, the state assesses the deservingness of the individual to receive benefits and only provides benefits to the individual as a last resort when no other option is available.[30]

In contrast to the previous legislation, the current Fundamental Law provides that social security is not implemented by the state through social security and social institutions but only through social institutions and measures. This solution has integrated social security and defined it as a social institution. The other significant change is that the extent of social measures—a change that is particularly significant for means-tested benefits—may also depend on the activity of the individual, which is useful to the community. Similar to the Anglo-Saxon system, the test of merit may arise: 'A law may determine the nature and extent of social measures according to the activity of the person receiving social measures which is useful to the community'.[31] The activities that are useful to the community are not listed at the level of the basic law;[32] in this context, in our view, the contribution to the burden can be mentioned.

The Constitution gives priority to the pension system by fixing its organisation. It provides that voluntary institutions may operate alongside the state pension system. The public pension system is a single system based on solidarity, ruling out the possibility of rebuilding the compulsory private pension fund system, which was abolished in 2012.[33] In 2012, the pension system was significantly reformed, with the abolition of early retirement benefits to ensure the sustainability of the pension system. According to the Constitutional Court, one of the benefits—a service pension—is no longer a pension insurance benefit and, therefore, the beneficiary has no vested right to it. These benefits are now only social benefits under Article XIX of the Fundamental Law, for which the need factor must be considered.[34]

The preferential pension scheme for women only, introduced in Hungary in 2012, is mentioned in the Fundamental Law. Women benefit from more favourable rules than the general pension eligibility conditions. The Constitution includes social rights, such as the right to physical and mental health. The right to health is promoted 'by ensuring agriculture free of genetically modified organisms, access to healthy food and drinking water, organising occupational safety and healthcare, promoting sport and regular physical exercise, and protecting the environment'. Overall, we do not consider the provisions of the Fundamental Law on social entitlements to be adequately regulated, and we agree with Professor Hajdú that the legislator would

30 Hoffman, 2018, p. 21.
31 Article XIX (3) of the Fundamental Law.
32 Szatmári, 2018, pp. 66–68.
33 Article XIX (4) of the Fundamental Law.
34 CC Decision 3061/2015 (IV.10.).

rather focus on individual self-care than on state responsibility for social security benefits.[35]

3. Social security benefits

3.1. Benefits

In 1998, Hungary replaced the unified, code-like Social Security Act with four separate laws regulating social security. In 2012, disability benefits were moved from pension benefits to health insurance benefits, and the possibility of early retirement was abolished, transforming pensions paid until then into social benefits. The provisions on the coverage and subjects of social security were also amended in 2019.

Thus, four important laws currently regulate benefits in the compulsory social security system: Act CXXII of 2019 on persons entitled to social security benefits and on the coverage of these benefits,[36] Act LXXXI of 1997 on social security retirement pensions,[37] Act LXXXIII of 1997 on Compulsory Health Insurance,[38] and Act CXCI of 2011 on the Benefits of Persons with Disabled Work Ability and on the Amendment of Certain Acts[39]. Benefits are grouped according to whether they are available under health insurance or pension insurance:

Health insurance benefits	Pension insurance benefits
a) Health service; b) Cash benefits; c) Accident benefits; d) Benefits for persons with reduced working capacity.	a) Pension in its own right; b) A survivor's pension.

3.1.1. About the benefits available under the compulsory health insurance scheme

3.1.1.1. Health services

The purpose of healthcare delivery and patient care is to restore health. The legislation groups the services that can be provided by type of care, according to five areas. The range of people entitled to health services is the widest, and for a minimum fee, anyone in Hungary today—who is not entitled to them by law—can receive care of any level. The high degree of solidarity in these benefits poses serious challenges to the sustainability of social security. Changes to eligibility for services are in our view inevitable, but the slightest change—partly due to inadequate education—will meet

35 Hajdú, 2015, pp. 34–38.
36 The abbreviation of the Act in Hungarian is 'Tbj.', in the following: Act on Social Security.
37 The abbreviation of the Act in Hungarian is 'Tny'., in the following: Act on on the Eligibility for Social Security Benefits and Private Pensions.
38 The abbreviation of the Act in Hungarian is 'Ebtv.', in the following: Health Insurance Act.
39 In the following: Act of Amendment.

with huge resistance from society (e.g. the introduction of the visit fee in 2007 [300 Ft. approx. 0.8 EUR], which was mandatory when using a healthcare provider, was in force for one year).

