

Slovakia: Seeking New Approaches to the Sustainability of the Social System in the Impact of Demographic Challenges

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ABSTRACT

This study describes the theoretical perspectives on social security law and its purpose and meaning. It then presents a concrete comparison of the quality of the legal regulation of social security law in Slovakia with the European Social Charter (revised). The main part of the work deals with specific national legislation that responds to the demographic challenges of society. In 2023, a parental pension was introduced into the social security system to ensure the direct involvement of children in the social status of their parents. In the conclusion, the author reflects on the future direction of the protection of social rights in the legislation.

KEYWORDS

social security law, Slovakia, European Social Charter (Revised), parental pension

1. Social security law in the law system of the Slovak republic

Legal scholarship offers several definitions of social security law. Several from college textbooks can be cited. Koldinská sees social security law as a set of legal norms that implement the rights formulated primarily in Articles 30 to 32 of the Charter of Fundamental Rights and Freedoms and respond to legally recognised social situations, which constitutes a system of social protection.¹ Matlák stresses that social security law acts as a separate legal branch but is the subject of pedagogical and scientific approaches, constituting scientific and pedagogical disciplines. He further states that social security law constitutes a set of legal norms regulating social, collective, and individual relations arising in social security and the application or implementation of social policy and social partnership of individual subjects of the social sphere.² Galvas and Gregorova consider social security law to be a set of legal norms that regulate the

1 Koldinská, 2022, p. 5.

2 Matlák, 2012, p. 42.

Dolobáč, M. (2023) 'Slovakia: Seeking New Approaches to the Sustainability of the Social System in the Impact of Demographic Challenges' in Jakab, N. (ed.) *Sustainability of the Social Security System: Demographic Challenges and Answers in Central Europe*. Miskolc-Budapest: Central European Academic Publishing, pp. 179–198. https://doi.org/10.54171/2023.nj.sotsss_9

behaviour of subjects in social relations arising in the provision of material security or other assistance to citizens who, given social events accepted by law, need such benefits or assistance.³ The variations in the definitions do not change the general recognition that social security law is a separate branch of law, with its own content and subject matter. The theoretical definition of any branch of law is always a sketch by which the author draws insight and a strict definition of the essential characteristics of that branch. As long as it is logically justified, it may also be considered correct. There is, thus, no objection to the multiplicity of definitions.

From an etymological perspective, social security law is associated with two basic concepts: social and security. These two words can form the skeleton of the definition of the meaning, purpose, or objective of social security law. The purpose is to create a legal environment to prevent adverse social situations as far as possible and, in the event of a social event, provide legal instruments to remedy the negative situation or eliminate the adverse consequences. Alternatively, it aims to preserve human dignity when a social event occurs. However, social security law is also intended to motivate and provide legal instruments for the integration of individuals into society. Thus, if we are to attach our own definition, let it be simple. Social security law is a system of legal norms designed to ensure human dignity in the face of an adverse social event.

Regarding the integration of social security law into the legal system, one can agree with the views⁴ that, by its nature, it is primarily a public law branch, with administrative law being the closest (especially in procedural norms) and similarities can also be found with financial law (the nature of insurance premiums in the social insurance system is similar to the tax system). Meanwhile, many private law elements can also be found in social security law (e.g. private law contracts concluded between the provider and the recipient of certain social or health services). We would add to these considerations that social security law has a special relationship with labour law, with several overlaps. There is a particular correlation in the protection of employees caring for children. The basic code of labour law provides these employees (and other groups) with special care and legal protection (e.g. interruptions at work, maternity leave, and paternity leave), which is supplemented by the financial security provided by the standards of social security law.

2. Constitutional anchorage of social security law

Social security law is characterised by the fragmentation of national legislation. The legislation governing individual social security benefits is based on international obligations (see below) and the constitutional anchoring of social security law. The right to social security and social assistance are constitutional rights. The Constitution of

3 Galvas and Gregorová, 2000, p. 13.

4 Koldinská, 2022, p. 6.

the Slovak Republic⁵ states in Article 1 that the Slovak Republic is a democratic state governed by the rule of law, whose economy, as it follows from its Article 55, is based on the principles of a socially and ecologically oriented market economy. These principles are translated into the second title, the fifth section of the Constitution, which regulates economic, social, and cultural rights. We will highlight a few of them as follows:⁶

Citizens have the right to work. The State shall, to the extent appropriate, provide material security for citizens who, through no fault of their own, are unable to exercise this right.⁷ Citizens have the right to adequate material security in old age and in the event of incapacity for work, as well as in the event of the loss of the breadwinner.⁸ Adequate material security in old age is provided through a pay-as-you-go pension scheme and a retirement savings scheme. The State encourages voluntary savings for retirement.⁹ Once a person has reached the stipulated age of participation in an adequate old-age material security scheme, he or she is entitled to adequate old-age material security. A person who has completed a specified number of years of service after reaching a specified period of participation in the old-age material security scheme may also be covered by the old-age material security scheme.¹⁰ The inability to engage in gainful employment on account of long-term care for a child during the statutory period after the child's birth must not adversely affect adequate material security in old age.¹¹ Everyone has the right to decide that part of the tax paid or part of the payment made in connection with participation in a scheme of adequate material security in old age shall be given to the person who brought him up and to whom the material security in old age is provided. The exercise of the right under the first sentence shall not adversely affect adequate material security in old age.¹² Everyone in material need has the right to such assistance as is necessary to ensure basic living conditions.¹³

It is characteristic of the social rights referred to in Article 39 that they are exercised within a legal framework. The details for the real fulfilment of constitutional rights are, thus, provided by the network of legal provisions regulating individual entitlements under the social security system.

