

# Minimum Income Protection in Slovenia: A Dignified Life Beyond Social Assistance

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## I. Introduction\*

Measures preventing poverty and social exclusion in Slovenia are exercised within the functionally centralised, tax-funded social assistance scheme. It provides a subsidiary safety net in respect to the functionally decentralised, contribution-funded social insurance scheme and other types of social security benefits, e.g. family benefits. The Slovenian social security system namely consists of three general parts, as is the case in numerous (continental) European countries. The first is the social insurance system, composed of a mandatory health insurance, pension and disability

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insurance, unemployment insurance, and parental protection insurance scheme. In 2021, the Long-Term Care Act (ZDOsk)<sup>1</sup> was passed, adding a new, independent social insurance scheme to the system. However, the act's application has been delayed by the newly elected Parliament a year later, with the deferral subject to a legislative referendum.<sup>2</sup> In 2023, an amended Long-Term Care Act (ZDOsk-1)<sup>3</sup> was passed and is now applicable. Next to the Bismarckian social insurance system, a subsidiary social assistance scheme is in place. It represents, as mentioned, a safety net for all persons and families who are facing poverty and social exclusion. Before claiming income support, beneficiaries have to claim, as will be discussed below, every available right from the social insurance scheme, e.g. unemployment benefits, sickness cash benefits, alimony or family benefits, and accept paid work.<sup>4</sup> The social assistance scheme also shares some characteristics with the third system, providing family benefits which are aimed at reducing child-rearing costs, since benefits under both schemes are generally tax-financed and provided on a means-tested basis. With the traditional categories of social insurance, social assistance, and family benefits, the Slovenian social security system is part of a larger social protection system.<sup>5</sup> The system also comprises a number of social advantages and social compensation schemes (partially introduced due to the COVID-19 epidemic<sup>6</sup>) that are commonly means-tested and paid on behalf of the state budget and are thus similar to social assistance.

Even though the fight against poverty and social exclusion is primarily reserved for social assistance benefits, provided both in cash and in kind, only a coordinated assurance of all types of social security benefits can lead

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1 *Zakon o dolgotrajni oskrbi*, Official Gazette of the RS, No. 196/21.

2 *Zakon o spremembah in dopolnitvah Zakona o dolgotrajni oskrbi* (Act Amending the Long-Term Care Act), EVA 2022-2611-0048. The amendment entered into force on 28 December 2022.

3 *Zakon o dolgotrajni oskrbi*, Official Gazette of the RS, No. 84/23.

4 A. Bubnov Škoberne and G. Strban, *Pravo socialne varnosti* (GV Založba 2010), p. 364. See also Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-110/15 of 1 March 2018.

5 G. Strban, 'Systematisierung des slowenischen Rechts der sozialen Sicherheit im Vergleich zur Systematisierung des deutschen Sozialrechts', *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS)* 4, (2010/2011), p. 353.

6 See G. Strban and L. Mišič, 'Social Protection and the Pandemic in Slovenia: Between Income Protection, Social Policy and Politics', in: U. Becker and A. Seemann (eds.), *Protecting Livelihoods: A Global Comparison of Social Law Responses to the COVID-19 Crisis* (Nomos 2022), pp. 427 ff.

to an adequate level of social protection for all persons, families or groups of the population. Since traditional income replacement benefits, like pensions, sickness cash benefits or unemployment benefits, do not follow only the principle of reciprocity but also the principles of horizontal, vertical and intergenerational solidarity,<sup>7</sup> they may have a strong redistributive effect themselves, just like their income support counterparts. In this sense, they also prevent poverty and social exclusion. In this respect, the challenge of offering means for a dignified life to all members of society seems much broader than the challenge of offering minimum income protection alone.

However, it is the variety of so-called *social transfers* that mostly contribute to the alleviation of poverty and social exclusion in Slovenia. Until austerity measures that limited, reduced or even suspended the provision of several social assistance benefits were introduced around 2012,<sup>8</sup> they played a significant role in lowering the risk of poverty and social exclusion in Slovenia. In 2009, 11.3% of the population lived below the poverty threshold, with the number of poor and socially excluded residents increasing to 12.7% in 2010, 13.5% in 2012 and 14.5% in 2013.<sup>9</sup> In 2009, social assistance benefits still reduced the risk of poverty and social exclusion by 50%, whilst the numbers kept falling from 2011 onwards, when 44% of cases were prevented. In the years following the recession, the material deprivation rate increased as well, most notably in 2008, when it reached an all-time record of 17%, lasting more or less up until 2013, with the then EU-wide average of 19.6%. Despite a number of austerity measures introduced in the field of social assistance at the time, the level of income inequalities remained comparably low during the economic crisis.<sup>10</sup> Interestingly, the number of persons living below the at-risk-of-poverty threshold remained steady after said period, even though Slovenia has been experiencing record high employment rates in the recent years.<sup>11</sup> In 2023, 12.7% of residents were at risk of poverty, similar to the crisis years of 2009 and 2010. Even more residents (13.7%) were at risk of social exclusion, considering not only

7 Solidarity between generations is mentioned also by Article 3 Treaty on European Union (TEU), Official Journal of the EU, No. C 326, of 26 October 2012.

8 B. Kresal, K. Kresal Šoltes, G. Strban, *Social Security Law in Slovenia* (Wolters Kluwer 2016), p. 213.

9 See *ibid.*, p. 21.

10 See *ibid.*

11 See, for example, Republic of Slovenia Statistical Office, 'More Residents Below the At-Risk-of-Poverty Threshold' (10 February 2023) < <https://www.stat.si/StatWeb/en/News/Index/10898> > accessed 4.07.2024.

the poverty line of EUR 10,832 per year in 2023 but also the level of work productivity. Last year, 264,000 residents lived below the poverty line whilst 62,000 of households faced energy poverty.<sup>12</sup>

Even so, there has been little public discussion on poverty and social exclusion in the recent years. Instead, record high employment rates (3.4% in the first quarter of 2024)<sup>13</sup> and a constant lack of job seekers were being put in the forefront. This changed temporarily during the summer of 2023, when Slovenia experienced the most devastating floods in its recorded history, leading to several legislative measures in the field of emergency social assistance and social compensation schemes.

## II. Overview

### 1. Normative Background

#### a) Constitutional Provisions

The Slovenian Constitution, as inspired by international social law documents, contains no explicit reference to the right to social assistance. However, according to the Slovenian Constitutional Court, a lack of such reference in Article 50 on the right to social security does not mean that no constitutional protection is afforded. Conversely, following its well-established case law, the Court notes that Slovenia is a social state and that the legislator is thus obliged to offer appropriate assistance to persons in need. It is the aim of Articles 50(1) and 50(2) of the Constitution (general provision on the right to social security, regulation of social insurance schemes) that individuals enjoy economic protection and human dignity.<sup>14</sup> Therefore, the provision of social assistance remains subject to key constitutional safeguards, like the principle of legality, equality of treatment and possibly the protection of legitimate expectations, even if the right itself is not contained within the basic law. Article 34 of the Slovenian Constitution also guarantees the right to personal dignity and safety to everyone.

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12 Republic of Slovenia Statistical Office, 'Income, Poverty and Social Exclusion' (2024) < <https://www.stat.si/StatWeb/Field/Index/10/39> > accessed 4.07.2024.

13 Republic of Slovenia Statistical Office, 'Labour Market' (2024) < <https://www.stat.si/StatWeb/Field/Index/3> > accessed 4.07.2024.

14 Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-110/15 of 6 May 2021.

