XIX. Social Protection and the Pandemic in Slovenia: Between Income Protection, Social Policy and Politics

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1. *Introduction: From "Slovenian Constitutional Hardball" to Record-High Numbers of COVID-19 Cases and Deaths*

The COVID-19 epidemic was first declared in Slovenia in March 2020.[1] Ever since, anti-corona measures that were adopted by the Slovenian government and parliament have been put under great scrutiny both by the professional public as well as non-governmental organisations, unions, and the civil society at large. Several acts were successfully challenged in front of the Slovenian Constitutional Court, whilst the Human Rights Ombudsman dealt with 324 COVID-19 related cases by April 2020 alone. These cases concerned, among others, measures in the field of social security and healthcare,[2] in which patients were faced with an almost general ban on the provision of COVID-19-unrelated medical services during the first wave of the epidemic. By October 2020, the number of cases dealt with reached 1,038, with most of them concerning social security rights, such as the right to healthcare and institutional care, equality and protection against discrimination, the protection of dignity, personal rights, safety and privacy, and restrictions of personal liberties.[3] Public disclosures also indicated that individual preliminary medical assessments of nursing home residents were made, deciding on whether it was sensible to transfer them to hospitals and offer them intensive care treatment should they become diagnosed with COVID-19 or whether they should remain and be treated in designated areas of the nursing homes. Such assessments were

1 Order on the declaration of the state of epidemic of COVID-19 in the territory of the Republic of Slovenia (Odredba o razglasitvi epidemije nalezljive bolezni SARS-CoV-2 (COVID-19) na območju Republike Slovenije), Official Gazette RS, No. 19/20 to 68/20. The order was passed on 12 March 2020 and entered into force the same day at 6 p.m.

2 See Varuh človekovih pravic in obravnava s covid-19 povezanih zadev of May 2020.

3 See Coronavirus Pandemic in the EU – Fundamental Rights Implication (Slovenia) of 3 November 2020, p. 2.

supposedly made without the knowledge or consent of both residents and their family members.[4]

After the first period of the epidemic, with its revocation in May 2020,[5] marked by a triumphant air parade dedicated to healthcare professionals, who were able to witness an unexpected yet mesmerising juxtaposition of Slovenian PC-19 propeller planes and American F-16 fighting jets, the number of COVID-19 cases rapidly increased in autumn 2020. After the second declaration of the epidemic in October 2020,[6] Slovenia began to experience some of the highest reported numbers of cases per number of inhabitants on a global scale. According to Johns Hopkins, Slovenia, a country of approximately two million inhabitants, has experienced 449,149 COVID-19 cases altogether, with 5,506 of them resulting in death. So far, 2,805,830 vaccine doses have been administered, whilst only 1,179,177 or 56.48% of the population are fully (two times) vaccinated.[7] According to the Covid Observer, Slovenia almost made it to the global podium concerning the number of COVID-19 cases per number of inhabitants, whilst coming in thirteenth in the world concerning non-recovered cases per number of inhabitants.[8]

Soon after the epidemic was first declared in March 2020, the government began to rule by governmental decrees, allowing for swift and unchallenged promulgation of much-needed rules aimed at preventing and eliminating the negative effects of the epidemic, however commonly failed to satisfy crucial constitutional standards such as the principle of legality, legal clarity, certainty, predictability and, last but not least, the democratic state principle. On several occasions, the decrees were misinterpreted prior to their passing by government representatives, including ministers, in their prime time media appearances. According to Bardutzky and oth-

4 See Republika Slovenija, Zagovornik načela enakosti: Razmere v domovih za starejše v prvem valu epidemije Covida-19, Poročilo o raziskavi Zagovornika načela enakosti of May 2021, pp. 17, 70.

5 Ordinance on the revocation of the COVID-19 epidemic state (Odlok o preklicu epidemije nalezljive bolezni SARS-CoV-2 (COVID-19)), Official Gazette RS, No. 68/2020.

6 Ordinance on the declaration of the COVID-19 epidemic state in the territory of the Republic of Slovenia (Odlok o razglasitvi epidemije nalezljive bolezni COVID-19 na območju Republike Slovenije), Official Gazette RS, No. 146/2020. The Ordinance's temporal scope of application was limited to 30 days. Nevertheless, it was prolonged several times and the epidemic officially lasted until 16 June 2021 (last prolongation passed in Official Gazette RS, No. 73/2021).

7 See Johns Hopkins of 21 December 2021.

8 See Covid Observer of 21 December 2021.

ers, the government also made repeated attempts of sneaking individual problematic solutions into different anti-corona pieces of legislation.[9] Not declaring a state of emergency (Article 92 of the Constitution[10]) and a temporary suspension of the human rights and fundamental freedoms during such state (Article 16 of the Constitution), it enacted all restrictive measures aimed at preventing the spread of the virus, such as travel restrictions between municipalities, curfews, etc., on grounds of the Communicable Diseases Act.[11] Described by Bardutzky and Zagorc as a pre-epidemic piece of legislation, even minor changes of the Act in 2020 did not expand the legal basis for the enactment of restricting measures.[12] According to the authors, its existing provisions were stretched to what they described as the very extremes and even beyond an acceptable legal interpretation to cover for some of the government's anti-corona ordinances. Among the most striking examples of such interpretations is the interpretation of Article 39(1)(2), allowing for the banning or limitation of movement in *infected* or *directly endangered areas*, so as to ban free movement and assembly in all public places and surfaces as well as access to public places and surfaces in the territory of Slovenia.[13] As recorded by Zagorc and Bardutzky, the decree contained an exhaustive list of 21 exceptions (work-related travel, supermarket access, use of public parks, etc.). Concerned about persons visiting parks, beaches and other open areas, especially in popular tourist destinations in the mountains and at the seaside, the government, which at that time had already been scorned by accusations of severe procurement irregularities concerning medical equipment, soon decided to impose a general ban on travel across municipalities, even if all statistical areas were commonly facing similar numbers of reported cases with the same rules of preventive conduct in place in the whole territory of Slovenia.

