

RIGHT OF THE ELDERLY TO SOCIAL PROTECTION THROUGH THE SUPRANATIONAL AND REGIONAL EUROPEAN LENSES – CASE-STUDY OF THE CZECH REPUBLIC

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Abstract: The contribution focuses on the issue of the right of the elderly to social protection in the CEE countries, with a special focus on the Czech Republic, and the most significant impacts of relevant international instruments on the domestic legal milieu. Apart from the national (Czech) level, the named right has also been guaranteed on both the supranational (EU) and the European (Council of Europe) level. As concerns the latter, the text accentuates especially the latest conclusions of the European Committee of Social Rights (of March 2022) concerning the Czech Republic, noting in particular that the level of the minimum pension was inadequate. Notwithstanding that the right to adequate pension has been anchored in the Czech Charter of Fundamental Rights and Freedoms, one cannot overlook the taken legislative steps in the arena of national old-age benefits which happened to cause even decrease in the original claim as regards the amount of the pension benefit. In the light of the Czech Constitutional Court's decision of January 2024, this article scrutinizes the persisting resistance of the national political representation to guarantee the right to adequate pension to its anticipated extent, as presumed also by the binding supranational as well as European legislation.

Keywords: Rights of the elderly, right to social protection, right to adequate material security in old age, old-age benefits, pensions, European Social Charter, EU Charter of Fundamental Rights and Freedoms, Charter of Fundamental Rights and Freedoms of the Czech Republic

INTRODUCTION

The contribution aims to analyze the issue of the right of the elderly to social protection in the region of the Central and East European (CEE) countries, with a special focus on the Czech Republic, and the most significant impacts of relevant international instruments on the domestic (Czech) legal milieu. In general, one can understand the right of the elderly to social protection, in a narrower sense (*stricto sensu*), as directly coinciding with national old-age benefits. Therefore, the right in question might be substituted also by the conception of the right to adequate pension (in the sense of material security in old age).

Apart from the national (Czech) level, the named right has also been guaranteed on both the supranational (EU) and the European (Council of Europe) level, jointly representing the desired pillars of the common framework (not necessarily only) in the CEE region. As concerns the latter, one can accentuate especially the latest conclusions of the European Committee of Social Rights (of March 2022) concerning the Czech Republic. Here, the Committee eventually noted in particular that the national *status quo* was found not in conformity with the European Social Charter on the ground that the level of the minimum pension was inadequate.

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Indeed, the right to adequate pension (as the right to adequate material security in old age) has been anchored in the Czech constitutional dimension of protection (as part of the Charter of Fundamental Rights and Freedoms). Notwithstanding the stated, the quite recently taken legislative steps in the arena of national old-age benefits happened to cause even substantial decrease in the original claim as regards the amount of the pension benefit. As a result of the fact, the unconstitutionality of the disputed amendment to the legislation in question, adopted by the coalition majority in the Parliament in 2023, has been claimed before the Constitutional Court by the group of the opposition representatives.

On the one hand, the eagerly awaited decision (following an extraordinary public hearing scheduled at the beginning of January 2024) dismissed the afore-mentioned submission, and thus confirmed constitutionality of the procedure. On the other hand, however, in the light of the above, the notable resistance of the Czech political representation to guarantee the right to adequate pension to its anticipated extent, as presumed also by the binding supranational as well as European legislation, appears to be worth scrutinizing even more.

I. EU DIMENSION OF THE RIGHT OF THE ELDERLY TO SOCIAL PROTECTION

Right of the elderly to social protection on the EU (supranational) level has been anchored in the EU Charter of Fundamental Rights and Freedoms (hereinafter referred to also as “EU Charter”),¹ which represents part of the EU primary law in accordance with Article 6 paragraph 1 of the Treaty on European Union.² In particular, the respective regulation has been embedded in the Article 25 (covering rights of the elderly), contained in the Title III (Equality) of the EU Charter, in conjunction with Article 34 paragraph 1 (covering social security and social assistance), subsumed in the Title IV (Solidarity) of the EU Charter. As concerns the practical implications, it needs to be highlighted, however, that the application framework of the mentioned rights has been limited solely to the extent of implementation of the EU law.³ In other words, and to put it straightforward, only if the EU law applies, then also the EU Charter applies.

The latter provision (Article 34 paragraph 1 of the EU Charter) stresses that: “The Union recognizes and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, de-

¹ Charter of Fundamental Rights and Freedoms of the European Union, Official Journal of the European Union C 326/391, 26. 10. 2012 (2012/C 326/02), EUR-Lex No. 12012P/TXT. In: *EUR-Lex* [online]. [2025-04-24]. Available at: <http://data.europa.eu/eli/treaty/char_2012/oj>.

