

Addressing the Social Issues of Widows and Widowers Through the Institute of a Guaranteed Widow's Pension

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ABSTRACT

The article deals with the question of the adequacy of reintroducing a guaranteed widow's pension into pension legislation to address the social issues faced by widows and widowers. It answers questions regarding the rules for calculating widow's pensions, the main differences between two different social security systems (insurance system and social protection system), the development of the guaranteed widow's pension institute through the legislation of independent Slovenia, and the current system in place today. During the legislative process of adopting the amendment ZPIZ-2N, the original draft of the law was slightly supplemented and modified, which is seen as positive as it better follows the principle of proportionality and prevents situations where a widow or widower would receive a higher amount than the combined pensions of both partners. Despite this, the article notes that it would be better to raise all widow's pensions to maintain the insurance principle, as this would also increase the amounts of the part of the widow's pensions. Finally, the article highlights that future interventions in the existing system must ensure that legislative changes consider the contributions paid by the insured into the pension fund and that social adjustments in social insurance are permissible but should not disrupt the balance among retirees.

Keywords: calculation of widow's pension, guaranteed widow's pension, death insurance, social security systems, changes in pension legislation

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Reševanje socialne problematike vdov in vdovcev skozi institut zagotovljene vdovske pokojnine

POVZETEK

Članek se ukvarja z vprašanjem ustreznosti ponovne uvedbe zagotovljene vdovske pokojnine v pokojninsko zakonodajo z namenom reševanja socialne problematike vdov in vdovcev. Članek odgovarja na vprašanja, kakšna so pravila za odmero vdovske pokojnine, kakšne so glavne razlike med dvema različnima sistemoma socialne varnosti (zavarovalni sistem in sistem socialnega varstva), kakšen je bil razvoj instituta zagotovljene vdovske pokojnine skozi zakonodajo samostojne Slovenije in kakšen sistem imamo danes. Med zakonodajnim postopkom sprejemanja novele ZPIZ-2N je bil prvotni predlog zakona nekoliko dopolnjen in spremenjen, kar se označuje za pozitivno, saj se bolj sledi načelu sorazmernosti in preprečuje situacije, ko bi vdovec ali vdova prejela višji znesek, kot sta ga imela oba partnerja skupaj. Kljub temu članek opozarja, da bi bilo za ohranjanje zavarovalnega principa bolje, da bi se dvigovale vse vdovske pokojnine, tako pa bi se dvigovali tudi zneski dela vdovske pokojnine. Članek na koncu opozori še na to, da bo treba pri prihodnjih posegih v obstoječ sistem paziti, da bodo spremembe zakonodaje upoštevale višino vplačil zavarovancev v pokojninsko blagajno ter da so socialni korektivi v socialnih zavarovanjih sicer res dopustni, vendar ne smejo rušiti razmerij med upokojenci.

Ključne besede: odmera vdovske pokojnine, zagotovljena vdovska pokojnina, zavarovanje za primer smrti, sistemi socialne varnosti, spremembe pokojninske zakonodaje

1. Introduction

Statistical data indicates that recipients of widow's pensions are one of the most socially vulnerable groups of the population, as last year the average monthly gross widow's and family pension amounted to only 502.84 euros. The vast majority of widow's pension recipients are female, with 96.3 percent of recipients

being women and only 3.7 percent being men in 2023 (Letno poročilo 2023, 2024, pp. 11, 21).

Given this situation, the legislator decided to address the social issues of widows and widowers through the institute of a guaranteed widow's pension, which serves as an additional social corrective in the pension legislation alongside the existing measures. The proposed law particularly emphasizes addressing poverty among older women, who, for various reasons (for example shorter presence in the labor market, lower work-related income, motherhood and related absences, resulting in fewer advancement opportunities, longer life expectancy compared to men, more favorable retirement conditions), receive low pensions (Besedilo Predloga zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju, 2023, pp. 4, 30).