In the field of social protection, parliament enacted several measures of a mixed nature, falling somewhere in-between social security, social assistance and universal social protection measures, and social compensations. Those measures, also measures concerning the provision of sickness benefits in cash or in kind, are analysed in the following paragraphs alongside job retention measures and different kinds of subsidies aimed at supporting the economy. Most of them form part of so-called anti-corona

9 See Verfassungsblog of 1 April 2021.
10 Official Gazette of the RS, No. 33/91-I to 92/21.
11 Zakon o nalezljivih boleznih (ZNB), Official Gazette of the RS, No. 33/06 to 178/21.
12 See Verfassungsblog of 19 March 2021.
13 See Verfassungsblog of 26 April 2020.

legislative packages (hereinafter: ACLP) or consecutive pieces of umbrella legislation, aimed at preventing and eliminating the negative effects of the epidemic in different areas of public and private life. So far, ten such umbrella laws, amending numerous other acts with a single legislative act, were passed. However, the authors as a rule refer only to the initial piece of legislation that enacted a particular measure, commonly indicating the period in which the measure was in force, since consecutive pieces of amended or new legislation, forming a labyrinth of legal sources, in most cases prolonged and/or introduced minor changes concerning particular measures. Such amendments are highlighted whenever important or whenever peculiar changes were introduced.

2. Job Retention

The Slovenian parliament enacted three central job-retention measures that were first introduced in 2020, whilst also enacting a special measure for self-employed persons financially affected by the epidemic (discussed in section 3).

Employers who were unable to guarantee work due to the epidemic could receive full or partial reimbursements of wage replacement benefits paid to employees put on hold. Similar benefits were made available to employers who introduced short-time work, paying out wages and wage-replacement benefits to their employees during the epidemic, and to those who paid out wage-replacement benefits to quarantined employees or employees taking up additional childcare duties due to the closure of schools and kindergartens. Since most reimbursements were offered to employers either due to consumers' limited market access or, in some sectors, full shutdowns, they could be on the one hand considered as social compensations. On the other hand, businesses in several sectors, especially in different production sectors, did not experience a shutdown but were rather challenged by a global lack of demand and/or distortions in their supply chains. From this perspective, reimbursements could be considered as social subsidies offered directly to businesses, whilst indirectly offering social security to waiting or only part-time active employees. Reimbursements for employees that were put on hold were granted to 29,415 employers, concerning 200,460 employees in total, with most benefits paid in the food and beverage service sector and retail sector. Reimbursements concerning employees whose working hours were reduced were paid out to 3,691 employers, concerning 17,426 employees. Benefits were granted on grounds of ever-changing ACLPs between March or June and Decem-

ber 2020.[14] The measures came as a consequence of Articles 137 and 138 of the Labour Relations Act.[15] According to Article 137(6), employees who cannot perform work due to force majeure are entitled to half of the payment they would have received if they worked, however no less than 70% of the minimum wage. According to Article 138, an employer who cannot guarantee work to his employees due to a valid business reason may, as a job retention measure, instruct employees to remain on hold whilst paying them 80% of their three-month average wage.

a) Short-Time Work Subsidies

Reimbursements or state subsidies concerning employees whose working hours had been reduced due to the epidemic were introduced in June 2020 with the third ACLP (ZIUOPPE).[16] The measures were initially in force between June and December 2020. However, a conclusion on a partial reimbursement of short-time work prolonged the measures until June 2021.[17] According to Article 11 ZIUOPPE and the following, employers who – as a result of the epidemic – reduced working hours of their full-time employees, were eligible to receive reimbursements of between EUR 448 and EUR 112 per employee, depending on the number of remaining working hours, amounting to between 20 and 35 hours per week. The employer, either a business or a self-employed person employing others, must have been registered before March 2020 and unable to guarantee at least 90% of working hours to at least 10% of his staff. Public sector employers and indirect beneficiaries of the state or public municipalities' budgets that received more than 50% of their funding from public budgets were excluded from the said measure. As mentioned before, subsidies were granted to 3,691 employers and concerned only 17,426 employees. From this perspective, reimbursements concerning employees who became fully

14 See Strokovna izhodišča za leto 2021, p. 26.

15 Zakon o delovnih razmerjih (ZDR-1), Official Gazette of the RS, No. 21/13 to 119/21.

16 Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19, ZIUOOPE), Official Gazette of the RS, No. 80/20 to 112/21.

17 Decision on the extension of the measure of partial subsidising of reduced full-time work (Sklep o podaljšanju ukrepa delnega subvencioniranja skrajšanega polnega delovnega časa), Official Gazette of the RS, No. 190/20.

economically inactive but remained in employment proved to be either more attractive or actually more relevant for affected private sector employers.

b) Employees on Hold, Force Majeure and Isolation

Already the first ACLP (ZIUZEOP)[18] of April 2020 introduced reimbursements for employers whose employees were unable to perform work either on grounds of a valid business reason on the side of the employer or due to force majeure. Entitled employers – excluded from which were public sector employers and beneficiaries of the state or public municipalities' budgets that received more than 70% of their funding from public budgets[19] – who paid wage replacement benefits to their employees on grounds of the Labour Relations Act were eligible to receive a maximum state reimbursement in the amount of an average monthly wage in Slovenia from the year 2019.

Additionally, ZIUZEOP increased the amount of wage replacement benefits on grounds of force majeure so as to meet the higher amount of wage replacement benefits paid whenever work is not performed due to a business reason on the side of the employer. Altogether different ACLPs also introduced reimbursements for wage-replacing benefits paid to quarantined employees, whilst explicitly introducing different categories of force majeure (e.g. shut-down of public transport, closure of educational or care facilities).[20] Different measures were, as a rule, in force between

18 Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (Zakon o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitev njenih posledic za državljane in gospodarstvo, ZIUZEOP), Official Gazette of the RS, No. 49/20 to 15/21.

19 Under special conditions, Article 24 ZIUZEOP also excluded employers in the financial and insurance sectors.

20 In cases of issued quarantine orders, Article 20 ZIUOPDVE for example afforded higher income replacement benefits to employees as if a business reason under Article 138 and not a force majeure reason under Article 137 existed. Also see Article 25 of the Healthcare Intervention Measures Act (Zakon o nujnih ukrepih na področju *zdravstva*, ZNUPZ), Official Gazette of the RS, No. 112/21 to 189/21, included in the ninth ACPL. The Act's amendment of December 2021offered (retroactively) state subsidies in cases of quarantine orders issued to self-employed persons, undertaking partners and farmers, groups of beneficiaries who were excluded from the first ZNUPZ.

March and December 2020,[21] with some measures, for example concerning work absence of quarantined employees or employees taking up additional childcare obligations, prolonged until June 2021.[22] As aforementioned, reimbursements were obtained by more than 29,000 employers, concerning over 200,000 employees by the end of 2020 alone.