² Consolidated version of the Treaty on European Union, Official Journal of the European Union C 326, 26. 10. 2012 (2012/C 326/01), EUR-Lex No. 12012M/TXT. In: *EUR-Lex* [online]. [2025-04-24]. Available at: <http://data.europa.eu/eli/treaty/teu_2016/oj>

³ Cf. Article 51 paragraph 1 of the EU Charter (Field of application): “The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.”

pendency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.” According to the official explanations, which represent a binding (albeit not in a legal sense) guiding principles for the purposes of interpretation of the EU Charter’s substantial contents,⁴ the set principle is based on Articles 153 and 156 of the Treaty on the Functioning of the European Union (hereinafter referred to as “TFEU”),⁵ Article 12 of the European Social Charter (see below) and Point 10 of the Community Charter (on the rights of workers).⁶ The EU must respect the said principle when exercising the powers conferred on it by Articles 153 and 156 of the TFEU, while achieving the objectives presumed under Title X (Social Policy), out of which the one laid down in Article 151 TFEU explicitly counts, among others, a proper social protection. Nonetheless, as results from the thorough examinations of the academia,⁷ the Article 34 of the EU Charter has created no fundamental rights which could be invoked in order to improve the legal position of claimants of social security (as well as of social assistance).

The former provision (Article 25 of the EU Charter) states that: “The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.” With a due regard to practical application, it needs to be noted, however, that the mentioned article also contains a “principle”, and not a “right”, meaning in practice that as such, it does not give rise to a direct entitlement for positive action by the EU’s institutions or authorities of the EU Member States, and therefore principally requires to be implemented through legislative or executive acts.⁸ Similar to the previously mentioned remarks concerning the inspirational sources with regards to social security (as well as social assistance) in general, this article draws on the Article 23 of the Revised European Social Charter (see below) and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers.

On the one hand, the jurisprudence concluded that the Article 25 of the EU Charter shall not give rise to a “subjective right” to a minimum level of pension.⁹ On the other hand, the commentators have argued that the material scope of this article “would seem to extend to cover the right of older persons to obtain social and medical care where this is necessary to maintain their dignity and autonomy”, whereas any different approach of interpretation would be hardly able to reconcile with the remaining contents of the

⁴ Cf. Article 52 paragraph 7 of the EU Charter (Scope and interpretation): “The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.”

⁵ Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union C 326, 26. 10. 2012 (2012/C 326/01), EUR-Lex No. 12012E/TXT. In: *EUR-Lex* [online]. [2025-04-24]. Available at: <http://data.europa.eu/eli/treaty/tfeu_2012/oj>.

⁶ Community Charter of the Fundamental Social Rights of Workers, adopted on 9 December 1989. In: *The Community Charter of Fundamental Social Rights for Workers* [online]. [2025-04-24]. Available at: <<https://aei.pitt.edu/4629/1/4629.pdf>>.

⁷ PENNING, F. Does the EU Charter of Fundamental Rights Have Added Value for Social Security? *European Journal of Social Security*. 2022, Vol. 24, No. 2, p. 132.

⁸ MARTIN, D. Part Two Non-Discrimination and Citizenship of the Union. In: Manuel Kellerbauer – Marcus Klamert – Jonathan Tomkin (eds.). *The EU Treaties and the Charter of Fundamental Rights. A Commentary*. Oxford: Oxford University Press, 2019, p. 2176.

⁹ See judgment of the General Court of 6 July 2016, *LM v. European Commission*, Case T-560/15 P, at point 15.

EU Charter, and with its correlating provisions in particular.¹⁰ Notwithstanding the stated, without any doubts one cannot but quote that protection of the rights of the elderly has made it into a special provision, since these individuals undoubtedly belong among vulnerable groups of people, whose individual rights and freedoms warrant to be guaranteed even more persistently.

Moreover, the soft law corroborates the above legal regulation. Namely, the Principle 15 (Old age income and pensions) of Chapter III (Social protection and inclusion) of the European Pillar of Social Rights¹¹ presumes explicitly that: “Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights. Everyone in old age has the right to resources that ensure living in dignity.”

The further developments of the named instrument have been recently under a vivid discussion, when the EU Member States explicitly recognized in the context of the analyzed issue that there exists “a need to safeguard the fiscal sustainability of pension systems, continued efforts are also needed to improve the adequacy of pensions.”¹² It has been argued, on the one hand, that long-term implementation of the European Pillar of Social Rights remains rather unclear, given its non-binding character (from a legal point of view), with no underpinning sanctions for no-action having been anticipated.¹³ On the other hand, it shall not be unseen that in the light of the consolidated jurisprudence of the Court of Justice of the EU,¹⁴ the duty (of the national judicial instances) to have regard to (or else, to take account of, or to take into consideration), also applies to other non-legally binding EU acts that can be classified as being of a soft-law character. Based on the stated, the potentials for practical impacts of specified legal sources should not dare to be underestimated.

¹⁰ O’CINNEIDE, C. Article 25 – The Rights of the Elderly In: Steve Peers – Tamara Hervey – Jeff Kenner – Angela Ward (eds.). *The EU Charter of Fundamental Rights. A Commentary*. 2nd ed. Oxford: Hart Publishing, 2021, p. 737.

