| Chapter 4 |

Croatia: Social Rights in a Welfare State—Wandering Between Symbolism, Irrationality and Economic Sustainability

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ABSTRACT

This chapter focuses on the analysis of social rights and social security in the Republic of Croatia, primarily through the lens of Articles 11-17 of the European Social Charter of the Council of Europe, which Croatia ratified on 26 February 2003, along with the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

The vulnerability of social rights is undisputed in the conditions of their permanent stratification as a consequence of social and political transitions in recent decades and demographic challenges and migrations that Europe predominantly faces. Thus, the provision and realisation of rights in the areas of social welfare, healthcare, and assistance to vulnerable groups, such as persons with disabilities, children, youth, and the elderly, pose a particular risk.

Croatia is already determined as an indivisible, democratic, and social state by Article 1 of the Constitution, with social justice, inter alia, elevated to the level of the highest value of the constitutional order and the foundation for interpreting the Constitution itself, as stated in Article 3. In such conditions, political elites have an undeniable responsibility to ensure and implement the rights proclaimed by constitutional provisions, which are perpetually threatened by national, regional, and global challenges, including material deficiencies that inevitably accompany planned measures of relevant social policies. Therefore, this chapter furnishes insight into the reality of implementing constitutional provisions, the application of relevant legislative solutions, and compliance with the aforementioned provisions of the European Social Charter of the Council of Europe. The substantive structure of the chapter should serve as a scientific foundation for further research efforts of interested PhD students in the Central-European environment.

KEYWORDS

social law, social security, social welfare, European Social Charter, Croatia

1. Introduction

New demographic trends, observed globally, encompass the 'population ageing' trend, which includes a decline in mortality and fertility rates, and the strengthening

Vinković, M. (2023) 'Croatia: Social Rights in a Welfare State—Wandering Between Symbolism, Irrationality and Economic Sustainability' in Jakab, N. (ed.) *Sustainability of the Social Security System: Demographic Challenges and Answers in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 71–91. https://doi.org/10.54171/2023.nj.sotsss_4

of the ‘longevity’ trend, which poses unquestionable challenges for the world of work[1] and social security. Historically, family members have been the primary source of financial support for older members, but such approaches and support are becoming increasingly uncertain even in the most developed countries.[2] In conditions of inadequate, underdeveloped, or vulnerable pension systems, along with diminishing family financial support and insufficient savings, for older workers, it will mean engaging in vulnerable forms of employment and consequently facing increased vulnerability and greater exposure to jobs in the informal economy.[3] Approximately 80% of the world’s population is insufficiently protected against ageing risks, particularly regarding health protection, potential disability, and stable income, which could affect nearly 1.2 billion people worldwide by 2050.[4] Demographic changes directly affect family dynamics, demography, and stability, leading to increasingly unstable family relationships, particularly among economically vulnerable groups. Consequently, this situation yields the inability to find support, financial security, care, and assistance among (other) family members (family and family relationships are understood in the broadest sense as an elusive concept).[5] Demographic divergences in the EU exacerbate economic, regional, and social divisions; impact the reduction of the working-age population; can affect the development and maintenance of sustainable, knowledge-based, and competitive societies and economies; and can *pro futuro* contribute to disparities and stratification of rural areas *in favorem* urban areas.[6] The increase in the share of older persons in the EU population will lead to increased demand for care services and long-term endangerment of the financial stability of the European welfare states.[7] Moreover, inflation and rising energy prices are pushing an increasing number of EU citizens at risk of poverty, social exclusion, and the inability to keep their homes adequately warm. In 2021, almost 7% of people living in the EU could not keep their homes adequately warm during the winter months.[8] Moreover, global warming, environmental protection issues, and natural resource management will directly impact migration within the EU Member States and between the EU and third countries.[9]

In such conditions, discussions about the sustainability of national social security systems, pension insurance, and the protection of vulnerable population groups gain importance and require ongoing efforts, planning, and projections for their sustainability. More than ever, the concept of a social Europe seems to be endangered and seriously questioned in terms of its survival.

1 International Labour Office, 2013, p. 1.
2 Ibid., p. 39.
3 Ibid., p. 40.
4 Ibid., p. 42.
5 Seltzer, 2019, pp. 405–426.
6 European Commission, 2023, p. 16.
7 Ibid.
8 Ibid., p. 14.
9 Ibid., p. 16.

In the global and regional environment of numerous risks and challenges, the Republic of Croatia has been confronting its uncertainties, capacity, resilience, and sustainability. Natural disasters such as strong earthquakes in multiple geographic areas and floods; the ongoing emigration of young, highly educated, and economically productive citizens; declining birth rates; depopulation of rural areas; and the increasing difficulty of finding adequate workforce for the thriving tourism sector (and other economic sectors), which for now makes up a significant percentage of national GDP, have recently contributed to this situation.

In normative terms, Croatia is a social state by its Constitution and has inherited communist and socialist legacies that have undoubtedly influenced citizens' perceptions and experiences regarding social security, an adequate standard of living, and free healthcare. Furthermore, Croatia ratified the European Social Charter of the Council of Europe as a kind of counterpart to the European Convention on Human Rights and Fundamental Freedoms in the field of economic and social rights. In this context, it should be regarded as a country that, in its political, economic, and democratic post-transitional development as an EU Member State, follows a similar evolutionary path and faces similar challenges as its Central-European counterparts.