During several periods of the epidemic, the Health Insurance Institute of Slovenia (HIIS) also began to pay out sickness cash benefits on grounds of ordered isolation in large numbers for the first time in its history. According to Article 29 of the Health Care and Health Insurance Act (ZZVZZ),[23] sickness benefits in cash are provided from the first day of work absence onwards on account of the HIIS in cases of ordered isolation. Needless to say, before the COVID-19 epidemic, cases of ordered isolation were rare and commonly concerned patients who got infected with exotic diseases abroad. In 2019, only 10 isolation orders amounting to a total of EUR 4,491 of associated costs for the HIIS were issued. In 2020 however, 690,062 working days were lost due to isolations, with costs skyrocketing to EUR 56.7 million.[24] After the contagion period has expired, the insured person, if still unable to work due to sickness, is entitled to receive sickness cash benefits under the general rules since the need for isolation no longer exists.

In cases of isolation orders issued to children who, for example, became infected in schools or kindergartens, parents not subject to the same measure are entitled to childcare-related work absence with benefits provided under the general rules in line with Article 30 and 31 of ZZVZZ, not on grounds of imposed isolation, but only if isolated children also fell sick. In cases of a child's isolation or quarantine, childcare-related work absence and associated income replacement benefits are paid under labour law provisions, just like in cases of closed schools and kindergartens, with benefits reimbursed to the employer by the Employment Services of Slovenia

21 See Strokovna izhodišča za leto 2021, p. 26.

22 Decision on the extension of some measures from the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 and the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic (Sklep o podaljšanju veljavnosti določenih ukrepov iz Zakona o začasnih ukrepih za omilitev in odpravo posledic COVID-19 ter Zakona o interventnih ukrepih za omilitev posledice drugega vala epidemije COVID-19), Official Gazette of the RS, No. 195/20 to 43/21.

23 Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Official Gazette of the RS, No. 72/06 to 196/21.

24 Letno poročilo ZZZS 2020, p. 68.

(ESS). According to HIIS,[25] the epidemic also introduced situations where insured persons were entitled to sick leave on different grounds, e.g. both isolation and sickness. In such cases, personal physicians have to determine the predominant or initial reason for the person's absence from work and the date when that reason has seized to be applicable. Interestingly, only the eighth ACLP provided special legal grounds concerning the prolonged treatment of COVID-19 patients (in cases of *Long Covid*).

3. *Supporting the Economy*

During different periods of the epidemic, parliament introduced several measures aimed at supporting the economy, either directly or by means of enhanced individual consumption. Some of the measures were already discussed in the previous paragraphs since the costs of several social security benefits (e.g. concerning short-time work, force majeure-related work absences) were directly consumed or partially or fully reimbursed by the general state budget. The state also took on part of the costs of social security contributions and occupational (pension) insurance contributions during the first period of the epidemic (see Articles 33 and 33.a ZIUZEOP), expanding the said benefit to self-employed persons and other contributors with the second ACLP. ZIUZEOP also automatically prolonged the right to social security contribution payment obligations that are borne by the state on behalf of the beneficiaries, e.g. for self-employed persons in the field of culture. Already the first ACLP introduced deferred payment of credit obligations, exemption from certain tax obligations and state guarantees for businesses, whilst the eighth ACLP, for example, enacted a peculiar and rather partial solution in the form of a EUR 50 subsidy for any employee whose salary is below the minimum, paid to their employers from January until June 2021. The same ACLP also lowered the minimum contribution base to the amount payable in case of a minimum salary instead of 60% of the average salary as stipulated by ZPIZ-2.

Possibly the most popular state aid was enacted via ZIUOOPE, the third ACLP, which granted tourist coupons worth EUR 200 to all adults, and coupons worth EUR 50 to all underage residents of Slovenia. Direct support to businesses also came in the form of rent payment exemptions concerning state-owned real estate or real estate owned by local municipalities, included in the sixth ACLP, or the partial reimbursement of fixed costs to

25 Odsotnost od dela in COVID-19.

the most affected businesses. The provision of coupons was repeated with the ninth ACLP, mostly providing specific state aid provisions concerning tourism and the economy at large, however this time the coupons were not earmarked for tourism-related consumption only.[26]

The ninth ACLP also offered state aids concerning annual holiday pays, specific support to service providers in the sector of winter tourism and the events industry, etc. As mentioned before, the greatest support for the economy possibly resulted from the fact that the government only imposed a strict lockdown during the first period of the epidemic, with more or less unlimited consumers' access to the market after early April 2020.

Importantly, parliament also enacted specific measures concerning self-employed persons. Already ZIUZEOP, the first ACLP, introduced a monthly basic income for self-employed persons in the amount of EUR 700 net per month for every month of the epidemic. The benefit was provided in a standard amount, independent from one's previous income from self-employment, thus representing a mixed social protection benefit, possessing elements of both social security and social assistance benefits, marked by a tint of universality. At the same time, the benefit could be considered as a social compensation for the loss of income experienced by self-employed persons due to the (initial and partial) shutdown of the economy. Nevertheless, it was not a universal basic income as some have tried to argue.

The benefit was granted to self-employed persons, including farmers and religious workers, who experienced a relevant loss of revenue compared to their prior months of establishment. However, it was made conditional upon the amount of one's future revenue concerning past and future reference periods, with unclear and uncertain conditions, having a negative effect on legal and economic certainty and predictability of potential recipients. Even if experiencing a relevant loss of income during the period of the epidemic, the recipients were obliged to return the said benefit if they experienced a relevant increase in income after the epidemic, e.g. during the summer months when several sectors experience a high increase in the number of costumers or clients. From this perspective,

26 Act on the Intervention Measures to Assist the Economy and Tourism Sector (Zakon o interventnih ukrepih za pomoč gospodarstvu in turizmu pri omilitvi posledic epidemije COVID-19), Official Gazette of the RS, No. 112/21 to 187/21. The ACLP was accompanied by a special emergency act in the field of healthcare. See Healthcare Intervention Measures Act (Zakon o nujnih ukrepih na področju zdravstva, ZNUPZ), Official Gazette of the RS, No. 112/21 to 189/21.

the measure, now considered only as a state loan, did not encourage (additional) work after the shutdowns. The same applies to the initially unclear and uncertain tax treatment of the benefit and its effect on other forms of social security, especially social assistance benefits. Similar to employers (see below), self-employed persons were also exempt from social security contribution payment obligations, if they experienced a relevant loss of revenue. For those not entitled to such exemption, deferred payment was made possible.