A) Free health services
It is the largest group of benefits. Within this, benefits can be further divided into three parts. Disease prevention and early detection services include screening and preventive care, based on the age of the population. For medical care, the insured person is entitled to general medical care, dental care, specialised outpatient care and inpatient care. For so-called other services, the healthcare provider provides obstetric care, medical rehabilitation and patient transport and rescue.

B) Services eligible for aid in addition to the price
In the context of outpatient care, the insured person is entitled to a subsidy for the cost of medicines, special dietary supplements, medical aids, and medical care ordered by a doctor.

In the cases listed in the law, the insured person is entitled to a travel allowance if, for example, the insured person uses specialised outpatient care or inpatient hospital care.

C) Benefits available on a part-pay basis
These benefits have been significantly reduced by the legislator, and only three types remain: orthodontic appliances under the age of 18; dentures to restore chewing ability; and interventions to change external sexual characteristics. For an additional fee, the insured person may receive comfort services and accommodation and nursing care, provided that the conditions are available at the healthcare provider. As a general rule, healthcare providers can offer accommodation in a single room as a comfort service.

D) Services available on grounds of fairness
The health insurer may, on a fair and equitable basis, cover the reimbursement of procedures not yet included in the financing or provide a subsidy for the cost of allopathic medicines, nutritional supplements for special nutritional needs, and medical aids that cannot be prescribed with social security support.

E) Provisions concerning treatment abroad
In the territory of a European Economic Area Member State, the homesickness insurance body may also reimburse the insured person for emergency benefits under the conditions and to the extent provided for by law.

3.1.1.2. Cash benefits

There are four cash benefits in the statutory comprehensive insurance scheme: the infant care allowance, the childcare allowance, the adoption allowance, and the

sickness allowance. One of the basic principles of the law is that health insurance benefits in cash may be claimed in proportion to the social security contribution payable unless otherwise provided by law. This does not mean, however, that the rate of health insurance benefits in cash is proportional to the obligation to pay contributions, given that (and the reference to the statutory exception implies this) two of the four cash benefits are capped (i.e. the rate is capped). Of the cash benefits, the infant care allowance, which is 100% of average earnings, and the adoption allowance are not capped. Meanwhile, the other two are capped, though there is no upper limit on contributions.

Three benefits are linked to the birth of a child. The infant care allowance is paid from birth until 168 days, and the childcare allowance is paid until the child is 2 years old. The adoption allowance is also a benefit for 168 days, from the age of 2 to 3 years.

Sickness benefit is paid in the event of incapacity for work, the most common form of incapacity for work being sickness. It is paid for the duration of the incapacity for work but for a maximum of one year. If the insurance relationship is terminated during the incapacity for work, the insured person is not entitled to sickness benefit, with the result that no benefit is payable on a passive basis. The limit on the amount of sickness benefit was introduced in 2009, but, although justified by the principle, no contribution ceiling was introduced by the legislator.

3.1.1.3. Accident benefits

Accident benefits are paid in the event of an accident at work or occupational disease. An occupational accident is an accident that occurs to insured persons while working during or in connection with their occupation or while travelling to or from work (accommodation). It is also an accident that occurs to the insured person while he is carrying out work for the public benefit or while claiming certain social security benefits. Occupational disease is a disease caused by the particular hazards of the insured person's occupation.[40] Accident benefits include accident medical services, accident sickness benefits, and accident allowance. The accident benefit is payable if the insured person's health impairment reaches 14%. Although it is recognised as a health insurance benefit in the Act, the average earnings on which it is based are subject to the provisions on the calculation of the average monthly earnings on which the pension is based.[41]

3.1.1.4. Benefits for people with reduced working capacity

Since 2012, disability benefits have been significantly reformed, with the former pension-like benefits (disability pension) being abolished and paid as a social benefit or old-age pension. From 2012, people with reduced capacity to work (other than accidental) can claim either rehabilitation benefits or invalidity benefits. Rehabilitation benefits can include rehabilitation services and cash benefits. Rehabilitation services include job placement. The cash benefit is small, based on previous earnings, but, as

40 Health Insurance Act, Article 57.
41 Health Insurance Act, Article 59 (4).

with health insurance cash benefits, it is limited in amount. The insured person is entitled to rehabilitation benefits for up to three years.