The research question we will attempt to answer is: Is it appropriate for the legislator to address poverty through the introduction of the guaranteed widow's pension? The article will be divided into four chapters: first, we will review how the widow's pension is calculated, followed by an overview of the two different social security systems, next, we will examine whether the reintroduction of the guaranteed widow's pension was appropriate, and finally, we will present concluding findings.

2. Calculation of Widow's Pension

2.1. Basic Rules for Calculating Widow's Pension

The widow's pension is calculated based on the base for calculating the widow's pension. This base consists of the pension amount the recipient was entitled to at the time of death, the pension or proportional part of the pension determined by international agreements to which the pension recipient was entitled at the time of death, the old-age or disability pension to which the insured person, recipient of a partial pension or beneficiary of disability rights under compulsory insurance would have been entitled considering the cause of death. For calculating the base, the provisions of ZPIZ-2 regarding the minimum and maximum pension bases are considered. The minimum base for calculation is a pension determined to be at least 38% of the pension base (ZPIZ-2, Article 60).

Two changes were introduced by the amendments ZPIZ-2I and ZPIZ-2M. The first amendment removed the provision that guaranteed pensions were not considered as a base for calculating the widow's pension, a rule that applied only to cases from May 1, 2021, onwards (ZPIZ-2I, Article 2). The second amendment established that recalculations would be performed *ex officio* for cases before the specified date (ZPIZ-2M, Article 5). Both apply only to cases where the deceased was or would have been entitled to this amount.

Under ZPIZ-2, widows and widowers have the option to choose between a widow's pension, calculated at 70% of the aforementioned base, and a part of the widow's pension, which amounts to 15% of the widow's pension and is granted in addition to their old-age, early retirement, or disability pension (ZPIZ-2, Article 61, Paragraphs 1, 3). The part of the widow's pension represents an exception to the principle that persons can choose the pension they receive (ZPIZ-2, Article 61, Paragraph 2), as it allows them to receive their own pension along with a part of the widow's pension. The amount of the part of the widow's pension and the total payment of their own pension plus the part of the widow's pension are subject to upper limits. Specifically, the part of the widow's pension can be a maximum of 11.7 percent of the minimum pension base, and the total payment of their own pension plus the part of the widow's pension cannot exceed the pension amount for a man at retirement age, based on the highest pension base for a 40-year service period (ZPIZ-2, Article 61, Paragraphs 3, 4).

2.2. Change Introduced by the ZPIZ-2N Amendment

The ZPIZ-2N amendment to the Pension and Disability Insurance Act introduced provisions for the guaranteed widow's pension, which is available to those widows and widowers who meet the conditions for both a widow's pension and their own pension (which could be an old-age, early retirement, or disability pension). The total amount of both pensions is capped such that the sum of the individual's own pension and the base for calculating the widow's pension must not exceed the amount of the guaranteed old-age pension (ZPIZ-2, Article 39, Paragraph 6), which, as of January 1, 2024, is 748.27 euros.

2.2.1. Initial Draft of the Legislative Text

The initial draft of the law proposed adding a new sixth paragraph to Article 39 of ZPIZ-2: »To a widow or widower who has, in addition to the right to a widow's pension, the right to an old-age, early retirement, or disability pension under the provisions of this law, the guaranteed widow's pension is guaranteed at the amount of the guaranteed pension as of January 1, 2024.« It also included a new seventh paragraph concerning the proportional calculation of the widow's pension based on the deceased's rights under international agreements (Besedilo Predloga zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju, 2023, p. 19).

During the legislative process, it was noted that implementing this institute requires attention to proportionality in two cases: first, when the total amount (the sum of the individual's old-age, early retirement, or disability pension and the widow's pension) is not as high as the guaranteed old-age pension; and second, when the widow or widower also receives benefits from abroad (Sklep 11. seje Sveta Zavoda za pokojninsko in invalidsko zavarovanje Slovenije, 2023, p. 1-2; Pripombe k Predlogu zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju, 2023, pp. 1-3).

