

## **Governmental social responsibility – the case of elderly in Slovenia**

**Borut Ambrožič**, B.S. in law,  
Nuova, employment agency Ltd,  
SI-1000 Ljubljana, and  
IRDO Institute for the Development of Social  
Responsibility,  
SI-2000 Maribor, Slovenia

Emeritus Professor Dr., Dr. **Matjaž Mulej**,  
systems and innovation theory (incl. Social  
Responsibility)  
University of Maribor, and  
IRDO Institute for the Development of Social  
Responsibility,  
SI-2000 Maribor, Slovenia

### **Abstract**

This contribution is limited to an overview of the legal aspects of the governmental social responsibility toward elderly in Slovenia. Social responsibility, namely does not replace law, but adds to law. On the topic of elderly in Slovenia, there are many laws, along with Constitution, but they do not seem to work in synergy, hence to fully cover the three basic concepts of social responsibility that are (1) one's responsibility for one's influence on society, (2) interdependence, and (3) holistic approach, supported by the seven principles from ISO 26000.

**Key words:** legislation, governmental social responsibility, elderly, Slovenia

## **Vladna družbena odgovornost – primer starejših v Sloveniji**

### **Povzetek**

Ta prispevek je omejen na pregled pravnih vidikov vladne družbene odgovornosti do starejših v Sloveniji. Družbena odgovornost namreč ne nadomešča prava, ampak ga dopolnjuje. Ko gre za starejše v Sloveniji, obstaja veliko zakonov, skupaj z ustavo, vendar se zdi, da ne delujejo v sinergiji, zato ne pokrivajo v celoti treh osnovnih konceptov družbene odgovornosti, ki so (1) odgovornost vsakogar za vpliv na družbo, (2) soodvisnost in (3) celovit pristop, ki jih podpira sedem načel ISO 26000.

**Ključne besede:** zakonodaja, vladna družbena odgovornost, starejši, Slovenija



## **Introduction**

In documents passed by the United Nations Organization and by ISO International Standards Organization, such as ISO 26000, the global humankind decided to work against the global socio-economic crisis, that surfaces in 2008. IRDO conferences contribute to this effort, on which the peace and survival of the current civilization on the Planet Earth depend critically.

A conference on “Social responsibility and sustainable development in science, education and business” may not forget about the elderly and the governmental social responsibility, although ISO 26000 avoids government and elderly by addressing corporate social responsibility (ISO, 2010). See more on the governmental social responsibility in the forthcoming book by Mulej, Merhar and Žakelj; more on the care for elderly e.g. in Zupančič, 2016. This contribution is limited to an overview of the legal aspects of the governmental social responsibility toward elderly. Hereby we add to (Ambrožič & Mulej, 2018; Ambrožič, Mulej, 2017; Ambrožič, Žlof, Mulej, 2016; Ambrožič, 2010; etc.).

## **Elderly persons’ employment in Slovenia**

In terms of working activity of elderly in the age group 55 – 64, Slovenia is the second last country in Europe. Employees over 55 enjoy a special attention and care. The basic legal act about this topic is the Employment Act. One must see the difference between the (1) employed elderly under the usual labor relations, and the (2) retired persons. The latter ones may work on a part-time or time-to-time basis as a special civil-law contract relation between the employer and entitled person. In this relation the employer must apply all provisions of the labor legislation, including the ones on prohibition of discrimination and torturing on job, equal treatment in terms of gender, working time, breaks, resting and liability for damages recovering; the employer must also respect the rules on security and health on job. The principle of (non-) discrimination is in forefront of all rules, having its basis in the Constitution of the Republic of Slovenia. (Zupančič, 2016)

The concrete given legal situation has many components, as follows.

## **International regulations on the protection of older workers**

These regulations include the following acts.

Charter of Fundamental Rights of the European Union 2010 / C 83/02 (Article 21, prohibition of discrimination and Article 25; The Union recognizes and respects the right of older people to a decent and targeted education and participation in cultural and social life)

Directive 2000/78 / EC on the general framework for equal treatment in employment and occupation (Article 1 specifically prohibits discrimination against older people in the labor market)

Convention and Recommendation MOD No. 111 of 1958 on discrimination and employment in occupations, which specifically govern the rights of older workers (Article 1, as circumstances considered as discrimination, is any differentiation, exclusion or preference



aimed to eliminate or compromise equal opportunities or a procedure for employment or occupations)

Recommendation MOD No. 126 of 1980 on older workers (countries should solve the problem of employing older workers with a strategy for achieving full employment and with appropriate social policy; the LUA is not a legally binding regulation).