Disability benefit is a cash benefit only; the amount depends on the remaining state of health but is also capped. The benefit is paid for an indefinite period, or, if the insured person reaches retirement age, a pension can be claimed instead. From 2021 onwards, it will be possible to work with both benefits without limit.

3.1.2. About the benefits available under the compulsory pension scheme

By the end of the 1990s, it was no longer feasible to operate the Hungarian pension insurance system on a pay-as-you-go basis. Thus, in 1998 the second pillar of the pension insurance system was introduced, the mandatory private pension fund system, which operated on a funded basis. From 2010, compulsory private pension fund membership was abolished, and members could choose to have their contributions deducted by the state when they transferred to the state pension scheme or remain members, in which case contributions would become voluntary. Thus, the Hungarian mandatory pension system became a single pillar again in 2012, which can be supplemented by voluntary pension fund membership. Pension insurance benefits are either payable in your own right or under a dependant's right.

3.1.2.1. Pension under own right

Currently, the only such benefit is the old-age pension, to which you must be over 65 and have 20 years of service to be entitled. Exceptions to the age limit are women who have 40 years of qualifying service (employment) but at least 32 years and 8 years of childcare. It is possible to continue to work while receiving pension benefits but only in the competitive sector; in the public sector, you do not receive both a salary and a pension. From August 2022, some professions classified as shortage occupations, such as teachers, will be exempt.

3.1.2.2. Dependants' benefits

All benefits are subject to the condition that the deceased person, for whom the survivors claim a pension, has acquired the right to an old-age pension until death, has been entitled to an old-age pension, or has acquired the periods of service defined by law for each age group.

A) Widow's pension

Widowed or widower pensions are available to spouses, divorced spouses, and life partners. The temporary widow's pension is paid for at least one year after the death of the spouse and until the orphan reaches the age of 18 months if the widow is dependent on a child under one and a half years old and is entitled to an orphan's pension under the deceased's right. After the temporary widow's pension has ceased, a widow's pension is payable to a person who, at the time of the death of her spouse, was over the age for entitlement to an old-age pension or was looking after a disabled person with reduced capacity for work or a disabled or permanently sick person entitled to

an orphan's pension by virtue of her spouse, or at least two children entitled to an orphan's pension.

The provisional widow's pension is equal to 60% of the old-age pension to which the deceased was entitled or would have been entitled at the time of death. Once the provisional widow's pension has been terminated, the widow's pension is normally 30% of the deceased's pension.

B) Orphan care

A child is entitled to an orphan's benefit, including a child of a married or cohabiting couple who is being brought up together in the same household, if the parent meets the primary conditions.

Orphan's benefit is payable from the date of the parent's death until the child reaches the age of 16. If the child is in full-time education, the orphan's benefit is payable for the duration of the education, but not beyond the age of 25. The orphan's pension per child shall be equal to 30% of the pension the deceased was receiving or would have received as an old-age pension at the time of death or 60% of that pension as an orphan's pension for that child, where both parents are deceased or the living parent is disabled.

C) Parental pension

A parent whose child fulfils the conditions set for the deceased spouse is entitled to a parental pension if the parent is disabled or aged 60 or over at the time of the child's death and the parent was predominantly dependent on the child for a year before the death. The parental pension is the same as the widow's pension.

D) Accidental survivors' pensions

An accidental survivor's pension (accidental widow's pension, accidental parent's pension, accidental orphan's pension) is paid to dependants if the injured person dies from the accident at work.

E) Widow's or widower's pension

For a deceased beneficiary who has withdrawn from the private pension scheme to the social security pension scheme, a person who meets the conditions for entitlement to a widow's pension is entitled to a widow's pension instead of a widower's pension if the amount of the widow's pension is higher than the amount of the widower's pension. No widow's pension is payable in the case of payment of a widow's pension.

3.2. Financing

One of the basic principles of social security law is that insured persons' entitlement to benefits is based on their obligation to pay social security contributions—contributions and taxes. In addition to the insured person, the employer is also liable for the payment of contributions, which is also laid down in the basic principles. You must pay tax on income that is defined by law. In particular, the part of the income from

self-employed and non-self-employed activities included in the consolidated tax base under the Personal Income Tax Act that is considered as income for the calculation of the advance tax is income that is subject to contributions.