The rules on the monthly basic income for self-employed persons were amended with the fifth ACLP[27] that increased the amount of the benefit to EUR 1,100 net with exceptions, whilst limiting the possibilities for the non-payment of social security contributions. The said measure was prolonged until June 2021 via a decision from January 2021.[28]

4. Social Protection

During different periods of the epidemic, the general legislator amended or enacted several new social security and social assistance measures, whilst also introducing measures of a mixed nature. Next to the already discussed mixed benefits in the field of unemployment, parliament for example enacted a special one-off solidarity benefit for vulnerable groups among the population, considered a *sui generis* social protection measure marked by clear political goals of the government and/or parliament. Different solidarity benefits are discussed next to numerous changes in the field of healthcare and health insurance, concerning not only the provision of cash benefits and benefits in kind but also their special ways of financing during the epidemic.

a) Solidarity Benefits, Family Benefits, and Social Assistance

Next to several job retention measures and the automatic prolongation of the provision of several social assistance or family benefits on a monthly

27 Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (Zakon o začasnih ukrepih za omilitev in odpravo posledic COVID-19, ZZUOOP), Official Gazette of the RS, No. 152/20 to 167/21.

28 See footnote no. 18.

basis (monetary social assistance, childcare allowance, etc.),[29] the first ACLP (ZIUZEOP), worth EUR 3 billion, also introduced a one-off solidarity benefit for retired persons (Article 57), for other vulnerable groups of persons such as social assistance beneficiaries or students (Article 58), and for what the legislator considered additional vulnerable groups of persons, such as family assistants, veterans of war, etc. (Article 58.a).

Even if no loss of income during the epidemic was experienced, retired persons received the said benefit under ZIUZEOP in the amount of EUR 300, 230 or 130, depending on the amount of their pension benefits (the lower the pension, the higher the allowance). Retirees entitled to a pension higher than EUR 700 were exempt from the measure. With the first amendment of the act,[30] a one-off solidarity benefit was also provided to unemployed recipients of disability benefits, to recipients of disability benefits whose working hours had been reduced, and to recipients of disability benefits who were put on hold by their employers. The benefit was also provided to occupational pension recipients whose pension benefits remained below EUR 700.

From this perspective, the one-off solidarity benefit – which was, as a rule, provided automatically and not as a claimable right – could be considered a social assistance benefit, even if grounded in a greatly simplified means test. However, if considered a needs-based benefit, it should have been provided to all recipients of low pension benefits after the first period of the epidemic had expired since the only additional life costs, resulting from the state of a public health emergency, were the costs of generally affordable protective masks and disinfectants, possibly also costs concerning compromised food stocks if made by the elderly in fear of a total shutdown or panic buyouts in grocery stores. The amount of the benefit was not taxed nor was it subject to social security contribution payment obligations; however, it was excluded from the means test when claiming social assistance benefits, except for extraordinary monetary social assistance. From this perspective, it could be considered a special kind

29 ZIUOPDVE or the sixth ACLP, for example, prolonged obligation deadlines for recipients of extraordinary monetary social assistance, facilitated access to social assistance benefits (lessened conditions concerning property) and, just like the first ACLP, also prolonged the provision of several social assistance and family benefits provided on a monthly basis. Importantly, it also administratively facilitated access to social assistance benefits, e.g. in e-form with no need of possessing a certified electronic signature commonly mandatory whenever accessing e-administration portals.

30 ZIUZEOP-A, Official Gazette of the RS, 61/2020.

of social compensation for endured (everyday) troubles resulting from the initial shutdown of public life. However, the predominant aim of the benefit might have been for the government to collect additional political points at the then still possible early elections.

The same applies to the one-off solidarity benefit for students receiving EUR 150 with not even a simplified means test put in place by the legislator. Even if the provision of emergency social protection benefits cannot be subject to complex administrative proceedings due to the great need for their timely provision, it is difficult to recognize relevant time constrains concerning the provision of such benefits to students. Like economically inactive retirees, students in general did not experience a loss of income nor did they incur relevant additional life costs during the first period of the epidemic. They might even have saved on transport and housing-related costs, since lectures were predominately held online. Even so, parliament granted universal benefits to all regular students resident in Slovenia, regardless of their place of study and related subsistence costs, income and property of their economically active family members, etc. To make matters worse, no much-needed income replacement benefits were granted to numerous students performing student work on grounds of a special civil law relationship for their clients in virtually all sectors of the economy.[31] The widespread phenomena of highly flexible and precarious student work, commonly used as a cover-up for actual employment relationships, commonly represents the only or vital source of income for students who then, during the initial shutdown of public life and most parts of the service industry, lost all of their income and, whenever not able to fall back on family assistance, began to fear poverty and social exclusion. Conversely, all private sector employees (i.e. standard workers), whose last salary did not reach the amount of three minimum salaries, received additional income in the form of a special, tax-free crisis allowance in the amount of EUR 200 on grounds of Article 33 ZIUZEOP. A special crisis allowance provided on behalf of the general state budget was granted to persons employed with disability companies and employment centres as well.

31 Student work represents a special form of temporary and part-time employment in which students (both university as well as high school students) perform work through student employment agencies for their clients. Its goal is to allow students to gain additional income and work-related experiences during their active studies within a work environment that is very flexible both for them and their clients. In reality, however, students commonly carry out student work within disguised employment relationships and even under fictitious student statuses.

The abovementioned one-off solidarity benefits were also included in the seventh ACLP (ZIUPOPDVE), during the second period of the epidemic with its circle of beneficiaries spreading even further (e.g. for full-age secondary students, long-term unemployed persons who lost employment during the epidemic) with the eight ACLP of February 2021.[32] ZIUPOPDVE also introduced one-off solidarity benefits for children up to the age of 18 in the amount of EUR 50, paid either on grounds of a claim or *ex officio* for recipients of childcare allowances, whilst raising the latter to EUR 100 per child during every month of a declared epidemic. Article 96 ZIUPOPDVE also granted one-off solidarity benefits for holders of farms and farming community members older than 65 and earning less than EUR 591.20 per month who were not entitled to receive the said benefit on grounds of a retirement status. Article 96(1) ZIUPOPDVE explicitly referred to the benefit's aim of enhancing the socio-economic position of its low-income and old-age recipients, most challenged by the dangers of the epidemic. Since a rational social (law) aim of the mixed benefit is once again rather hard to find, one cannot help but think of a link between the archetypical voter of Slovenia's major political party according to age, place of residency and obtained level of education, and the most common recipient of the discussed one-off solidarity benefit.