The right to personal dignity represents the foundations for one's free personal development and life-plan creation. According to the Slovenian Constitutional Court,<sup>15</sup> it guarantees to the individual the recognition of his or her value as a human being, from which his or her ability of self-determination is derived. The right is also a guarantor of personal rights. According to the Court, even the name of this set of rights itself suggests that they are granted to the person as such. Respect of personal rights also guarantees the protection of all elements of one's personality which are not explicitly protected by other constitutional provisions, like the freedom of conscience, freedom of expression, etc., and which offer to the individual means for their free personal development and a life grounded in autonomous decision-making. Since personal dignity and equal opportunities for all, coupled with the prevention of poverty and social exclusion, represent the core of all social assistance benefits, Article 34 is commonly recognised as one of its constitutional cornerstones,<sup>16</sup> next to the social state principle from Article 2 (Germ.: *Sozialstaatsprinzip*) of the Slovenian Constitution. This basic principle is included in the same article as the rule of law principle, marking Slovenia as a normative social state that provides social protection and personal dignity by means of statutory legislation and within the limits of the law.<sup>17</sup> At the core of the social state principle lies the principle of solidarity that represents no difference between public (social) and private insurance, but also a legal argument that has often been used by the Slovenian Constitutional Court when determining the constitutional meaning of social security rights and obligations. The Court has, for example, referred to the solidarity between persons with higher and persons with lower income in parental care insurance or, for example, decided that the legislator followed the solidarity principle when it determined the lowest and the highest calculation base within the pension and disability insurance scheme.<sup>18</sup> Next to the notion of vertical solidarity, i.e. solidarity of high-earners with low-earners, the Court explicitly referred to the principle of intergenerational solidarity, and, for example, the principles of mutuality

15 Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-226/95 of 8 July 1991.

16 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 214.

17 See G. Strban, 'Constitutional Protection of the Right to Social Security in Slovenia', in: M. Wujczyk (ed.), *The Right to Social Security in the Constitutions of the World: Broadening the Moral and Legal Space for Social Justice*, ILO Global Study, Volume 1: Europe (International Labour Organization 2016), p. 244.

18 See *ibid.*, pp. 246-247.

and solidarity, unfortunately with no clear boundaries established in this respect.<sup>19</sup>

In social security, the principle of solidarity manifests itself in an interpersonal redistribution of risk-based burdens within the compulsorily insured community, possibly forming a community distinguishable from the society as a whole.<sup>20</sup> According to Pieters, it all boils down to the question of who belongs to the scope of application *ratione personae* in the distributing function of social security.<sup>21</sup> Even so, the Slovenian Constitutional Court argued that social insurance is a type of insurance which is not completely based on the principle of mutuality (as is private insurance) but also on the principle of solidarity,<sup>22</sup> interpreting the latter beyond its sole risk-pooling function. Interestingly, the personal scope of the constitutional right to social security is grammatically restricted to Slovenian citizens. Foreigners, even EU citizens, lawfully residing or even employed in Slovenia are not expressly protected. However, since Article 50 has to be read in line with international and EU law, as well as other constitutional provisions (such as the right to private property, applied for example in the field of pensions),<sup>23</sup> such narrow interpretation of its personal scope may be applied in the field of minimum income protection only.<sup>24</sup> The concept of membership, limiting the personal scope of social solidarity that guarantees the financial stability of national welfare systems,<sup>25</sup> is strongest in the field of social assistance, where access to rights is generally grounded in one's permanent and actual residence in the territory of Slovenia.

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19 See *ibid.*, p. 247.

20 U. Becker, 'Solidarity, Financing and Personal Coverage', *The Japanese Journal of Social Security Policy* 6 (2007)1, p. 1.

21 D. Pieters, *Social Security: An Introduction to the Basic Principles* (Kluwer Law International 2006), p. 21.

22 G. Strban (n 17), p. 247. On the notion of (social) solidarity see also L. Mišič, 'Theories of Political Philosophy as Guiding Principles in Social Security', *Studies on Labour Law and Social Policy* 25 (2018)3, p. 272 ff.

23 G. Strban, 'Lastninsko varstvo socialnih pravic' *Podjetje in delo* 41 (2015)6-7, p. 1251.

24 See G. Strban (n 17), p. 248.

25 K. Lenaerts, 'European Union Citizenship, National Welfare Systems and Social Solidarity', *Jurisprudence* 18 (2011)2, p. 398.

## b) The Principle of Need

According to Dean, whenever we take *wants*, *preferences*, *desert* or *merit* as the prime organising principles in society, all of the above still amount to different interpretations or approaches to the principle of *need*.<sup>26</sup> On the one hand, a humanistic or humanitarian approach may be followed, on the other hand, it may be the paternalistic approach that prevails.<sup>27</sup> The economic or market-oriented approach, as suggested by Dean, is concerned not with needs but with economic opportunities and consumer preferences. It expresses need in terms of the opportunities that people have to satisfy their wants and the preferences that they express in the market-place, prioritising between jobs, homes, leisure pursuits and relationships.<sup>28</sup> From a liberal point of view, which is commonly concerned with persons' active participation in the free market, it is the friction between individuals' liberties and obligations towards the common good or considerations for the other that is triggered by the establishment of solidarity-based social security and (especially) social assistance schemes. The first are primarily shaped by the principle of equivalence whilst the second depend fully on the criterion of need, legitimising the distribution of wealth to the point in which social exclusion and poverty are effectively prevented.<sup>29</sup> Such philosophical underpinnings are important for the discussion since according to the Slovenian Constitutional Court, the legislator is faced with the difficult task of, on the one hand, fairly redistributing public funds according to criterion of personal and family needs and in line with the particular goal of a given benefit (i.e. assistance should be granted to those truly in need, and made available in appropriate form) whilst on the other hand protecting an economically-sound and effective public expenditure.<sup>30</sup> According to the Court, the constitutional right to personal dignity is related to the provision of certain minimum funds for the satisfaction of persons' cultural and other personal needs. A complete absence of such possibilities could be regarded

26 H. Dean, *Understanding Human Need* (The Policy Press and the Social Policy Association 2016) p. 4. On different criteria of just redistribution see also D. Miller, *Principles of Social Justice* (Harvard University Press 2003).

27 H. Dean (n 26), p. 5.

28 Ibid.

29 L. Mišič, 'Theories of Political Philosophy as Guiding Principles in Social Security' *Studies on Labour Law and Social Policy* 25 (2018)3, p. 281.

30 Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-110/15 of 1 March 2018.

as a violation of the right to human dignity and, in this sense, the right to social security.<sup>31</sup> According to the Slovenian Constitutional Court, the social state principle on the one hand obliges the state to consider the *social interests* of individuals and groups of the population and to pass active measures as to afford everyone a *life in dignity*.<sup>32</sup> On the other hand, the Court also followed a narrow, less idealistic interpretation of the benefit's legislative intent, i.e. the abovementioned coverage of the most immediate basic needs.<sup>33</sup>

Regardless of the two almost contradictory approaches towards the minimum income benefit from 2006 and 2007, the legislator enjoys a broad margin for appreciation (using the language of international human rights law and of the Slovenian Constitutional Court) in the field of social security, especially in the field of social assistance, where it redistributes funds raised from general taxation and not funds raised from earmarked social security contributions that are (re)distributed within the more or less autonomous insurance group. Any constitutional review is thus refrained or limited, following the traditional division between positive and negative rights or human rights of the first and the following generations.<sup>34</sup>

## 2. Social Benefits

### a) Between Social Security and Assistance

Uncodified and regulated by several legislative acts from different fields of social security law, alongside the basic law of the Constitution, the Slovenian social law refers to a 'system' of social security in a single provision. Article 58 of the Labour and Social Courts Act (ZDSS-1)<sup>35</sup> defines a social dispute as a dispute concerning rights, obligations, and benefits of physical, legal, and other persons who can be bearers of rights and obligations within the social security system, and for which the social courts are competent. According to Article 7, their competence extends to the fields of pension and disability, health, long-term care, unemployment, and parental

31 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 214.