¹¹ Joint proclamation of the European Parliament, the European Council and the European Commission of 17 November 2017. In: *European Commission* [online]. [2025-04-24]. Available at: <https://employment-social-affairs.ec.europa.eu/european-pillar-social-rights-20-principles_en>.

¹² La Hulpe Declaration on the Future of the European Pillar of Social Rights (La Hulpe, Belgium, 16 April 2024), paragraph 27. [online]. [2025-04-24]. Available at: <<https://gouvernement.lu/dam-assets/documents/actualites/2024/04/17-deprez-mischo-socle-hulpe/declaration-finale.pdf>>.

¹³ KUCHARCZYK, M. Social Exclusion in Older-Age and the European Pillar of Social Rights. In: Kieran Walsh et al. (eds.). *Social Exclusion in Later Life. Interdisciplinary and Policy Perspectives. International Perspectives on Aging*, Vol. 28. Cham: Springer, 2021, p. 424.

¹⁴ See particularly judgment of the Second Chamber of the European Court of Justice (Court of Justice of the EU) of 13 December 1989, *Salvatore Grimaldi v. Fonds des maladies professionnelles*, Case C-322/88; or from more recent decisions, see e.g. judgment of the Fourth Chamber of the Court of Justice of the EU of 25 March 2021, *BT v. Bulgarska Narodna Banka*, Case C-501/18, point 80, or judgment of the Grand Chamber of the Court of Justice of the EU of 15 July 2021, *Fédération bancaire française (FBF) v. Autorité de contrôle prudentiel et de résolution (ACPR)*, Case C-911/19, point 71.

II. COUNCIL OF EUROPE DIMENSION OF THE RIGHT OF THE ELDERLY TO SOCIAL PROTECTION

Indeed, it seems noteworthy that the arena subsuming questions related to the various aspects of social rights has been discussed during the couple of most recent forums attended by high-level political representations. In the Reykjavík Declaration (of 17 May 2023),¹⁵ the Council of Europe Member States reaffirmed their “full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system”. In the similar light, the following Vilnius Declaration (of 4 July 2024) stated, while explicitly referring to the preceding Reykjavík Declaration, that the Member States “commit to respect, protect and implement social rights in general and, for the States Parties to the Charter, to pay continued attention to the challenges and opportunities to implement the Charter’s requirements and, to this end, encourage States Parties to make full use of all available possibilities for enhanced dialogue between the organs of the Charter, States Parties and social partners”.¹⁶ Based on the wording used, however, this proclamation happened to be evaluated rather with regrets as “a somewhat less enthusiastic statement of recommitment”.¹⁷ Notwithstanding the stated, the crucial importance of the issue shall no longer be deemed as disputable.

Right to social security as enshrined in the Article 12 of the European Social Charter (of 1961, ETS No. 35)¹⁸ might be deemed as a basis for the right of the elderly to social protection on the European (Council of Europe) level. It has been continually understood as “a cornerstone of the European social rights framework” and, simultaneously, as one of the most complex rights contained in the European Social Charter.¹⁹ More specifically, its Additional Protocol (of 1988, ETS No. 128)²⁰ builds on the mentioned provision while accentuating the right of elderly persons to social protection (Article 4). The identical right as the latter has been included also in the Article 23 of the revised version of the European Social Charter (of 1996, ETS No. 163).²¹ The academia appreciates in particular an extensive scope of protection of the named article, having at its centre the dignity and the provision of a “decent life” for this group of persons protected.²² It can be noted here

¹⁵ Reykjavík Declaration – United around our values. Adopted on the Reykjavík Summit – 4th Summit of Heads of State and Government of the Council of Europe, 16-17 May 2023, Reykjavík, Iceland. In: *Reykjavík Declaration – United around our values* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1>>.

¹⁶ Paragraph 8.a. of the Vilnius Declaration. Adopted at the High-Level Conference on the European Social Charter “a step by member States to take further commitments under the Charter”, 3–4 July 2024, Vilnius, Lithuania. In: *Vilnius Declaration* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/en-vilnius-declaration/1680b-0dcf3>>.

¹⁷ GLAS, L. R. The tide is turning for the European Social Charter: The Vilnius Declaration and the Warm-up thereto. *Strasbourg Observers Online*. 2024 [2024-09-13]. Available at: <<https://strasbourgobservers.com/2024/07/19/the-tide-is-turning-for-the-european-social-charter-the-vilnius-declaration-and-the-warm-up-thereto/>>.

¹⁸ In: *Council of Europe Treaty Office* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/168006b642>>.

¹⁹ LUKAS, K. *The Revised European Social Charter. An Article by Article Commentary*. Cheltenham: Edward Elgar Publishing, 2021, pp. 173–174.

²⁰ In: *Council of Europe Treaty Office* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/168007a84e>>.