2.2.2. Adopted Draft of the Legislative Text

In response to the concerns raised, the new draft of the sixth paragraph was proposed as follows: »Notwithstanding the provisions of this law governing the calculation and payment of early retirement, old-age, disability, and widow's pensions, a widow or widower who has claimed the right to a pension under this law and meets the conditions for obtaining both a widow's pension and an old-age, early retirement, or disability pension receives guaranteed widow's pension /.../ in the amount of the sum of the old-age, early retirement, or disability pension and the base for calculating the widow's pension from the first paragraph of Article 60 of this law, but not exceeding the amount of the guaranteed pension. /.../. The seventh paragraph specified that the sum also includes any amount received by the widow or widower from abroad (Besedilo Predloga zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju

- tretja obravnava, 2023, p. 3). Both provisions were adopted by the legislator and are effective from January 1, 2024 (ZPIZ-2, Article 39, Paragraphs 6, 7).

3. Differentiation of Systems

3.1. Right to Social Security

In Slovenia, the right to social security enjoys the highest level of legal protection, as the Constitution of the Republic of Slovenia mandates that the legislator establishes by law the right to a pension, which falls under one of the mandatory social insurance schemes (the Constitution also provides a basis for other types of insurance (URS, Article 50)). Although the Constitution of the Republic of Slovenia refers to social insurance, Article 50 must be interpreted more broadly, encompassing benefits not covered by contributions from insured individuals. Generally, benefits in insurance systems are financed from the fund where contributions from insured persons are collected, but this article also includes benefits fully financed by the state due to individual hardship, such as social assistance and protection allowance (Letnar Černič, 2019).

Social security law covers various social risks (including for example old age, unemployment, pregnancy, death) that individuals face at different stages of their lives and which impact their financial situation, specifically their income for survival. As people age and their ability to work decreases over time, the state ensures through pension insurance that individuals who meet the legal requirements (typically related to periods of service and age) receive a pension. This is because, although they are no longer capable of working, they still need a certain income to sustain themselves (Cvetko, Kalčič, Pogačar, 2009, p. 36).

3.2. Social Insurance Systems vs. Social Protection Systems

We must differentiate between two systems that guarantee individuals different types of rights. The pension system in Slovenia falls under social insurance systems, meaning that the benefits derived from it are linked to contributions deducted from an individual's income during his working life. Although the primary

principle is insurance-based, it can be supplemented with elements of solidarity, which provide individuals with very low or very high incomes with pensions that are higher or lower than what they would otherwise be entitled to based on their actual circumstances (ZPIZ-2, Articles 1, 2).

For individuals who find themselves in financial hardship and require assistance, the social protection system takes over. This system is not based on contributions but on the individual's social need (ZSVarPre, Article 2).

3.3. Jurisprudence of the Constitutional Court of the Republic of Slovenia

From the jurisprudence of the Constitutional Court, three essential categories attributed to the pension system in Slovenia can be identified: the property category, the social category, and the intergenerational category.

Regarding the property category, the Constitutional Court emphasizes in its rulings that a pension is an economic category based on work. This means that the insured person's work forms the basis for determining the contribution amount during his active period and for calculating his rights during the passive period. Therefore, if an individual meets at least the legally specified minimums for retirement (minimum age and duration of contributions), he can request that his pension right be recognized, and it will be calculated based on the duration and amount of his contributions to the pension fund (USRS, Decision Up-360/05, October 2, 2008; USRS Decision, U-I-358/04, October 19, 2006). The Constitutional Court highlights the importance of maintaining the standard of living that an individual was accustomed to. If he had low wages, his pension will be accordingly low; if he had high wages, his pension will be high as well (USRS, Decision U-II-1/11, March 10, 2011).