32 Decision of the Constitutional Court of the RS, No. U-I-11/07 of 13 December 2007.

33 See Decision of the Constitutional Court of the RS, No. U-I-116 of 9 February 2006.

34 See L. Mišič and G. Strban, 'ESL in EKČP: bremena človekovih pravic druge generacije in kako jih preseči' Delavci in delodajalci 21 (2021)4, pp. 515 ff.

35 *Zakon o delovnih in socialnih sodiščih*, Official Gazette of the RS, No. 2/04 to 196/21.

insurance, the field of family benefits, and the field of social benefits (Sl.: *socialni prejemek*) which comprise (monetary) social assistance benefits<sup>36</sup> and any other type of benefits that concern the social protection status of the beneficiary and are, as explicitly stipulated by the act, means-tested. On the one hand, procedural social law is referring to an open number of social assistance benefits stemming from material legislation. On the other hand, the inclusion of social assistance benefits within the social security system, as derived from a simultaneous reading of Articles 58 and 7 of the Labour and Social Courts Act, replaces, at least to a certain extent, the absence of the right to social assistance in the Slovenian Constitution.<sup>37</sup>

As mentioned above, the Slovenian Constitution does not explicitly recognise minimum income protection as part of the right to social security. However, the distinction between social security and social assistance is today somewhat fluid since elements of minimum income protection are commonly found in social security (insurance) benefits as well. Furthermore, the statutory right to social assistance is a subjective and enforceable legal right.<sup>38</sup> Even if discretionary decision-making powers of social assistance carriers, following their means-tested nature and a targeted, re-activation-based approach (e.g. granting benefits in kind instead of cash benefits), represent an integral part of social assistance legislation, a person or a family (household) will be entitled to any form of social assistance if the legislative conditions are met and if there exists no proof of misuse. Such powers must be exercised strictly within the margins of the law and cannot lead to plain discretion or arbitrary decision making and unequal treatment.<sup>39</sup> In case of a rejected claim, parties to the social administrative procedure can first complain to the competent ministry, then bring forward an individual social dispute. Judicial protection is afforded by specialised labour and social courts and by the Slovenian Constitutional Court, since the right so social assistance forms part, even if only implicitly, of the constitutional right to social security. Following limited constitutional provisions, social assistance benefits are also dispersed, as mentioned, through various pieces of statutory legislation.

36 Social courts are generally not competent in the field of social services and related emerging disputes.

37 *Ustava Republike Slovenije*, Official Gazette of the RS, No. 33/91-I to 92/21.

38 G. Strban (n 17), p. 244.

39 See A. Bubnov Škoberne and G. Strban, *Pravo socialne varnosti* (GV Založba 2010), p. 364.

## b) Statutory Legislation on Social Assistance

The Slovenian social assistance scheme comprises both cash benefits as well as benefits in kind (e.g. social services). It represents a complex system of rights aimed at tackling a variety of persons' or families' social challenges, especially poverty and social exclusion. Its complexity is furthered by the fact that the applicable legislation is dispersed through numerous legal acts and is frequently amended.<sup>40</sup>

The Social Assistance Payments Act (ZSVarPre)<sup>41</sup> represents the main source of law for cash benefits in the field of social assistance. It regulates monetary social assistance (Sl.: *denarna socialna pomoč*), extraordinary monetary social assistance (Sl.: *izredna denarna socialna pomoč*), and the social assistance allowance (Sl.: *varstveni dodatek*). It also contains provisions on the assistance and attendance allowance (Sl.: *dodatek za pomoč in postrežbo*), primarily regulated in pension and disability, and now mostly in long-term care insurance legislation. If the person is not entitled to the latter allowance under sectoral legislation, their monetary social assistance may be increased by the amount of such allowance under the ZSVarPre. The main social assistance cash benefit is the monetary social assistance, which is aimed at alleviating the poverty of individuals and their dependent family members.

In 2012, a new type of social assistance was introduced. The legislator removed the state pension (Sl.: *državna pokojnina*) from the pension and disability insurance scheme – since it was provided on a means test basis – and created the so-called social assistance supplement, regulated by a special act.<sup>42</sup> When this happened, most beneficiaries shifted from one system of social security to the other almost automatically. Today, the social assistance supplement is regulated by ZSVarPre.

In 2014, two additional types of extraordinary social assistance were introduced with the aim of covering funeral costs.<sup>43</sup> They were once part of the health insurance legislation. The first benefit covering funeral costs (Sl.: *pogrebna*) equals two basic amounts of minimum subsistence income (EUR 930.70) and may not surpass actual costs, whilst the second bereave-

40 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 214.

41 *Zakon o socialnovarstvenih prejemkih*, Official Gazette of the RS, No. 61/10 to 196/21.

42 *Zakon o varstvenem dodatku*, ZVarDod (Minimum Pension Support Act), Official Gazette of the RS, No. 10/08 to 61/10.

43 B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 221.

ment benefit or death grant (Sl.: *posmrtnina*) amounted to EUR 465.35 in 2023. Several means-tested benefits that are not included in ZSVarPre, like state scholarships or the right to a child benefit, are in part regulated by the Exercise of Rights from Public Funds Act (ZUPJS)<sup>44</sup>.

The aim of ZUPJS is that persons take advantage of a variety of social assistance and associated benefits in a fixed order: child benefit, monetary social assistance, social assistance supplement, state scholarship. If the applicant does not follow the prescribed order, the public officer considers amounts of benefits that were available to the applicant as if they were granted, meaning that they count as personal income, potentially going beyond the threshold for a lower-ranked social assistance benefit or reducing its amount.<sup>45</sup> This adds to the complexity of the regulation whilst further limiting access to at least some social assistance or associated benefits. The Act also gives competence to territorially competent Social Work Centres (SWCs) to decide on several different cash benefits and social subsidies or incentives that do not strictly fall within the realm of social assistance. They are, however, means-tested and paid on behalf of the general state budget. They comprise subsidies for kindergarten care, school meals, partial or full exemption from the payment for a number of social services, like institutional care or co-payment for family assistants.<sup>46</sup> ZUPJS thus established a single-entry point into the world of different types of means-tested benefits, laying down uniform rules concerning the assessment of income, property or number of dependent family members, that accompany ZSVarPre. The legislator also enacted a number of social policies, for example in the field of taxation, employment or housing as to further the socio-economic status of the population whilst at the same time developing different regions in Slovenia.<sup>47</sup> ZUPJS also partially regulates family benefits, more precisely the child benefit or child allowance (Sl.: *otroški dodatek*), and its relationship to other rights like reduced kindergarten fees, or state scholarships. Systematically, all family benefits, aimed at reducing the costs of childrearing to

44 Zakon o uveljavljanju pravic iz javnih sredstev, Official Journal of the Republic of Slovenia, No. 62/10, 40/11, 40/12.

45 See *ibid*.

46 B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 223.

47 See A. Bubnov Škoberne and G. Strban, *Pravo socialne varnosti* (GV Založba 2010), p. 377.

prevent poverty and social exclusion, are part of the Parental Protection and Family Benefits Act (ZSDP-1),<sup>48</sup> as discussed in the analysis.