### **Legal basis for the elderly persons' employment in Slovenia**

According to Eurostat, the population in Europe is aging and is expected to reach almost 27% of the population over 65 years old by 2040. The workforce is also aging and the share of older workers (55-64 years) is increasing. By 2029, the proportion of elderly population - 65 years or more in Slovenia should reach 24.8%; in 2029, according to projections, there might be 66,478 Slovenian men and women aged 85 or more (SORS, 2010).

The changed age structure of the population and, consequently, the reduction in the labor supply, along the current regulation of the labor market and the pension system, require the necessary adjustments in the labor market and in the field of education, which will ensure longer stay in the activities and efficient exploitation of the potential of all generations. Adjustment of workplace and working time to older workers and the intergenerational transfer of knowledge and promotion of creativity in the workplace, which in practice means the prevention of the European Union's Charter of Fundamental Rights 2010 / C 83/02 (Article 21, prohibition of discrimination, and Article 25; The EU recognizes and respects the right of the elderly to have a decent and targeted education and participation in cultural and social life).

Directive 2000/78 / EC on the general framework for equal treatment in employment and occupation (Article 1 specifically prohibits discrimination against older people in the labor market) or discrimination in the workplace, the adaptation of staffing plans, and so on.

The European Parliament was the initiator of the three-year pilot project "Safer and healthier work at all ages", focusing on the challenges to health and safety at work resulting from an aging workforce in Europe. From the findings in the project, it is clear that safety and health systems for sustainable work must fulfill several basic conditions. These include:

- Improved prevention for all in order to prevent workers from leaving the labor market for medical reasons, and to enable them to maintain and increase their working capacity;
- Specific measures for a diverse workforce based on risk assessments that take account of diversity;
- A comprehensive approach to prevention and promotion of well-being at work by integrating safety and health at work with other areas;
- Providing support to businesses, in particular micro and small enterprises;
- Social dialogue at all levels;
- An integrated policy that goes beyond the boundaries between different policy areas, safety and health at work, employment, public health, education and economic and social affairs.



On July 20, 2017, the Government of the Republic of Slovenia adopted the Long-living Society Strategy at its 144th regular meeting. It defines the vision and the main goals in shaping the answers to the challenges due to the changed age structure of the population in Slovenia, and outlines the strategic orientations and goals of its operations in four areas:

- independent, healthy and safe life of all generations;
- integration into society;
- creating an environment for activity throughout the life cycle;
- employment, work activity.

### **Constitution of the Republic of Slovenia (Constitution of RS)**

Each country has a Constitution or a set of fundamental principles and rules governing state and social order, irrespective of whether these principles and rules are written in a constitution (in the act) or comprise various other written and unwritten sources. The latter is represented in the English constitution, which is not written (Osolnik, Basle, 2001, 2011). The Constitution of the Republic of Slovenia was adopted, proclaimed and entered into force on 23 December 1991.

Following the hierarchical order, the Slovenian Constitution is the highest legal act adopted and supplemented by the National Assembly by a special procedure with a two-thirds majority. Other legal acts in this order are: the laws adopted by the National Assembly, the decrees of the government for the implementation of laws, regulations, guidelines and the ordinances of ministries for the implementation of laws and government decrees, as well as the regulations of local self-governing bodies adopted by them for the regulation of matters within the framework of their competences.

According to its highest legal power, the constitution is the "suprema lex" or "the highest legal act. In its content and in relation to laws, the constitution is a basic or starting legal act. The constitutional act is the political act by the will of the constitutor, and in the form and content, and the legal nature, the constitution is a general legal act, since it refers to all legal entities in the territory and in general terms governing basic social relations (Kovač, 2010). The inviolable part of the constitution represents its fundamental values and principles, such as the legal and social state, the principle of democracy, the guarantee of fundamental rights and freedoms, etc.

The Constitution of the Republic of Slovenia in Article 14 stipulates that in Slovenia everyone has the same human rights and fundamental freedoms, regardless of nationality, race, sex, language, religion, political or other belief, material status, birth, education, social status, disability or any other personal circumstance. Article 49 ensures freedom of work, according to which everyone can freely choose employment. Every workplace is accessible to everyone under the same conditions. Forcible work is forbidden.