5 Constitution of the Slovak Republic – Constitutional Act No. 460/1992 Coll., hereinafter referred to as the Constitution.

6 A closer analysis of the individual rights, in particular Article 39(6) of the Constitution, which guarantees the constitutional right to social assistance, and in particular the most recently added Article 39(5) of the Constitution, is set out below.

7 Article 35(3) of the Constitution.

8 Article 39(1) of the Constitution.

9 Article 39(2) of the Constitution.

10 Article 39(3) of the Constitution.

11 Article 39(4) of the Constitution.

12 Article 39(5) of the Constitution.

13 Article 39(6) of the Constitution.

The enshrinement of social rights in the Constitution is standard in all European countries. Relative to the social rights enshrined in the Constitution of the Slovak Republic, it should first be noted that the adoption of the Constitution materially incorporated the Charter of Fundamental Rights and Freedoms into the text of the Constitution. The protection of human rights and fundamental freedoms based on their natural-law understanding has, thus, reached, at least, the level of the current international standard. The text of the constitutional regulation of fundamental rights and freedoms contained in the Charter is comparable, but not identical, to the text of the constitutional regulation of fundamental rights and freedoms contained in Title II of the Constitution.¹⁴ Successive additions to the Constitution have increasingly diverged its text from the Charter of Fundamental Rights and Freedoms. It is particularly true of social rights, which does not, of course, mean the loss or constitutional restriction of the right to social security and social assistance. However, the legislature is clarifying and progressively making these rights more specific in the Constitution.

Reading the text of the Constitution, which enshrines selected social rights, one can rightly get the impression that the content of constitutional social rights is specific, especially if we consider that social rights are exercised to the extent that they are enshrined in the law. By comparison, the Charter of Fundamental Rights and Freedoms states quite generally that citizens have the right to adequate material security in old age and in the event of incapacity for work and the loss of a breadwinner. Anyone in material need has the right to such assistance, which is necessary to ensure basic living conditions.¹⁵ This gives the legislator a fairly wide margin of discretion as to the material and personal scope of the social system in providing for the social events in which natural persons find themselves.

The concretisation of the constitutional text finds a positive response. It increases the degree of legal certainty regarding the protection guaranteed to beneficiaries (specifically in old age) by the Constitution. Even constitutional lawyers have gone further and stated that it cannot be ruled out that the Slovak Constitution will be the first or among the first to introduce a certain regulation, which will then be adopted by other states, with the result that the usual standard of comparative constitutional law will be born in Slovakia.¹⁶ However, over-specification of the text (many times

14 Additionally, originally the Charter of Fundamental Rights and Freedoms was contained in a separate constitutional document, namely the Constitutional Act of the Federal Assembly of the Czechoslovak Federal Republic No. 23/1991 Coll., which introduced the Charter of Fundamental Rights and Freedoms as a constitutional act of the Federal Assembly of the Czech and Slovak Federative Republic. This constitutional document is still valid for the Slovak Republic. From a formal perspective, the Slovak Republic still has a duplicate national constitutional regulation of the institute of fundamental rights and freedoms, contained both directly in the Constitution of the Slovak Republic (Title II) and in the Charter of Fundamental Rights and Freedoms. See Orosz, 2010, pp. 151–152.

15 Article 30(1) and (2) of the Charter.

16 Drgonec, 2012, p. 780. One can agree with the above considerations, but paradoxically they are linked to the specification of a constitutional text that has since been repealed.

given political efforts to enforce what is essentially a statutory regulation) also results in frequent amendments, which results in a loss of legal certainty. An example is the attempt to cap the maximum age for old-age pensions. Until 1 January 2021, Article 39(3) of the Constitution stipulated that the age of entitlement to adequate material security in old age must not exceed 64 years. Further, to promote family and maternity in the State, anyone who has brought up a child is entitled to an appropriate reduction of the maximum age for entitlement to adequate old-age material security. Despite the constitutional enshrinement, the provision in question proved unsustainable and was eventually repealed or amended in the Constitution (more below on parental pension).

3. Categorisation and classification of social security law

Social security law is characterised by an extraordinary multiplicity of legal rules of different legal forces. Despite the fragmented legal framework (see below), social security law can be divided into three main blocks: the insurance system, the state social support system, and the social assistance system.

3.1. Insurance system

The insurance system is the main pillar of social security law, covering most social events. It is a contributory system, meaning that statutory persons such as the employer, the employee, and the state are obliged to pay for insurance that protects the insured person (not necessarily the premium payer) against the negative consequences of a social event. The insurance system can be divided into the health and social insurance systems. The basic legislation enshrining the social insurance system is the Social Insurance Act,¹⁷ which regulates the five subsystems of social insurance: sickness, pension, accident, guarantee, and unemployment insurance.

Beyond the principle of social justice, the social insurance system should also reflect the principle of merit, fulfilling an economic, motivational, and educational function. The meritocracy of the insurance system is not absolute and is balanced quite strongly by the principle of solidarity, which is reflected, for example, in the maximum amount of benefits in the calculation of the amount of the benefit (e.g. also of the old-age pension), where the formulas are set up to favour low-income groups at the expense of higher earners (and, therefore also of contributors).

3.2. State social support system

The state social support system is financed from general tax resources, through benefits paid from the state budget. Unlike the insurance system, no contributions—insurance premiums—are required. Unlike social assistance, the state social

17 Act No. 461/2003 Coll. on Social Insurance, as amended.

assistance system is characterised by equal benefits (security) for all beneficiaries who experience a social event. It is true, however, that certain benefits are subject to income limits or are conditional on the absence of other income (e.g. parental allowance).¹⁸

The individual benefits of state social support are primarily aimed at creating support for family policy. Examples of benefits from the state social support system include childbirth allowance, allowance for multiple children born at the same time, parental allowance, maintenance allowance, and child care allowance. Without analysing the individual benefits in detail, it can only be reiterated that these benefits are aimed at supporting the family and childcare. Notably, this is not the only objective of State social assistance, as its benefits may also include a funeral allowance. In recent years, state policy to support families has shifted from the state social support system to tax law, with the legislature extending a tax bonus to parents caring for dependent children.