Similarly, the seventh ACLP did not, for example, increase the one-off childbirth assistance benefit, paid in the amount of EUR 350 to all parents resident in Slovenia,[33] but rather introduced an additional solidarity benefit for new-born children in the amount of EUR 500 if the child was born between 1 January 2020 and a year after the epidemic – as if the costs of buying childcare equipment, etc., had almost tripled during the year of ongoing emergency. Similarly, the first ACLP enacted a higher large family supplement.

It seems as if the government and parliament had taken the opportunity offered by the epidemic to splash cash at the electorate body, not minding the lack of targeting nor the lack of a clear social (law) aim of a number of mixed solidarity-based benefits or their long-term fiscal implications. However, if the aim of the provided benefits was to advance individual consumption, then such benefits should have been provided to the entire pop-

32 Act on Additional Measures for the Mitigation of the Consequences of COVID-19 (Zakon o dodatnih ukrepih za omilitev posledic COVID-19, ZDUOP), Official Gazette of the RS, No. 15/21 to 112/21.

33 See Article 68 of the Parental Protection and Family Benefits Act (Zakon o starševskem varstvu in družinskih prejemkih – ZSDP-1), Official Gazette of the RS, No. 26/14 to 92/21.

ulation under state aid and not social law provisions. Even more so since additional income obtained by vulnerable groups of persons might only cover their basic needs or needs of the family, which should have been met by sufficient social security measures (e.g. pensions, unemployment benefits) or social assistance measures (e.g. monetary social assistance, state scholarships), whilst not allowing for beneficiaries' or consumers' wants, wishes or desires to be fulfilled in the market. Concerning one-off solidarity payments for children and students and the increase in particular family benefits[34] mostly seems sensible only when considering the fact that additional life costs did arise from the epidemic in the field of education with the introduction of e-learning. The large family supplement was, for instance, increased by EUR 100 for families with 3 and EUR 200 for families with 4 and more children by ZIUPOPDVE.

b) Healthcare and Health Insurance

During the first period of the epidemic, the majority of non-urgent medical services were suspended by governmental decree[35] both within the public healthcare network as well as with private providers excluded from the public network.[36] The aim of the suspension was, on the one hand, to fight a more effective battle against the disease, with additional capacities, staff, medical equipment, etc., earmarked for COVID-19 patients and, on the other hand, to prevent additional spread of the disease within the premises of healthcare providers and through potentially infected healthcare professionals. In a broader sense, any suspension or deferral of (all non-urgent) medical services could be considered a form of triage, since it determined the priority of competing patients in accessing particular medical treatment. Even more so, only potential and yet unidentified COVID-19-related patients were in a sense given general priority over actual, non-COVID-19-related patients.

The suspension of medical services (and the right to health, the right to equal access to healthcare, the right to appropriate, quality and safe

34 Different ACLPs also waived kindergarten payments.

35 Ordinance on temporary measures in healthcare to contain and control the COVID-19 epidemic (Odlok o začasnih ukrepih na področju zdravstvene dejavnosti zaradi zajezitve in obvladovanja epidemije COVID-19), Official Gazette of the RS, No. 40/20 65/20.

36 If only public medical services had been suspended, access to healthcare would have become dependent on one's socio-economic status.

medical treatment, etc.)[37] represented an obvious example of how patients' rights may face limitations on grounds of public health and public safety legislation or for the sake of protecting the rights of others. It also represented an obvious example of how constitutionally guaranteed human rights and basic freedoms may face limitations on grounds of a legitimate, valid reason, such as public health protection, if meeting other criteria of the proportionality test. At the same time, mandatorily insured persons experienced a suspension of their health benefits in kind, which should have been provided within a two-sided social insurance relationship in which social security contributions were paid. The suspension of some and the increase of other medical programmes might also lead to complex reimbursement or compensation claims between medical providers and the HIIS.[38] During the second period of the epidemic, no general suspension of medical services occurred, with more organisational autonomy posed on hospitals rather than the Ministry of Health or the government.

As a precautionary measure concerning the spread of the disease on the one hand and as a measure aimed at decreasing the workload of general practitioners on the other, the fifth ACLP (ZZUOOP), for example, enabled employees to remain absent from work on grounds of sickness without having to showcase a certificate of ill health provided by their personal physician. Article 20 ZZUOOP granted three consecutive days of sick leave under the said conditions per calendar year.[39] Unlike general sickness benefits in cash, the costs of which are borne by the employer during the first 30 days of work absence, the costs of such short-term absences were taken on by the HIIS, with the latter receiving reimbursements of those costs from the general state budget. Hence, it was a *de facto* measure to disburden employers, not employees as patients.

Additionally, parliament or government enacted several administrative simplifications concerning access to benefits. Personal physicians, for ex-

37 See Patients' Rights Act (Zakon o pacientovih pravicah, ZPacP), Official Gazette of the RS, No. 15/08 to 177/20.

38 For an in-depth discussion of the said suspension, its reference to (medical) triage and the possibility to claim benefits in kind abroad due to increased waiting periods in Slovenia see L. Mišič, G. Strban, Regulation of Triage in Times of a Pandemic: Experiences from Slovenia (and Beyond), in: MLS 14 (2021) 2, pp. 199 ff.

39 ZIUOPDVE also facilitated reporting procedures between employers and the labour inspection concerning at-home work. During the (declared) epidemic, employers commonly relied on Article 169 ZDR, which allows for a one-sided imposition of at-home work in cases of natural and other disasters or other emergency situations in which the life, health or the employer's property is endangered.

ample, received authorisation to decide on longer sick leaves, and both HIIS-appointed physicians and medical committees received authorisation to decide solely on grounds of documentation without conducting in-person verification, etc. Administrative simplifications were also put in place concerning decisions on spa treatment, sanitary transport, and the use of medical appliances,[40] whilst the expiration of deadlines for the initial claim concerning the protection of patients' rights was suspended.[41]

Another important challenge introduced by the epidemic relates to the differentiation between cases of sickness and injury as private social risks and cases of accidents at work and occupational diseases following from a COVID-19 infection. As for example highlighted by the Health and Social Carers' Union of Slovenia,[42] several employers in the field deemed any absence from work resulting from a confirmed COVID-19 infection as absence on grounds of a private contingency. Generally, numerous employers suggested that a COVID-19 infection could not have occurred at the workplace due to the imposition of strict health and safety measures concerning the said disease.[43] Following such reasoning, it could only have its source in the employees' private sphere or come as a result from employees' health and safety violations, e.g. during work breaks. Interestingly, COVID-19 is not treated as an occupational disease, since it does not develop through a longer time period but, according to the accident-at-work definition stipulated by Article 66 of the Pension and Disability Insurance Act (ZPIZ-2),[44] results from an almost instantaneous exposure to the virus. From this perspective, it resembles an instantly occurring in-

40 See Letno poročilo ZZZS 2020, pp. 25-26.

41 See Article 96 ZIUOPDVE and Article 59 ZPacP.

42 Sindikat zdravstva in socialnega skrbstva poziva k priznavanju okužbe Covid-19 na delovnem mestu kot poškodbe pri delu.