Despite the above, a pension cannot depend solely on contributions; the principles of mutuality and solidarity, thus forming the social category, play a significant role in the system. The fundamental guiding principle is the insurance principle, but the pension insurance system cannot be based solely on individual contributions. Therefore, the insurance principle is adjusted with various social correctives, ensuring the insured person receives a

higher or lower pension than he would based solely on his actual payments. An example of a higher pension than what would be based on actual payments is the calculation of a pension from the minimum pension base and the guaranteed pension, as social security must also be provided to people with lower incomes. An example of a lower pension than what would be based on actual payments is the calculation of a pension from the maximum pension base, as individuals with very high incomes, in the name of solidarity, forgo part of their pension to ensure a social minimum (USRS, Decision U-I-36/00, December 11, 2003; USRS, Decision U-II-1/11, March 10, 2011).

The Constitutional Court, in addition to the points mentioned, also emphasizes the importance of the intergenerational category, which involves cooperation between younger and older generations. The system of collecting contributions must be organized in such a way that it considers the interests of both the already retired and the not yet retired generations. It is essential to recognize that pension expenditures are increasing and that the state must ensure the system's sustainability so that benefits are also guaranteed for future generations who will retire later (USRS, Decision U-I-303/18, September 18, 2019).

4. Reintroduction of Guaranteed Widow's Pension

4.1. Regulation in Previous Pension Legislation

Previous pension legislation in independent Slovenia, ZPIZ/92 and ZPIZ-1, already included the institute of a guaranteed widow's pension, which was not initially regulated by the new ZPIZ-2 but was reintroduced with the amendment ZPIZ-2N (ZPIZ-2, Article 39, Paragraph 6).

ZPIZ/92, which managed widow's and family pensions under the unified institute of family pension, stipulated that if a family member, in addition to the right to a family pension, was also entitled to an old-age, early, or disability pension, the family pension was to be determined at least at the level of the minimum pension for a full pensionable period (ZPIZ, Article 87, Paragraph 2).

ZPIZ-1 stipulated that in cases where a widow and widower had, in addition to the right to a widow's pension, the right

to their own pension (old-age or disability pension, as early pension was no longer regulated), they could enjoy the right they chose. In such cases, the widow's pension was to be determined at least at the level of the minimum pension for a full pensionable period valid for the last month before the implementation of this act (ZPIZ-1, Article 57, Paragraph 1, Article 123, Paragraph 3).

Protection Allowance Act repealed the existing third paragraph of Article 123 of ZPIZ-1 (ZVarDod, Article 25, Paragraph 1) and established a guaranteed widow's pension for individuals entitled to an independent old-age or disability pension in addition to an independent widow's pension, amounting to 81.6% of the minimum pension base (ZVarDod, Articles 2, 5, 12, Paragraph 6).

Under this law, the protection allowance was tied to retired persons. However, with the enactment of the Social Assistance Payments Act (effective January 1, 2012), which repealed the Protection Allowance Act (ZSVarPre, Article 77), it was no longer part of pension legislation but became part of the system aimed at individuals who cannot secure their material security on their own, due to circumstances beyond their control. This system thus applies not only to retired persons but also represents a social security right at a wider level (ZSVarPre, Article 2).

4.2. The Appropriateness of Re-regulating the Guaranteed Widow's Pension

Based on the above, the question arises whether it is appropriate to introduce into the pension system, which forms part of social insurance, an institute aimed at eliminating poverty among widows and widowers.

Widow's pension itself is already a social corrective, as it ensures that widows and widowers receive a widow's pension instead of their own pension if it is more favorable for them. They are also entitled to a widow's pension even if they are not entitled to their own pension, with the aim of continuing the income they received until the partner's death. In addition to the widow's pension, a kind of social corrective is also a part of the widow's pension that does not follow the principle that an individual should receive only one pension but receives part of

the widow's pension in addition to his own pension. Experts point out the inappropriateness of the institute of part of the widow's pension, as its justification with the payment of contributions for at least two rights or the retention of funds by the provider is not sufficient, because the system is based on the pay-as-you-go principle, which means that the active generations contribute with the aim of paying pensions to the current retirees, and they expect the same in the future (Rangus et al., 2016, pp. 131–132).

