

Serbia: Impact and Consequences of Demographic Challenges on Domestic Social Law and Social Security Systems

Filip BOJIĆ

ABSTRACT

The author gives an overview of the Social Security System in Serbia, with a special focus on demographic challenges, which have an impact on the proper functioning of the domestic social security system. In recent decades, it has been noticeable that the average length of life in the Republic of Serbia has been increasing. Thus, the legislators decided to adopt certain amendments and supplements to the regulations on social insurance to ensure the sustainability of social insurance funds, especially the Republic Pension and Disability Fund. Therefore, the question arises as to whether changes in the law represent the only solution for the sustainability of the social security system. For the stated reason, the author proposes certain de lege ferenda proposals to ensure the further sustainability of the social security system of the Republic of Serbia. Moreover, the paper will assess the compliance of domestic regulations with certain provisions of the Revised European Social Charter, which our country ratified in 2009 and, thereby, assumed a whole series of obligations related to the further development of the social security system.

KEYWORDS

social security law, social security system, demographic challenges, pension and invalidity insurance, social legislation of the Republic of Serbia.

1. Introduction

As is well known, the definition of social security is rarely found in international legal sources, while the social security system itself is most often defined in professional literature as ‘a set of all measures that should in certain cases (illness, accident at work, old age, death, birth of a child and unemployment) establish a disturbed balance’.¹ In most cases, it is assumed that social security represents an umbrella concept, that is, the basic goal of the science of social law, which is achieved through various subsystems,

1 Jašarević, 2010, p. 75.

Bojić, F. (2023) ‘Serbia: Impact and Consequences of Demographic Challenges on Domestic Social Law and Social Security Systems’ in Jakab, N. (ed.) *Sustainability of the Social Security System: Demographic Challenges and Answers in Central Europe*. Miskolc-Budapest: Central European Academic Publishing. pp. 155–178. https://doi.org/10.54171/2023.nj.sotsss_8

such as social insurance systems and social protection systems. Consequently, social security can be a goal that society strives for to ensure decent living conditions and an existential minimum for as many residents as possible, and the aforementioned goal will be achieved by the developed social insurance and social protection system, which will enable individuals to exercise their basic rights and receive appropriate protection in cases of occurrence of a certain social risk. Therefore, the state must create a valid normative framework that will regulate the procedure and conditions for exercising social security rights and providing social protection measures. Without developed legal and sub-legal legislation and a clear constitutional framework, including appropriate measures of supervision over the implementation of the law, ensuring social security for citizens will be a difficult task for every state.

The social security system of the Republic of Serbia comprises the social insurance system, composed of pension and disability insurance, health insurance and unemployment insurance. Moreover, in the Republic of Serbia, there is a special system of social protection, which is an integral part of the social security system. In general, the functioning of the social security system today is subject to numerous different risks, such as demographic, economic, political and institutional risks, and individual risks related to the insured themselves.² Bearing in mind that it is necessary to note the connection between demographic challenges and the social security system, the paper will pay the most attention to demographic risks, which have a significant impact on today's social security systems, including the social security system of the Republic of Serbia. Special attention will be focused on the sustainability of pension systems, bearing in mind that these systems face the most challenges. Consequently, the recent amendments to the social legislation adopted to ensure the sustainability of the social security system of the Republic of Serbia will be noted.

2. The place of social law in the legal system

Serbian Social Law represents a relatively new branch of law, which began to develop rapidly after the Second World War in the territory of the Republic of Serbia. However, in the first decades of development, it was mostly related to the area of Labour Law, bearing in mind that only working members of the population were mostly insured in the noted period.³ However, in the last few decades, the social security system of the Republic of Serbia has rapidly changed, as certain concepts

² Gillion et al., 2001, p. 12.

³ As Professor Vera Jelčić states, 'social law, in fact some of its parts such as social insurance, was in the beginning of its development related to the employment relationship, i.e., the holders of the rights were exclusively persons in employment, namely persons who were no longer capable due to the occurrence of risks to work, and through work to ensure for themselves and their family members the means necessary for a dignified life. Therefore, it was considered that social law, that is, certain parts of it, represent an extension of the rights that were exercised on the basis of work'. Jelčić, 1988, p. 5.

are accepted that are represented in modern European social security systems. Thus, today social law in Serbia is separate from Labour Law, and special regulations regulate basic rights, which are provided to the insured and other citizens given the realisation of some of the social risks.

The Constitution of the Republic of Serbia from 2006 undisputedly represents the foundation for the construction of the social security system in our law. The Constitution contains several provisions guaranteeing certain social rights. These provisions are foreseen in the second part of the Constitution, which regulates basic human rights and freedoms and guarantees the right to social protection, the right to healthcare, and the right to pension insurance. The right to social protection is guaranteed within a special Article of the Constitution. However, the name of this article seems quite incoherent with its content, and, in addition to the rights realised in the social protection system, rights from social insurance are also guaranteed. The first paragraph posits that

...citizens and families who need social assistance in order to overcome social and life difficulties and create conditions for meeting basic life needs, have the right to social protection, the provision of which is based on the principles of social justice, humanism and respect for human dignity.⁴

It is also provided that employees have the right to compensation in case of temporary incapacity for work and the right to compensation in case of temporary unemployment. It is also stated that disabled persons, war veterans and war victims are provided with special protection per the law, and social insurance funds are established per special regulations.⁵ Analysing this Article of the Constitution of the Republic of Serbia, it seems that it would be much more appropriate if it was titled social security rather than social protection because, beyond rights from social protection, certain rights from social insurance are also guaranteed.