²¹ In: *Council of Europe Treaty Office* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/168007cf93>>.

²² LUKAS, K. *The Revised European Social Charter. An Article by Article Commentary*, p. 285.

that the list of respective appropriate measures, which the state considered is expected to adopt or encourage with a view to ensuring the effective exercise of the right of elderly persons to social protection, shall not be deemed as exhaustive. The means indicated are therefore intended simply for guidance, and the states are free to adopt any other measures appropriate to the full achievement of the referred aim.

From the angle of the right to adequate pension, which has been central to this text, the Article 4 paragraph 1.a of the Additional Protocol to the European Social Charter guarantees the right of elderly persons to remain full members of society for as long as possible, by means of adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life.²³ Furthermore, the quoted provision anchors also the right of the elderly to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of provision of housing suited to their needs and their state of health or of adequate support for adapting their housing, as well as the health care and the services necessitated by their state (Article 4 paragraph 2). The remaining part (Article 4 paragraph 3) then anticipates guarantees from the state's side of appropriate support to elderly people living in institutions, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Without any doubts, the impact of the quoted provision shall not be underestimated, since it establishes a fundamental right of elderly persons to social protection, which responds to an increased need on account of the ageing of the population. In this respect, the European Committee of Social Rights (hereinafter referred to also as "Committee"), responsible for monitoring (review) mechanism of the European Social Charter, pointed out to the novelty character of this right, which, not just in relation to the Charter but to other existing international instruments, deserves special mention since it represents the first international norm specifically protecting elderly persons.²⁴ At the same time it has been noted, however, that the dynamic character of the Article 4 led the Committee to assess the existing situation at a given moment, taking into account the progress achieved and ongoing efforts.

In accordance with the Explanatory Report to the Additional Protocol to the European Social Charter, the expression "full members" (of society) used in Article 4 paragraph 1 shall mean that elderly persons must suffer no ostracism on account of their age, considering the fact that the right to take part in society's various fields of activity is not granted or refused depending on whether an elderly person has retired or is still vocationally active, or whether such a person is still of full legal capacity or is subject to some restrictions in this respect.

²³ Furthermore, the regulation continues to provide with the kind of variable of the addressed right to information, when covering the means of enabling the named right resting in provision of information about services and facilities available for elderly persons and their opportunities to make use of them (Article 4 paragraph 1.b).

²⁴ European Committee of Social Rights, Conclusions XIII-3 (1995), Statement of Interpretation on Article 4 of the Additional Protocol (Article 23). In: *hudoc.esc.coe.int* [online]. [2025-04-24]. Available at: <https://hudoc.esc.coe.int/fr/?i=XIII-3_Ob_-4/Ob/EN>.

Within this ambit, the Committee also tends to reiterate in its deliberations²⁵ that it takes due account of contemporaneous definitions of ageism, which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age,²⁶ considering serious and far-reaching consequences of the named phenomenon for people's health, well-being and human rights. Social rights, as contained and emphasized in the European Social Charter, shall be thus used to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community. Such aspect requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism.

The Committee itself drew the very framework of practice application for prospective considerations, especially as concerns assessing adequacy of resources of elderly persons.²⁷ From this perspective, it shall therefore take into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. Whereas the emphasis remains on pensions, whether contributory or non-contributory, the laid down does not mean that other complementary cash benefits available to elderly persons would not be considered. These resources are then to be compared with the median equivalized income in the country concerned. Subsequently, the Committee noted that in order to be considered as adequate, the level of benefit should in cases of wage substitution, whether temporary or permanent, always stand in a reasonable relation to the wage in question and should in any event exceed the minimum subsistence level.²⁸ Importantly to the very scope of this text, the Committee stressed in particular, that the income of the elderly should not be one of minimum assistance.

As far as the Czech Republic is concerned, although on the one hand it failed to ratify the Revised European Social Charter so far (despite its signing on 4 November 2000),²⁹ on the other hand it so did not as concerns the Additional Protocol to the (original) European Social Charter, whereby the country expressly stated that it avails itself to be bound by all four Articles contained therein.³⁰ Arguing in a way that the fact of a certain more

²⁵ See e.g. European Committee of Social Rights, Conclusions XXII-2 (2021): Czech Republic, p. 41. In: *Council of Europe – European Social Charter* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/conclusions-xxii-2-2021-czech-republic-en/1680a5da28>>.

²⁶ Cf. World Health Organization Global Report on Ageism, 2021, p. XIX. In: *World Health Organization* [online]. [2025-04-24]. Available at: <<https://www.who.int/publications/i/item/9789240016866>>.

²⁷ European Committee of Social Rights, Conclusions 2013, Statement of interpretation on Article 23: adequate resources for the elderly. In: *hudoc.esc.coe.int* [online]. [2025-04-24]. Available at: <https://hudoc.esc.coe.int/fr/?i=2013_163_04/Ob/EN>.