Some incomes are not subject to contributions (i.e. they do not constitute a social security contribution base). Thus, for example, social security (e.g. sick pay) and social (e.g. family allowances) benefits not paid by the employer and not payable by the employer and remuneration paid under a contract for the exploitation of copyrighted work as consideration for the use of the property right are not social security contributions.

Contribution is the collective term for all contributions paid by insured persons, beneficiaries, employers, or other persons to cover social security benefits and labour market purposes. It includes social security contributions, pension contributions, health service contributions, agreed pension contributions, health insurance contributions, and sickness contributions. From 1 January 2012, the employer pays social contribution tax instead of contributions.[42]

The social security contribution rate is 18.5%, the pension contribution rate is 10%, and the monthly health service contribution is HUF 9,600 (approximately 25 EURO). Note that the latter is paid by people who are not insured (they are not employed) and are not covered by the budget (e.g. for those receiving childcare allowance). Thus, anyone employed without being registered with the authorities becomes entitled to all health services by paying a minimum fee of 9600 HUF, which is compulsory for them if they are residents of Hungary. The current rate of social contribution tax payable by the employer is 13%.

Contributions are paid into the social security funds. The Health Insurance Fund has a projected revenue (and expenditure, as there can be no deficit) of approximately HUF 4033 billion, while the Pension Insurance Fund has a projected revenue of approximately HUF 5554 billion by 2023.[43]

3.3. Organisation and administration

From 1 November 2017, there has been a major change in the organisation. The administrative bodies of Pension Insurance are the government offices of the capital and counties, the Pension Disbursement Directorate of the Hungarian State Treasury, and the Central Body of the Hungarian State Treasury. The administrative bodies of Health Insurance are the government offices of the capital and counties, the Central Body of the Hungarian State Treasury, and the National Health Insurance Fund Management. In 2021, the National Directorate General of Hospitals was established, which is responsible for the management or professional supervision of hospitals. Employers who employ more than 100 persons entitled to social security benefits are obliged to set up a social security and family support payment office or conclude an agreement with another payment office to perform these tasks.

42 Act CLVI of 2011 amending certain tax laws and other related acts.
43 Act XXV of 2022 on the Central Budget of Hungary for 2023.

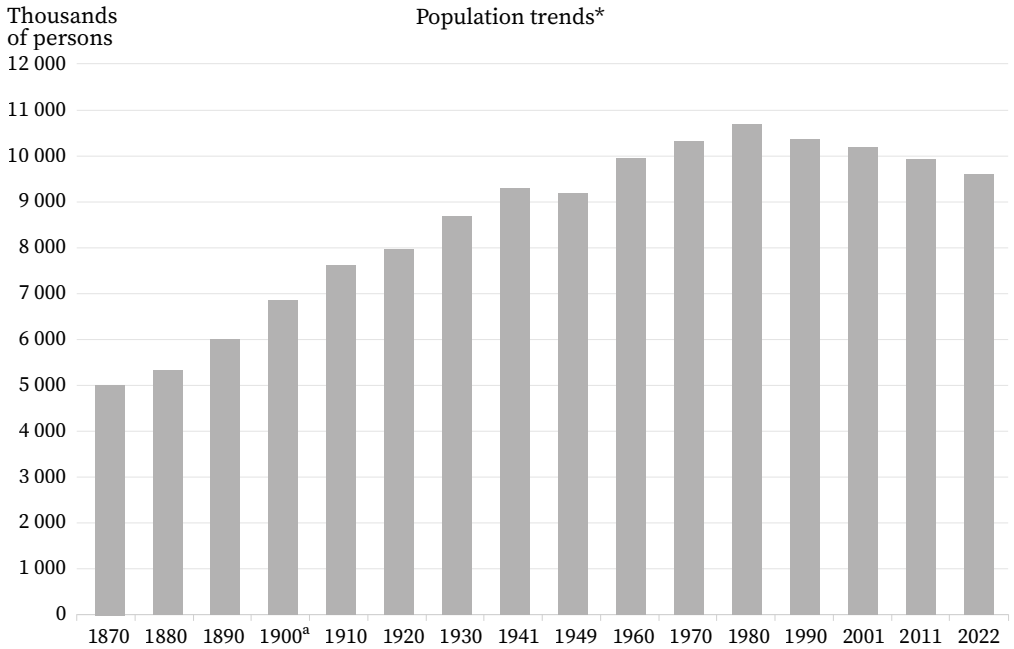
4. Current social law regulatory issues—Problems regarding sustainability in the light of the demographic challenges