43 Another important question concerning health and safety measures was the question whether it should be employers or employees who pay for COVID-19 tests after testing has been made compulsory within the great majority of sectors. Since no health- and safety-related costs may come at the expense of employees, it is up to the employers to finance regular work-related COVID-19 tests. See Article 14 of the Health and Safety at Work Act (Zakon o varnosti in zdravju pri delu, ZVZD-1), Official Gazette of the RS, No. 43/11. However, the Ordinance on the temporary measures for the prevention and control of the infectious disease COVID-19 (Odlok o začasnih ukrepih za preprečevanje in obvladovanje okužb z nalezljivo boleznijo COVID-19), Official Gazette of the RS, No. 174/21 to 201/21, allowed for the reimbursement of test-related costs from the general budget. The tenth ACLP afforded financial support for purchasing quick antigen tests.

44 Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-2), Official Gazette of the RS, No. 96/12 to 196/21.

jury. According to Article 31 ZZVZZ, cash benefits concerning accidents at work and occupational diseases amount to 100% of the calculation base, whilst benefits concerning sickness and injury amount to between 90% and 70% of the calculation base, depending on the type of contingency and the period of the benefit's provision. As aforementioned, the costs of the benefit are borne by the employer during the first 30 days. Article 137 ZDR also limits the employers' provision of income replacement benefits concerning sickness and injury to a maximum duration of 120 days in a calendar year. No such limitation is posed when occupational disease and accidents at work are involved, making the provision of such benefits more expensive for the provider. Additionally, even if not exercised in practice, ZZVZZ allows for the imposition of a higher contribution burden for employers showcasing above-average numbers concerning cases of occupational diseases and accidents at work. However, ZIUPOPDVE somewhat resolved the situation by introducing reimbursement benefits for employers paying out income replacement benefits on grounds of Article 31 ZZVZZ and Article 137 ZDR. According to Article 46 ZIUPOPDVE, the general state budget took up the costs resulting from the difference in the amount of cash benefits paid on grounds of sickness and on grounds of occupational disease. Whenever an employee got infected and there existed great probability that the infection had its source in the workplace, the employer paid out the income replacement benefit in the amount of 100% of the calculation base under the rules governing the provision of benefits concerning accidents at work, whilst receiving the said reimbursement from the state as if it was a case of (private) sickness. The reimbursement mechanism, administered by the HIIS and financed by the state, remained in force until 31 December 2021 and was limited to the health and social services sector and cases in which health and safety regulations were fully respected. Interestingly, during the first period of the epidemic, all income replacement benefits paid on grounds of Article 137 ZDR were covered by the HIIS from day one onwards, with the social insurance carrier receiving compensation from the general state budget for this state aid measure aimed at supporting the economy. The measure was in force only until the end of May 2020.

During the epidemic, the general state budget also began to co-finance mandatory health insurance or directly took on particular healthcare costs stemming from the epidemic, an act commonly omitted by parliament since ZZVZZ does not provide a statutory basis for the state obligation of co-financing the insurance scheme, even if such obligation can be derived directly from Article 50 of the Constitution (The Right to Social Security). According to the Constitution, the state does not only possess a constitu-

tional obligation of organising a variety of social insurance schemes but also has to secure their proper functioning.

Next to the already discussed reimbursements concerning employers' costs emerging from COVID-19 infections as accidents at work, the general state budget covered the majority of costs of unrealised health programmes, agreed upon through the general agreement in healthcare of 2019, covered the majority of costs emerging from health programme adjustments of individual healthcare providers due to the influx of COVID-19 patients, material costs related to the prevention of the spread of the disease within healthcare providers' premises, and, for example, published a tender for additional financial resources earmarked for the reduction of COVID-19-enhanced waiting periods in the public healthcare network. Additionally, the general state budget financed COVID-19-related drugs, patient transport fees, parents' cohabitation concerning hospitalised children, telemedicine, microbiological analysis, and, least but not least, voluntary influenza and COVID-19 vaccination programmes. Most measures remained in force until 31 December 2021, with the HIIS acting as an administrative agent for state-financed measures.[45] In addition, some healthcare providers, especially hospitals, might even have benefited financially or recovered from previous financial turmoil during the COVID-19 epidemic due to the rather high prices imposed on the HIIS for the treatment of COVID-19 patients.

d) Facilitated Access to Unemployment Benefits

In the field of unemployment, the legislator eased the conditions for the receipt of unemployment benefits for persons who became unemployed during the pandemic. The Slovenian labour market namely experienced a surge in number of cases of registered unemployment in April 2020, soon after the epidemic was declared, when more than 11,000 persons became unemployed in a month's time. Soon after, the numbers steadied at around 86,000 unemployed persons, reaching the ceiling in January 2021 with 91,449 unemployed persons. After January, the numbers plummeted, with only 65,379 unemployed persons registered in November 2021.[46] The rather low level of registered unemployment (75,074 as a yearly average in

45 For a full overview of measures see Letno poročilo ZZZS 2020, pp. 23 ff. See also p. 124.

46 See Gibanje registrirane brezposelnosti med 2017 in 2021.

2021), which is currently one of the lowest in Slovenian history, can on the one hand be ascribed to the (at least short-term) successful job retention measures introduced by parliament, and, on the other hand, to the fact that Slovenian society experienced very lenient restriction measures after the first and second period of the epidemic in spring and late autumn and winter during the transition from 2020 to 2021. The full functioning of the economy, coupled with almost unlimited consumers' access to the market, however seems to have taken its toll in terms of deaths.