2. Croatia as a welfare state—Demographic changes, financial capacities, social rights, and social security in the youngest Member State of the European Union

2.1. Demographic changes and financial capacities—Key indicators

From the 2021 Census, the Republic of Croatia has 3,871,833 inhabitants, recording a decrease of 9.64% or 413,056 people relative to the 2011 Census.[10] Population aged 0-14 years accounts for 14.27%, the 15-24 years age group comprise 10.27%, those aged 25-34 years comprise 11.40%, the 35-49 years age group comprise 20.23%, those aged 50-64 years comprise 21.38%, and the population aged 65 and over represents 22.45%.[11] That is, individuals aged 50 and older make up almost 44% of the total population. In terms of gender in Croatia, women (men) comprise 51.83% (48.71%),[12] which *pro futuro* poses a risk of the feminisation of poverty.

Regarding the number of insured persons in the health insurance system, it is especially interesting to note that Croatia has more than 230,000 health insurance beneficiaries than residents. Moreover, even after deducting 41,000 individuals living outside the Republic of Croatia who are entitled to health insurance in Croatia based on the rules of coordinating social security systems in the EU and international social security agreements (e.g. pensioners living in other EU or third

10 Croatian Bureau of Statistics, 2022.
11 Ibid.
12 Ibid.

countries, insured persons living in other countries but working in Croatia as cross-border workers and their family members, and posted workers),[13] there remain almost 170,000 health insurance beneficiaries more than residents in Croatia.[14] These figures suggest that a significant number of Croatian economic emigrants who have moved to other EU Member States (especially Germany[15] and Ireland[16]) are still taking advantage of health insurance benefits in Croatia, from which they have not deregistered (even though they have not been paying taxes and contributions in Croatia for some time, they have continued to enjoy benefits at the expense of legal and natural persons who live and do business in Croatia and allocate significant funds to public health insurance, simultaneously financing healthcare for a large number of beneficiaries who do not participate in the costs because of various reasons or their status recognised under relevant regulations). It may sound like an anecdote, but there have been numerous cases of Croatian economic emigrants who arrived from Ireland in Croatia on extended weekends by using low-cost airlines, underwent medical examinations, and consumed public health services. Meanwhile, they also visited their relatives, spent money to get their hair and nails done, and paid for other services, spending way less money than if they had paid for the same healthcare services or partially participated in these services in Ireland. The recent amendments to the Mandatory Health Insurance Act, which came into effect on 1 April 2023, aim to address such absurd situations. Pursuant to these amendments, insured persons who are not registered as unemployed individuals with the Croatian Employment Service (and are not entitled to mandatory health insurance based on some other basis but have regulated mandatory health insurance status) must personally report to the Employment Service every three months to verify the circumstances in which their insured person status is based.[17] Otherwise, they will be deregistered from mandatory health insurance *ex officio*.[18] It seems these legislative changes are neither a response to public outrage and the absurdity of the situation nor a reduction of rights for economic emigrants who have emigrated from Croatia and who were once intentionally or unintentionally provided with a certain level of health insurance in their homeland. They are a necessary consequence of

13 N1 Info, 2022.

14 Ibid.

15 Pursuant to available data, in 2009, more than 46% of the total number of residents who emigrated to EU Member States immigrated to Germany, while three years after full membership in the EU (i.e. in 2016, as many as 71% of the total number of emigrants to the EU immigrated to Germany). The true extent of emigration is not reliable, as many residents did not deregister their residence before emigrating, although they were required to do so according to the 2012 regulations. See Pokos, 2017, p. 16.

16 A trend in emigrating to Ireland has been particularly pronounced since Croatia's full membership in the EU, probably because Ireland opened its labour market for Croatian citizens and did not introduce transitional periods in the context of freedom of movement of workers. See Jerić, 2019, p. 22.

17 Article 7(7) of the Mandatory Health Insurance Act, Official Gazette, Nos. 80/13, 137/13, 98/19, 33/23.

18 Article 7(8) of the Mandatory Health Insurance Act.

the lack of responsibility towards spending (public) money and inadequate interconnection of national records, which could prevent obvious abuse. However, preventing abuse will not solve the consequences of emigration from the Republic of Croatia, as, according to Pokos, after a decade or two, remnants in the country will have a significantly lower reproductive health effect given the large outflow of the population in reproductive age.[19] Beyond economic reasons, the main motives for emigration are linked to the perception that the values of work ethics and honesty are not institutionally accepted. Thus, citizens' trust in institutions is low, leading to a 'moral breakdown' of Croatian society.[20] Emigration is not only a deduction of the number of emigrants from the total population; it is also a long-term disruption in the age structure of the population and the direct reduction of the biological basis for its renewal,[21] which will lead to long-term and significant consequences for the enjoyment of social rights *pro futuro*.

Eurostat data indicate that in 2019, Croatia spent 21.4% of GDP on social protection (significantly higher than other EU Member States in terms of healthcare or sickness and disability payments).[22] However, costs for unemployment and housing were lower relative to other Member States, which is explained by the high number of those who have emigrated from Croatia and the fact that the percentage of privately-owned homes in Croatia is high.[23] The national healthcare system is constantly facing financial deficits and serious risks to its future financial sustainability. Although it is inclusive and practically accessible to everyone, waiting lists for certain healthcare services and procedures are long.[24] Deficiencies in the childcare system and the lack of available and necessary infrastructure, such as an adequate network of kindergartens and nurseries, hinder the reconciliation of work and family life.[25] Regarding the elderly population, it is certain that the pension system is unsustainable and inadequate in terms of intergenerational fairness.[26]