The sustainability of the systems outlined is largely a consequence of changing demographics. This is particularly true for pension benefits. Looking at the system as a whole, the Hungarian social security system relies quite heavily on contributions from employers and employees. One element of this is that, recalling the principles set out at an earlier point in this chapter, solidarity is the soul of the Hungarian system, and the nature of this fund is that contributions are not labelled amounts. Thus, contributions are collected in a common hat, from which each insured person uses as much as necessary. They must, of course, be accompanied by a commitment and backing from the State. The system is not self-sustaining. Contributions cannot even now cover the full cost of social security payments. It is, therefore, important to examine how demographic effects affect its financing. As a starting point, it is worth looking at the data already available from the 2022 census. The population is 9,604,000, which represents a 3.4% decrease in population relative to the last census. Considering the age distribution, the population aged 65 and over are 20.8% of the total population. This number will keep increasing in the coming period. A significant proportion receive old-age care. The working-age population is 6,201,000 (64.6% of the population). The third large group is the 0-14 age group, with 1,407,000 people.[44] The picture must be nuanced, however, because these categories are underestimated, as there are many pensioners under 65, and members of the 0-14 age group are the least likely to be insured. What is certain is that population decline is a continuing trend.

The population decline represents natural and non-natural decreases in total. The other category includes migration. The EU itself, with certain rules, sees the promotion of migration within its borders as the key to its competitiveness. Thus, it has itself created the legal instruments of the four freedoms, including the right of free movement for workers and, later, for persons, and the coordination of social security rules.[45] Given the difficulty of measuring emigration, we can accept as a guide the figures for 2022 from the Hungarian Central Statistical Office, which show that 26,500 people emigrated from Hungary. The former figure only indicates one year. The emigration figures for previous years are similar. In the light of these, migration entails two things. First, the working-age population that emigrates disappears from the Hungarian system as contributors to the social security system. However, they may later appear as claimants, for example, in the case of pension provision to be determined in the coordination process.

44 Official data from Népszámlálás 2022 [Online]. Available at: https://nepszamlalas2022.ksh.hu (Accessed: 29 May 2023).
45 James, 2007, pp. 337–354.

Table: *Population of Hungary (1870-2022)*[46]



* Population data refer to the resident population for the period 1870-1970 and the resident population for the period 1980-2022.

a) Civilian population: 6804 thousand persons

We must also talk about the sustainability of the health insurance system, not just pensions. The health insurance system has different problems from the pension system, but its sustainability is questionable, as the application of the solidarity principle and the principles of social security create situations in which the service quality provided and received is constantly deteriorating, with the same funding. By matching funding, we mean that a significant part of the funding comes from insured and employed persons and from the corresponding contributions and taxes paid, which form a contribution base. This contribution base is used by the decision-making process to fund the various subsystems. In the financing of health insurance, there is a kind of underfunding by the state, supplemented in vain by the contributions paid by the individual insured and the employers. The sums paid are constantly being passed on and used up in the health sector. From the health insurance perspective, we are also talking about an extensive care system, and, as far as can be seen, the biggest problems are in the provision of benefits in kind; that is, the so-called health insurance benefits.

46 Source: Népszámlálás 2022: A népesség számának alakulása [Online]. Available at: https://nepszamlalas2022.ksh.hu/eredmenyek/elozetes_adatok/#/4 (Accessed: 3 June 2023).

The sustainability of social security is a key issue that is not only raised in the expert debate but will also affect our daily lives. For reasons of space, the sustainability of health insurance and pensions will be highlighted only relatively briefly.