## **The Employment Relationships Act (ZDR-1)**

This Act regulates the employment relationships concluded with a contract of employment between the worker and the employer. Among the articles relating to the age of a worker, it is necessary to distinguish between the concepts of an older worker and a worker prior to retirement. Among the articles referring to an older worker, it should be pointed out:

- Article 6 of ZDR-1, according to which the employer must provide equal treatment to the male and female jobseeker in employment;
- Article 197 of ZDR-1, according to which the status of an older worker belongs to the one who is 55 years of age or older, regardless of the completed work or pension period. Such a census applies to both men and women, and the age condition is not exacerbated in the coming years;
- Article 198 of the ZDR-1, after which an older worker may conclude a contract of employment or, he has the right to start working part-time shorter than full time at the same or other relevant workplace, if he or she is partially retired;
- Article 199 of ZDR-1, according to which an employer may not order an overtime work or night work without an employee's written consent to an older worker;
- Article 159 of ZDR-1, according to which an older worker, a disabled person, a worker with at least 60% physical impairment and a worker who nurses and protects a child who needs special care and protection in accordance with the regulations governing family, benefits at least three additional days of annual leave.

Article 113 of ZDR-1 is to be considered among articles referring to a worker before retirement. Under this Act, a worker before retirement is a person who has reached the age of 58, this is a worker who, up to the age of retirement conditions, falls short of five years of retirement age. Such a person may not be terminated an employment contract for business reasons without the written consent of the person until the worker has fulfilled the conditions for obtaining the right to a retirement pension. ZDR - 1, however, allows for a few exceptions when a cancellation can be made for business reasons, namely:

- If the employee is offered another suitable employment, in accordance with the ZDR-1 provisions for the offer of a new contract;
- If at the time of signing the employment contract the worker already fulfilled the legal conditions for protection against cancellation;
- If the worker receives unemployment benefits until he has fulfilled the conditions required to retire with full retirement age;
- if the procedure for the termination of the employer is introduced.

Article 226 of ZDR-1 should also be mentioned among the articles relating to the worker before retirement. Notwithstanding the provision of the first paragraph of Article 114 of the ZDR - 1, they enjoy special protection against dismissal of workers who in 2013 fulfill the condition of 54 years and 4 months - women and 55 years - men, and workers who in 2014



fulfill the condition of age 55 years. In the next three years to reaching the age of 58, the age for workers is increased annually for one year.

### **The Anti-Discrimination Act (ZVarD)**

Article 1 of this Act defines the protection of every individual against discrimination irrespective of sex, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, sexual identity and sexual expression, social status, wealth, education or any other personal circumstance in various fields of social life, in the exercise of human rights and fundamental freedoms, in the exercise of rights and obligations, and in other legal relations in the political, economic, social, cultural, civil or other fields. This law defines and prohibits discrimination, provides for bodies and measures for the promotion of equal treatment, determines the position and powers of the advocate of the principle of equality, the procedure in front of the advocate in case of establishing the existence of discrimination and the special features of the legal protection of discriminated persons.

### **Health and Safety at Work Act (ZVZD-1)**

Article 5 of ZVZD-1 stipulates that the employer must pay particular attention to ensuring the safety and health of older workers and the Article 37 stipulates, that the employer must ensure that older workers are informed about the results of risk assessment and about the employer's actions for the safety and health of workers at work.

### **Law on Intervention Measures in the Labor Market (ZIUPTD)**

With this Act, a temporary incentive for the employment of older unemployed persons is provided for the promotion of employment. Article 3 of this Act provides for an exemption from the payment of contributions for the elderly under the conditions that older than 55 years and being at least 6 months registered in the register of the unemployed at the ZZRS, and that the employment contract is concluded for the period from January 1, 2016 to December 31, 2019. The exemption from payment relates to employer's social security contributions (contributions for pension and disability insurance, health insurance, parental protection and unemployment insurance).

The exemption from the payment of employer's contributions shall be enforced by the Financial Administration of the Republic of Slovenia. Exemption from payment of contributions may be undertaken by employers who:

- Have not initiated the termination of the employment contract in the last 3 months prior to the conclusion of the employment contract with the elderly unemployed or have not terminated the employment contract on the grounds of business;
- Did not have a blocked TRR over 30 consecutive days or more before the conclusion of the employment contract with the elderly unemployed;





- Have regularly paid salaries and paid compulsory contributions to the social security of employees in the last 6 months prior to the conclusion of the employment contract with older unemployed persons.

### Concluding remarks

The official legal regulation of labor and elderly relations is supposed to match social responsibility of both the government, employers, and citizens. They need also the ethics of social responsibility in order not to misbehave and mistreat each other, and a legal basis supportive of it. Evaluation of the care for the elderly in Slovenia must match the basis of the three basic items of social responsibility according to ISO 26000, which are: responsibility for the effects on society, interdependence, and holistic approach. These data find it is still far from "excellent". There are many laws, but their synergy is missing.

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