Article 68 of the Constitution guarantees the right to healthcare and proclaims that everyone, including children, pregnant women, mothers during maternity leave, single parents with children up to the age of seven, and the elderly receive healthcare from public revenues, has the right to protect their physical and mental health if they do not achieve it in another way. It is also envisaged that health insurance, healthcare, and the establishment of health funds will be regulated by law, which was done in 2019, when the current Law on Health Insurance and Law on Healthcare came into force, thereby invalidating the regulations of the same name, adopted in 2005.⁶

Pension insurance is guaranteed by a special Article of the Constitution. There, the constitution maker does not go into details but only states that pension insurance is regulated by law, and the Republic of Serbia takes care of the economic security

4 Constitution of the Republic of Serbia, Article 69 (1).

5 Constitution of the Republic of Serbia, Article 69 (4–5).

6 Constitution of the Republic of Serbia, Article 68.

of pensioners.⁷ Some authors justifiably believe that this Article does not contain a guarantee of human rights but looks more like a political proclamation.⁸ It seems that it would be more appropriate if that article contained a provision that the Republic of Serbia takes care of the social security of the elderly, not the economic security of pensioners, as this deliberately omits the category of elderly persons who have not secured basic rights from pension insurance and, therefore, do not have the status of a pensioner, that is, a beneficiary of an old-age pension. Moreover, the question arises as to whether that Article also refers to the protection of beneficiaries of disability and survivor pensions, who, according to the interpretations of the largest number of authors, also have the status of pensioners. This article often causes certain doubts in practice. Further, on the occasion of an initiative to start the constitutionality and compliance procedure with the confirmed international treaties of the Law on temporary regulation of the method of pension payments, the Constitutional Court took the position that Article 70 of the Constitution did not determine the content of that right, and the Constitution to citizens guaranteed pension insurance as a form of social insurance, but specific rights from pension insurance are not rights guaranteed by the Constitution but are rights established by law.⁹

Regarding the legal arrangement of social insurance, in the Republic of Serbia, no codification of social legislation has been conducted and, as noted, there are three basic branches of mandatory social insurance, pension and disability insurance, health insurance and unemployment insurance. Pension and disability insurance is regulated by the Law on Pension and Disability Insurance, health insurance is regulated by the Law on Health Insurance, and unemployment insurance is regulated by the Law on Employment and Unemployment Insurance. These three laws form the basis of the social insurance of the Republic of Serbia. Notably, the field of social protection is regulated by a special Law on Social Protection. Beyond the aforementioned regulations, significant legal sources of social law are represented by the Law on Healthcare, the Law on Voluntary Pension Funds and Pension Plans, the Law on Financial Support for Families with Children, the Law on Contributions for Mandatory Social Security, and the Law on the Rights of Veterans, Military Disabled, Civilians war invalids and their family members. Although there were certain announcements in previous years, a special branch of social insurance for work-related injuries has not yet been set aside, and the insured's rights for work-related injuries remain provided within the framework of pension and disability insurance and health insurance.

Beyond the noted sources of law, numerous sub-legal general acts are also of particular importance, which regulate basic rights from social insurance and social

7 Constitution of the Republic of Serbia, Article 70.

8 Andrić, 2017, p. 127.

9 The decision of the Constitutional Court of Serbia on the rejection of the initiative for the initiation of the procedure for the evaluation of the constitutionality and compliance with the confirmed international treaties of the Law on temporary regulation of the method of payment of pensions, No. IUz-531/2014 dated 23 September 2015.

protection rights. These are mainly the rules of the ministry and the Government's decrees, which regulate the legal provisions of basic social rights in more detail. Finally, certain social rights are sometimes guaranteed by collective agreements concluded by the social partners. In most cases, supplementary rights for employees are regulated by them. As Professor Lubarda puts it,

...in domestic law, the prevention and protection of employees contribute to the employer's obligation established in several special collective labour agreements to, in addition to the collective insurance of all employees in the event of death, injury at work, occupational disease, [and] reduction or loss of work ability, additionally insure employees who work at workplaces with an increased risk in an increased amount of injuries at work and occupational diseases.¹⁰

In the noted case, the financial resources are borne by the employer and are determined depending on the level of risk of injury or occupational disease and the working environment.¹¹ Case law does not represent a significant source of law when it comes to the social law of the Republic of Serbia. In this connection, the Administrative Court is responsible for resolving disputes from social insurance; that is, social protection.

Regarding the international sources of law, which guarantee basic social rights, the Republic of Serbia ratified Convention No. 102 of the ILO on Social Security (minimum standards) and the Revised European Social Charter of the Council of Europe. Other significant sources of social law adopted under the auspices of the Council of Europe, such as the European Social Security Code and the European Convention on Social Security, have not yet been ratified by our country. Further, the convention of the ILO No. 128 (Invalidity, Old Age and Survivors' Benefits Convention) has not been ratified, and the provisions of Recommendation No. 202 on Social Protection Floors have not been implemented.

3. Demonstration of compliance with the European Social Charter

As noted, the Republic of Serbia ratified the Revised European Social Charter in 2009. During the ratification, 29 basic principles of the Charter were accepted, guaranteeing various social and economic rights, which are most often referred to in the literature as the rights of the second generation of human rights. Articles 11 to 17 were ratified, which guaranteed the following social rights: the right to protection of health; the right to social security; the right to social and medical assistance; the right to benefit from social services; the right of persons with disabilities to independence, social

¹⁰ Lubarda, 2015, p. 491.

¹¹ Ibid.

integration and participation in the life of the community; the right of the family to social, legal and economic protection and the right of children and young person to social, legal and economic protection. The question arises as to the extent to which domestic regulations on social insurance and social protection accord with the provisions of the Revised European Social Charter, which guarantees basic social rights. Article 11 of the Revised European Social Charter, the right to protection of health, posits that

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*: to remove as far as possible the causes of ill-health; to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.¹²

In the Republic of Serbia, the healthcare system is governed by the provisions of the special Law on Healthcare, adopted in 2019. This regulation stipulates that healthcare is an organised and comprehensive activity of society to achieve the highest possible level of preservation and improvement of citizens' health. It is further determined that healthcare includes the implementation of measures and activities for the preservation and improvement of the health of the citizens of the Republic of Serbia, the prevention, suppression and early detection of diseases, injuries and other health disorders and timely, effective and efficient treatment, healthcare and rehabilitation.¹³ The healthcare system in Serbia comprises healthcare and higher education institutions that run accredited study programmes for acquiring appropriate knowledge and skills for performing work in the field of healthcare and other legal entities for which a special law provides that they also perform healthcare activities, private practice, healthcare workers and healthcare associates, including the organisation and financing of healthcare.¹⁴ Article 12 of the Revised European Social Charter, which guarantees the right to social security, posits that