4.1. Sustainability of the pension system

The sustainability of the pension system[47] is also a key issue in light of the recent increase in the number of people aged 65 and over in Hungary from 16.6% to 19.9%. The EU average increase was approximately 3%.[48] Beyond the number of retired people, the replacement rate and the income conditions underpinning the pension are important considerations for pensions. If we analyse income relations in more detail, we can see that a significant part of the workforce is registered as minimum wage earners. Some of the workers employed on the minimum wage receive wages above the minimum wage 'in the black'; thus, neither the insured nor employer pays contributions or taxes on this part of their income. It is also the case that an amount higher than the minimum wage is the worker's official income, and the excess is received 'in the black' (e.g. in the health sector, this is also the case for healthcare gratuities, the acceptance and provision of which will be a criminal offence under the new law that will enter into force from 2021. However, in practice this institution continues to operate and is a major problem for the healthcare system). This may mean that these large numbers of minimum wage workers will subsequently only be entitled to a basic pension. It is also a problem because it will preserve a certain income situation that will lead to the phenomenon of poverty in old age.[49] This can be argued in light of the fact that the minimum total pension that can be received in Hungary is 28,500 gross. Ft. The amount of this pension has remained unchanged for approximately 15 years, which could be a problem in the current economic situation, as the Hungarian economy is struggling with high inflation.[50] This amount was not too high even when it was introduced. If we look at the shopping basket that can be put together with this money, we can see that it is completely deflated. Retirement benefits in the Hungarian system are based almost exclusively on social security pensions, which are covered by the state in the case of old-age benefits, and the principle of self-care is very much in the background. Among the major reasons for the marginalisation of the principle of self-sufficiency is precisely minimum wage employment. If we look at the sections of society that do not earn the minimum wage, we must also talk about the fact that a significant proportion of these people cannot afford early savings, such as pension savings accounts or various other insurance schemes or voluntary pension funds. In response to this situation, the national association of pensioners has repeatedly spoken out, stating that the

47 There are two monographs on sustainability, see also Rab, 2010, pp. 10–389; Menyhárt, 2013, pp. 336.
48 Országgyűlés Hivatala, 2021.
49 Spark, 2017, pp. 287–309.
50 Mélypataki, 2020, pp. 216–222.

introduction of a basic pension would be appropriate and might help to alleviate the trend towards increasing poverty in old age. The idea of a basic pension has already been implemented in several European countries. Thus, it is not particularly new. The most that can be said is that perhaps the introduction of such a basic benefit or, at least, the introduction of such a level of benefit is alien to the Hungarian system. This solution was mooted before the 1997 pension reform. Per the plan proposed by the then Self-Government of the Pension Insurance Fund, the compulsory state pension scheme would have comprised two subsystems. One would have been a basic pension. This system would have made a clear distinction between social assistance and social security. The first component would have been a basic pension of the same amount, to which all citizens would have been entitled. According to the economists involved, this would have been an obvious redistributive measure and would have been covered by general taxation after appropriate restructuring of social security and social security contributions. The second sub-scheme would have been a defined contribution pension.[51]

Another aspect that we must consider for pensions is the EU's strategy, which embraces the idea of active ageing.[52] Ageing policy should not just be about the level of pension provision we are thinking about, whether at the Member State or EU level, but also about developing strategies and implementing programmes that specifically promote active ageing. This includes legal measures to allow and promote employment during retirement. In the Hungarian social policy system, this includes the public interest pensioners' cooperative, which aims to keep retired persons in the labour market and reintegrate them into the labour market. However, for the sustainability of the pension system, we must also talk about the implementation of the Women 40 programme. As noted, it means that if a woman has 40 years of qualifying service, she is entitled to a pension regardless of her age, and if she has 32 years of earnings-tested service out of these 40 years, she is entitled to a full pension regardless of her age. The introduction of this pension could result in a significant proportion of women disappearing from the labour market. Meanwhile, it is necessary to consider that women who retire under the Women in 40 scheme can expect, on average, lower pension amounts than if they claim pension benefits at retirement age.[53] There was also a political initiative to allow men to retire after 40 years of service, but the referendum initiative was annulled by the Constitutional Court because a state referendum cannot be held on matters covered by the Budget Law.[54] In this case, the Constitutional Court did not consider its own previous ruling on the issue of hospital fees to be binding, according to which the budget, as an excluded

51 Augusztonovics et al., 2002, pp. 473–517.
52 Rauh, Talyigás and Csizmadia, 2023.
53 Farkas, 2022.
54 CC Decision 28/2015 (IX.24.). Its content in English is. Available at: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2015-3-006 (Accessed: 3 June 2023).

subject of referendums, cannot be applied to all referendum questions with budgetary implications.[55]