Due to the fear of rising unemployment, parliament enacted several measures making unemployment benefits easily available. ZIUZEOP, the first ACLP, introduced a special temporary unemployment benefit available to unemployed persons who did not meet the minimum criteria for the receipt of standard unemployment benefits. Unlike the Market Regulation Act (ZUTD),[47] which stipulates a minimum insurance period of 10 months within 24 months prior to unemployment or 6 months of insurance records for employees or self-employed persons under the age of 30, Article 61.a ZIUZEOP allowed for the receipt of the benefit on the sole condition of losing employment after 13 March 2020, either on grounds of a business reason or due to the expiration of a fixed-term employment contract.

According to ZIUZEOP, a single day of prior insurance was enough to claim temporary unemployment benefits in the amount of EUR 513.64. Due to the standardised amount of the benefit, the latter, like several other social benefits enacted on grounds of emergency legislation, is of a mixed legal nature. On the one hand, it mirrors the idea behind traditional (income replacement) unemployment benefits whilst on the other hand, even if lacking a means test, it resembles traditional social assistance benefits, financed by taxation and paid within a one-sided social relationship between the beneficiary and the state. The beneficiary was also mandatorily insured in all branches of social insurance, as if he was a recipient of the unemployment benefit on grounds of ZUTD.

The measure was also included in the seventh ACLP (ZIUPOPDVE),[48] providing temporary unemployment benefits to persons losing employment after 18 October 2020, during the second period of the epidemic. In-

47 Zakon o urejanju trga dela (ZUTD), Official Gazette of the RS, No. 80/10 to 172/21.

48 Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic (Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije COVID-19), Official Gazette of the RS, No. 203/20 to 112/21.

terestingly, Article 97 ZIUPOPDVE entitled recipients to the benefit in the standardised amount of EUR 513.64 *gross*, an important characteristic obviously missed by the legislator in ZIUZEOP, whilst explicitly limiting the period of provision according to the duration of the declared epidemic. The relationship between the first and the seventh ACLP concerning entitlement to a temporary unemployment benefit clearly indicates how some nomotechnical and possibly substantive legislative errors of emergency legislation were eliminated on an ongoing basis.

Unemployment-related measures were also included in ZIUOPDVE, the sixth ACLP,[49] which for example amended the definition of *satisfactory employment* from the ZUTD and allowed for the latter to be offered to unemployed persons straight after their registration with the unemployment offices. Under the general rules, *suitable employment*, for example one that matches a person's type and level of education, has to be offered first. The measure had a clear aim of preventing a rise in unemployment. ZIUOPDVE also enacted the suspension of unemployment benefits for unemployed persons taking up fixed-term employment in order to substitute for absent employees concerning activities necessary for the containment of the epidemic.

During times of a public health emergency, we were also able to witness a peculiar amendment to the ZUTD passed with the enactment of the Act Amending the Organisation and Work of the Police Act.[50] After the amendment, unemployed persons who are members of the auxiliary police force receive unemployment benefits also during the period of police training or when they perform actual police work. Prior to the said amendment, the provision of unemployment benefits, which now enhance (short-term only) the socio-economic status of unemployed auxiliary police staff while on duty, was suspended during such periods in order for them to receive benefits only when they are actually able to seek employment.

49 Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev posledic drugega vala epidemije COVID-19, ZIUOPDVE), Official Gazette of the RS, No. 175/20 to 112/21.

50 Zakon o spremembah in dopolnitvah Zakona o organiziranosti in delu v policiji (ZODPol-G), Official Gazette of the RS, No. 172/21.

5. Conclusion: From Epidemic to Pandemic

By now, parliament has already passed the tenth ACLP,[51] this time worth around EUR 250 million. ZDUPŠOP reintroduced several one-off solidarity benefits and prolonged the provision of financially enhanced benefits in different fields of social security. Importantly, the act also introduced compensations for COVID-19 vaccine-related health impairments, even if COVID-19 vaccination is not mandatory, as well as health impairments stemming from the use of COVID-19 drugs with a temporary authorisation for use. The general rules of the ZNB namely provide only for a social compensation scheme concerning health impairments resulting from mandatory vaccination. Hopefully, the compensation scheme will encourage more persons to get vaccinated.

So far, ten ACLPs have formed an endless web of measures in different fields of social protection as well as support measures for the economy. Some are clearly targeted and possess a legitimate social (law) aim, whilst other are more of a broader social policy nature, with some reminiscent of pure politics. It seems as if parliament and government followed the constitutional obligation of adapting the law to changed societal relations in a way as to, on the one hand, limit and mitigate the negative effects of the epidemic in different areas of both public and private life, whilst seizing the opportunity of a public health emergency to gain additional political support from distinct groups among the Slovenian society. With ZDUPŠOP, parliament for example increased the highest pay grade for doctors and dentists. Such increase was not afforded to any other group of civil servants and public employees also working face-to-face with public service users during the epidemic. The measure clearly represents an improvised but likely irreversible increase in (senior) medical doctors' salaries, agreed upon without any social dialogue concerning other professional groups included in the uniform public salary system, not even nurses or other healthcare professionals (whose salaries were however also recently increased).

Next to a stack of consecutive one-off solidarity payments, the general legislator also took other bold but ill-considered steps in the field of social law. Even if bound by ILO Convention No. 158, parliament introduced a new cause for dismissal through which an employer could completely arbitrarily and one-sidedly – without a valid business or other genuine

51 Zakon o dodatnih ukrepih za preprečevanje širjenja, omilitev, obvladovanje, okrevanje in odpravo posledic COVID-19 (ZDUPŠOP), EPA: 2297 – VIII.

reason – terminate a contract of employment if the worker fulfilled old-age retirement criteria. The aim of the measure, first suspended, then revoked by the Constitutional Court,[52] was, on the one hand, to offer a more flexible employment environment to the economy, whilst, on the other hand, furthering the employment of younger persons. The government proposed the said measure even though Slovenia is showcasing low levels of employment among the elderly population and without even making employment of a junior employee mandatory after an older employee has been dismissed.

Despite increased public spending due to the epidemic, the government also proposed the imposition of a "social cap" on high wages (more precisely, an upper limit posed on social security contribution payment obligations), a dream come true for representatives of the economy that would relieve high earners and their employers from contributory obligations after a certain amount of personal income from employment has been obtained, thus reshaping the well-established notion of vertical solidarity within different social insurance groups. Needless to say, the increased amount of high-earners' disposable income could offer additional income to private insurance providers, both in the field of healthcare and life insurances.