With a view to ensuring the effective exercise of the right to social security, the Parties undertake: to establish or maintain a system of social security; to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security; to endeavour to raise progressively the system of social security to a higher level; to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such

12 Revised European Social Charter, Article 11.

13 Law on Health Care, Article 2.

14 Law on Health Care, Article 6.

agreements, in order to ensure: equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties; the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Analysing the aforementioned provision, the Republic of Serbia has partially fulfilled the obligations assumed by the ratification of the Charter, even regarding the right to social security. Undoubtedly, a social security system has been established and maintained in Serbia. However, Serbia has still not ratified the European Social Security Code. It is also an open question as to whether the social security system has been raised to a higher level since the ratification of the Revised European Social Charter in 2009. What is evident is that new regulations have been adopted in the field of health insurance (i.e. healthcare), including certain amendments and additions to regulations on pension and disability insurance. However, a certain percentage of the population is not provided with an appropriate level of social security. Thus, further reforms of the domestic system are necessary to achieve the standard, which is accepted in the majority of European social security systems. Moreover, as the Republic of Serbia has not yet joined the EU, the rules on the coordination of the Social Security System are not applied on its territory. Nevertheless, a large number of bilateral agreements on social insurance have been concluded between the Republic of Serbia and other countries based on which the equal treatment of citizens of other contracting states with the treatment of their own citizens is ensured, in terms of basic rights from social insurance.¹⁵ Although there were certain ideas in the professional public, no multilateral agreement was concluded between the states formed on the territory of the Socialist Federal Republic of Yugoslavia. Accordingly, the obligations from Article 12, which guarantees social security, have largely been fulfilled, but there remains room to raise the social security system of the Republic of Serbia to a higher level.

Article 13 of the Revised European Social Charter guarantees the right to social and medical assistance. It posits that

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits

15 The Republic of Serbia concluded a total of 33 bilateral agreements with the following countries: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Montenegro, the Czech Republic, Denmark, Greece, France, the Netherlands, Croatia, Italy, Canada, Quebec, China, Cyprus, the United Kingdom, Libya, Luxembourg, Hungary, North Macedonia, Germany, Norway, Panama, Poland, Romania, Russia, Slovakia, Slovenia, Switzerland, Sweden, Tunisia, and Turkey.

under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition; to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights; to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want; to apply the provisions referred to in Paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Analysing the provisions, it seems that the regulations of the Republic of Serbia are largely harmonised with this Article of the Charter. Serbia provides the right to social assistance by the provisions of the Law on Social Protection, while the right to medical assistance is provided by the provisions of the Law on Healthcare. Although this Article indirectly indicates the importance of ratifying the European Convention on Social and Medical Assistance from 1953, Serbia has not yet ratified this Convention, even though it has been a member of the Council of Europe for 20 years. Article 14 on the right to benefit from social welfare services posits that

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake: to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment; to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

The aforementioned Law on Social Protection of the Republic of Serbia, in addition to the right to various types of material support, realised to ensure the subsistence minimum, and the right to social protection services, defined as activities of providing support and assistance to an individual in the family to improve (i.e. preserve) the quality of life and eliminate or mitigate the risks of unfavourable life circumstances, creates the opportunity to live independently in society.¹⁶ These services include assessment and planning services (assessment of the condition, needs, strengths and risks of the user and other important persons in his environment; assessment of guardians, foster parents and adoptive parents), daily services in the community (daycare, help at home, inn); support services for independent living (supported housing, personal assistance, training for independent living); counselling-therapeutic and social-educational services, and accommodation services (accommodation in

16 Law on Health Care, Article 5.

a relative, foster or other family for adults and the elderly, home accommodation, accommodation in a shelter and other types of accommodation).¹⁷

Regarding Article 15 of the Revised European Social Charter, the right of persons with disabilities to independence, social integration, and participation in the life of the community, the Law on Professional Rehabilitation and Employment of Persons with Disabilities was adopted in Serbia in 2009. It governs incentives for employment to create conditions for the equal inclusion of persons with disabilities in the labour market, assessment of work abilities, professional rehabilitation, and the obligation to employ persons with disabilities and conditions for establishing and conducting activities of firms for professional rehabilitation and employment of persons with disabilities and other special forms of employment, including other important issues of importance for professional rehabilitation and employment of persons with disabilities.¹⁸ This regulation introduced an affirmative measure into our system; more precisely, the quota system of employment of persons with disabilities, which is based on the obligation for all employers with at least 20 employees to establish a working relationship with a certain number of persons with disabilities.¹⁹ Given this obligation, an employer who employs between 20 and 49 employees will be obliged to employ at least one person with a disability, while an employer who employs more than 50 employees will be obliged to employ at least one more person with a disability, and so on for every next 50 employees.²⁰ If the employer does not fulfil the stated obligation (i.e. if he does not employ the required number of persons with disabilities), he will be obliged to pay the amount of 50% of the average salary per employee in the Republic of Serbia.²¹

Article 16 of the Charter on the right of the family to social, legal, and economic protection posits the following:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

The Special Law on Financial Support for Families with Children stipulates that financial support for families with children in the Republic of Serbia is granted to improve the conditions for meeting the basic needs of children; harmonise work, parenting, special incentives, and support for parents to achieve the desired number of children; and improve the financial situation of families with children, families with children with developmental disabilities, and families with children without parental care.²²

17 Law on Health Care, Article 40.

18 Law on Professional Rehabilitation and Employment of Persons with Disabilities, Article 1.

19 Šunderić and Kovačević, 2017, p. 275.