3.3. Social assistance system

The social assistance system is the last safety net, a system designed to protect people in critical existential situations and ensure a minimum level of human dignity. It is a subsidiary system and should only come into play when the recipient of social assistance cannot help himself or herself or is not assisted by other social security systems.

The legislative definition of social service corresponds to the above purpose,¹⁹ which is understood as a professional activity, service activity, other activity, or a set of these activities to prevent an adverse social situation, resolve an adverse social situation, or alleviate an adverse social situation of a natural person, family, or community; preserve, restore, or develop a person's ability to lead an independent life and supporting their integration into society; ensure the necessary conditions for meeting the basic needs of life of a natural person; solve the crisis social situation of a natural person and family; prevent social exclusion of individuals and families; and provide childcare because of a family situation that requires help with childcare.

As it follows from the quoted legislative text, the Social Services Act aims to promote the social inclusion of citizens and meet the social needs of people in unfavourable social situations. Decentralisation is typical of social services. It is right that the legislator transfers part of its responsibility for social policy to higher territorial units and municipalities while creating room for the penetration of private-law elements into the sphere of social services, which means an increase in the flexibility and effectiveness of the assistance provided.

¹⁸ Matlák, 2012, p. 45.

¹⁹ Article 2 (1) of Act No. 448/2008 Coll. on social services in and on amendment and supplementation of Act No. 455/1991 Coll. on trade business (Trade Licensing Act), as amended.

4. International bases of social security law

The issue of social security is the subject of several international documents and treaties. Among the most relevant are ILO Convention No. 102 concerning Minimum Standards of Social Security, 1952;²⁰ ILO Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits, 1967;²¹ and the International Covenant on Economic, Social and Cultural Rights (UN), 1966. Of the regional international treaties, the most important are the European Social Charter of 1961,²² the Additional Protocol to the European Social Charter²³ and, the most recent document, the European Social Charter (Revised) of 1996.²⁴

The ratification of the revised version of the European Social Charter marks a significant shift in the protection of individual social rights.²⁵ The President of the Slovak Republic ratified the Charter on 20 March 2009, and the instrument of ratification was deposited with the Depositary of the Charter, the Secretary General of the Council of Europe, on 23 April 2009. As per Article 7(5) of the Constitution of the Slovak Republic, it is an international treaty which takes precedence over laws.

The revised European Social Charter is a kind of European code of social rights. From the whole catalogue of rights, the Revised European Social Charter, in Articles 12 and 13, enshrines the right to social security and social assistance and, in Article 30, recognises the right of everyone to protection against poverty and social exclusion. Thus, to ensure the effective exercise of the right to protection from poverty and social exclusion, the Parties undertake to take measures within the framework of a general and coordinated increase in practices to promote effective access to persons living in a situation of social exclusion or poverty or at risk of such a situation and their families, in particular access to employment, housing, vocational education and training, education, culture, and social and medical assistance. State signatories are also obliged to review these measures to adjust them if necessary.

Additionally, the Slovak Republic has not ratified these provisions of the Charter: Article 13(4) (right to social and medical assistance for nationals of other contracting parties per the obligations under the European Convention on Social and Medical Assistance signed in Paris on 11 December 1953); Article 15(3) (to promote the full

20 Notification of the Federal Ministry of Foreign Affairs No. 461/1991 Coll. on the Negotiation of the Convention on the Minimum Standard of Social Security (No. 102).

21 Notification of the Federal Ministry of Foreign Affairs No. 416/1991 Coll. on the negotiation of the Convention on Invalidity, Old-Age and Survivors' Benefits (No. 128).

22 Ministry of Foreign Affairs of the Slovak Republic Notice No. 329/1998 Coll. on the European Social Charter.

23 Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 330/1998 Coll. on the Additional Protocol to the European Social Charter.

24 Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 273/2009 Coll., European Social Charter (revised).

25 On selected provisions of the revised European Charter; see also Barinková, 2008, pp. 194–202.

social integration of persons with disabilities, in particular through measures, including technical assistance, to overcome communication and mobility barriers and enable them to access transport, housing, cultural activities, and leisure time); Article 18(3) (relax the right to work rules for individuals and groups governing the employment of foreign workers); Article 19(2), (3), (4)(c), (8), (10) and (12) (limitation of the right of migrant workers and their families to protection and assistance); and Article 31(1), (2) and (3) (right to housing).

4.1. Monitoring mechanism for compliance with the Revised European Social Charter

As with other international treaties, the European Social Charter (Revised) creates an international system for monitoring its implementation by States Parties. The monitoring mechanism is not based on the right of individual complaint, as provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms, but has been entrusted to four European monitoring bodies and is based on biennial reports, of which the States Parties are obliged to submit to the Council of Europe. The Slovak Republic last submitted a report at the end of 2021²⁶ and the European Committee on Social Rights submitted a report in March 2023.²⁷ Notable, the rights under review were in the field of labour law, not social security law.²⁸ In 2023, the European Committee on Social Rights will assess compliance with selected articles of the European Social Charter (revised) in the areas of children's rights, family rights, and migrants' rights.

Regarding social security law, the 11th report,²⁹ submitted on 27/11/2020, concerns the accepted provisions on the thematic group 'Health, social security and social protection'.³⁰ Conclusions on these provisions have been published in March 2022. Here again, the European Choice for Social Rights has assessed the inadequacy of the legislation in several areas.