19 Pokos, 2017, p. 23.
20 Jerić, 2019, p. 23; Jurić, 2017, pp. 356, 342 and 362.
21 Akrap and Strmota, 2015, cited in Jurić, 2017, p. 348.
22 Bertelsmann Stiftung and Sustainable Governance Indicators, 2022.
23 Ibid.
24 Ibid.
25 Ibid.
26 Ibid. In April 2023, Croatia had 1,639,698 insured persons in the pension insurance system and 1,227,071 pension beneficiaries, which makes a ratio between the number of pension beneficiaries and the number of insured persons of 1:1.34. In other words, 1.34 working-age individuals support one pensioner. Of this number, 1,417,601 are employees employed in legal entities, 104,633 are natural person employees, 75,914 are self-employed, 18,445 are farmers, 18,087 are self-employed professionals, 4,887 enjoy extended insurance status, and slightly over a hundred are insured persons employed by international organisations abroad and in the territory of Croatia but with employers with a seat abroad. Women (men) make up 53.88% (46.12%) of pension beneficiaries. The average pension for 40 or more years of service is 624 euros, and its share in the average net salary is 55.24% (1,130 euros). The average old-age pension is 403 euros. See: Hrvatski Zavod Za Mirovinsko Osiguranje, 2023.

2.2. Croatia as a welfare state—How to perceive social rights and social security

Croatia is defined *inter alia* as a social state in Article 1 of the Constitution. In Article 3, social justice is elevated to one of the highest values of the constitutional order and the foundation for interpreting the Constitution.[27] However, in its constitutional case law, the Constitutional Court has primarily focused on personal and political rights, excluding the possibility of regulating social rights by virtue of organic laws and leaving them in the hands of the legislature and political debates.[28] Arguably, in doing so, the constitutional position of social rights has been deconstructed by separating them from the sphere of organic laws, which are adopted by a qualified majority and by allowing Parliament to delegate the authority to the Government to interfere with economic, social, and cultural rights through regulations.[29] However, it does not mean that the Constitutional Court makes a distinction in the possibility of enjoying constitutional judicial protection for economic and social rights relative to civil and political rights.[30]

The idea of a social state, most consistently embedded in German constitutional doctrine and social laws in the Bismarck era,[31] which marked the beginning of state intervention in the fight against the risks of illness, disability, and old age, now encompasses the protection of a much wider range of vulnerable social categories through financial and institutional forms of social benefits. The Croatian social welfare system undoubtedly belongs to the Bismarck model of the social state.[32] However, it has also inherited the system of social assistance and social welfare from the socialist era of the former Yugoslavia.[33] Ravnić argues that, pursuant to the Croatian Constitution, social law comprises social security and social insurance.[34] Article 57 specifies that the right of employees and their family members to social security and social insurance shall be regulated by law and collective agreements, while Article 58 guarantees that the state shall ensure the right to assistance for weak, infirm, or other persons unable to meet their basic subsistence needs, given their unemployment or incapacity for work. This article also mentions that the state shall devote special care to the protection of persons with disabilities, Croatian war veterans, disabled Croatian war veterans, and the widows, parents and children of fallen Croatian war veterans. The Constitution guarantees everyone the right to healthcare in conformity with the

27 See Articles 1 and 3 of the Constitution of the Republic of Croatia, Official Gazette, Nos. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 and 05/14. Article 3 of the Constitution proclaims: 'Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia and the basis for interpreting the Constitution'.
28 Barić and Miloš, 2016, p. 141.
29 Kuzelj, Cindori and Horvat Vuković, 2021, p. 67.
30 Ibid., p. 68.
31 Vrban, 2003, p. 203.
32 Babić and Šućur, 2022, p. 162.
33 Žganec, 2002, p. 181.
34 Ravnić, 2004, p. 226.

law,[35] which stipulates that the family shall enjoy the special protection of the state (with marriage defined as a union between a man and a woman),[36] and emphasises state protection of maternity, children, and the youth by creating social, cultural, educational, material and other conditions that promote the realisation of the right to a dignified life.[37] However, in such a constitutional construct, Ravnić wonders what social security would encompass (individual subjective rights or something broader)[38] while analysing German law, according to which social benefits and services include only those recognised by the public authorities responsible for public social benefits and services.[39] That is, social law regulated by state public law norms establishes a relationship between the individual and the state, in which individuals are granted benefits and services regulated by public authorities.[40] According to Ravnić, social content regulated by a contract voluntarily, unilaterally by a charitable institution, or even compulsorily determined by public authorities would be part of the content of social protection law as a gender concept comprising different forms of insurance and assistance for individuals and, to a lesser extent, for groups.[41] Social protection in this sense is only part of social law and by no means represents its sole task.[42] However, Ravnić clearly emphasises that the concept of social security has displaced the concept of social protection,[43] and social security, seen as a system, encompasses social areas based on insured risks, social needs, and other insured cases, overlapping with the concept of social law or the right to social security.[44] Objectively, social law is a set of norms, regulations, and rules that regulate legal and social relationships. Subjectively, it is a set of powers conferred by law to individuals and less frequently to groups to demand certain social benefits (provision or action) in a state of social need, provided that they meet certain conditions.[45] Although he worked on labour and social legislation during a specific period of socialist Yugoslavia, as early as the late 1960s, one of the greatest Croatian labour law theorists, Nikola Tintić, criticised the ambiguity of the attribute 'social' and its usage in various meanings of the term.[46] The term 'social' is seen as the totality of protective legislation *in favorem* workers; the limitation of the employer's contractual dictate, particularly regarding vulnerable groups of workers (minor workers and women); a system of social assistance and protection in the broadest sense (regarding members of society in a state of social need); or provisions elevated in such cases to the level of specific social rights of

