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COMPARATIVE ANALYSIS OF CONSTITUTIONAL SAFEGUARDS FOR DECENT LIVING STANDARDS: ROMANIA, SLOVAKIA, AND CROATIA¹

ABSTRACT

This comparative law article examines the legal frameworks in Romania, Slovakia, and Croatia concerning the protection of the standard of living. The research examines the constitutional aspects of defining a decent standard of living and evaluates mechanisms for its safeguarding. I explore how each country's socio-economic context influences living standards' determination and assess the effectiveness of legal protections and social policies. Employing a comparative legal methodology, the study scrutinizes constitutional texts, legal enactments, and judicial interpretations to understand similarities and differences in safeguarding living standards. By analysing constitutional provisions and implementation mechanisms, I contribute to understanding the intersection between constitutional law and socio-economic well-being. The paper underscores the diverse approaches of Romania, Croatia, and Slovakia, where Romania and Croatia explicitly embrace a welfare state concept, while Slovakia addresses living standards through fair work conditions and social assistance. Additionally, it highlights discrepancies in the implementation of constitutional safeguards and variations in methodologies for setting minimum standards of living. Overall, this study offers insights into legal frameworks' strengths and weaknesses, emphasizing the need for clearer guidelines and enhanced consistency in judicial rulings to better protect citizens' standard of living across the examined jurisdictions.

Keywords: constitutional safeguards, standard of living, comparative legal analysis, welfare state

1. INTRODUCTION

Ensuring a decent standard of living is a pivotal goal for nations across the globe, implicating various dimensions of legal, economic, and social policy

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frameworks. This paper explores the constitutional safeguards and legal mechanisms deployed in Romania, Slovakia, and Croatia, three European Union member states with shared historical trajectories transitioning from communist regimes to market-driven economies.

Despite their common heritage, these countries have adopted distinct approaches to encapsulate and protect the right to a decent living within their constitutional and legal orders. This analysis is particularly timely and relevant, considering the evolving socio-economic challenges confronting Central and Eastern Europe (CEE) and the broader European context.

The fall of communism and subsequent accession to the European Union mark significant milestones for Romania, Slovakia, and Croatia, catalysing extensive constitutional and legal reforms. These reforms have included efforts to redefine the role of the state in ensuring economic welfare and social protection for their citizens. Against this backdrop, the paper aims to dissect the constitutional articulations of a “decent standard of living” in these nations, examining the extent to which such frameworks provide a solid foundation for legal protections and social policies aimed at safeguarding living standards.

Employing a comparative legal methodology, this research scrutinizes the constitutional texts, legal enactments, and judicial interpretations relevant to the standard of living in the examined jurisdictions. This approach facilitates an in-depth understanding of the similarities and differences characterizing the legal safeguards for living standards in Romania, Slovakia, and Croatia. It also enables an assessment of the practical implementation and effectiveness of these legal frameworks in achieving their intended objectives.

This analysis sets the stage for a comprehensive review encompassing constitutional provisions, social rights, economic principles, and the enforcement mechanisms operative in Romania, Slovakia, and Croatia. By uncovering the nuances of legal frameworks and their operational realities, this paper contributes to the broader discourse on the constitutional underpinnings of social welfare and the pursuit of socioeconomic well-being within the European Union.

The first section of this paper, titled “Constitutional Safeguards of Decent Living Standards in Romania, Slovakia, and Croatia,” examines how the concept of a decent standard of living is articulated within the constitutional texts of these nations. It analyses constitutional provisions related to social rights, economic principles, and individual freedoms to understand how living standards are defined and protected. Additionally, the role of constitutional courts and other

legal mechanisms in ensuring the practical realization of these standards is explored.

The subsequent section, titled “Legal Implementation of the Right to a Decent Living,” investigates how constitutional principles concerning living standards are practically implemented and legally enforced in Romania, Slovakia, and Croatia. It evaluates legal frameworks, social policies, and governmental initiatives to assess the effectiveness of each country's approach in protecting citizens' standard of living.

2. CONSTITUTIONAL SAFEGUARDS OF STANDARD OF DECENT LIVING IN ROMANIA, SLOVAKIA AND CROATIA

To assess the safeguards of the standard of decent living in Romania, Slovakia, and Croatia, in this section of the paper I will analyse and compare the text from the constitutions of these countries. Then, since the texts of the constitutions are quite generic, I will look up for the case law of these countries' constitutional courts to find out how these courts interpreted the standard of decent living and how it is guaranteed.

2.1. Romania

Romania is defined as a social state by Article 1 para. (2) of the Constitution of Romania.² Article 47, named living standard, of the Constitution, under Title II – Fundamental rights, freedoms and duties, Chapter II – Fundamental rights and freedoms, states that “[t]he State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens”. The 2nd paragraph of the article states that “[c]itizens have the right to pensions, paid maternity leave, medical care in public health centres, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law”.

Besides Article 47, there are other articles in the Constitution of Romania which are linked to the concept of social state and living standard. For example, Article 32, named “Right to education”, states that “[s]tate education shall be free,

² Constitution of Romania, Official Gazette, Part I, no. 767/31.10.2003, available on <https://www.presidency.ro/en/the-constitution-of-romania>, 2 April, 2024.

according to the law. The State shall grant social scholarships to children or young people coming from disadvantaged families and to those institutionalized, as stipulated by the law”, Article 34, named “Right to protection of health”, states that “[t]he organization of the medical care and social security system in case of sickness, accidents, maternity and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law”.