If, on the one hand, ZSVarPre and ZUPJS regulate monetary social assistance and other means-tested cash benefits, a number of social services are, on the other hand, regulated by the Social Assistance Act (ZSV).<sup>49</sup> They also belong to the Slovenian social assistance scheme; however, they are aimed at preventing and eliminating social challenges that are not of a financial nature.<sup>50</sup>

### III. Analysis

#### 1. Access to Benefits

The first issue of the Slovenian social assistance scheme relates to its level of complexity. The understanding of rights and obligations as well as being able to effectively claim them is commonly difficult for the average beneficiary,<sup>51</sup> let alone for vulnerable groups of persons. Even if special administrative procedure rules favour claimants as weaker parties,<sup>52</sup> effective access to social rights remains limited. Since 2012, SWCs serve as single-entry points for most means-tested benefits as well as subsidies,<sup>53</sup> whilst public officers have a statutory obligation to check whether beneficiaries are eligible for any other benefit, either in cash or in kind. However, they cannot initiate a social administrative procedure on behalf of the party or, even more so, on behalf of a potential beneficiary who is not (yet) a party.

The application for social assistance or other means-tested benefits is filed by way of a single form, together with the documents proving eligibility.<sup>54</sup> This form should facilitate access to benefits and inform claimants on a variety of rights that are available according to the law. However, the form is complex and requires at least some familiarity with the legal terminology

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48 *Zakon o starševskem varstvu in družinskih prejemkih*, Official Gazette of the RS, No. 26/14 to 153/22.

49 *Zakon o socialnem varstvu*, Official Gazette of the RS, No. 23/07 to 196/21.

50 B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 214.

51 Ibid.

52 G. Strban, 'Country Report on Slovenia', in: U. Becker; D. Pieters et al. (eds.): *Security: A General Principle of Social Security Law in Europe* (Europa Law Publishing 2010), p. 419.

53 B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 214.

54 Ibid, p. 223.

and basic notions in the field of social security. It is thus important that ZSV, among others, stipulates the right to first social assistance (Sl.: *prva socialna pomoč*) as a special type of social service that is aimed at recognising persons' needs and offering first advice in the matter. Unlike other social assistance benefits, it may be claimed from any SWC, regardless of their territorial competences that generally go by the claimant's place of permanent residence.

Public officers are thus namely well-informed on the socio-economic landscape in a particular area. Together, 16 SWCs cover the territory of roughly 20,300 square kilometres and roughly 2,000,000 potential beneficiaries. In 2023, for example, around 50,000 persons were entitled to receive monetary social assistance, whilst the benefit, granted to the individual whilst covering the needs of his or her dependent family members as well, comprised around 75,000 beneficiaries.<sup>55</sup> According to the Employment Services of Slovenia, 29,312 or 44.4% of unemployed persons were recipients of monetary social assistance at the end of 2021. In the three largest cities, Ljubljana (300,000 inhabitants), Maribor (100,000 inhabitants) and Celje (40,000 inhabitants), municipal SWCs have been established, whilst the rest cover regions or parts of regions. Some SWCs also partake in special social projects, like the regional SWC Posavje, which is involved with the Roma population.<sup>56</sup> In 2021, 3 SWCs also had in place special programmes for the social inclusion and activation for employment of the Roma.<sup>57</sup> According to Article 49a ZSV, SWCs not only carry out duties of municipal significance but also cooperate with competent NGOs. Nevertheless, they do not hold competence to act *ex officio* on behalf of a potential beneficiary who did not themselves initiate a proceeding. Conversely, SWCs may *ex officio* start proceedings against social assistance recipients if the circumstances regarding their eligibility have changed or if misuse is suspected.<sup>58</sup>

55 See STA, 'Prejemnikov denarne socialne pomoči oktobra skoraj 49.500' (4 February 2023) < <https://www.sta.si/3135138/prejemnikov-denarne-socialne-pomoci-oktobra-skoraj-49-500> > accessed 11.05.2023.

56 See < <https://www.gov.si/zbirke/projekti-in-programi/vecnamenski-romski-centri/> > accessed 25.10.2024.

57 <[https://irssv.si/wp-content/uploads/2022/10/Spremljanje\\_izvajanja\\_programov\\_socialnega\\_varstva\\_porocilo\\_o\\_izvajanju\\_programov\\_v\\_letu\\_2021.pdf](https://irssv.si/wp-content/uploads/2022/10/Spremljanje_izvajanja_programov_socialnega_varstva_porocilo_o_izvajanju_programov_v_letu_2021.pdf) > accessed 17.11.2022.

58 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 224.

## 2. Benefits, Amounts and Conditions

### a) Monetary Social Assistance

The second issue of the social assistance scheme relates to the amount of provided benefits, especially the amount of monetary social assistance, stipulated by ZSVarPre. Monetary social assistance or minimum income benefit represents the central social assistance (cash) benefit aimed at alleviating poverty not only of the individual, but also of his or her dependent family members. According to Article 2 ZSVarPre, the minimum income, alongside the social assistance supplement, is available to those who cannot make a living due to circumstances beyond their control. According to Article 8 ZSVarPre, the basic amount of minimum subsistence income is set at EUR 392.75 and reflects the at-risk-of-poverty threshold. Monetary social assistance is namely always tailored to persons' financial needs, since it is provided as a difference between personal income of the individual or family and minimum income as set by the line of poverty.<sup>59</sup> It is adjusted according to the Act Regulating Adjustments of Transfers to Individuals and Households in the Republic of Slovenia (ZUTPG).<sup>60</sup> Like a number of other thresholds, the amount is adjusted annually, following the increase in consumer prices from the previous year as determined by the Statistical Office of the Republic of Slovenia. Thus, in 2023, the amount of the benefit was set at EUR 465.34 net for an adult person without any income, whilst being increased according to the number of dependent as well as partially economically active members of the family. In comparison, the legislatively prescribed minimum salary for full working time reached EUR 878.48 net (EUR 1,203.36 gross) in January 2023, following an almost EUR 200 gross increase from 2022.

It is difficult to imagine how this amount can effectively prevent poverty and social exclusion, let alone enable persons to actively participate in public life and lead, if not a fulfilling, at least a decent life. According to Article 4 ZSVarPre, the benefit is aimed at offering to the beneficiary material means that are sufficient to cover their *immediate basic needs* and to make a living. From the reading of Article 4 ZSVarPre, it is clear that the

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59 G. Strban, 'Pravni vidiki nove ureditve sistema socialnega varstva' *Pravnik*, 66 (2011)3-4, p. 171.

60 *Zakon o usklajevanju transferjev posameznikom in gospodinjstvom v Republiki Sloveniji*, Official Gazette of the RS, No. 114/06 to 153/22.

right is not aimed at enabling the individual to lead a free and fulfilling life, according to a rationally selected life-plan. Its aim is to cover one's basic needs only, which may also represent a violation of the social state principle when interpreted in a broader sense, i.e. through the prism of protecting one's personal dignity. From this perspective, need-based redistribution of societal wealth, where one's needs are understood as a bare minimum for survival, can hardly live up to the standard of a dignified life, unless a person's wants, wishes or desires coincide with their basic needs only.<sup>61</sup>

Social assistance, including monetary social assistance, is often not adapted to the local social and economic environment either (prices of, for example, housing, services, public transport), nor to the geographic and demographic characteristics of the beneficiary's place of residence. Different living costs in different cities, municipalities or regions may lead to differences in the impact of a given social assistance benefit. Even more so, especially bigger or richer municipalities commonly introduce special social assistance benefits or<sup>62</sup> subsidies for their (permanent) residents, making one's socio-economic status partly dependent on their place of residence even if key benefits, aimed at tackling poverty and social exclusion, are provided at the level of the unitary state within a functionally (semi-)centralised social assistance scheme.<sup>63</sup>

To prevent the so-called poverty trap and to promote work, economically active persons who work from 60 to 128 hours per month are entitled to a higher benefit of EUR 586.33 net. Persons who work more than 128 hours monthly receive EUR 702.66 net as an important incentive to remain or become economically active, whilst not immediately losing the right to monetary social assistance. Minimum income legislation follows a broad notion of persons' economic activity, recognising not only employment and self-employment, but also voluntary work, work of family assistants or carers and work within rehabilitation programmes, thus also following a broad notion of *merit* or *desert*, accompanying the central distributional

61 See, for example, L. Mišič, 'Theories of Political Philosophy as Guiding Principles in Social Security' *Studies on Labour Law and Social Policy* 25 (2018)3, p. 284 ff.