35 Constitution, Article 59.
36 Ibid., Article 62.
37 Ibid., Article 63.
38 Ravnić, 2004, loc. cit.
39 Ravnić, 2004, loc. cit.
40 Ravnić, 2004, p. 227.
41 Ibid.
42 Ibid., p. 228.
43 Ibid., p. 229.
44 Ibid., p. 234.
45 Učur, 2000, p. 39.
46 Tintić, 1969, p. 29.

individuals.[47] Moreover, he clearly stated that social law and social security in different periods of history, social, political, and economic systems are based on different conditions, social relations, interests, possibilities, goals, and concepts.[48] For such reflections on social law by Tintić, social policies, generally speaking, become a very important instrument because, unlike static social law or social security law, they reflect a more dynamic nature and the ability to adapt to different social challenges, needs, and, ultimately, different programmes of political elites.

Probably the most accurate assessment of social law in Croatia was given by Professor Vera Jelčić almost three decades ago when she stated at an international conference[49] that there has been little research on social law, particularly from the perspective of legal theory, as most of the scientific attention has been focused on labour law. Such a claim could be extended to the period after this statement since scientific research has been predominantly focused on labour law given a small number of researchers dealing with related topics and the clear scientific interests of a small group of legal theorists. It is supported by the fact that Social Law is not taught in Croatia as a separate course at law faculties but as part of the joint course of Labour and Social Law. The only exception is the field of social work, whose professors and researchers have been fairly actively involved in the analysis of the Croatian social welfare system and relevant social policies in the broadest sense. In the 1980s, Vera Jelčić defined social law as a set of legal rules that regulate the rights and obligations of insured persons under social insurance, including the entirety of social protection measures that belong to citizens to satisfy social needs.[50] Therefore, the content of social law would encompass social insurance (health, pension, and disability) and social protection of vulnerable groups, including the protection of citizens from natural and other disasters.[51] The words of Professor Ravnić, who emphasises the suppression of the concept of social protection, social law, or social security law, reflect its preventive and curative function, including its ability to support social cohesion and social control as a concept that is broad and inclusive in content.[52] Considering the discussion thus far and the vagueness of the attribute 'social' criticised by Tintić over 50 years ago, the question arises as to whether it would be more appropriate to focus on the term 'social security law' (which is, arguably, a more suitable and specific term).

According to Vrban, a welfare state represents a set of interrelated institutional and normative solutions and procedures aimed at protecting and improving the standard of living of the population (in a broader sense). However, it also encompasses the issues of fundamental rights and the social interpretation of subjective rights;

47 Ibid.
48 Tintić, 1978, cited in Učur, 2004, p. 41.
49 International conference: 'Pravne posljedice raspada SFRJ u području radnog i socijalnog prava', Zagreb, 26. i 27. ožujka 1999. See Puljiz, 1999, pp. 187–188.
50 Jelčić, 1988, p. 1.
51 Ibid., pp. 2–3.
52 Cf. Učur, 2000, pp. 39–41.

that is, legal relations that belong to private law (in a narrower sense).[53] Constitutional experts highlight that the Croatian Constitution maker, by constitutionalising the concept of a welfare state, has placed the Constitution of the Republic of Croatia in the group of socially sensitive European constitutions, obliging the legislator to care for the general social welfare and the development of social rights.[54] A welfare state, social justice, and social rights are constitutionalised categories, but their concretisation is left to the legislative level.[55] The Constitutional Court, however, holds that the principle of social justice, as part of the concept of a welfare state, is undoubtedly abstract in nature but with various degrees of abstraction.[56] Despite reducing certain social rights during economic crises,[57] the Constitutional Court has reaffirmed its commitment to the welfare state, emphasising that the constitutional character of social rights implies the implementation of fair and equal redistributive policies to reduce extreme inequalities and align limited resources with constitutional social objectives.[58]

The evolution of the Croatian welfare state has progressed from abandoning the socialist statist model of the welfare state (which privileged employees in the public sector through state interventions) to reforming the social security system and introducing elements characteristic of reformed states in the West, with an increased role of the market and individual responsibility for one's destiny.[59] The entire social security system remains based on Bismarck's foundations of social security but with Beveridge's elements of financing social security through tax payments, where the negative consequences of the neoliberal approach should be avoided, and social costs, as Puljiz notes, should be considered an investment in society.[60]

3. Compliance with the European Social Charter of the Council of Europe

On 26 February 2003, Croatia ratified the European Social Charter of the Council of Europe, together with the additional protocols and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.[61] Thus, from the so-called à la carte system of ratification, Croatia ratified the following articles that are important for this discussion: Article 11 – The right to protection of health; Article

53 Vrban, 2003, p. 203.
54 Kuzelj, Cindori and Horvat Vuković, 2021, p. 69.
55 Tucak and Blagojević, 2015, p. 286.
56 Ibid., p. 290.
57 Ibid., p. 293.
58 Kuzelj, Cindori and Horvat Vuković, 2021, p. 70.
59 Pezo, 2007, p. 1485.
60 Puljiz, 2004, pp. 218–219.
61 Act on the Ratification of the European Social Charter, the Additional Protocol to the European Social Charter, the Protocol Amending the European Social Charter and the Additional Protocol Providing for a System of Collective Complaints, Official Gazette – International Agreements, No. 15/2002.