²⁸ European Committee of Social Rights, Conclusions XVI-1 (2002), Statement of interpretation on Article 12-1, 12-2, 12-3. In: *hudoc.esc.coe.int* [online]. [2025-04-24]. Available at: <https://hudoc.esc.coe.int/fr/?i=XVI-1_035_04/Ob/EN>.

²⁹ At present, together with the following seven Member States of the Council of Europe who similarly did manage to sign the treaty in question, namely: Croatia, Denmark, Luxembourg, Monaco, Poland, San Marino and the United Kingdom. Most lately, Iceland succeeded in ratifying the Revised European Social Charter on 4 July 2024, thus becoming the 36th contracting party with a successfully ended process of ratification. Cf. the complete list available at the following link. In: *Council of Europe Treaty Office* [online]. [2025-04-24]. Available at: <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=163>>.

³⁰ See the Declaration contained in the instrument of ratification deposited on 17 November 1999. In: *Council of Europe Treaty Office* [online]. [2025-04-24]. Available at: <<https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=128&codeNature=0>>.

strictness of the Revised European Social Charter towards its signatories in this respect, in comparison with the former one, might be the very reason why the Czech Republic has not yet acceded to the latter,³¹ requires, based on the stated, to be set aside as misleading. As a matter of the fact, the Committee shall be entitled to scrutinize also the fulfilment of obligations resulting from the named right by the Czech Republic, or its political representation, respectively. Most lately, the Committee did so in its conclusions relating to the reporting cycle XXII-2 (reference period of the year 2021),³² made public in March 2022.

Firstly, the Committee reiterated its previous monitoring output (Conclusions of 2013) that that the minimum old-age pension was manifestly inadequate as it was considerably below the poverty threshold, and that the situation was found not in conformity with the Article 4 of the Additional Protocol of 1988 on this point. However, it also noted from Eurostat figures that the number of older persons living in poverty was low, and thus asked for clarification of the situation. In response, the Czech government stated in the submitted national report that there is no statutory minimum old-age pension, the protection of people with low income being ensured within the systems of assistance in material need and state social support. It was also noted that the recipients of the lowest pensions might be entitled to other benefits such as housing allowance, allowance for living, supplement for housing and extraordinary assistance.

Based on the stated, the Committee concluded that it took note that recipients of the lowest pensions can receive additional assistance. However, without further information as to the level of income this would give older persons, the Committee could not but only reiterate its previous conclusion that the minimum level of the old age benefit (pension) was inadequate. Therefore, the situation in the Czech Republic shall not be deemed as conforming with the Article 4 of the Additional Protocol of 1988 to the European Social Charter.

To put the above conclusion into the present *status quo*, or more precisely, into the *de lege ferenda* context, one shall not overlook the significant changes concerning a substantial raise of old-age pensions, brought together with adoption of the amendment to the pension insurance act, which provides for major parametric changes to pension insurance.³³ These epitomize in particular a desired increase in the minimum percentage of the old-age pension (as well as invalidity pension for disability of the third degree) to approx. 10 % of the average wage. Based on the stated, both the percentage and basic assessment of an old-age pension shall be set in the same way, thus meaning refraining from the occurrence of two slightly different amounts in the law.³⁴ The taken legislative

³¹ HLOUCH, L. Čl. 30 [Sociální práva. Právo na sociální zabezpečení]. In: Faisal Husseini et al. *Listina základních práv a svobod. Komentář*. Praha: C. H. Beck, 2021, paragraph 74.

³² European Committee of Social Rights, Conclusions XXII-2 (2021): Czech Republic. In: *Council of Europe – European Social Charter* [online]. [2025-04-24]. Available at: <<https://rm.coe.int/conclusions-xxii-2-2021-czech-republic-en/1680a5da28>>.

³³ See Act No. 417/2024 Coll., amending Act No. 155/1995 Coll., on pension insurance, as amended, and other related acts. Taking into force of the relevant provisions affecting the mentioned increase in old-age pensions has been foreseen starting from 1 January 2026.

³⁴ Explanatory Report to the Act No. 417/2024 Coll. (see *supra*), p. 149. (in Czech only). In: *psp.cz* [online]. [2025-04-24]. Available at: <<https://www.psp.cz/sqw/text/orig2.sqw?idd=241667>>.

step has been advocated while referring to the fact that it would result in increasing the level of material security for persons with low contributions to the financing of basic pension insurance. Indeed, the Committee might be satisfied at least to some extent with the Czech legislator's explicit acknowledgement of the fact that a decent level of security means a level of security which is capable of ensuring that a person's basic needs for life are met, as far as possible without the need to resort to alternative forms of state provision.³⁵ At the same time, however, the crucial question whether or not the proposed solution fulfills the requirements prescribed under the European Social Charter, or the Additional Protocol hereto, respectively, as interpreted by the Committee, still remains open. Seen from this angle, the subsequent round of the national reporting and the following assessment of the Committee therefore seems to be worth eagerly awaiting even more.