20 Ibid., pp. 275–276.

21 Ibid., p. 276.

22 Law on Financial Support for Families with Children, Article 1.

This Law foresees the following financial benefits provided to families with children: the right to salary payment (i.e. salary payment during maternity leave, leave from work for child care, and leave from work for special child care); the right to other allowances based on the birth and care of a child and special child care intended for mothers who, in the period of 18 months before the birth of the child, earned income based on independent performance of activities or as holders of a family farm; the right to parental allowance, which is provided to the mother for the first, second, third, and fourth child, provided that she is a citizen of the Republic of Serbia and resides in the Republic of Serbia; the right to funds for construction, participation in purchase, or purchase of a family-residential building or apartment based on the birth of a child; the right to child allowance, which can be realised, provided that the total monthly income, minus taxes and contributions, per family member realised in the three months preceding the month in which the request is submitted does not exceed the determined census; and the right to compensation for the costs of staying in a preschool institution for children without parental care, for children with developmental disabilities and children with disabilities, and children receiving financial social assistance. Despite certain legal gaps and certain illogicalities in the text of the Special Law on Financial Support for Families with Children, through the provision of the above-mentioned financial benefits, the main goal of this Law is achieved, which is to improve the financial position of families with children and the increase in the birth rate in the Republic of Serbia. Moreover, it is important to note that with the adoption of this regulation, Serbia has largely fulfilled the obligations assumed by the ratification of Article 16 of the Charter.

Finally, Article 17 establishes the obligation of the Member States of the Council of Europe, which accept this Article, to provide children and young persons with the right to appropriate social, legal, and economic protection. Hence, the special protection of children and young persons is ensured by the provisions of the Family Law and regulations in the field of education. However, regarding social protection of children and young persons, they are unavoidable sources and provisions of the Law on Social Protection, which posits that a child can be a beneficiary of social protection rights or services when his health, safety, and development are threatened given family and other life circumstances—that is, if it is certain that without the support of the Social Protection System, the child cannot reach an optimal level of development, especially if he is without parental care or at risk of losing parental care; if his parent, guardian, or other person who directly takes care of him is unable to take care of him without the support of the Social Protection System, given health reasons, mental illness, intellectual difficulties, or unfavourable socio-economic circumstances; if he has developmental disabilities, and his needs for care and financial security exceed the family's capabilities; if he is in conflict with his parents, guardian and the community and if his behaviour endangers himself and the environment; if he faces challenges from the abuse of alcohol, drugs or other intoxicants; and if there is a risk of becoming a victim of violence, exploitation, or human trafficking.²³

23 Law on Social Protection, Article 41.

4. Financing

Benefits, which are provided within the social insurance system, are primarily financed from contributions for mandatory social insurance. The Law on Contributions for Mandatory Social Insurance establishes the obligation to pay contributions for pension and disability insurance, health insurance, and unemployment insurance. Contributions are required to be paid by employers, self-employed persons, and farmers. Per the provisions of the Law, the rates at which contributions are calculated and paid are, for mandatory pension and disability insurance, 24%; for mandatory health insurance, 10.3%; and for unemployment insurance, 0.75%. Regarding employee insurance, for mandatory pension and disability insurance, 14% is allocated from the gross salary of employees, while 10% is allocated from the funds of the employer; that is, the other payer of income. For health insurance, contributions are divided evenly, 5.15% each from the gross salary of the employees and the employer's funds, while the contribution for unemployment insurance is paid from the base (i.e. the gross salary of the employee) at a rate of 0.75%.²⁴

Beyond contributions, funds for financing social insurance are often provided from the budget of the Republic of Serbia, which is especially the case with pension and disability insurance. Given the numerous social factors that affect the functioning of the social security system, most modern pension systems, whose main source of financing are contributions for mandatory pension and disability insurance, cannot smoothly ensure the payment of benefits without the appropriate intervention of the state, which covers deficit in pension systems. In the fifties of the 20th century, the Federal People's Republic of Yugoslavia (FPR Yugoslavia) spent 11.04% of its national income on social benefits, which do not include only allocations for pensions. Meanwhile, the countries in which the welfare state model was strongly promoted allocated for social benefits: Canada – 7.03%, Denmark – 9%, USA – 4.86%, Finland – 8.87%, Italy – 6, 36%, Netherlands – 8.41%, Great Britain – 11.26%, Switzerland – 4.10%. The FPR Yugoslavia had the largest allocations, but one must consider the large number of war-disabled soldiers and unsecured families of persons who lost their lives during the Second World War.²⁵ Professor Rakonjac Antić states that

...according to the data of the Federal Bureau of Statistics, the share of expenditures for pension disability insurance in the national product was 6.3%, in 1981 it was 6.8%, and in 1991 it increased to a worrying 13.7%, while according to data for 2004, this share increased to 14%.²⁶

24 Law on Contributions for Compulsory Social Insurance, Article 44.

25 Lazarević and Vujošević, 1958, p. 22.

26 Antić, 2010, pp. 7 and 148.

Large allocations for the sustainability of pension systems remain observed today in the Netherlands, Italy, Greece, France, Sweden, and Germany, where more than 10% of GDP is allocated to pensions on an annual basis.²⁷ It is the result of numerous social changes, which affect the sustainability of pension systems. High unemployment rates, demographic changes and the increase in life expectancy are just some of the factors that cause a deficit in funds and require the intervention of the state. Until recently, 14% of GDP was allocated annually to the Republic of Serbia for the sustainability of the pension fund.²⁸ Most authors believe that the ideal proportion for the sustainability of a country's pension system is four employees who will pay contributions for pension and disability insurance per one pension beneficiary.²⁹ However, in most modern countries, the number of employees who support the number of existing pensioners is unsustainably small given the policy of full employment from the period of socialism and the possibility of early retirement during the period of the transition process.³⁰ A similar situation is observed in our country, where there are currently 1.4 insured persons for one pension beneficiary, with a tendency to further shift these proportions.³¹ It is one of the main reasons certain budget funds are allocated for the sustainability of the social security system in the Republic of Serbia.