12 – The right to social security; Article 13 – The right to social and medical assistance; Article 14 – The right to benefit from social welfare services; Article 15 – The right of persons with disabilities to independence, social integration, and participation in the life of the community; Article 16 – The right of the family to social, legal, and economic protection; and Article 17 – The right of children and young persons to social, legal, and economic protection. Notably, pursuant to Article 20 of the Charter, which regulates the obligations of the contracting parties, it is *expressis verbis* stated that states have the option to undertake from the à la carte system at least five out of the following seven Articles (1, 5, 6, 12, 13, 16, and 19).

By ratifying the Additional Protocol Providing for a System of Collective Complaints, Croatia became one of the 16 contracting parties that recognise the quasi-judicial role of the European Committee of Social Rights in the process of deciding on submitted collective complaints. However, it has not allowed the submission of such complaints by national non-governmental organisations through a separate declaration *per se*.[62] Moreover, although Croatia ratified the 1961 European Social Charter and signed the revised European Social Charter of 1996, it has not yet ratified the revised version, placing itself among the smaller number of Member States still bound by the original text of the Charter. In the context of the relation between national and international law or, in legal terminology, the monist or dualist relationship between national and international law, it is clearly stipulated by the Croatian Constitution that international treaties concluded and confirmed in accordance with the Constitution, published, and in force constitute part of the internal legal order and have legal force superior to that of national laws. Their provisions, as specified in the Constitution, may only be altered or repealed under the conditions and in the manner determined therein or in accordance with the rules of international law.[63] For the true implementation of the obligations undertaken by the Charter (i.e. the implementation of social rights at the national level, it is of utmost importance to monitor the conclusions of the European Committee of Social Rights from the monitoring process of the Charter's application through the system of periodic reports). Therefore, national normative solutions and their implementation represent one dimension of formal compliance with obligations, while the Committee's assessment in each specific case reflects the true reality of the application and realisation of the undertaken obligations. This study will primarily focus on the areas of health, accidental insurance, and long-term care.

3.1. The right to protection of health (Article 11 ESC)

The European Committee of Social Rights interprets health as physical and mental well-being in accordance with the Constitution of the World Health Organisation (WHO), and it is particularly focused on the highest attainable standards of health

62 See Council of Europe, no date.
63 Article 134 (i.e. Article 141 of the consolidated text of the Constitution of the Republic of Croatia). See: Consolidated text of the Constitution of the Republic of Croatia, 2010.

and the right to access healthcare. It entails, as a positive obligation, the realisation of the highest possible level of protection through, *inter alia,* adequate health services, and, as a negative obligation, to refrain from direct or indirect interference with this right.[64] The healthcare system must respond appropriately to eliminate health risks. The main indicators developed by the European Committee of Social Rights in this regard are life expectancy, causes of mortality, child mortality, and maternal mortality (the latter two being decisive indicators).[65] Access to healthcare facilities implies accessibility for all, and restrictions must not yield hindrances to the enjoyment of the right to health for vulnerable groups.[66] According to the case law of the Committee, access to healthcare *inter alia* entails that healthcare costs do not excessively burden individuals. Healthcare access management must not lead to unnecessary delays or postponements, waiting lists must be based on transparent criteria established at the national level, and access must be ensured to everyone as a fundamental human right without discrimination.[67] In the assessment of infrastructure and equipment at the national level, the Committee applies criteria established by the WHO.[68]

In its 2021 conclusions in assessing the situation in the Republic of Croatia, the Committee deferred its decision regarding Article 11(1) and requested, *inter alia*, additional information on maternal mortality and measures taken to reduce maternal deaths and the protection of health and access to healthcare for transgender persons.[69] Regarding Article 11(3), the Committee also requested additional information on the number of partially or fully closed institutions for persons with disabilities (in the context of deinstitutionalisation), the number of beds in long-stay psychiatric hospitals, deinstitutionalisation strategies (including deadlines for the closure of all institutions), community-based services, personal assistance, access to services, including data on education and employment, the number of people living in group housing (small group homes, family-type homes), the methods of financing and monitoring community-based services, and information on mental healthcare services for children.[70]

In the context of the above questions and requested data and from a normative standpoint, healthcare is provided on the basis of the Health Care Act,[71] which guarantees healthcare to every person while striving to achieve the highest possible level of healthcare per Croatian legislation.[72] Healthcare measures are extensively specified by the noted Act and bylaws. Health insurance, founded on the principles of mutuality, solidarity, and equality based on the Mandatory Health Insurance Act[73] is

64 Lukas, 2021, pp. 162–163.
65 Ibid.
66 Ibid., p. 164.
67 Ibid., p. 165.
68 Ibid.
69 European Committee of Social Rights, 2022, pp. 3–6.
70 Ibid., p. 11.
71 Health Care Act, Official Gazette Nos. 100/18, 125/19, 147/20, 119/22, 156/22 and 33/23.
72 Health Care Act, Article 3.
73 Mandatory Health Insurance Act, Official Gazette, Nos. 80/13, 137/13, 98/19 and 33/23.