62 Article 21 of the Local Self-Government Act, *Zakon o lokalni samoupravi* (ZLS), Official Gazette of the RS, No. 94/07 to 80/20 refers to monetary assistance.

63 On the division of competences in the field of social security in Slovenia see L. Mišič and G. Strban, 'Devolution and Decentralisation in Social Security: The Situation in Slovenia', in: G. J. Vonk and P. Schoukens (eds.), *Devolution and Decentralisation in Social Security: A Comparative European Perspective* (Eleven International Publishing 2019), pp. 165 ff.

criteria of *need*. Whenever possible, social assistance benefits stipulated in ZSVarPre follow the logic of economic reactivation since they are of a purely financial nature. They are paid in limited duration and subject to review before periodical renewal, whilst recipients generally must register with the Employment Services of Slovenia and become or remain active job seekers. This does not apply to some groups of the population, like the elderly and permanently incapacitated male (65 years of age) and female (63 years of age) beneficiaries who may exceptionally receive permanent monetary social assistance. According to Article 28 ZSVarPre, unemployed persons claiming monetary social assistance also must prove that they have become unemployed against their will (e.g. no dismissal agreement with their employer with exceptions,<sup>64</sup> objective reason behind self-employed persons' unemployment) or without their fault (e.g. no culpable reason behind termination of employment contract). They are also not entitled to, may lose, or even have to pay back the obtained benefits if they, for example, refuse suitable employment, do not claim other rights that would positively affect their social and economic situation (e.g. maintenance allowance), lose other means of subsistence or income for reasons that were not beyond their control, or if they become incarcerated. Two types of suitable employment, determined by working time, distance from the person's home, level of education, etc., are found in the Market Regulation Act (ZUTD)<sup>65</sup>, which regulates a variety of active employment measures alongside the Slovenian unemployment insurance scheme.

On the one hand, ZSVarPre stipulates the rights and obligations concerning key social assistance benefits, whilst on the other hand ZUPJS sets thresholds and the order of considered income within the means test, also for several other social rights like family benefits, subsidies and incentives (e.g. scholarships) or benefits of a mixed nature (coverage of medical costs). According to Article 17 of the Exercise of Rights from Public Funds Act (ZUPJS),<sup>66</sup> different types of property are considered when granting the right to monetary social assistance and other social assistance rights (real estate, movable assets, stocks, etc.), with some types of property excluded by law, e.g. real estate used as one's dwelling up to a certain amount in value, car or other transport vehicle up to a certain amount in value,

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64 For example, if the claimant or beneficiary terminates the contract of employment due to family violence, and moves to a different and remote place of residence.

65 *Zakon o urejanju trga dela*, Official Gazette of the RS, No. 80/10 to 109/23.

66 *Zakon o uveljavljanju pravic iz javnih sredstev*, Official Gazette of the RS, No. 62/10 to 54/22.

etc. Differences between municipalities or regions are problematic with respect to housing prices, since homeowners who own and reside in real estate that exceeds EUR 120,000 may become eligible to receive monetary social assistance under special conditions only. Additionally, if a deceased monetary social assistance recipient owned and resided in a house or apartment surpassing the said threshold, his heirs will have to return the entire amount of received income support to inherit the property before the state.

The means test by which the amount of monetary social assistance and several other social assistance benefits is decided considers, as mentioned, the number of family members, with different criteria set for different types of members, e.g. the first adult person, the first adult person who is economically active, first child, etc. It also considers assets, like bank account savings, real estate, valuable movables, business and/or stock ownership, motor vehicles and vessels, etc., with different thresholds or exemptions set for different types of more common assets, like real estate (e.g. house or apartment up to EUR 120,000, as discussed regardless of the average price of real estate in the area, municipality, region, agricultural land, forest) according to value, motor vehicle according to value, bank loans if granted in respect to homeownership, additional pension insurance savings, general savings (up to EUR 2,500 or 3,500, depending on one's family status or age) etc. As discussed, monetary social assistance as well as other social assistance benefits are granted only to persons and families who could not ensure the necessary means of subsistence themselves and due to an objective reason and who have exhausted recourse to all other rights, e.g. social insurance rights or maintenance allowance that could have protected their livelihood. Therefore, all social security and other benefits are generally considered when determining the amount of the claimants' or beneficiaries' personal income. The discretionary decision-making powers of the SWC's follow the basic social assistance principle according to which everyone is primarily personally responsible for themselves and their family members in respect to preventing poverty and social exclusion.<sup>67</sup> However, potential beneficiaries might feel reluctant to claim some types of rights that could secure their livelihood, e.g. maintenance allowances following separation from violent spouses.

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67 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 213.

Since it is a tax-funded benefit and grounded in the redistribution of societal wealth within a one-sided social relationship between the individual and the state, monetary social assistance beneficiaries must hold permanent residence and actually reside in Slovenia for the necessary link between the individual and the tax community to be present. This applies both to Slovene citizens as well as foreigners, whilst special conditions are laid down for persons who were granted international protection.<sup>68</sup> According to Article 7(2) of the Regulation (EU) No. 492/2011 on freedom of movement for workers within the Union,<sup>69</sup> monetary social assistance should also be available, if meeting other conditions provided by law, to foreign workers, since they are entitled to the same social and tax advantages as national workers.

## b) Social Assistance Supplement

Unlike monetary social assistance covering immediate needs of the person and family, the Social Assistance Supplement is aimed at covering living costs that have emerged gradually or over longer time periods, like home maintenance costs. It is granted to permanently unemployable persons or persons who lost their working capacity and who are older than 63 (women) or 65 (men) years of age. To obtain the said benefit, a person either must be a monetary social assistance recipient or fulfil the more lenient conditions for the obtainment of the allowance (EUR 684.05 for a single person in 2023). The social assistance supplement is means-tested and tax-funded, with the maximum income ceiling increased by criteria depending on the personal circumstances of the respective recipient.<sup>70</sup> Like in the case of monetary social assistance, the person is entitled to the difference between their personal income and the abovementioned threshold (max. EUR 218.71).<sup>71</sup> Since the benefit depends on the social risks of disability and/or old age, it is theoretically not clear which EU social security coordination rules should apply, i.e. general rules that exclude

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68 See, for example, G. Strban and L. Mišič, ‘Migrants’ Access to Social Protection in Slovenia’, in: J. M. Lafleur and D. Vintila (eds.), *Migration and Social Protection in Europe and Beyond. Comparing Access to Welfare Entitlements* (Springer 2020), pp. 391 ff.

69 Official Journal of the EU, No. L 141/1 of 27 May 2011.

70 B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 222.

71 See Ibid.

social assistance from the material scope of coverage, or rules on special non-contributory cash benefits (SNCBs). According to the latter, *lex loci domicilii* and the non-exportability of benefits rules apply. However, when the social assistance supplement was first transferred from the pension and disability insurance into the social assistance legislation, the Slovenian government also excluded it from Annex X to the Regulation (EC) No. 883/2004,<sup>72</sup> arguing that it has now become a traditional social assistance benefit. Insertion into the Annex is a constitutive element for the SNCBs according to Article 70 Regulation (EC) No. 883/2004.