Additionally, the proposed enactment of a limited contributory base, later withdrawn by the government, coincided with the passing of the Long Term Care Act (ZDOsk),[53] a vital piece of legislation in the field of social security that was proposed and publicly discussed amidst a health crisis, and that will require additional and, as a rule, independent public sources of financing once in force, sources which the current government did not propose, nor parliament did enact. Finally, parliament also passed an amendment to ZUTD, which substantially increased the maximum amount of unemployment benefits (by almost EUR 1,000) for Slovene-resident cross-border workers – high earners, commonly employed in Austria and Italy – at the sole expense of the Member State (hereinafter: MS) of last employment.[54]

Concerning Article 50 of the Constitution (Right to Social Security) and its associated basic social rights, parliament possesses a "legislative reservation" or a margin of appreciation in relation to the constitutional

52 Decision of the Constitutional Court of the RS, No. U-I-16/21 of 18 November 2021.

53 Zakon o dolgotrajni oskrbi, ZDOsk, Official Gazette of the RS, No. 196/21.

54 See European Law Blog of 7 April 2021.

provisions whenever passing legislation in the social field. As a general rule, this applies to a variety of positive rights as well as taxation. In a way, the margin of appreciation should apply even more to cases of ACLPs passed by parliament, since the latter has to rapidly adapt the law to the ever-changing societal conditions. However, even then both the general legislator and the government should not only adhere to key constitutional standards such as the rule of law principle but should also enact targeted and substantiated measures with a clear social aim.

Importantly, the epidemic was and remains a (global) pandemic. It thus also put to the test the cooperation among Member States of the European Union (hereinafter: the EU) in the field of healthcare. Regulations on the coordination of social security systems, first substantive regulations ever passed,[55] namely establish a legally binding cooperation mechanism among MS' public healthcare systems, established and operating either in the form of a (de)centralised national health service or in the form of a social health insurance scheme. The question is, for example, whether an insured person from one MS could be vaccinated against COVID-19 or be treated as a COVID-19 patient in another MS, e.g. if no resources were available in the MS of insurance.[56]

Since the EU social security coordination mechanism only links national social security systems for persons who move within the EU, the reply has to be sought for in the national legislation of distinct MSs. Hence, if COVID-19 vaccination (considered as preventive healthcare) and the medical treatment of COVID-19 patients (both benefits in kind in the terms of the Coordination Regulations) are part of the public healthcare system of a given MS, they are also subject to and within the material scope of the social security coordination mechanism. In some MSs, holders of PD S1 are entitled to such benefits in kind. However, things might become complicated with holders of the European Health Insurance Card (EHIC). In some MSs, their entitlement to benefits namely depends on the medical necessity and the foreseen duration of the stay in the host MS, e.g. fewer benefits in kind are provided for short-term tourists and more for students or, for example, seasonal workers. Additionally, in several MSs, one's (legal

55 See Regulations 3 and 4 from 1958. Today, Regulations (EC) 883/2004 and (EC) 987/2009 are in force. G. Strban, Social Rights of Migrants in the European Union, in: Regional Aspects of Integration: European Union and Eurasian Space : Monograph / K. Malfliet, A. И. Абдуллин, Г. Р. Шайхутдинова [и др.] ; отв. ред. Р. Ш. Давлеттильдеев, Statut, Moscow 2019, p. 73.

56 Compare with the CJEU decision in C-268/13 - Petru, EU:C:2014:2271.

or habitual) residence might be the decisive factor. Some MSs are also inclined to demand cost reimbursement from the MS of insurance.[57]

However, many MSs consider COVID-19 vaccination and the treatment of COVID-19 patients as a (national) public health concern. In this case, it is also a general state's concern, thus financed out of general budget rather than included among the benefits provided within a social health insurance scheme.[58] Then, benefits are to be considered mostly as a social compensation in their legal nature, rather than a traditional social insurance benefit in kind. Social compensations are also explicitly excluded from the material scope of coverage of the social security Coordination Regulations.[59] In such cases, a bilateral agreement would have to be concluded among the respective MSs in order to enable COVID-19 vaccination or the treatment of COVID-19 patients in another MS. Even so, other (non-COVID-19) patients might be affected by any focus posed on COVID-19 patients only, since many (non-urgent) programmes have been put on hold in order to deal with the immediate health threats of the epidemic. If waiting periods should become too long, limiting access to equal or equally effective benefits in kind in due time in the home MS, prior authorisation according to the social security Coordination Regulations would have to be provided and treatment in another MS enabled.[60]

Similar questions arise in respect to the Cross Border Healthcare Directive.[61] Also under the said legal act, the national organisation of healthcare might be relevant. However, the Directive explicitly excludes "public vaccination programmes against infectious diseases which are exclusively aimed at protecting the health of the population on the territory of a Member State and which are subject to specific planning and implementation measures."[62] This provision could also apply to COVID-19 vaccination programmes. Moreover, the treatment of COVID-19 patients is, as a rule, provided in the form of hospital treatment and some MSs might require

57 See the replies to the questionnaire of the Administrative Commission for the Coordination of Social Security Systems (AC 240/21, from October 2021).

58 Ibid.

59 See Article 3(5)(b) Regulation (EC) 883/2004 in which social compensation benefits are listed in an exemplifying manner only (and not exclusively).

60 See also L. Mišič, G. Strban, Functional and Systemic Impacts of COVID-19 on European Social Law and Social Policy, in: E. Hondius (et al.) (eds.), Coronavirus and the Law in Europe, Intersentia, Cambridge, Antwerp, Chicago 2021, pp. 984 ff.

61 See Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011.

62 Article 1(3)(c) Directive 2011/24/EU.

prior authorisation, similar to the one required under the Coordination Regulations.[63]

Once this national epidemic and the global pandemic are over, the World will never be the same again. The same applies to the way we perceive and carry out work, the way we perceive public healthcare systems or, in general, the way we perceive different measures in the field of social protection that proved vital during different periods of the public health emergency. We can only hope that all will change for the better and not only for the select few, but for society (national and European) at large. It goes without saying that the pandemic has proved that more cooperation (within the EU and globally) is required to successfully deal with common challenges posed to humanity.

63 On the distinctions of possible justification concerning prior authorisation under both instruments see the CJEU decision in C-243/19 – Veselības ministrija, EU:C:2020:872.