widely established to cover almost all citizens (except for recent legislative changes mentioned *supra* and related to a larger number of insured individuals than the total population of the country). However, what is particularly emphasised and posed as a difficulty is the fact that the rights of the insured are not aligned with the resources allocated for healthcare, which significantly burdens the functioning of healthcare institutions and questions the public healthcare system's sustainability.[74] That is, the Croatian healthcare system is also based on a combination of the Bismarck and Beveridge models of financing, predominantly funded by mandatory health insurance contributions paid by employees, with additional transfers from the budget,[75] especially in the case of substantial hospital debt accumulation. The greatest problem, as assessed by Vehovec, Rašić Bakarić, and Slijepčević,[76] lies in the normative planning of healthcare, which includes the principle of comprehensive healthcare based on the 'all rights for all' approach, and in the methods of determining healthcare service prices by the Croatian Health Insurance Fund, which acts as a monopolistic entity that directly influences the accumulation of debt in the public hospital system in Croatia.[77] Citizen participation in mandatory health insurance services is mainly conducted through contracts for supplementary health insurance, which can be concluded with the Croatian Health Insurance Fund and private insurance companies. The average monthly premium for a supplementary health insurance policy (for those who pay for it, as there are various categories entitled to it at the expense of the Republic of Croatia's budget) amounts to approximately EUR 10, which is not a significant financial burden for the insured individuals.

In accordance with the Act on Vocational Rehabilitation and Employment of Persons with Disabilities,[78] persons with disabilities (looking at disability as a social concept encompassing physical, mental, intellectual, or sensory impairments) are entitled to vocational rehabilitation and the use of services provided by a centre for vocational rehabilitation via a wide range of measures and activities.[79] The entities responsible for vocational rehabilitation can be the Croatian Pension Insurance Institute; the Croatian Employment Service; the Institute for Expert Evaluation, Vocational Rehabilitation, and Employment of Persons with Disabilities; the ministry

74 Dubovečak et al., 2019, pp. 61–63.
75 Pešić and Vinković, 2019, p. 329.
76 Vehovec, Rašić Bakarić and Slijepčević, 2014, p. 188.
77 Pešić and Vinković, 2019, pp. 338–341.
78 Act on Vocational Rehabilitation and Employment of Persons with Disabilities, Official Gazette, Nos. 157/13, 152/14, 39/18, 32/20.
79 Act on Vocational Rehabilitation and Employment of Persons with Disabilities, Article 4. Pursuant to Article 4(4), vocational rehabilitation includes assessment of remaining working capacity and general abilities, vocational information, advice and assessment of vocational options, analysis of the labour market and possibilities for finding and securing employment, evaluation of possibilities for introducing, developing and improving vocational training programmes, individual and group programmes to improve vocational and social integration, vocational training, advisory suggestions on the use of various technologies and techniques for learning and work, motivating and training persons with disabilities to use selected technologies, and technical assistance and support in vocational rehabilitation.

responsible for social policy; an insurance company; an employer; a local or regional self-government unit; or a natural person (a person with a disability, a legal representative), obliged to finance vocational rehabilitation.[80] Persons with disabilities can be employed in the open labour market or under special conditions with reasonable adjustments provided in interviews or tests.[81] Legislative solutions also include the category of integrative workshops as places of employment for persons with disabilities who cannot be employed in the open labour market. The Croatian model also allows for the possibility of quota employment of persons with disabilities, thus incorporating modalities present in EU anti-discrimination labour law but with the legislative option to exempt certain categories of legal entities from the obligation of quota employment.[82] However, particular challenges are posed by the employment opportunities for individuals with mental impairments given a lack of general awareness of this population, existing stereotypes, and objective difficulties for certain job positions.[83] The Act on the Protection of Persons with Mental Disorders[84] lays down basic principles, the protection of rights, and conditions for the implementation of measures and actions concerning persons with mental disorders. The Commission for the Protection of Persons with Mental Disorders under the Ministry of Justice established under this Act is, *inter alia*, competent to discuss matters of importance for the protection of persons with mental disorders; monitor the respect of their human rights, freedoms, and dignity; monitor the implementation of medically approved procedures; examine individual cases of retention and placement in psychiatric institutions and the use of coercive measures; and approve projects of biomedical research involving persons with mental disorders.[85] The impression gathered in the eight years of work in the said Commission is that Croatia chronically lacks hospital capacity for children with mental disorders, as there is only one children's hospital in the entire country. Therefore, the urgent placement of children with auto- and hetero-aggressive behaviour, both with and without autism, can be a challenging mission given the justified inability to accommodate them with adults.

Regarding the deinstitutionalisation measures highlighted by the Committee, it is worth noting that the Social Welfare Act of 1997 laid the foundation for non-governmental organisations and private individuals to register and open family homes (under certain conditions) for the accommodation of beneficiaries, primarily from the social welfare system.[86] However, today, such a system of family homes and foster care has expanded to include persons with disabilities and other protected categories, mainly supplementing insufficient public capacities and infrastructure. The role of personal assistants will be regulated by the Personal Assistance Act, which is

80 Act on Vocational Rehabilitation and Employment of Persons with Disabilities, Article 6.
81 Act on Vocational Rehabilitation and Employment of Persons with Disabilities, Article 7.
82 Act on Vocational Rehabilitation and Employment of Persons with Disabilities, Article 8.
83 Lulić and Vinković, 2018, pp. 815–818.
84 Act on the Protection of Persons with Mental Disorders, Official Gazette, No. 76/14.
85 Act on the Protection of Persons with Mental Disorders, Articles 74 and 75.
86 Žganec, 2002, p. 183.

expected to enter into force on 1 July 2023.[87] Hence, the role of personal assistants, who assist persons with disabilities in their daily lives, would be regulated by law and funded by the state budget, rather than primarily relying on programme and project funds financed by the EU.