### c) Extraordinary Social Assistance

Unlike the social assistance supplement, which is aimed at covering ordinary but long-term costs, the right to extraordinary social assistance is aimed at covering unforeseen costs. The benefit stipulated in Article 33 ZSVarPre can be granted as a one-off earmarked payment (e.g. roof replacement due to hail damage) or a periodical payment over the duration of 3 or 6 months. The benefit may not exceed the monetary social assistance amount for a single person or family granted monthly, nor may it exceed five times the amount on a yearly basis. Additionally, three minimum amounts may be granted to cover costs incurred as a result of natural accidents or force majeure. From the wording of Article 33(3) ZSVarPre, it is not clear whether the benefit may be granted as a one-off payment in the amount of three monthly or three yearly maximum amounts when such costs are incurred. However, since the yearly amount cannot exceed the amount of five monthly amounts and since very high costs may result from natural disasters or other events, it may be concluded that the maximum amount comprises three yearly amounts and may reach several thousand euros. In 2023, the benefit was limited to EUR 465.34 monthly and EUR 2,326.70 annually for a single, economically inactive person.

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72 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Official Journal of the EU, No. L 166 of 30 April 2004.

#### d) Social Insurance Benefits

An important characteristic of the Slovenian social security system is also the fact that several measures preventing poverty and social exclusion are found not in social assistance but in social insurance legislation, even after the latter was stripped of most income support benefits. Insurance-based cash benefits for low-income contributors are commonly increased according to the principle of vertical solidarity, i.e. solidarity of high-earners with low-earners, and are paid in higher amounts than they would have been paid if the insurance principle was followed to a greater extent. They are mostly found in the pension and disability insurance legislation. However, some insurance benefits are paid in amounts that may lead to poverty and social exclusion, triggering the subsidiary social assistance safety net.

Article 36 of the Pension and Disability Insurance Act (ZPIZ-2)<sup>73</sup>, for example, stipulates that the minimum calculation base must amount to 76.5% of the average monthly gross wage in the previous calendar year. Following the principle of vertical solidarity, the highest calculation base cannot exceed four times the minimum. It also stipulates minimum pension conditions. The benefit cannot be lower than 29.5% of the minimum calculation base. Additionally, beneficiaries meeting general retirement conditions (60 years of age and 40 years of insurance with no purchased period)<sup>74</sup> are entitled to a guaranteed pension of EUR 653.75 (in October 2022), whilst the invalidity pension, obtained under general conditions, cannot be lower than 41% of the minimum calculation base. The said provisions are aimed at preventing poverty and social exclusion. However, the amounts that they guarantee are in some cases too low to effectively prevent the application of subsidiary social assistance provisions. According to the Slovenian Constitutional Court, the elements of mutuality and solidarity are a constitutionally permissible part of the insurance scheme since the Constitution defines the pension insurance as a type of social insurance and explicitly mentions the right to a pension as a social insurance benefit. Despite the proprietary characteristics of the right to an old-age pension, the Constitution however does not safeguard the right in a particular amount. Nevertheless, the lowest pension insurance benefits ought to protect the social minimum which

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73 *Zakon o pokojninskem in invalidskem zavarovanju*, Official Gazette of the RS, No. 48/22.

74 The other general condition is 65 years of age and 15 years of insurance. In this case, the calculation percentage is only 29.5% of the calculation base.

cannot be understood as a basic subsistence minimum only as found in social assistance legislation, but as a minimum that provides the recipient with a certain living standard based on their work and the amount of contributions paid during their career.<sup>75</sup> As put forward by the Court in as early as 2003, the legislator, following the broad margin of appreciation in the field of social security and the principle of solidarity, is free to prescribe both the minimum as well as the maximum calculation base, as well as the ratio between them.<sup>76</sup> However, a flat-rate minimum pension for all beneficiaries would go against the constitutional right to social security from which social insurance benefits are derived, first and foremost, as proportional, income-sensitive cash benefits that do not reflect one's needs, but the previous standard of living.

Some benefits aimed at preventing poverty and social exclusion are part of the health insurance legislation, showcasing a broad legislative approach to income support. According to the Healthcare and Health Insurance Act (ZZVZZ),<sup>77</sup> some persons, for example those meeting poverty thresholds set in social assistance legislation, enjoyed full coverage of particular medical care even if they had not concluded supplementary health insurance for once rather extensive co-payments. In 2024, the system of co-payments was abolished.<sup>78</sup> Then, SWCs also granted the right to full payment of medical care on behalf of the general state budget which took on the costs borne either by private insurance groups, offering supplementary health insurance, or by the patients themselves, whenever no such insurance was concluded. The right that depended on one's entitlement to monetary social assistance was granted under the conditions set in ZUPJS. This also stipulates the conditions for the payment of social security contributions in the field of health insurance, since persons who are not economically active nor recipients of income-replacing social security benefits that lead to insurance must enter the insurance scheme by means of individual registration and pay a monthly insurance fee. The health insurance legislation also comprises benefits that are increased in cases of low-income contributors. Sickness

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75 Decision of the Constitutional Court of the Republic of Slovenia, No. U-II-1/11 of 10 March 2011.

76 Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-36/00 of 11 December 2003.

77 *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*, Official Gazette of the RS, No. 72/06 to 141/22.

78 The system of co-payments, along with supplementary health insurance, was abolished in 2023 with ZZVZZ-T, Official Gazette of the RS, No. 78/23 of 19/7/2023.

cash benefits, for example, cannot be lower than 60% of the minimum wage.

Conversely, some insurance-based cash benefits are provided in amounts so low that they do not necessarily prevent poverty and social exclusion, let alone allow for the proportionate continuation of the beneficiary's lifestyle during times of an occurred contingency. Even if paid from a social insurance scheme, they are provided in amounts that may expose the person and their family members to the risk of poverty and social exclusion. According to Article 62 of the Labour Market Regulation Act (ZUTD),<sup>79</sup> no unemployment insurance benefit may exceed EUR 892.50 gross. First, the cash benefit fully neglects the insurance principle of reciprocity and, even more so, falls below the amount of the minimum salary, which in 2023 reached EUR 1,203.36 gross. Even if unemployment insurance contributions are significantly lower than contributions paid within most other insurance branches, thus making the scheme almost exclusively dependent on the state budget, the reactivating idea behind the provision seems to go up against the liberal-egalitarian ideal of equal opportunities, since the need for sustained labour market participation fully disregards the notion of *desert*. Put differently, a worker or self-employed person who becomes fully unemployed after earning a Slovenian average salary of EUR 2,144.72 gross or EUR 1,399.03 net at the beginning of 2023, receives around EUR 650 net, even if 80% of his or her salary, which is the calculated amount for the first 3 months of entitlement, would entitle the unemployed person to more than EUR 1,000 net. The principle of reciprocity only sets in after three months, when the person is entitled to 60% of his or her salary, which amounts to approximately EUR 800 net and falls below the upper limitation. In this sense, an unemployed person with, for example, a part-time working spouse and two dependent children may claim monetary social assistance straight after losing employment, unless they surpass the property threshold. Conversely, the amount of unemployment benefits cannot be lower than EUR 540,19 gross, which leads to the great paradox of the legislator who, on the one hand, tried to afford minimum insurance-based benefits that were to prevent poverty and social exclusion, and, on the other hand, failed to effectively prevent the provision of social assistance benefits of unemployed persons who may be entitled to the maximum amount of benefits. Additionally, current domestic legislation allows for much higher

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79 *Zakon o urejanju trga dela*, Official Gazette of the RS, No. 80/10 to 59/22.

unemployment benefits to be paid to Slovenian-resident frontier workers, setting more than a double maximum threshold (EUR 1,785 gross) for whenever higher-income member states of last employment (commonly Austria, Italy and Germany) reimburse the benefits paid by Slovenia as the competent member state of residence.<sup>80</sup> It comes as no surprise that the competent ministry recently proposed substantial increases to both the minimum and the maximum amount of unemployment benefits. According to the Slovenian Constitutional Court, which also recognised the principle of adjusting the law to changing social relations as a sub-principle to the rule of law principle,<sup>81</sup> social security rights, e.g. insurance-based long-term care benefits paid from the emerging independent branch of insurance, have to provide (proportional) continuity of one's standard of living,<sup>82</sup> whilst social assistance benefits (and social services) should provide the amount of protection needed in order to alleviate poverty and social exclusion and enable the free development of every individual and the society.<sup>83</sup>

#### e) Family Benefits

As mentioned, measures aimed at preventing poverty and social exclusion are also a key feature of the Slovenian legislation on family benefits. They are generally means-tested, with the amounts dependent on the amount of personal income and number of children (e.g. child benefit), and granted either to parents who are not entitled to income replacement benefits from the parental protection scheme or those who fulfil other special conditions, like raising a large family (e.g. large family supplement), raising a child with disabilities (e.g. special child-care allowance, partial compensation for loss of income), etc.