The social protection system is financed exclusively from budget funds, which is determined by the provisions of the Law on Social Protection. It is foreseen that social protection rights and services will be financed from the budget of the Republic of Serbia, namely, the right to cash social assistance, the right to an (increased) allowance for the assistance and care of another person, the right to a special monetary compensation, the right to assistance for training for work, family accommodation services, counselling and training services for foster and adoptive parents, residential accommodation services, housing services with the support of persons with

27 In the Netherlands, 13.6% of GDP is allocated; in Italy, 13.5%; in Greece, 12.7%; in France, 12.2%; in Sweden, 10.3%; and in Germany, 10.3%. The second group includes countries that set aside between 8% and 10% of GDP for the sustainability of pension systems: Spain (9.4%), the United Kingdom (8.9%), Poland (8.5%), New Zealand (8.2%). The third category includes countries that allocate between 3% and 7% - the United States of America (6.6%), Chile (6%), Japan (5.5%), Canada (4.8%), Australia (4.6%), Argentina (3.6%), Turkey (3.3%). The fourth group includes countries that spend between 1% and 3% of GDP: China (2.6%), Brazil (2.4%), Egypt (2.3%), Tunisia (2.3%), Costa Rica (2.0%) and Singapore (1.4%). In the last group are countries, mostly developing countries, that allocate less than 1% of GDP for the sustainability of pension systems: Kenya (0.4%), Zambia (0.4%), Pakistan (0.3%), Mexico (0.3%) and Nigeria (0.0%). These data are from the 90s of the last century, though recent statistics indicate that there have been no major changes, but allocations for pensions given numerous demographic changes, especially the extension of the average life expectancy, are higher than before. See Arza and Johnson, 2006, pp. 64-65.

28 Antić, 2010, pp. 7 and 148.

29 Popović, 1999, pp. 19-20.

30 Perišić, 2014, p. 27.

31 In the FPR Yugoslavia in the 50s of the 20th century, five employees per pensioner paid contributions for mandatory social insurance. In the 1960s, the difference increased. Thus, that there were six employees for one pensioner. During the 80s, there was a sharp decline: two employees for one pensioner. Stojiljković and Devedžić, 2010, p. 183; Petrović-Stojanović, 2017.

disabilities, accommodation services for victims of human trafficking and the right to one-time assistance in the event of a large number of citizens at risk.³² The budget of the Republic of Serbia also finances the work of centres for social work, institutions for home placement founded by the Republic of Serbia (i.e. the autonomous province), the Republic Institute for Social Protection, centres for family placement and adoption founded by the Republic of Serbia, institutions for the education of children and youth, the Chamber, and other institutions founded by the Republic of Serbia.³³

5. Organisation and administration

In the Republic of Serbia, there is no single public service before which social security rights will be exercised. As is the case in Great Britain, social security rights are exercised before several funds are established separately for each branch of social security, as is the most common case in comparative law.³⁴ Therefore, health insurance rights will be exercised before the Republic Health Insurance Fund, while unemployment insurance rights will be exercised before the National Employment Service. Notably, in the Republic of Serbia, the National Employment Service is not only involved in the implementation of unemployment insurance but also performs tasks related to employment and the education of unemployed persons to make it easier for the unemployed to find suitable employment. In both bodies, the management bodies are the director and the board of directors. The Board of Directors of the Republic Fund for Health Insurance has seven members, four members are elected on the proposal of the Minister, one member is elected on the proposal of representatives of insured employees, one member is elected on the proposal of representative trade unions organised at the level of the Republic of Serbia, one member is elected on the proposal of representatives of insured pensioners and one member is elected on the proposal of the representative of insured farmers.³⁵ The Management Board of the National Employment Service has seven members, appointed and dismissed by the Government, with four members, including the president, appointed on the proposal of the minister responsible for employment affairs, while three members are appointed on the proposal of the Social and Economic Council of the Republic of Serbia.³⁶

Rights from pension and disability insurance are exercised before the Republic Fund for Pension and Disability Insurance. As with the Republic Health Insurance Fund and the National Employment Service, the bodies of the Fund are also the director and the board of directors, which has seven members, appointed and dismissed by the Government of the Republic of Serbia. Four members of the Management Board

32 Law on Social Protection, Article 206 (1).

33 Law on Social Protection, Article 206 (2).

34 Lubarda, 2015, p. 466.

35 Law on Health Insurance, Article 242.

36 Law on Employment and Unemployment Insurance, Article 12 (3).

are appointed on the proposal of the minister responsible for pension and disability insurance and the minister responsible for finance, one member from among the insured is proposed by a representative trade union established at the level of the Republic of Serbia, one member from among employers is proposed by a representative association of employers established at the level of the Republic of Serbia, while one member is appointed from among the beneficiaries of rights, at the proposal of the association of pensioners established at the level of the Republic, which has the largest number of members in the country.³⁷

Regarding the actual procedure for exercising rights, rights from pension and disability insurance are exercised from the day the request is submitted, and at the earliest six months before that day. These rights are exercised in the procedure provided for by the law regulating general administrative procedure; more precisely the Law on General Administrative Procedure from 2016.³⁸ The procedure is initiated at the request of the insured; that is, at the request of a family member, when it comes to exercising the right to a survivor pension.³⁹ Pursuant to the provisions of the Law on Pension and Disability Insurance, the Republic Fund for Pension and Disability Insurance is obliged to provide professional assistance to insured persons and beneficiaries.⁴⁰ It is also important to note that in the procedure for exercising rights from pension and disability insurance in the fund, a two-step process is ensured, and against the first-level decision, an appeal can be filed with the body designated by the fund's general act within 15 days from the date of receipt of the decision.⁴¹ The second instance decision (i.e. the decision of the fund made following an appeal) is final and, against it, an administrative dispute can only be filed within 30 days before the Administrative Court.⁴² The same rules apply in the case of violation of rights from health insurance and unemployment insurance and in the case of violation of rights from the social protection system. Thus, the Administrative Court of the Republic of Serbia is overloaded with a huge number of cases from the field of social security, and the idea of introducing special social courts or the possibility of establishing special departments at administrative courts that will be competent only for resolving disputes from social security insurance and social protection disputes should be reaffirmed. Our regulations stipulate that there is no two-tier system in administrative disputes, but the Law on Administrative Disputes stipulates that the Supreme Court of Cassation in a panel of three judges will decide on a request for review of a court decision against a decision of the Administrative Court.⁴³