Considering the specific questions that the European Committee of Social Rights addressed to Croatia in its 2021 conclusions and based on the structured elaboration of national circumstances, this chapter will no longer make specific reference to Article 15 of the European Social Charter, as its content is *mutatis mutandis* partially covered *supra*.

3.2. Pensions

The issue of pensions in the European Social Charter context is quite complex and encompasses analysis through several articles. Article 13(1) applies to states that have not accepted the obligations of Article 23 of the Revised European Social Charter and those bound by the original text of the Charter (as with Croatia). Within its framework, it examines non-contributory pensions paid to a single elderly person without resources.[88] Given the assessment of the situation indicating that in Croatia over 60,000 persons aged 65 or above do not meet the minimum requirements to be entitled to a pension (i.e. a minimum of 15 years of pensionable service), most of whom are women, [89] the Act on the National Benefit for the Elderly was passed.[90] This Act lays down the conditions for acquiring the right, the scope of persons entitled to the exercise of the right, and the competent authorities responsible for implementing the procedure.[91] However, beyond the requirement that the person must not be a beneficiary of a pension under national or foreign regulations and that their monthly income (or the income of their household members) in the previous calendar year does not exceed the determined amount of the national benefit for the elderly, it also applies to individuals not entitled to the guaranteed minimum benefit[92] under social welfare regulations.[93] Furthermore, they must neither be entitled to accommodation services under social welfare regulations nor have concluded a support-until-death or lifelong support agreement in the capacity of a supported person.[94] The Croatian

87 The draft act was subject to public discussion but generated many comments and criticism. [Online]. Available at: https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=22652. (Accessed: 12 February 2023).

88 Lukas, 2021.

89 Ministry of Labour, Pension System, Family and Social Policy, no date.

90 Act on the National Benefit for the Elderly, Official Gazette, No. 62/2020.

91 Act on the National Benefit for the Elderly, Article 1.

92 The guaranteed minimum benefit is the right to a sum of money ensuring the right aimed at meeting basic needs of a single person or a household that does not have enough funds to meet basic needs, and it is regulated by Articles 21–29 of the Social Welfare Act, Official Gazette, Nos. 18/22, 46/22, and 119/22. The homeless, victims of domestic violence, and victims of human trafficking are, *inter alia*, entitled to the right to the guaranteed minimum benefit.

93 Act on the National Benefit for the Elderly, Articles 5(1), 1–3.

94 Act on the National Benefit for the Elderly, Article 5(1), Sub-Paragraphs 4 and 5.

Pension Insurance Institute decides on the right to the national benefit for the elderly, and the procedure is initiated upon the request of a person who must be a Croatian citizen who has reached the age of 65 and has resided in the territory of the Republic of Croatia for 20 years without interruption before submitting the application for the benefit.[95] The benefit currently amounts to approximately EUR 120, but an increase to EUR 150 has been announced.

From a developmental perspective, the Croatian pension system has undergone multiple reforms, of which the systemic reform from 1998 to 2002 introduced the three-pillar pension insurance system.[96] The first pillar is based on intergenerational solidarity and provides pensions for current pensioners. The second and third pillars are based on individual capitalised savings. The first and second pillars are mandatory for all employees residing in Croatia, while the third pillar constitutes voluntary pension insurance, which implies individual savings that receive state incentive funds and are managed by privately-owned pension companies. The Croatian Health Insurance Fund manages the first pillar, and pension contributions (i.e. 15% of gross salary) are paid directly to the State Treasury for the payment of pensions to current pensioners. The second pillar involves monthly contributions of 5% of gross salary, and the funds are deposited into a personal account in one of the mandatory pension funds chosen by the employee.[97] Supervision of the operation of companies man ageing the second pillar of pension insurance is conducted by the Croatian Financial Services Supervisory Agency. Among much criticism directed towards the Croatian pension system, the most significant one regards its fragmentation via various privileged groups, which reduce the potential for regular pension payments and question equal treatment of beneficiaries, while another relates to the definitions of partial and total disability introduced in the past, leading to an increase in disability pensions.[98] From an economic perspective, considering the aforementioned data on Croatia's depopulation and the unfavourable ratio of pensioners to insured employees, it is evident that since the beginning of the pension reform, the pressure on annual transfers from the state budget has continued to increase. Thus, Samodol stresses that, *inter alia*, responsible and planned changes and adjustments to the pension system are necessary based on known variables and the adoption of pension stabilisers implemented by countries with similar pension reform models.[99]

The Mandatory Pension Insurance Act,[100] which regulates mandatory pension insurance based on generational solidarity and the principles of reciprocity and solidarity, ensures mandatory rights for old age and reduced work capacity with residual work capacity, partial or complete loss of work capacity, and rights for family

95 Act on the National Benefit for the Elderly, Articles 4, 6 and 7.

96 Vukorepa, 2015, p. 285.

97 Ibid., pp. 286–290.

98 Ibid., p. 301.

99 Samodol, 2020, pp. 90–92.

100 Mandatory Pension Insurance Act, Official Gazette, Nos. 157/13, 151/14, 33/15, 93/15, 120/16, 18/18, 62/18, 115/18, 102/19, 84/21 and 119/22.

members in the event of the insured person's death. In this regard, the Act regulates the right to an old-age pension, an early old-age pension, a disability pension, a family pension, a minimum pension, a basic pension, vocational rehabilitation, and bodily injury compensation.[101] These rights are personal property rights and cannot be transferred to another person or inherited.[102]