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80 See L. Mišič, 'Unemployment Benefits in the EU: Is Slovenia Fighting the Good Fight or Just Trying to Get Away with a Free Lunch?' (7 April 2021) < <https://www.europea.nlawblog.eu/pub/unemployment-benefits-in-the-eu-is-slovenia-fighting-the-good-fight-or-just-trying-to-get-away-with-a-free-lunch/release/1?readingCollection=37e593b8> > accessed 25.10.2024.

81 G. Strban (n 17), p. 244.

82 Decision of the Constitutional Court of the Republic of Slovenia, No. U-II-1/11 of 14 March 2011.

83 See Strban (n 17), p. 244.

ZSDP-1 also provides parents with a one-off flat rate payment in case of every childbirth (EUR 421.97). The benefit could be disputed since it is an earmarked benefit the use of which cannot be controlled effectively, whilst being granted to all parents regardless of their socio-economic situation. From this perspective, an earmarked and means-tested benefit would ensure far better targeting, even if on the account of additional administrative work by the SWCs. Just like social assistance benefits, family benefits were either lowered or not adjusted to the rising costs of living during the economic crisis, with fiscal restrictions relaxed around 2015.<sup>84</sup>

#### f) Temporary Benefits

Most recent amendments in the field of social assistance, however, mostly came about as emergency measures only. Just like during the 2008 recession and the COVID-19 epidemic,<sup>85</sup> in which new and *sui generis* social rights commonly categorised as a mix of social assistance benefits, social advantages and social compensations were introduced, the legislator once again relied on novel, temporary means-tested benefits to tackle the energy crisis and inflation in 2022 and 2023. The Act Determining Temporary Measures to Remedy the Consequences of Higher Living Costs of the Most Vulnerable Population Groups (ZZUOPD),<sup>86</sup> for example, introduced a special energy allowance for monetary social assistance and social assistance supplement beneficiaries, as well as a special energy allowance for disabled persons, and formed a special regime for the exclusion of this benefit from one's relevant income concerning the means test for other social assistance benefits. According to governmental data, around 13,500 individuals will be eligible to receive the said benefit which can be calculated online.<sup>87</sup> Additionally, the legislator raised all pensions and wages in the public sector by 4.5%, as well as some other elements of one's work remuneration, to remedy the negative effects of long-term inflation. Excessive use of emergency legislation, which has in the recent years also become a norm in the field

84 See B. Kresal, K. Kresal Šoltes, G. Strban (n 8), p. 97.

85 See G. Strban and L. Mišič (n 6), pp. 427 ff.

86 *Zakon o začasnih ukrepih za odpravo posledic draginje za najbolj ranljive skupine prebivalstva*, Official Gazette of the RS, No. 117/22.

87 Republic of Slovenia, 'Ukrepi za omilitev draginje za ranljive skupine in družine' (11 May 2023) < <https://www.gov.si/zbirke/projekti-in-programi/ukrepi-za-omilitev-draginje/ukrepi-za-omilitev-draginje-za-ranljive-skupine-in-druzine/> > accessed 25.10.2024.

of healthcare, may violate the rule of law principle and its subprinciples, e.g. legal clarity and certainty, the predictability of law, and the systematic nature of the legal order itself.

### 3. Emerging Challenges

#### a) Social Services and Long-Term Care

A third issue of the Slovenian social security system that has an important impact in the field of social assistance is the dispersion of long-term care benefits and social services not only throughout different pieces of legislation but also different parts of the social security system, whilst necessarily offering comprehensive coverage. Social as well as long-term care services are important in any debate on poverty and social exclusion since they, whenever provided at the expense of the state or social insurance carriers, increase the disposable income of care recipients, therefore limiting the chances of income support provision. Like other social assistance benefits, need- and income-sensitive social services are afforded on grounds of citizenship and/or permanent residence. They are non-profit and exercised as part of the public social care service network, established and maintained by the state or, in some cases, municipalities. Several social services provided institutionally or at home commonly represent a mix of social inclusion, social care and healthcare measures. In this respect, social services like domestic care,<sup>88</sup> residential or semi-residential care (day care centres) and others, will gain importance soon. In October 2022, the average old-age pension amounted to EUR 777.72, and to EUR 971.09 net for 40 years of insurance, whilst the average invalidity pension amounted to EUR 663.46.<sup>89</sup>

88 Domestic or at-home care comprises assistance with activities of daily living, like personal hygiene, dressing, toileting, household assistance, like cooking or cleaning, and assistance with social interaction. It is one of seven social care services provided by the Social Assistance Act. However, it in itself comprises a variety of sub-services or sub-rights. At the same time, the regulation in the field of *family assistance* might appear similar to the regulation in the field of *personal assistance* even if there exist several paradigmatic differences between the two. The latter is regulated by the Personal Assistance Act, *Zakon o osebni asistenci* (ZOA), Official Gazette of the RS, No. 10/17 to 172/21.

89 Pension and Disability Insurance Institute of Slovenia, 'Mesečni statistični pregled' (2024) < <https://www.zpiz.si/cms/content2019/-meseclistatisticnipregled-koledar-ob-jav> > accessed 25.10.2024.

An average pension recipient who is not a homeowner and who cannot rely on their family members as social buffers can barely make ends meet, let alone make out-of-pocket payments for a variety of care services that are also available in the free market. Homes for the elderly, for example, are either public (13,501 places with 59 providers) or private (5,476 places with 43 providers),<sup>90</sup> with different municipalities potentially co-financing such care in different amounts. In 2022, the average daily costs of basic care amounted to EUR 23.06 ( EUR 21.20 in public and EUR 25.52 in private homes for the elderly). The costs for the highest category of care amounted to EUR 34.49 daily in public, and to EUR 38.71 daily in private homes for the elderly.<sup>91</sup> Relatively small differences in price between public and private providers (around EUR 60 monthly for basic and EUR 128 monthly for advanced care) can be ascribed to the fact that private providers act as concessionaires within the public network. However, since the average old-age pension amounted to less than EUR 800 net in October 2022, and to less than EUR 1000 net for 40 years of insurance, the average retired person can barely afford institutional care in old-age. After paying for the most basic care according to the average daily costs of public providers, he or she is left with around EUR 80 of disposable income from the average old-age pension, whilst he or she cannot pay for the average daily costs of private providers (around EUR 776 monthly), nor afford advanced care, which may amount to over EUR 1,200 monthly. In comparison, the average invalidity pension amounted, as mentioned, to just over EUR 660 net in October 2022. According to Article 100 ZSV, the right to first social assistance, victim support and institutional care within SWCs, providing special training, are the only social services that are provided free-of-charge. However, some persons, like permanent recipients of monetary social assistance, receive all services free-of-charge, apart from institutional care, where organised care supplements or substitutes one's home and family functions (accommodation, nutrition, healthcare, etc.). Full or partial exemption from payment of social services may be claimed in from SWCs, whilst exemption criteria are stipulated by a governmental decree. In 2011, only 11.9% of the Slovenian population above the age of 65 were receiving long-term care benefits. 5.0% received care institutionally, whilst

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90 Skupnost socialnih zavodov Slovenije, Splošno o domovih za starejše (2024) < <https://www.ssz-slo.si/splosno-o-domovih-in-posebnih-zavodih/> > accessed 25.10.2024.