If we consider past legislative arrangements, we see that the guaranteed widow's pension has gradually been transferred from the pension system to the social protection system. It was first regulated by ZPIZ/92, followed by ZPIZ-1, and then the Protection Allowance Act. In 2012 it was excluded from the system of pension benefits regulation, and a law regulating social protection benefits began to apply. From this development, we could conclude that institutes that mean (too) large social correctives, such as also the state pension (ZPIZ-1, Article 59), do not belong in the pension system and were excluded from it for a reason.

The same is emphasised by the Legislative-Legal Service, which draws attention to respect the insurance principle, which should be based on the interdependence of contributions and benefits. The insurance principle must be considered as the primary principle, and solidarity as the secondary principle (Mnenje o Predlogu zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju (ZPIZ-2S), druga obravnava, EPA 841-IX, 2023, p. 2).

The Constitutional Court also emphasizes that pension insurance does not mean insurance for obtaining a predetermined insurance amount, but it is about replacing the loss of income from the active period of the insured person. The pension is therefore a reflection of the individual's income and is tied to the amount of contributions, while the consideration of the financial situation is essential for the social protection system, which is not financed by contributions but from the state budget (USRS, Decision U-I-303/18, September 18, 2019).

5. Conclusion

Based on all the above, we can conclude that it is good that the original draft regarding the guaranteed widow's pension was not adopted, as it would have (further) disrupted the existing relationships among retirees. The essence of the amendments to Article 4 of ZPIZ-2N was to consider the amount of the widow's or widower's own pension and the basis for calculating the widow's pension, ensuring that the widow or widower receives a combined pension, but not exceeding the amount of the guaranteed old-age pension. This is in line with the principle of proportionality in the recognition of rights and prevents situations where a widow or widower would receive a higher amount than both partners together or more than the sum of their own pension and the basis for calculating the widow's pension.

Despite the greater consideration of proportionality, we must still emphasize that in pension insurance, insurance is considered the primary principle, and solidarity the secondary. We believe that if the legislator wants to maintain the relationships among retirees, all widow's pensions should be raised. If the percentage for calculating the widow's pension is increased, the amount of the part of the widow's pension will also increase. Given the different systems mentioned above (insurance and social protection), it should also be emphasized that it would be better to address social issues within social protection systems designed for this purpose, rather than in social insurance systems, where the primary respect should be for the relationships between contributions to the system on one side and benefits from the system on the other. It should be recognized that the Slovenian pension system still fundamentally relies on insurance, and the rights should follow this. Certain social elements are permissible, but caution must be taken to what extent they are allowed.

In conclusion, it must be emphasized that in the future, care must be taken to ensure that similar individual interventions do not disrupt the existing pension allocation system. Regardless of whether there will be a comprehensive reform of the system or only individual changes in the future, the right balance of introducing solidarity elements into the new law must be found, while primarily still stemming from property rights, which solidarity

can only complement to a certain extent. We agree that a decent level of pensions (including the lowest) must be ensured, but this should be done proportionally for all retirees according to their contributions to the pension fund. If we increase the lowest pensions, we must also increase the others, as those who contributed more should receive more, and vice versa. For the poorest population, we have a social protection system that helps individuals when they do not have enough income to survive. Every intervention in the existing pension system must be carefully considered, taking into account the impact on both the already retired generations and those who will retire in the future (the system must remain sustainable). At the same time, it is necessary to keep in mind that any intervention requires a comprehensive approach to the system, and the measures must be such that the relationships among retirees are respected.

LITERATURE AND SOURCES

Besedilo Predloga zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju. (2023). Ljubljana: Vlada Republike Slovenije.

Besedilo Predloga zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju – tretja obravnava. (2023). Ljubljana: Vlada Republike Slovenije.

Cvetko, A., Kalčič, M., Pogačar, P. (2009). Pregled sistema pokojninskega in invalidskega zavarovanja: s komentarjem in sodno prakso. Maribor: De Vesta.