4.2. Sustainability of health insurance

The issue of the sustainability of health insurance is always at the forefront in the provision of benefits in kind. That is why we will begin with this presentation. Primary care and specialised out- and in-patient care face constant challenges. There is a marked shortage of specialists in these areas and the resulting inequality. There is a steady decline in care in peripheral areas in particular, but it is not uncommon for services to be stretched in the centre. The system is heavily overburdened, with the result that the right of access enshrined in the European Charter of Patients' Rights is not guaranteed in many places. Recent measures have not helped improve this situation. These measures include the state maintenance of some outpatient specialised care facilities, the creation of community practices, and efforts to reduce the use of pay-as-you-go.[56] Such measures alone may not be sufficient. Accordingly, the Ministry of Human Resources published the Healthy Hungary 2021–2027 Sector Strategy for Health in January 2021.[57]

The measures outlined in the strategy are increasingly shifting towards centralisation. Some elements, such as the reform of the on-call doctor system, the plan to change the boundaries of general practitioner districts, and the adoption of uneconomic practices are in preparation, are already in place. There are also plans to set up a national primary care professional centre. In the context of the transformation of chronic care, the strategy notes that, given Hungary's demographic situation and morbidity, a more economically efficient care system can make a greater contribution to improving population health indicators, which supports demographic and competitiveness objectives.[58]

Thus, the government sees centralisation as the key to sustainability in health services. However, in parallel with the transformation, there is not necessarily a perception that the previous funding model will change to a degree that would attract additional revenue streams.

5. Closing remarks

Most developed countries are implementing a welfare model. The welfare state is a common pool of resources in which many welfare gains are inherited from the past, including those that allow adults to care for the young and the young to care for the elderly later.[59] Effective and swift reforms would be needed to preserve the character

55 CC Decision 16/2007 (III.9.).
56 Ferencz and Nyerges, 2020, p. 664.
57 Ministry of Human Resources, 2021.
58 Ibid., p. 102.
59 European Commission, 2023, p. 35.

of the welfare state given the challenges facing the domestic social security—social care system.

As regards pensions, even the smallest methodological change or even no change in the pension calculation can impact the level of pensions.

For example, on the degressivity in the calculation of pensions, only a certain percentage of the average earnings on which the pension is based can be considered. On the degressivity threshold, only 90% of the part of the income above HUF 372 000 and 80% of the part above HUF 421 000 can be considered. It has remained unchanged since 2013, even though average earnings have more than doubled in the past 10 years. It would be appropriate to reintroduce the rule previously in force, which obliged the legislator to increase the threshold in proportion to the increase in average net earnings. Sustainable pensions may be a solution to the problem, but it is by no means a palliative solution.

The current level of care provided by the health system will not be sustainable in the future without major reforms, and the only way to provide a higher level of care would be to attract additional resources. In recent years, the number of people using private health services in Hungary has increased significantly, and the number of providers has also evolved rapidly. According to some surveys, the population buys nearly HUF 1000 billion (1/4 of the contributions paid into the public system) worth of services from the private health system. However, the increase in demand is not necessarily matched by an increase in the supply side providing adequate quality of care, and the unregulated and uncontrolled nature of private healthcare providers may raise more problems in the near future, leading to a predicted increase in malpractice cases. The state's uncertainty is apparent as to whether it should finance private healthcare providers from the contributions paid into the state system.

The advantage of a well-organised public health system over private providers is that its administrative costs are low. Thus, a large proportion of the contributions paid can be spent on benefits. By reintroducing local government management of the health insurance system, the impact of the adverse changes would not be subject to political attacks.[60]

Education on healthy lifestyles is also lacking in Hungary; except for a few EU projects, there is no continuous awareness-raising on the importance of this area. Harnessing the benefits of digitalisation is also important for health awareness, prevention, and treatment. Germany is a good example, where a digital care law regulates access to effective digital applications for social security patients.[61]

IT, green health, and telemedicine also hold huge potential for the Hungarian healthcare system, which should be brought together as soon as possible to ensure the sustainability of healthcare. Furthermore, it is essential to establish and develop

60 Similarly, Prugberger would support the introduction of local government. Prugberger, 2014, pp. 134–140; see also Prugberger, 2019. p. 108.
61 Mezei and Dózsa, 2022, pp. 64–68.

a transparent and rigorous quality assurance system for healthcare providers—public ones—that can be used to establish processes that increase patient satisfaction. It would also be important to establish as a general principle at the level of the law that the social security institution is obliged to use contributions appropriately and economically to take the necessary measures.

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