On exercising rights from social protection, certain differences are observed when starting the procedure for exercising rights from social security versus the

37 Law on Pension and Disability Insurance, Article 155.

38 Law on Pension and Disability Insurance, Article 84.

39 Law on Pension and Disability Insurance, Article 88 (1).

40 Law on Pension and Disability Insurance, Article 88 (2).

41 Law on Pension and Disability Insurance, Article 92 and Article 99 (1).

42 Law on Pension and Disability Insurance, Article 103.

43 Law on Administrative Disputes, Article 9.

procedure for exercising rights from social protection. The Law on Social Protection stipulates that the procedure for realising the right to financial social assistance, the right to an allowance for the assistance and care of another person and the right to an increased allowance for the assistance and care of another person is initiated based on a request, but it can also be initiated *ex officio*. Meanwhile, the procedure for exercising rights from social security, according to the provisions of the current law, can be initiated only based on the request of the insured.⁴⁴ According to the provisions of the Law on General Administrative Procedure, ‘the procedure is initiated *ex officio* when it is determined by the regulation or when the authority determines or learns that, given the factual situation, it is necessary to protect the public interest’.⁴⁵

6. Demographic challenges

In the Republic of Serbia and most European countries, an increase in the average life expectancy has been observed in recent decades. According to available statistics, the average life expectancy of a man in Serbia is 70 years, while the average life expectancy of a woman is 75.6 years.⁴⁶ The noted changes directly affect the functioning of the social security system of Serbia. Thus, to maintain this system, the legislator often decides to resort to changes in the regulations on social security. Most often, the regulations on pension and disability insurance are amended to ensure the smooth operation of the Republic Fund for Pension and Disability Insurance, which continues to operate on a pay-as-you-go basis.

In the largest number of pension systems, the conditions for exercising the right to social benefits, provided within the pension and disability insurance system, have been tightened in recent decades. In particular, the tightening of the conditions related to the years of life of the insured aims to ensure the sustainability of pension funds given constant demographic changes, as reflected in the constant increase in the life expectancy of beneficiaries of old-age pensions. It is noticeable that in European countries with a high standard of living and a significantly better healthcare system, the conditions for acquiring the right to an old-age pension are constantly being raised to financially maintain the pension funds, which have increasing expenses every year given the increased number of old-age pension beneficiaries. As Professor Yves Jorens claims,

44 Law on Social Protection, Article 95 (1); Law on Pension and Disability Insurance, Article 68 (1).

45 Law on Administrative Procedure, Article 90 (2). It is interesting that certain regulations from the period of the FPR Yugoslavia provided that the Social Insurance Institute could initiate proceedings *ex officio* when the death of the insured occurred as a result of an accident at work to ensure the payment of a survivor pension to the family members of the deceased insured. Cota and Popović, 1958, p. 299.

46 Notably, the average life expectancy has decreased in the previous two years given the COVID-19 pandemic. Before the beginning of the pandemic, the average life expectancy in Serbia for men (women) was 73.1 (78.3) years.

...at the beginning of the sixties of the twentieth century, the average duration of human life was 68 years, of which approximately half of that life was spent in a working relationship, but with the beginning of the XXI century, the situation changed drastically, and today the average duration of human life is almost 80 years, so a person spends less than half of his life in a working relationship, approximately 38 years.⁴⁷

The Professor believes we will soon find ourselves in a situation where human life is divided into three almost equal parts: one part of life will be spent in education, another in work, and the third will be spent in retirement.⁴⁸ In that study, a problem that will certainly appear in the future is pointed out, which is the excessive number of beneficiaries of old-age pensions due to the extension of the life expectancy of the population, which is primarily the result of better living conditions and the progress of medicine and science.

The EU is particularly facing the global phenomenon of demographic changes in the ageing of the population, and if the currently established growth continues, by 2030, the total percentage of elderly people, between the ages of 65 and 79, will amount to 37% of the entire population in the EU, which will especially affect the sustainability of the pension systems of the Member States.⁴⁹ Special studies have been prepared on the topic of demographic ageing of the population and the impact of ageing on existing pension systems. Demographic data also indicate that Europe is ageing much faster than other continents and regions of the world and that, of the 25 countries with the oldest population worldwide, 24 countries are from Europe.⁵⁰ However, even among EU countries, there are systemic differences in the approach to the problems of the ageing population, and there is no single concept of protection, especially given that building a system and providing care for the elderly is the responsibility and obligation of each Member State.⁵¹ Despite the developed social security system, there remain people who are not covered by that form of security. Therefore, the integration of the elderly into society is necessary, which requires adequate income in old age such that the elderly can meet different types of needs.

Notably, many EU Member States have decided to gradually equalise the conditions regarding the years of life for male and female insured persons, and the condition for exercising the right to an old-age pension is 65 years of age.⁵² Although the

47 Jorens, 2002, p. 10.

48 Ibid.

49 Meenan, 2008, pp. 10–11. The average life expectancy is increasing worldwide. It is predicted that from 2010 to 2030, the number of people over 65 (85) in England will increase by 51% (101%). Blackham, 2016, p. 1.

50 The Republic of Serbia is in a high fourth place. Drča, 2010, p. 42.

51 Ibid., pp. 44 and 47.

52 The age requirement is equal for female and male insured persons in the following EU Member States: Belgium, Czech Republic, Denmark, Finland, Greece, France, Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden. The data is taken from: OECD, 2021, p. 131.