Situations of non-conformity 'Health, social security and social protection' include the following: Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations: it has not been established that self-employed and

26 The deadline was 31.12.2021; the report was submitted on 7.2.2022.

27 The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

28 The conclusions regarding the Slovak Republic concern 23 situations as follows: – 10 conclusions of conformity: Articles 2§2, 2§3, 2§4, 2§6, 2§7, 4§2, 6§2, 6§3, 21, and 22; – Seven conclusions of non-conformity: Articles 2§5, 4§4, 4§5, 6§4, 26§1, 26§2, and 28. Regarding the other six situations related to Articles 2§1, 4§1, 4§3, 5, 6§1, and 29, the Committee needs further information to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Slovak Republic under the Revised Charter. See Report of the European Committee of Social Rights. Conclusion 2022 [Online]. Available at: <https://rm.coe.int/conclusions-2022-slovak-republic-e/1680aa9874> (Accessed: 19 July 2023).

29 Ministry of Labour, Social Affairs and Family of the Slovak Republic, 2021.

30 Articles 3, 11, 12, 13, 14, 23 and 30.

domestic workers are protected by occupational health and safety regulations; consultation with employers' and workers' organisations is ensured. Article 11§1 – Right to protection of health – Removal of the causes of ill-health: Insufficient measures have been taken to reduce the number of premature deaths. Article 11§3 – Right to protection of health – Prevention of diseases and accidents: it has not been established that adequate measures were taken to overcome environmental pollution; efficient immunisation and epidemiological monitoring programmes are in place. Article 12§1 – Right to social security – Existence of a social security system: the amount of sickness benefit can be reduced on discriminatory grounds. Article 12§4 – Right to social security – Social security of persons moving between states: it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties. Article 13§1 – Right to social security – Right for every person in need of adequate assistance: the level of social assistance paid to a single person without resources is not adequate. Article 23 – Right of the elderly to social protection: the level of the minimum old age pension is inadequate; the amount of social assistance is inadequate where the person has no other resources.³¹

Although the list of shortcomings seems excessive, the Slovak Republic is not out of the average in this respect. The European Committee on Social Rights' observation of shortcomings in the observance of the Revised European Social Charter is not unique, even in the cases of other countries, and it is not, a priori, a finding of non-observance of fundamental rights and freedoms. The monitoring mechanism is intended to strengthen and improve the protection of human rights, including social rights. In the meantime, the Slovak Republic has adopted several measures within the framework of social policy aimed at eliminating the alleged shortcomings. Examples include the adoption of several laws and regulations on minimum safety and health requirements at work, covering most of the relevant risks (i.e. those related to health protection at work with ionising radiations, carcinogens, biological and chemical agents, asbestos, noise and vibrations), and minimum safety and health requirements for the use of work equipment and the manual handling of loads at work.

The European Social Charter (Revised) is an international convention on human rights and freedoms that takes precedence over the law under the Constitution.³² The control of compliance with its provisions should, thus, be the task of the control mechanisms established by the Council of Europe and the Constitutional Court of the Slovak Republic.³³ In this context, however, it should be stressed that this is a theoretical starting point. The European Social Charter (Revised) does not have a system of

31 Council of Europe, 2023, p. 67.

32 'International treaties on human rights and fundamental freedoms, international treaties for the implementation of which no law is required, and international treaties which directly create rights or obligations of natural persons or legal entities and which have been ratified and promulgated in the manner prescribed by law shall prevail over laws'.

33 Hereinafter referred to as the 'Constitutional Court'.

individual complaints, and perhaps that is why there is no constitutional case law on its provisions. Ultimately, it means that natural persons and legal entities who bring complaints to the Constitutional Court for breach of fundamental rights are not alleging a breach of the rights enshrined in the European Social Charter (as opposed to the rights enshrined in the Charter of Fundamental Rights and Fundamental Freedoms and the European Convention for the Protection of Human Rights and Fundamental Freedoms). Finally, the Constitutional Court has ruled on the compatibility of laws with the European Social Charter on only two occasions, neither of which it has upheld. Interestingly, in one case, when assessing the compatibility of a social assistance law, the Constitutional Court found a conflict with the Constitution but not with the European Social Charter (more on this below).³⁴

5. Demographic challenges

Social security law is specific in that it covers social events that occur to individuals, and legislation must consider the overall social policy, social protection, and challenges of society as a whole. The scope of the provision of social security and social services is historically and economically determined. The social safety net in any given country is determined by political, economic, and, as a direct consequence, legislative conditions. Given the noted social conditions, it is the legislation of social security and social assistance that particularly comes to the forefront of political interest. Speaking of crises, in the long term, one of the greatest challenges is undoubtedly to deal with the demographic crisis, which is defined by low birth rates and an ageing population.

Although the average life expectancy is increasing for men and women, the total number of people living in the Slovak Republic, including migration, is decreasing.³⁵ The Slovak Republic is, thus, coping with a population decline, a decline in the number of people of working age (who contribute to the social insurance system, especially the pension system), and an increase in the number of people of post-working age (who receive benefits from the social insurance system, especially pensions). This problem is not unique to the Slovak Republic and affects all the countries of the EU to a greater or lesser extent. The answers to these challenges are relatively easy to find regarding support for natality, legislative anchoring of the balance and sustainability of the pension system, and alternative replenishment

34 This was the ruling in the case PL. ÚS 13/09-81. The second case is PL. ÚS 8/2018-59.

35 As of 31 December 2022, the Slovak Republic had 5,428,792 inhabitants. In 2022, there were 52,668 live births and 59,583 deaths in the Slovak Republic. The natural decrease in population was, thus, 6,915 persons. The Slovak Republic gained 995 persons through foreign migration (5,463 persons immigrated and 4,468 persons emigrated). The total loss of population in Slovakia was 5,920 persons. In 2021, the total population decline was 14,558 persons, but this indicator is clearly affected by the COVID-19 epidemic. Source: Statistical Office of the Slovak Republic [Online]. Available at: <https://slovak.statistics.sk/> (Accessed: 19 July 2023).

of the working-age population through migration. What is more challenging is to translate these answers into a legislative framework and real practice. They are often the most sensitive political topics. In the following, we will limit our interpretation to relatively recent legislative changes or new legislation by which the legislator is responding to demographic challenges. We will pay particular attention to the pension system.