III. CZECH CONSTITUTIONAL DIMENSION OF THE RIGHT OF THE ELDERLY TO SOCIAL PROTECTION

Right of the elderly to social protection (more precisely for the purposes of this text, the right to adequate material security in old age) has been expressly recognized by the Article 30 paragraph 1 of the Charter of Fundamental Rights and Freedoms,³⁶ representing part of the national constitutional order. The given right has been interpreted as a significant part of the leading (in the sense of an umbrella-nature) right to social security.³⁷ Namely, the mentioned provision prescribes that: "Citizens have the right to adequate material security in old age and during periods of work incapacity, as well as in the case of the loss of their provider." Article 30 paragraph 3 of the Charter adds, importantly, that all the detailed provisions shall be set by (ordinary, meaning "under-constitutional") law.

The named right requires to be, however, together with a couple of other specified rights (or entitlements, respectively) from the group of economic, social and cultural rights, read in conjunction with the Article 41 paragraph 1 of the Charter which provides a certain form of legal limitation for practical application of these rights. In fact, these may be claimed only within the confines of the laws implementing these provisions. The said means in practice, that the state shall have a duty to maintain a minimum standard of the guaranteed right, and even though it can truly be seen more as a constitutional idea influencing the drafting of laws and implementing legislation, the decision-making of court instances, as well as the activities of administrative bodies, there does exist a certain solid core of the social right in question which must not be denied.³⁸

³⁵ Ibid., p. 103.

³⁶ Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as a part of the constitutional order of the Czech Republic, promulgated under No. 2/1993 Coll., as amended (hereinafter referred to also as "Charter"). English translation available e.g. at the following link. In: usoud.cz [online]. [2025-04-24]. Available at: <https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf>.

³⁷ Cf. ŠTEFKO, M. Otazníky ohledně ústavní ochrany práva seniorů na uspokojivé hmotné zabezpečení ve stáří. *Časopis pro právní vědu a praxi*. 2016, Vol. 24, No. 2, p. 177; HLOUCH, L. Čl. 30 [Sociální práva. Právo na sociální zabezpečení]. In: HUSSEINI, F. et al. *Listina základních práv a svobod. Komentář*, paragraph 1.

³⁸ ŠTEFKO, M. Otazníky ohledně ústavní ochrany práva seniorů na uspokojivé hmotné zabezpečení ve stáří. *Časopis pro právní vědu a praxi*, p. 179.

As pointed out earlier, the Constitutional Court of the Czech Republic had recently a unique opportunity to investigate the matter of reduction of the extraordinary indexation of pensions, in combination with adoption of laws in the state of legislative emergency.³⁹ The issued ruling, dismissing the submitted constitutional complaint (albeit not unanimously, with three constitutional judges out of 15 in total expressing their dissenting opinions),⁴⁰ ended the proceedings initiated by the group of opposition political representatives (members of the Chamber of Deputies of the Parliament of the Czech Republic) who lodged the complaint of the specified amending legislation adopted by the current government coalition majority in 2023. The question with possible impacts to the scope of this text represents only one (and simultaneously, the rather minor) part of the commented decision, besides the leading questions of the possibility of adopting the laws in the declared legislative emergency due to extraordinary circumstances in connection with protection of parliamentary political minority's legitimate interests, as well as of permissibility of non-genuine retroactivity of the laws (both these major issues remain set aside though, since they do not correspond with the main focus of this contribution). Notwithstanding the stated, it can prove significant also as regards the analyzed issue of the right of elderly people to social protection, particularly in the perspective of their constitutionally guaranteed right to adequate pension.

The Constitutional Court reiterated,⁴¹ while referring to its previous findings,⁴² that the above provisions governing the right to adequate material security imply an obligation for the legislator to adopt an implementing law, but it is in principle a matter of its discretion as to how it regulates the relevant matter, or what content it gives to this fundamental right, provided that it does not deviate from the constitutional limits, in which the key place is occupied by the requirement to preserve the very essence of this fundamental right (in the form of the so-called minimum standard) within the meaning of the Article 4 paragraph 4 of the Charter.

Nonetheless, the fact that these rights derive from the Article 30 paragraph 1 of the Charter does not, of course, mean that the legislator cannot reduce pension benefits in the future or change the conditions for entitlement to a pension. In the event of changes, however, the legislator must take care to observe the constitutional limits that stem from the principles of the welfare state, to which the Czech Republic undoubtedly subscribes, by emphasizing the inviolability of human dignity and generally shared values of humanity in the Preamble to the Constitution of the Czech Republic, the Article 1 of the Charter, by enshrining fundamental social rights in the constitutional order, and by assuming international obligations in this area, even if it does not do so explicitly.

³⁹ See ruling of the Constitutional Court of 17 January 2024, File No. Pl. ÚS 30/23, promulgated under No. 36/2024 Coll. Text of the ruling is available (in Czech only). In: *nalus.usoud.cz* [online]. [2025-04-24]. Available at: <https://nalus.usoud.cz:443/Search/GetText.aspx?sz=Pl-30-23_2>.