3.3. Accidental insurance

The European Committee of Social Rights assesses accidents at work under Article 3 of the European Social Charter (Right to safe and healthy working conditions), but the concept of accidents and its scope are broadly interpreted and include accidents at work, at home, at school, and during leisure activities.[103]

Croatian social security law is specific in that it does not have a unified system regarding work-related injuries and occupational diseases that would imply short- and long-term benefits on these grounds. This problem would likely be better addressed in organisation and structure if Croatia had a certain Code of Social Security. However, in its absence, it is mainly regulated through two systems: the healthcare and pension insurance systems. As mentioned earlier, the Mandatory Pension Insurance Act regulates, *inter alia*, the issue of the right to vocational rehabilitation and bodily injury compensation, including disability and family pensions as forms of long-term care. Furthermore, it provides for the rights based on reduced work capacity with residual work capacity, partial loss of work capacity, and total loss of work capacity (a disabled worker entitled to the right to a disability pension or the right to vocational rehabilitation). Reduced work capacity exists when, given permanent changes in health status that cannot be eliminated through treatment, work capacity is reduced by more than half relative to a healthy insured person with the same or similar level of education.[104] Residual work capacity exists when a reduction in work capacity has occurred, but considering health status, age, education, and ability, the person can be rehabilitated to work full-time in other jobs through vocational rehabilitation.[105] Partial loss of work capacity exists when, given health status, age, education, and ability, the person cannot be rehabilitated to work full-time in other jobs but can work at least 70% of the working time in adjusted jobs of the same or similar level of education.[106] Illness, a work-related injury, an occupational disease, and a non-work-related injury are recognised as the causes of reduced work capacity with residual work capacity, partial loss of work capacity, and total loss of work capacity.[107]

By contrast, salary and healthcare compensation are regulated in such cases through the provisions of the Mandatory Health Insurance Act as a form of short-term

101 Mandatory Pension Insurance Act, Article 3.
102 Mandatory Pension Insurance Act, Article 4.
103 Lukas, 2021, p. 172.
104 Mandatory Pension Insurance Act, Article 39(1).
105 Mandatory Pension Insurance Act, Article 39(2).
106 Mandatory Pension Insurance Act, Article 39(3).
107 Mandatory Pension Insurance Act, Article 39(5).

benefits. Hence, beyond salary compensation during temporary incapacity for work or occupational disease, the insured person is entitled to the reimbursement of travel and transportation costs for access to healthcare resulting from an occupational disease or a recognised work-related injury, even funeral expenses in the event of the insured person's death when the death is a direct result of a recognised work-related injury or occupational disease.[108]

3.4. Long-term care

Regarding long-term care, Croatia is criticised for the lack of strategic approaches that would identify long-, medium-, and short-term priorities, goals, responsibilities, and financing methods. A fundamental complaint is the lack of community- and home-based services that would be evenly distributed across the country.[109] Long-term care is predominantly implemented through the social welfare system and other ministries, particularly regarding war veterans. Although the private sector is significantly growing, especially as previously mentioned, there is a lack of capacity in public care homes for the elderly and facilities for patients in the final stages of terminal illness (hospices) and those suffering from various mental illnesses.[110]

In the context of analyses by the European Committee of Social Rights, *mutatis mutandis*, similar conclusions could be drawn regarding the national report and targeted questions of the Committee.[111]

4. Concluding remarks

Croatia, as a constitutionally defined social state, was undoubtedly protected by this constitutional determinant from potential neoliberal interventions in the area of healthcare, health, pension, and disability insurance. However, another question is how generous the material rights are in the respective systems and how long-term the health and pension insurance systems are financially sustainable. Knowledge of local conditions suggests great challenges for the health and pension system given pronounced depopulation, ageing of the population, and large emigration of citizens in productive life age, the consequences of which will mark the coming decades. A particularly aggravating circumstance is the lack of medical doctors (partly caused by their emigration to other, more economically developed members of the EU and third countries)[112] and a sufficient number of medical teams in almost the entire country, especially in less populated rural areas and areas and on Croatian islands.

The problem of normative complexity and partially reduced transparency can be observed in the exercise of various rights from the pension and disability insurance

108 Mandatory Health Insurance Act, Article 37.
109 Stubbs and Zrinščak, 2018, p. 4; Rusac et al., 2011, pp. 67–80.
110 Stubbs and Zrinščak, 2018, p. 5.
111 European Committee of Social Rights, 2022.
112 Čipin, Smolić and Vlah Jerić, 2017, pp. 357–359.

system, including health insurance and health protection. The necessity and challenge of finding one's way in the forest of legal and by-law texts of the observed systems, as a nomotechnical deficiency, could potentially be eliminated by the adoption of a Croatian Code on Social Security (though overall codification of a targeted legal area is not a tradition of Croatian legislative activity). Unfortunately, given the format and primary function of this chapter, we could not focus sufficiently on the rights from the social welfare system, as this complex matter represents a separate research topic.

In summary, it cannot be said that Croatia is not realising its constitutional determination as a welfare state, but serious questions arise regarding the sustainability of the social security system, at least, at the same level of rights for generations to come in the coming decades. For a system that rests dominantly on intergenerational solidarity regarding pension insurance (by which current pensions are provided exclusively by the work of currently employed people and transfers from the state budget), with an unfavourable ratio of actively employed persons or insured persons, where the number of pensioners (which amounts to almost 1:1) does not offer hope for optimism, Bismarck's model of social security (with undoubted Beveridge elements) posits a collapse.

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