5.1. Promoting natality

With effect from 1 April 2021, a new benefit, the so-called pregnancy benefit, was introduced into the Social Insurance Act. The pregnancy allowance is to be paid to a pregnant university student or a pregnant secondary school pupil of full age under the conditions set out in the law, and a pregnancy allowance is also introduced in the social security system for police officers and soldiers. The legislator envisages that the pregnancy allowance will have a positive impact on marriage, parenthood, and the family. The purpose of adopting this legislation was to support the financial situation of mothers because of the increased expenses associated with motherhood and to reduce the number of abortions for economic and social reasons. With effect from 1 January 2023, the support for parenthood has been increased by raising child benefits to €50 per month for each dependent child. Meanwhile, the bill aims to reintroduce a one-off increase in child benefits for children entering the first year of primary school for the first time in the amount of €110.

Support for working parents is also provided through a major amendment to the tax bonus institute effective from 1 January 2023. The monthly amount of the tax bonus is up to € 140 per child under ‘ideal conditions’ (sufficient income).³⁶ This amendment aims to ensure support for working parents. However, two brief criticisms are warranted. First, parents on lower incomes cannot successfully claim the full amount of the tax bonus for each child, given the specific nature of this institution. Second, from the perspective of legal theory, some say that tax law legislation should not address social policy because tax law serves a different purpose, and tax collection becomes less transparent. The tax bonus is a much-discussed institution; regarding the first criticism (i.e. that the tax bonus favours better-off earners), it is a matter of political decision, not an a priori error of legislative setting. It is difficult to agree with the second remark that the tax bonus is not intended to interfere with the social policy of the state. The legal system is an interconnected web; dividing the law by branches of law or any legal purism is a matter of academic debate. The law is supposed to serve a rational ordering of social relations, including those relating to family support and motivation through tax schemes seems reasonable. Thus, the child tax bonus is not a new feature; it has only been substantially increased with effect from 2023. Meanwhile, the tax bonus can also be applied to the spouse if she

36 Estimated number of families claiming the tax bonus for 2023 – 26,803, for 2024 – 24,404, for 2025 – 22,256. Quoted from the explanatory memorandum to Act No. 496/2022 Coll. amending the Income Tax Act (Act No. 595/2003 Coll.).

did not earn sufficient income (e.g. from taking parental leave). It is on this point that there is an imbalance, as the tax bonus can only be applied to the spouse, not the cohabiting partner.

One-off support for the birth of a child or multiple births³⁷ has been in force since 2014, but from 1 May 2023, the benefit of €829.86 is to be extended to a child from a fourth birth. Until the amendment was adopted, the allowance at the amount indicated applied only to children from the first three births and was granted at a significantly lower amount for children from other births. Changes related to the promotion of deeper childcare by parents should not be forgotten. Recently, the Labour Code has been amended to regulate paternity leave, and the sickness insurance regulations (as part of social insurance) have been amended to support the mother's maternity leave. In the context of caring for a newborn child, the right to time off work belongs not only to the woman (mother) but also to the man (father). The legislation in force until 31 October 2022 referred to this leave as parental leave. With effect from 1 November 2022, it is paternity leave. The fact that the woman is on maternity leave does not exclude the man's right to paternity leave. Maternity and paternity leave in connection with the care of a newborn child may be taken concurrently, even if the woman and the man work for the same employer.³⁸ The employee shall not be entitled to pay or pay in lieu of pay while on paternity leave. These rules were also in force before the adoption of the amendment. There has been a change in the material security of the father during paternity leave. An employee on paternity leave is materially secured by maternity pay. It is a benefit provided by sickness insurance under the conditions laid down by the Social Insurance Act.³⁹ The child's father is entitled to maternity benefits as a so-called other insured person⁴⁰ who takes care of the child and who has been insured for at least 270 days before applying for maternity benefits. The child's father is entitled to maternity allowance within 2 weeks of the maternity allowance being granted, if the child's father is the father of the child until six weeks after the date of birth, and the child's mother's receipt of maternity allowance or parental allowance is not an obstacle to this entitlement. After the expiry of six weeks from the date of childbirth, the father of the child shall be entitled to maternity allowance if the mother is not in receipt of maternity allowance or parental allowance for the same child. The total duration of another insured person's entitlement to maternity pay is 28 weeks from the date of the award of maternity pay (31 weeks if he is single or 37 weeks if he is caring for two or more children at the same time). Another insured person's entitlement to maternity allowance shall cease at the latest when the child reaches the age of three. The essence of the change in the legislation does not, thus, lie in the introduction of paternity leave; paternity leave was also provided for in the

37 Act No. 383/2013 Coll. on childbirth allowance and allowance for multiple children born at the same time and on amendment and supplementation of certain acts, as amended.

38 See Trelová, 2014, pp. 319–331; Žulová, 2014, pp. 331–343.

39 Act No. 461/2003 Coll. on Social Insurance.

40 Section 49 of the Social Insurance Act.

previous version of the Labour Code.⁴¹ The improvement in the care of the newborn child lies primarily in the simultaneous financial compensation of the father and mother from maternity insurance.