⁴⁰ Dissenting opinions of Jan Svatoň (formerly assigned as the judge-rapporteur), Pavel Šámal and Josef Fiala are annexed to the quoted ruling.

⁴¹ See ruling of the Constitutional Court of 17 January 2024, File No. Pl. ÚS 30/23, promulgated under No. 36/2024 Coll., especially points 143 ff.

⁴² Cf. e.g. ruling of the Constitutional Court of 20 May 2008, File No. Pl. ÚS 1/08, promulgated under No. 251/2008 Coll.

At the first sight, one seemingly cannot but simply agree. What is more, it can also be appreciated that the Constitutional Court managed to explicitly recall the case-law of the European Court of Human Rights, according to which even a reduction in pensions does not necessarily lead to a violation of the obligations under the Convention on the Protection of Fundamental Rights and Freedoms.⁴³ The Court also confirmed that the austerity measures taken in the respective country at the relevant time could have been proportionate to the legitimate aim of achieving economic recovery, and struck the right balance between the general interests of the community and the protection of the fundamental rights of the allegedly affected individual.⁴⁴

Yet the very issue in question is not, as after all explicitly admitted also in the analyzed ruling,⁴⁵ the situation of a nominal reduction in pensions, but rather on the contrary, it is the situation where although there was an extraordinary increase indeed, it was not of an amount which, under the original rules, corresponded to the observed price increase. As a matter of the fact, the said in the decision does not seem as sufficient, and the used case-law argumentation thus seems rather weakened. Especially in the sense of particularly mentioning “international obligations” (point 144) it raises questions, in the light of the concluding considerations below even more visible, and remains unclear, why the judges refrained at this point from deeper proportioning the issue with reflections over both the EU and the Council of Europe context concerning the adequacy of pensions.

Furthermore, the Constitutional Court held that two different positions shall be distinguished, namely of those with an already approved old-age benefit on the one hand, and of those whose old-age benefit is about to be approved in the (near) future on the other hand. In general, it can be stated that from this point of view the legislator has a wider scope where it interferes with the position of insured persons as future pension beneficiaries. On the other hand, much higher requirements can be placed on interference with pension benefits already granted. In the first case, the individuals concerned do not have specific rights, but only a statutory expectation that they will receive a pension in the future. In the case of the reduction of individual benefits in the form of pensions to insured persons, on the contrary, the legislator’s scope is narrower the closer the maturity of such benefits. It is therefore incumbent on the legislator to make any changes to legislation affecting the amount of pensions which are to the detriment of their beneficiaries in sufficient time to enable pensioners to adapt to the new situation.

As outlined above, the right to adequate material security in old age under the Article 30 paragraph 1 of the Charter must be interpreted in the context of the right to preserve human dignity (in the sense of Article 10 paragraph 1 of the Charter, which stipulates: “Everyone has the right to demand that their human dignity, personal honour, and good reputation be respected, and that their name be protected.”). Therefore, in the light of

⁴³ See e.g. judgment of the Grand Chamber of the European Court of Human Rights of 13 December 2016, *Bélané Nagy v. Hungary*, Application No. 53080/13, or decision of the Chamber of the Fourth Section of the European Court of Human Rights of 17 January 2023, *Žegarac and Others v. Serbia*, Application No. 54805/15.

⁴⁴ See decision of the Chamber of the First Section of the European Court of Human Rights of 24 September 2015, *Da Silva Carvalho Rico v. Portugal*, Application No. 13341/14, point 46.

⁴⁵ See point 170 of the ruling of the Constitutional Court of 17 January 2024, File No. Pl. ÚS 30/23, promulgated under No. 36/2024 Coll.

the present case, only if pensions were to be reduced to an extent that would interfere with the inalienable foundations of human dignity, it would be a manifestly unconstitutional measure.⁴⁶

In conclusion, the Constitutional Court ruled based on the above argumentation that there is no fundamental right to a permanent increase in pensions as a result of price increases (inflation).⁴⁷ The essence of the fundamental right under the Article 30 paragraph 1 of the Charter is the guarantee of a dignified life in old age for the pensioner, which means, *inter alia*, a fair and adequate pension, not an automatic increase. This shall be the result of a specific policy and subject to adjustment by the legislator. Nonetheless, the principle of legal certainty cannot be equated with the requirement of absolute immutability of legislation, which is subject, *inter alia*, to socio-economic changes and the demands placed on the stability of the state budget,⁴⁸ the Constitutional Court also noted while recalling its previous case-law.