Convention of the ILO No. 102 on Social Security (minimum standards) stipulates that the prescribed age limit for exercising the right to an old-age pension cannot exceed 65 years, the competent authorities are left with the possibility to set a higher age limit considering the working capacity of older persons in the specific country.⁵³ In the last few years, some countries, mostly more developed ones, have decided to raise the age limit from 65 to 67 years of life, bearing in mind that in those systems the average life span has been extended and that people in their sixties are in much better health condition than in previous years and can, therefore, generally continue to earn income based on work.⁵⁴

However, for the basic topic of this research, it is vital to determine the perspectives and predictions in the Republic of Serbia regarding the constant increase in the number of elderly people, even though the standard of living, as well as the average length of life, remain significantly lower than in the Member States of the UE.⁵⁵ Statistical data show that the population of the Republic of Serbia is among the oldest worldwide. At the time of the 2002 census, the average age of the population was 40.3 years, and approximately 1,250,000 people were over 65 years old. The unfavourable trend continued in the first years of the second decade of the twenty-first century, and according to estimates from 2010, the share of young people under the age of 14 in the total population was 15%, and those over 65 increased to 17%. In that population category, almost every fourth person is over 80 years old, which indicates a progressive ageing of the elderly population.⁵⁶

As stated in the introductory part, with the aim of sustainability of pension systems, there are often changes in the regulations on pension and disability insurance, and in terms of tightening the conditions for exercising the right to an old-age pension. In general, the Law on Pension and Disability Insurance of the Republic of Serbia regulates the rights provided in the event of the realisation of social risks of old age, disability, death of family breadwinner, physical damage, and loss of autonomy. The insured will exercise the right to retirement, which is provided within the framework of the pension and disability insurance system, if he has fulfilled the conditions provided for in this regulation. The stated conditions in most cases refer

53 Social Security (Minimum Standards) Convention No. 102, Article 26 (1 and 2).

54 In Iceland and Norway, based on current regulations, the age of life, as a condition for old-age pension for male and female insured persons is 67 years. It can also be seen that some countries in the region have also decided on this solution, but the age limit will gradually increase to 67 years of age. Thus, the Law on Pension and Disability Insurance of Montenegro stipulates that from 2025 the condition for exercising the right to an old-age pension will be 67 years of age for male insured persons, and, from 2041, the same condition will apply to female insured persons. It is realistic to expect that the conditions will be changed again in the Republic of Serbia in some future amendments and additions to the Law on Pension and Disability Insurance, bearing in mind the problems faced by the Republic Fund for Pension and Disability Insurance when paying pensions. OECD, 2021, p. 131; Montenegro Law on Pension and Disability Insurance, Article 17 (1), and Article 197d.

55 Radivojević, 2012, p. 66.

56 Ibid.

to years of life and previous insurance experience, for which contributions were paid to the insured. Holders of the right to benefits are mostly insured persons or family members of the deceased insured person when it comes to exercising the right to a survivor pension.

Although the right to social benefits should be exercised without discrimination and under equal conditions, regardless of the personal characteristics of the insured, the theory represents the idea of tolerating discrimination regarding the years of life of women insured when acquiring the right to old-age and survivor pensions for widows.⁵⁷ It considers that women spend much time in the house, take care of the family and housework, work with little pay, are often absent from work due to maternity and child care, and accept work in the grey economy much more often than men.⁵⁸ Notably, the adopted international standards also tolerate this difference between men and women in terms of years of life for exercising the right to an old-age pension, and Recommendation No. 67 of the ILO also overlooks that the age for exercising the right to an old-age pension for men (women) should not exceed 65 (60) years.⁵⁹

However, in the national system of pension and disability insurance, the legislator decided to equalise the years of the life of men and women when prescribing new conditions for exercising the right to an old-age pension, which was introduced by amendments to the Law on Pension and Disability Insurance from 2014, yielding the conclusion that the European model of life expectancy equalisation is accepted in Serbia. Current legal regulations on pension and disability insurance provide that the right to a full old-age pension will be exercised by an insured person who has reached the age of 65, with a minimum of 15 years of insurance experience or 45 years of insurance experience, regardless of age.⁶⁰ The gradual equalisation of conditions began on 1 January 2015, when the requirement for old-age pension increased by 6 months each year and by two months from 2020 to equalise the conditions by 2032, which refer to the years of life of male and female insured persons.⁶¹ Notably, before the adopted amendments to the Law on Pension and Disability Insurance in July 2014, as an alternative condition for exercising the right to a full old-age pension, for many years, the possibility was provided that a male insured person who had completed 40 years of insurance obtains the right to an old-age pension on reaching the age of 60, while more favourable conditions have always been provided for female insured persons, considering the duties that women perform in the household. Thus, the right to an old-age pension could be obtained at the age of 58 and 38 years of insurance experience. That condition has been abolished; today, with similarly set conditions (i.e. 60 years of age and 40 years of previous insurance experience), the insured can only exercise the right to an early old-age

57 Pieters, 2006, p. 48.

58 Servais, 2013, p. 80.

59 Ibid.

60 Law on Pension and Disability Insurance, Article 19.

61 Law on Pension and Disability Insurance, Article 19a.

pension, where a permanent reduction of the pension amount by 0.34% is foreseen for each month before reaching 65 years of age.⁶² Therefore, the question arises as to whether the Republic of Serbia can face demographic changes and whether this is the right way for the sustainability of the pension system. Hence, it should be noted that the Republic of Serbia did not accept the three-pillar model of the World Bank, which is accepted in many European countries, although this idea was considered at the beginning of this century, and is foreseen with mandatory pension and disability insurance and the possibility of contracting voluntary pension and disability insurance.