Although the significance of this amendment on demographic development is not as decisive as the above measures, it can nevertheless be included in a package that helps to increase the birth rate. We will dwell for a moment on the entitlement to maternity pay for the father (in the words of the Social Insurance Act, ‘another insured person’). In practice, it was quite common for the father to notify his employer that he was taking parental leave to claim maternity pay during that period and be employed by another employer. It was not uncommon for the employee to do the same work, on the same premises, only for another employer, which was, for example, a subsidiary of the original employer. In such cases, the Social Insurance Institution refused to pay maternity benefits over time, which was challenged in court. Finally, the developed case law was established in favour of the Social Insurance Institution’s procedure by the Supreme Administrative Court,⁴² which stated that the mere fact that the child’s father, almost immediately after declaring that he had taken custody of the child, and for this purpose after taking parental leave, was employed in a new job under comparable working conditions, or, in other words, that he had been employed in a new job with comparable working conditions, was not a reason for the child’s maternity pay and that the child’s father had not been employed in a new job with comparable working conditions. The same working time arrangements suggest the pursuit of an aim other than the creation of conditions for the provision of care for minor children. The Supreme Court further reasoned that the Social Insurance Act, in the relevant provision of Article 49(1), uses the phrase ‘another insured person who cares for the child’, as interpreted above, not the term ‘to provide’ care, which is to be distinguished, as it is broader in content and may, therefore, include care for the child by persons other than the child’s parents themselves.

We agree with the above conclusions of the Supreme Administrative Court and express our conviction that parental leave and receipt of maternity benefits are intended to serve as a compensatory mechanism for loss of income due to child care and not as a financial supplement to work.

5.2. Parental pension

In Slovakia (as in other countries), there has been a long-standing debate on how to ensure the sustainability of the pension system without reducing pensions or extending the retirement age (which has been happening gradually for more than

41 Directive 2019/1158 emphasises that the existence of rights is judged by content and not by name. Therefore, the introduction of paternity leave, or any other leave where a comparable institution already exists in the national legal order is not necessary. By way of comparison, the amendment to the Labour Code did not introduce the so-called ‘nursing leave’ under Article 6 of the Directive, as leave to care for a sick family member and a benefit under the Social Insurance Act are already granted under Article 141(1) of the Labour Code.

42 Case No. 6Ssk/23/2021 of 30 November 2021.

a decade). This debate has been in the technical plenary and is a burning political issue. A fundamental change took place from 2023 onwards, when an amendment to the Social Insurance Act⁴³ introduced the so-called parental pension. The amendment of the legislation on the Social Welfare Act was preceded by an amendment to the Constitution (see above – Chapter 2), and, interestingly, the amendment to the Constitution was made based on an amendment proposed by a group of MPs, when the government’s proposal was aimed at changing the justice system without any connection to social rights.

The promoters of the proposal⁴⁴ hinged on the belief that the intergenerational solidarity principle should allow children of working age to have part of their contributions or taxes ‘earmarked’ for their parents. In the view of the proposers, three conditions should be met: (a) a decision by the child expressing a wish to pass on part of the sum in this way to the recipient (in simple terms, the parents), (b) the provision of a retirement pension to the recipient (the parent) of the sum, and (c) the fact that the recipient of the sum in question (the parent) has brought up the child. The drafters of the Constitution themselves assumed that the ‘amount’ to be transferred directly to the parents would be based on the payment of compulsory social contributions or tax (presumably they meant income tax). Meanwhile, they have constitutionally prohibited the negative impact on other entitlements, namely material security in old age for children who have chosen to pass on part of the amount of levies or taxes to their parents. The explanatory memorandum does not say more.

As already mentioned, the constitutional change has been translated into the parental pension, which complements the pension system as part of the insurance system of the Slovak Republic. The parental pension is an additional pension that seniors can receive alongside the old-age pension, the invalidity pension, and the retirement pension. A recipient of an old-age pension is entitled to a parental pension and is entitled to its payment⁴⁵ if he or she is the child’s parent (own or adopted child) and the child was insured for a pension (compulsorily as an employee or compulsorily as a self-employed person or voluntarily insured) in the two years preceding the calendar year in question and did not declare that the parent (pensioner) should not be entitled to a parental pension on reaching retirement age.

The entitlement to a parental pension and its payment accrues automatically to the child’s parent (including the adoptive parent) (this somewhat contradicts the ideas of the drafters of the constitutional text). Conversely, the surrogate parent of a child who has brought up that child is only entitled to it based on the child’s affirmative declaration within the statutory period. Meanwhile, the legislation allows for the child to declare that the parent should not be entitled to a parental pension (opt out). In such

43 Act No. 352/2022 Coll. amending Act No. 461/2003 Coll. on Social Insurance as amended and supplementing certain acts.

44 The explanatory memorandum to their proposal – specifically on parental pensions – is less than one page long.

45 The same applies to the recipient of an invalidity pension payable after retirement age and to the recipient of a retirement pension payable after retirement age.

a case, the child's possibility to declare consent to the entitlement to the parental pension in any subsequent year (reinstatement of the parental pension) is preserved. The automatic vesting of own and adoptive children has been modified given the large number of persons concerned or to ensure administrative enforceability.⁴⁶ The social security institution will, therefore, pay it automatically, according to the data in the register of natural persons for the natural parent and the adopter.