Letnar Černič, J. (2019). 50. člen: Opredelitev pravice in razmerje do drugih ustavnih pravic. V: Komentar Ustave Republike Slovenije / Avbelj, M. (ur.). Nova Gorica: Nova univerza, Evropska pravna fakulteta. URL: <https://e-kurs.si/komentar/opredelitev-pravice-in-razmerje-do-drugih-ustavnih-pravic-2019-01-53/>, 18. 11. 2024.

Letno poročilo 2023. (2024). Ljubljana: Zavod za pokojninsko in invalidsko zavarovanje Slovenije.

Mnenje o Predlogu zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju (ZPIZ-2S), druga obravnava, EPA 841-IX. (2023). Ljubljana: Zakonodajno-pravna služba.

Pripombe k Predlogu zakona o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju. (2023). Ljubljana: Zavod za pokojninsko in invalidsko zavarovanje Slovenije.

Rangus, A., et al. (2016). Bela knjiga o pokojninah. Ljubljana: Ministrstvo za delo, družino, socialne zadeve in enake možnosti.

Sklep 11. seje Svetega Zavoda za pokojninsko in invalidsko zavarovanje Slovenije. (2023). Ljubljana: Svet zavoda za pokojninsko in invalidsko zavarovanje Slovenije.

USRs, Odločba U-I-36/00, Ustavno sodišče Republike Slovenije, 11. 12. 2003, ECLI:SI:USRS:2003:U.I.36.00.

USRs, Odločba U-I-358/04, Ustavno sodišče Republike Slovenije, 19. 10. 2006, ECLI:SI:USRS:2006:U.I.358.04.

USRs, Odločba Up-360/05, Ustavno sodišče Republike Slovenije, 2. 10. 2008, ECLI:SI:USRS:2008:Up.360.05.

USRs, Odločba U-II-1/11, Ustavno sodišče Republike Slovenije, 10. 3. 2011, ECLI:SI:USRS:2011:U.II.1.11.

USRs, Odločba U-I-303/18, Ustavno sodišče Republike Slovenije, 18. 9. 2019, ECLI:SI:USRS:2019:U.I.303.18.

Ustava Republike Slovenije (URS). Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a in 92/21 – UZ62a.

Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ). Uradni list RS, št. 12/92, 56/92 – odl. US, 43/93 – odl. US, 67/93 – odl. US, 5/94, 7/96, 29/97 – odl. US, 54/98 in 106/99 – ZPIZ-1.

Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-1). Uradni list RS, št. 109/06 – uradno prečiščeno besedilo, 114/06 – ZUTPG, 10/08 – ZVarDod, 98/09 – ZIUZGK, 38/10 – ZUKN, 61/10 – ZSVarPre, 79/10 – ZPKDPIZ, 94/10 – ZIU, 94/11 – odl. US, 105/11 – odl. US, 110/11 – ZDIU12, 40/12 – ZUJF, 96/12 – ZPIZ-2, 9/17 – odl. US in 171/21 – odl. US.

Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-2). Uradni list RS, št. 48/22 – uradno prečiščeno besedilo, 40/23 – ZČmIS-1, 78/23 – ZORR, 84/23 – ZDOsk-1, 125/23 – odl. US in 133/23.

Zakon o socialno varstvenih prejemkih (ZSVarPre). Uradni list RS, št. 61/10, 40/11, 14/13, 99/13, 90/15, 88/16, 31/18, 73/18, 196/21 – ZDOsk in 84/23 – ZDOsk-1.

Zakon o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju (ZPIZ-2I). Uradni list RS, št. 51/21.

Zakon o spremembah in dopolnitvah Zakona o pokojninskem in invalidskem zavarovanju (ZPIZ-2M). Uradni list RS, št. 29/22.

Zakon o varstvenem dodatku (ZVarDod). Uradni list RS, št. 10/08 in 61/10 – ZSVarPre.