However, it is essential that the implementation of such policy should not undermine the essential nature of the guaranteed fundamental right.⁴⁹ As far as the case under consideration is concerned, it cannot be concluded without further ado that the contested law interfered with the essence of the fundamental right in accordance with the Article 30 paragraph 1 of the Charter, when taking into due consideration that the lower rate of valorization did not affect only pension recipients in a socially disadvantaged situation, but also such recipients who belong to the highest income groups. It is therefore clear that the lower rate of valorization of pensions has had a very different effect on the recipients in different ways and with different intensity.

At the very same time, it is the duty of the government to act – if the conditions set by law for an extraordinary increase in pensions arise – and to “complete” the valorization by issuing an implementing regulation. The content of the implementing regulation is the establishment of specific parameters for pension increases provided for directly by law. The Constitutional Court further stressed that if the government had failed to fulfil this obligation within the prescribed time-limit, it could not affect the state’s judicially enforceable obligation to pay the pension to the recipient in the amount prescribed by law.

Importantly, it arises very clear from the stated that the right to adequate pension shall not subsume (and thus shall not be interpreted as inherently containing) the correlating right (or entitlement, respectively) to increase in old-age pension. Which does not mean, however, that all reductions in these social security benefits would be out of the scope of constitutional protection at all. This perspective also corresponds to articulated observations accepting the significant redistributive function of the Czech pension system and its effectiveness at protecting the older population against poverty and social exclusion,

⁴⁶ Ruling of the Constitutional Court of 17 January 2024, File No. Pl. ÚS 30/23, promulgated under No. 36/2024 Coll., point 171.

⁴⁷ *Ibid.*, point 180.

⁴⁸ See especially the ruling of the Constitutional Court of 15 May 2012, File No. Pl. ÚS 17/11, promulgated under No. 220/2012 Coll., point 85.

⁴⁹ Ruling of the Constitutional Court of 17 January 2024, File No. Pl. ÚS 30/23, promulgated under No. 36/2024 Coll., point 181.

while warning at the same time, that such ability at present has decreased recently due to a drop in relative income of pensioners, resulting from strong economic growth.⁵⁰

Nevertheless, the lastly taken rather resistant approach of the Constitutional Court implies that solely the situations of an interference resting in undermining the essential nature (the very core) of the right to adequate material security shall prove unconstitutional (i.e., in the situations of existing case of violation, impermissible breach of the named right). Such fact would therefore deserve an intervention in the form of repealing the contested legal regulation *ex post* by the Constitutional Court, playing herewith its role of the so-called “negatory legislator”.

CONCLUSION

The text aimed to analyze the right of elderly persons to their social protection in the sense of an adequate material security (old-age pensions) on the three correlating, and mutually interdependent levels, while leaving thus the not less important international (universal, global) level behind to avoid too much complexity of the issue. First, the level of the EU (supranational) regulation was discussed, mainly the relevant provisions contained in the EU primary law (EU Charter of Fundamental Rights and Freedoms). Second, the attention was drawn to the level represented by the regional European (Council of Europe) regulation and related conclusions (as a form of the quasi case-law). Specifically, this regulation includes the respective rights covered in both the European Social Charter (of 1961), or the Additional Protocol thereto (of 1988), and the Revised European Charter (of 1996), supplemented by their cyclic-based reviewing procedure accommodated by the distinguished monitoring body, namely the European Committee of Social Rights.

Third and foremost, the constitutional level of the Czech Republic provided the opportunity to contrast the above international legally binding obligations of the state with the national *status quo*. The right of the elderly to social protection (in the Czech constitutional context, the right to adequate material security in old age guaranteed by the Charter of Fundamental Rights and Freedoms) resonated in the Czech legal discourse quite recently. The Constitutional Court issued a highly-awaited ruling in January 2024, which concerned, among other contested legal disturbances arising from the specified legal regulation adopted by the Parliament, also the issue central to the scope of this text. Eventually, the Constitutional Court concluded that considering a situation resting in a *de facto* decrease in old-age pensions following the pointed legislative change, there occurred no interference with the essence (substantial core) of the fundamental right guaranteed, which case would warrant its repealing intervention.

Indeed, the right to adequate pension shall not be equated (synonymized) with the right to increase in pension. Simultaneously, no such a fundamental right (to gradual

⁵⁰ European Commission, Directorate-General for Employment, Social Affairs and Inclusion. 2021 Pension adequacy report – Current and future income adequacy in old age in the EU. Volume II, Country profiles. Luxembourg: Publications Office of the EU, 2021, p. 36. In: *Publications Office of the European Union* [online]. [2025-04-24]. Available at: <<https://data.europa.eu/doi/10.2767/765944>>.

increase in old-age benefits) has ever been accepted as existent. Moreover, one can also tend to agree that the very essence of the fundamental right in question has not been interfered with in the present case. Notwithstanding the stated, one might observe that the constitutional judges seemingly refrained in the reasoning of the ruling from argumentation which would properly reflect, besides the jurisprudence of the European Court of Human Rights, also further, not less relevant legal sources (in particular, the conclusions of the European Committee of Social Rights). As argued earlier, the latter ones shall have ideally rather prevailed.