If we simplify the calculations of the amount of the parental pension, the monthly parental pension for a person with two children with approximately average earnings (€ 1.211) comes to € 36 per month. For example, for a pension recipient with three children with average earnings, it is € 55 per month. According to statistical estimates, approximately 426 thousand pensioners in Slovakia have two working children, and approximately 181 thousand pensioners have three children, while 48 thousand pensioners in Slovakia have four or more children.⁴⁷

A change as fundamental as the introduction of a parental pension understandably provokes heated debate. On its website, the Ministry of Labour, Social Affairs, and Family, which proposed the change to the Social Insurance Act, stresses that the priority of the Labour Ministry is to eliminate unfairness in the payment of pensions to parents who have brought up their children and have had the amount of their pensions reduced for this period. Assistance in the form of a parental bonus can remove this unfairness and allow working children to contribute to their parents' pension.⁴⁸ It is also legitimate to view the prohibition of discrimination in the opposite way. A pertinent question may be asked regarding whether pensioners who have no children or whose children are not economically active, even through no fault of their own (e.g. because they are recipients of a disability pension) are not discriminated against by being excluded from receiving pensions. Other reservations are directed at the sustainability of public finances; the amount of the additional pension benefit is currently not covered by the additional revenue to the Social Insurance Fund, which has been in deficit for the last few years. Lastly, reservations are also directed at the extraordinary administrative burden of the Social Insurance Institution in the payment of the parental pension and the overly paternalistic approach of the State to family relations.⁴⁹

46 Cf. Explanatory memorandum (separate part) to point 8.

47 Retrieved from Rodičovskýbonus.gov.sk [Online]. Available at: www.rodicovskybonus.sk (Accessed: 30 April 2023).

48 Ministry of Labour, Social Affairs and Family of the Slovak Republic, 2022.

49 The debate is being conducted at a political rather than a scientific level. See, for example, Dvořáčková, 2021. Another issue of discrimination may arise in the case of substantial support for the employment of persons with disabilities, found in the Act on Employment Services, which regulates financial incentives for employment and enshrines the so-called false quota system. According to the law, if an employer employs at least 20 employees and if the relevant Labour, Social Affairs, and Family Office keeps citizens with disabilities in the register of job seekers, the employer is obliged to employ citizens with disabilities in a number corresponding to 3.2% of the total number of its employees, whereas a disabled people who, given a long-term adverse health condition, has a low ability to engage in gainful activity of more than 70% shall be counted as three such employees for the purpose of fulfilling the established mandatory proportion of employment of disabled employees. An employer who does not employ the statutory

6. Doctrine of the Constitutional Court on social assistance

The social security system is complex and quite complicated. Thus, in this chapter we take a selective approach to social security issues in the Slovak Republic; there is probably no other approach possible. Hence, we will dwell on a certain specificity of the legislation of the Slovak Republic, which is related to social services that are part of the social security system.

A fairly major reform of social assistance took place with the adoption of the Social Services Act⁵⁰ in 2008. The reason for the adoption of this Act was the fact that the previous legislation of Act No. 195/1998 Coll. on social assistance appeared to be insufficient, not guaranteeing sufficient variability and, in particular, accessibility of social services to every natural person who is dependent on it. The legislator has transferred part of its responsibility for social policy to higher territorial units and municipalities, creating space for the penetration of private law elements into the sphere of social services, which ultimately means an increase in the flexibility and efficiency of the assistance provided. It is precisely this unfair transfer of competencies that has been challenged before the Constitutional Court, whereby the legislator's adoption of the Social Services Act has been accused of contradicting the European Social Charter (revised).

The essence of the dispute was based on the fact that, according to the legislation, social services may also be provided by private law entities, such as non-profit organisations, civil associations, commercial companies, or other corporations of a private law nature. However, the legislator subordinates those entities established by a municipality or a higher territorial unit to the term 'public provider'. The access of non-public providers to the provision of social services is subject to specific legal conditions.

The applicants argued that (i) the status of non-profit organisations providing social services is the same irrespective of the person of their founder; (ii) however, one group of non-profit organisations is at a direct disadvantage in access to the possibility to implement those services and receive financial compensation for the implementation of those services, while (iii) that disadvantage is not based on any legitimate reason of overriding public interest. According to the petitioners, such legal regulation contravenes Article 14(2) of the European Social Charter, under which the Slovak

mandatory share of the number of employees with disabilities or meet the replacement obligation by awarding a contract or taking products or services is required to make a mandatory levy on behalf of the Labour Office for each citizen who falls short of meeting the mandatory share. Such an approach accords with EU anti-discrimination law, which is characterised by the fact that its application is not limited to compliance with the prohibition of discriminatory practices but focuses more on positive action to compensate for the handicaps of persons with a view to ensuring formal and material equality.

50 Act No. 448/2008 Coll. on Social Services and on Amendments and Supplements to Act No. 455/1991 Coll. on Trade Enterprise (Trade Licensing Act), as amended.

Republic undertakes to ‘encourage the participation of individuals and voluntary or other organisations in the establishment or maintenance of social services’. The same statement applies to the Slovak Republic’s commitment to Article 13(3) and (4) of the European Social Charter. Under these provisions, the Slovak Republic undertakes ‘to provide that everyone may obtain from the appropriate public or private services such advice or personal assistance as may be required to prevent, remove or alleviate the distress of his person or family’.

The Constitutional Court upheld the motion of a group of Members of Parliament and found the provisions in question to be incompatible with the Constitution; however, it found no conflict with the European Social Charter. Accepting the Government’s argumentation, the Constitutional Court stated that the provision of Article 13(2) of the European Social Charter (revised) concerns the obligations of the contracting parties (i.e. the Slovak Republic) regarding persons dependent on social and medical assistance (according to the terminology of the Social Services Act, the so-called ‘social services’). The Slovak Republic is not concerned with persons who provide social and medical assistance (according to the terminology of the Social Services Act, so-called social service providers), but with persons who are primarily affected by the disputed provision of the Social Services Act.