Finally, despite the narrowed competence regarding social policy measures, European officials often raise the question of the sustainability of pension systems and the constant demographic changes taking place in Europe, which represents a special challenge for the community in the coming period. One of the conclusions of the Stockholm European Council on the issue of demographic changes and the sustainability of the pension system and, in this area, the application of the increasingly popular Open Method of Coordination, was proposed, which, however, did not bring satisfactory results.⁶³ Further, the European Commission, after consultation with the Committee for Social Protection of the European Union and the Committee for Economic Policy, proposed joint goals in the implementation of appropriate pension measures. Thus, it is also mandated to ensure decent basic living standards for the elderly and prevent poverty and social exclusion.⁶⁴

The Committee for Social Protection of the European Union, based on the submitted reports of the Member States of the community, issued a special report, in which the issue of the sustainability of pension systems is addressed, and the Member States previously agreed on 10 common goals for future pension reforms: 1. Sustainability of a more appropriate pension amount; 2. Ensuring intergenerational equity; 3. Maintaining the idea of solidarity within pension systems; 4. Maintaining a balance between rights and obligations; 5. Ensuring that pension systems support equality between men and women; 6. Ensuring transparency and predictability; 7. Ensuring that pension systems are even more flexible in light of constant social changes; 8. Facilitating the adaptability of the labour market; 9. Ensuring the consistency of pension schemes in general pension systems; and 10. Ensuring the sustainability of public finances.⁶⁵ However, it seems that those strategies and proposals of the competent authorities of the European Union remain a dead letter and that the open method of coordination does not produce the expected results. Even so, some of the proposed measures should be considered in the Republic of Serbia to ensure the best possible way for the further sustainability of pension systems.

62 Law on Pension and Disability Insurance, Article 70a.

63 Jacob, 2002, pp. 40-41.

64 Ibid.

65 Fuchs, 2002, p. 63.

7. Actions—Amendment of the law

In general, the regulations of the Republic of Serbia governing the social security system can be evaluated positively. As stated in the research, in the last 20 years, new laws have been adopted that regulate rights from social insurance and social protection. It is indisputable that there is room for further improvement of the regulations, and per the standards of the EU, especially the Council of Europe, an organisation of which Serbia has been a Member State for two decades. In this regard, it would be appropriate for the Republic of Serbia to ratify the European Code of Social Security from 1964 and the European Convention on Social and Medical Assistance from 1953 as soon as possible. This would undoubtedly improve the social security system, which is governed by the aforementioned standards.

Moreover, attention should be paid to redefining social rights as part of some future amendments to the Constitution of the Republic of Serbia, as the existing articles of the Constitution guaranteeing the aforementioned rights are quite imprecise and, therefore, do not represent a suitable basis for the further development of the Social Security System. This refers in particular to Article 69, which guarantees the right to social protection, instead of the right to social security, and Article 70, which is dedicated to pension insurance.

Although there was no space in the paper for a detailed analysis of social insurance regulations, the adoption of the new Law on Health Insurance and the new Law on Healthcare has improved the healthcare system in our law. The same is true with the unemployment insurance system, which is increasingly oriented toward work orientation, instead of orientation toward social security, because, as Professor Šunderić states,

...unemployment rights should not demotivate in relation to work and monetary compensation is not permanent, but a time-limited right for the period until a vacancy is offered on the labour market or until conditions are created for the insured to switch to another form of protection.⁶⁶

The unlimited duration of the benefit would lead to a situation where users neglect the obligation to actively seek employment and rely on benefits provided by the state. Moreover, we should persevere in implementing the idea of forming a new branch of social insurance in case of injury at work, as is the case in many Member States of the EU.

The most open questions remain with pension and disability insurance, where, unlike other branches of insurance, conditions are most often changed, that is, tightened, all with the aim of sustainability of pension systems. Therefore, the re-establishment of the second and third degrees of disability, which have not been

66 Šunderić, 2009, p. 160.

foreseen in our regulations since the adoption of the Law on Pension and Disability Insurance in 2003, should be considered. It is also necessary to review the overly strict conditions, especially those related to the previous insurance period of 40 years of service, which are foreseen for exercising the right to an early old-age pension and which prevent many insured persons from exercising this right. Regarding the sustainability of pension systems, instead of constantly tightening the conditions for the old-age pension, the noted report of the Committee for Social Protection of the European Union should be considered to find an alternative model, instead of strictly tightening the conditions for the old-age pension and other benefits, which are provided within the Pension and Disability Insurance System. The appropriate proposals are those related to the sustainability of the appropriate amount of pension, which would ensure an adequate level of social security, ensure intergenerational fairness, maintain the idea of solidarity within the pension system, and maintain a balance between rights and obligations. Bearing in mind that the Republic of Serbia aspires to membership in the EU, it would be good to harmonise the goals related to the sustainability of pension systems, which, as observed in the paper, are quite affected by demographic changes, and, therefore, is necessary to reform them in due course, but by no means to the detriment of the insurer and beneficiary.

8. Closing remarks

Indeed, further reforms of the social security system of the Republic of Serbia are necessary. It is important to continue with changes in the regulations but in such a way that the new regulations benefit the insured; that is, the beneficiaries. It is indisputable that demographic changes have a great impact on modern social security systems, but it is also important not to forget that the purpose of social law is to provide for persons in a state of social risk; that is, in a state of social need and for whom help is necessary. With frequent changes in the regulations, we come to a situation where many insured persons have certain problems when exercising basic rights from social insurance, especially rights from pension and disability insurance, and they cannot be provided with the appropriate minimum of social security through them.

Furthermore, the Republic of Serbia ratified the Revised European Social Charter of the Council of Europe in 2009 and, thereby, assumed obligations related to the improvement of the social security system and the social and healthcare system. Based on the analysis of compliance of our regulations with the provisions of the Charter, it seems that it is still necessary to work on the improvement of domestic regulations on social insurance to provide help through the social security system to all those who need it and when a certain social risk is realised.

Finally, the Republic of Serbia has provided a favourable normative framework regarding the social security system. Beyond the basic laws, which regulate basic rights from social insurance and social protection, special laws were also adopted, such as the Law on Professional Rehabilitation and Employment of Persons with

Disabilities and the Law on Financial Support for Families with Children through which are also accepted obligations arising from the ratification of the Revised European Social Charter. However, it is important to apply the regulations in practice to ensure legal certainty for all insured persons and beneficiaries of rights. The above is an important segment because it would fulfil the goals proclaimed in the Revised European Social Charter, which refers to raising the social security system to a higher level, undoubtedly contributing to helping the Republic of Serbia to join the EU.

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