91 < <https://www.ssz-slo.si/splosno-o-domovih-in-posebnih-zavodih/cene-oskrbe-1-3-2-022/> > accessed 25.10.2024.

6.9% received long-term care benefits within their home environment. 2.1% of beneficiaries received informal, i.e. unprofessional care, covered by cash benefits paid to carers.<sup>92</sup> Long-term care benefits that were received within the home environment, however, mostly consisted of healthcare and had no social dimension.<sup>93</sup> A similar trend was observed in 2019, when around EUR 360 million of long-term care expenses emerged as healthcare costs, whilst only EUR 185 million figured as costs of social services. 23,227 beneficiaries received long-term care services within an institution, whilst 23,395 did at home.<sup>94</sup> On the one hand, long-term dependency should be perceived as an independent contingency and distinguished from sickness, injury, invalidity or old age.<sup>95</sup> On the other hand, it should be accompanied by all types of benefits that allow persons to live a dignified life during all of its stages, irrespective of the challenges they face. The provision cannot be limited to healthcare only. Additionally, at-home assistance is not provided free of charge, with prices varying from municipality to municipality. As mentioned, persons at risk of poverty and social exclusion may apply for full coverage of the right by their municipality, which co-finances (to a proportion of 50% or more) the scheme alongside its users. However, the payment of such costs (average costs for user per hour is EUR 5-6)<sup>96</sup> for those not entitled to the exemption may also trigger the poverty trap, with necessary recourse to monetary social assistance. This also makes the amount and/or type of provided social or other services potentially dependent on the socio-economic situation of the family, since close family members generally possess maintenance obligations under family law.

92 See M. Nagode, E. Zver et al., 'Dolgotrajna oskrba – uporaba mednarodne definicije v Sloveniji', Delovni zvezek UMAR 23 (2014)2, p. 38.

93 See *ibid.*

94 Republic of Slovenia Statistical Office, 'Long-Term Care Expenditure and the Number of Recipients of this Care Higher than in 2018' (15 December 2021) < <https://www.stat.si/StatWeb/news/Index/10027> > accessed 25/10/2024.

95 For an in-depth analysis see: G. Strban, 'Legal Aspects of Long-Term Care in Slovenia' in: U. Becker and H.-J. Reinhard (eds.), *Long-Term Care in Europe. A Juridical Approach* (Springer 2018), pp. 440 ff.

96 Republic of Slovenia Government, 'Pomoč na domu' (23 July 2024) < <https://www.gov.si teme/pomoc-na-domu/> > accessed 7.07.2024.

## b) Housing

One of the reasons for the rather low level of poverty and social exclusion considering severely low amounts of monetary social assistance or guaranteed wage can be ascribed to the high levels of homeownership. Historically, homeownership represented a *de facto* pension pillar of its own and is without a doubt still the most important and most common form of saving or investment or, put in other words, the most common and most important means of private income protection, especially in old age. Currently, 92.1% apartments in Slovenia are owned by natural persons. However, the statistics do not reveal how many natural persons own several apartments, with 36,400 apartments built between 2011 and 2021.<sup>97</sup> Nevertheless, in 2021 real estate prices grew by almost 17%.<sup>98</sup> According to the Deloitte Property Index, buyers in Slovenia have to put aside between 8 and 10 gross annual salaries to purchase a new own apartment, which amounts to between EUR 190,000 and 235,000 and is the overall country average, with real estate prices significantly higher in Ljubljana, the governmentally, economically and culturally centralised capital. By comparison, in Denmark, Portugal, Belgium and Norway, citizens need to put aside between 4 and 6 gross annual salaries only.<sup>99</sup> It is thus becoming increasingly difficult for young persons and families to rent, let alone own decent housing. As stipulated in Article 78 of the Slovenian Constitution, the state shall create opportunities for citizens to obtain proper housing. In this regard, special attention will have to be afforded by the government and legislator to the challenges of decent and affordable housing soon, otherwise housing costs may have a detrimental long-term negative effect on the levels of poverty and social exclusion.

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97 Republic of Slovenia Statistical Office, 'Število naseljenih stanovanj se je povečalo' (1 January 2021) < <https://www.stat.si/StatWeb/News/Index/10265> > accessed 25.10.2024.

98 Republic of Slovenia Statistical Office, 'Dwelling Prices Continue to Rise' (23 June 2022) < <https://www.stat.si/StatWeb/News/Index/10232> > accessed 25.10.2024.

99 Deloitte, 'Property Index' (2022) < <https://www2.deloitte.com/content/dam/Deloitte/de/Documents/real-estate/Property-Index-2022.pdf> > accessed 25.10.2024.

#### IV. Conclusions

Minimum income protection in Slovenia is not limited to the field of social assistance alone. Measures aimed at offering material and other means for a dignified life to all members of the community are found both in poverty-preventing social insurance and poverty-alleviating social assistance legislation, as well as in the field of family benefits. This also applies to the field of taxation (the so-called *hidden welfare state*),<sup>100</sup> which has not been discussed in this contribution. Social assistance benefits are included in ZSvarPre and ZSV, whilst ZUPJS, the act setting income and other criteria concerning social assistance rights, very much broadened the competences of SWCs, which decide on several other means-tested benefits provided on behalf of the state budget. This requires a broad research approach to the topic of minimum income protection, a field in which the legislator enjoys a wide margin of appreciation with respect to the basic constitutional provisions that do not, as mentioned, directly govern the right to social assistance. Several benefits like subsidies or incentives as well as *ad hoc* or emergency measures are also of a mixed legal nature and do not fully fall within the established category of social assistance, where the right to monetary assistance represents the key cash benefit. It is accompanied, as mentioned, several other cash benefits as well as social services which follow different purposes (e.g. basic needs coverage, social activation, social inclusion) and sometimes share an important link with long-term care services. Generally, all benefits stem from the social state principle enshrined in Article 2 of the Slovenian Constitution but are associated with different constitutional rights, like the right to social security (Article 50), the right to healthcare (Article 51), or the right to personal dignity and safety (Article 34), depending on the legal nature of every benefit. Even if protected by the Constitution, some social assistance benefits are in practice, however, not high enough to effectively prevent poverty and social exclusion. Even more so, this applies to some social insurance benefits too, like unemployment benefits or invalidity pensions. The legislator thereby potentially violates the right to personal dignity and safety as well as the right to social security, especially with respect to social insurance benefits.

100 Taken from C. Howard, *The Hidden Welfare State. Tax Expenditures and Social Policy in the United States* (Princeton Studies in American Politics: Historical, International, and Comparative Perspectives 1999).

In the future, a rising demand for long-term care and the lack of affordable housing will add to the challenges in the field of social and economic rights and may have, if not considered by the legislator to safeguard timely and effective access to benefits, a detrimental effect on the socio-economic situation in the country and on its social assistance scheme. Even if granted a broad margin of discretion by the Constitution in the field of social security, the legislator must take the necessary action to adapt the legislation to relevant social change and, in doing so, fulfil its positive obligations towards citizens and other potential beneficiaries.