In these circumstances, even if one respects the fact that the noted parts of the Social Services Act disadvantage non-public providers of social services, the conclusion that the obligations under Article 14(2) of the European Social Charter (Revised) are not fulfilled based on these provisions of the Social Services Act alone would not correspond to reality because, in the context of its other provisions, it is undoubtedly possible to formulate the conclusion that the Social Services Act (together with other legislation) contributes to fulfilling the obligations arising for the Slovak Republic from this provision of the European Social Charter (Revised). We will stay for a while on the Constitutional Court’s decision on the legal regulation of social assistance. In the case under discussion, the Constitutional Court assessed the eligibility of the provision of material hardship benefits on the obligation to carry out a work activity.⁵¹ The appellants, who were a group of Members of Parliament, argued that the right to receive the material hardship allowance was conditional for each adult member of the household on the existence of a legal relationship that gives rise to an entitlement to income from gainful employment of at least 32 hours per month; on participation in the carrying out of smaller municipal services for the municipality, a budget organisation, or a contributory organisation of which the municipality is the founder; or on volunteering or work to prevent an emergency during a declared emergency and in dealing with the consequences of an emergency.

The Constitutional Court did not agree with the petitioners. In its reasoning for the rejection, the Court stated that economic, social, and cultural rights and freedoms

51 The case was filed under PL. ÚS 8/2014, which assessed the compliance of Section 10(3) to (11) of Act No. 417/2013 Coll. on aid in material need and on amendments and supplements to certain acts with Article 1(1), Article 12(1) and (2) and Article 39(2) of the Constitution.

‘are second-generation rights, the form and content of which essentially depend on the economic and economic possibilities of the State’,⁵² and it is essential for them that, pursuant to Article 51(1) of the Constitution, they are not subject to the provisions of Article 51(1) of the ECHR. It is essential that the fundamental rights and freedoms of the EU, as defined in Article 51(1) of the Constitution, may be invoked only within the limits of the laws implementing those provisions (i.e. only to the extent deducible from the quoted constitutional reservation, through which the Constitution undoubtedly provides the legislator with a greater margin of discretion relative to other groups of fundamental rights and freedoms) to determine to what extent, in what quality, and under what conditions it will guarantee them. However, in this regard, the Constitutional Court has already expressed the legal opinion that

...the margin of discretion granted by the Constitution to the legislator in adopting these laws cannot be understood in absolute terms; its limits must be sought above all in the constitutional principles and in the requirement to protect other values on which the Constitution is based and which it protects. While these fundamental rights, by their very nature, call for legislation by the State (to give effect to their content), the State must not, however, interfere with the very essence of these rights or affect other rights enshrined in the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court may declare incompatibility in the abstract review of constitutionality only in cases where the legal norm in question does not respect a specific constitutional guarantee of one of the fundamental rights referred to in Article 51(1) of the Constitution (PL. ÚS 11/2013).

The Constitutional Court based its decision on the fact that the right to assistance in material need, which is necessary to ensure the necessities of life pursuant to Article 39 in conjunction with Article 51(1) of the ECHR 1 of the Constitution, must be interpreted as an order for the legal state to provide a realistic possibility for everyone (not only citizens of the Slovak Republic) who finds themselves in a state of material need, as defined by law, to secure assistance to ensure at least the minimum necessities of life, which according to the law on material need means one hot meal a day, necessary clothing, and shelter. However, in the view of the Constitutional Court, it is not contrary to the constitutional injunction expressed in Article 39(2) of the Constitution to require the active participation of persons in the provision of their necessities of life, as long as the activities required are not disproportionate, unreasonable or unnecessarily burdensome. In simple terms, the Constitutional Court accepted the objective of the contested legislation, which was to increase the efficiency and effectiveness of the provision of State funds, to activate citizens in material need and strengthen their motivation to work.

52 PL. ÚS 19/08.

7. Final (extra-legal) considerations

Social security law is unstable and (together with tax law) subject to (social) state policy. This can be seen in the numerous changes in legislation and increases and decreases in individual benefits that make up the social security system in a regular rhythm. This fact will not change; it is not really a criticism (even if it were justified), but rather a statement of fact. However, what the political elites should not resign themselves to when legislating on social security law are the demographic challenges, the population decline, the gradual decrease in fertility, the simultaneous decrease in the working-age population, and the increase in the post-working age population.

In this chapter, we have highlighted recent efforts by the legislature to boost fertility by increasing financial support for pregnant women (pregnancy allowance, increasing maternity pay) and subsequently for families (e.g. tax bonus, increased childbirth allowance). It is up to the judgment of sociologists, economists and, ultimately, statisticians to determine whether this increased financial support is sufficiently attractive for young people to start families. The support should be broader, the state should, beyond directing and fiscal financial incentives, promote the possibility of taking time off work and insist on the prohibition of discrimination on the grounds of childcare in the legal text (most recently, the work-life balance directive has been transposed) and in real practice. Pre-primary childcare should be increased. Ultimately, it is questionable whether this policy will have the desired result and whether the declining birth rate is not a reflection of modern times. However, it takes us out of the legal debate.

The second, and equally important, challenge is to maintain a stable pension system. We do not see the provision of a parental pension as a strategic or fundamental step. From a public policy perspective, the funds withdrawn from the pension funds will have to be replaced or subsidised by other revenues, assumedly by direct funding from the tax levy. The insurance system is no longer self-funding, mainly because of increasing payments for old-age (early retirement and disability) pensions. Again, the debate is not a legal one but rather an economic and political one. Demographic challenges suggest the need for greater personal responsibility for retirement.

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