Also, the constitution also mentions that some special categories of people enjoy a special protection regime, such as children and young people, mentioned on Article 49 and disabled people, mentioned on Article 50.

The Romanian Constitution asserts the right to a decent standard of living without providing a precise definition thereof, leaving this task to be delineated in scholarly discourse and subsequently integrated into jurisprudence by the Constitutional Court and statutory law. Scholars acknowledge the complexity of this concept, attributing the phrase “decent standard of living” to the constituent legislator. They argue that, rather than explicitly guaranteeing such a standard, the Constitution should ensure “reasonable living conditions,” with the right to social security constituting one aspect of this broader framework.³

In recent academic literature exploring citizens’ rights and freedoms, the notion of a decent standard of living is depicted as encompassing not only reasonable living conditions but also the essential provision of food, clothing, and housing, thus ensuring a dignified existence. However, scholars caution against a rigid, universally applicable definition, noting the variable nature of this right across different socio-economic, political, and cultural contexts. For instance, in regions where access to clean drinking water is scarce, ensuring daily access to this vital resource becomes paramount in realizing a decent standard of living.⁴

Furthermore, scholars address the practical implementation of this fundamental right, recognizing the challenges faced by legislators in delineating concrete measures. They argue for a nuanced approach, granting legislators considerable discretion in navigating these complexities. Consequently, there is a call for a complementary role of constitutional courts rather than a primary one, emphasizing the importance of elected authorities and public policy experts in

³ Popescu, A., Tănăsescu, E.S. in Muraru, I.; Tănăsescu, E.S.; *Constituția României. Comentariu pe articole*, C.H. Beck, Bucharest, 2022, p. 415.

⁴ Enache, M., Deaconu, Ș., *Drepturile libertăților fundamentale în jurisprudența Curții Constituționale*, Vol. II, C. H. Beck, Bucharest, 2019, p. 154-155.

effectively implementing and upholding social rights within the framework of a functional democracy.⁵

In Romania, the right to decent living is not very well established in the case law of the Romania's Constitutional Court. In recent legal decisions, the Constitutional Court of Romania has grappled with issues concerning the preservation of decent living standards amidst various policy changes. In 2020, the Constitutional Court, through Decision no. 717/2020⁶, emphasized that the determination of a decent standard of living should be evaluated on a case-by-case basis, considering various factors such as the country's economic situation, available resources, societal development, culture, and organization. The Court highlighted the dynamic nature of assessing decent living standards and underscored the importance of considering contextual factors rather than establishing a rigid standard. Decision no. 785/2019⁷ addressed concerns raised by the Ombudsman regarding the impact of abolishing a public service on the right to a decent standard of living. While the court did not directly respond to the challenge, it emphasized the legislative freedom to ensure citizens' decent living standards within the constraints of state policy and available resources.

Previous cases have also highlighted the role of fiscal measures in upholding decent living standards. The Court affirmed that certain exceptions to tax obligations, established by the legislature, contribute to the legal framework supporting social protection measures for specific categories of taxpayers.⁸ Moreover, the Court underscored the constitutional obligation of the state to implement measures for economic development and social protection, ensuring a decent standard of living for citizens.

In another case concerning the suspension of salary increases for teachers, the Constitutional Court recognized that such measures infringed upon fundamental rights, including the right to work, social protection of work, and the right to a decent standard of living.⁹ These rights, enshrined in the constitution, encompass not only salary considerations but also the provision of reasonable living conditions necessary for a civilized and decent life.

⁵ Safta, M., *Drept constituțional și instituții politice*, Vol. I., Hamangiu, Bucharest, 2021, p. 332.

⁶ The Constitutional Court of Romania, Decision no. 717/06.10.2020, <https://legislatie.just.ro/Public/DetaliiDocument/236181> (Romanian), 2 April, 2024.

⁷ The Constitutional Court of Romania, Decision no. 785/28.11.2019, <https://legislatie.just.ro/Public/DetaliiDocument/223057> (Romanian), 2 April, 2024.

⁸ The Constitutional Court of Romania, Decision no. 426/09.06.2015, <https://legislatie.just.ro/Public/DetaliiDocument/170403> (Romanian), 2 April, 2024.

⁹ The Constitutional Court of Romania, Decision no. 1221/12.11.2008, <https://legislatie.just.ro/Public/DetaliiDocument/99719> (Romanian), 2 April, 2024.

In 1999, the Constitutional Court¹⁰ assessed the constitutionality of provisions in Government Emergency Order no. 40/1999 regarding tenant protection and rent regulation. Objectors argued that these provisions violated property rights and equality under the Constitution. They cited disparities in tenancy contract terms for state-owned versus privately owned properties.

However, the Court ruled that tenancy contract regulations didn't affect property rights. It justified tenant protection measures under constitutional provisions ensuring citizens' decent living standards and quality of life. The Court emphasized that the legislature balanced property rights with tenants' rights to housing. It concluded that the regulations didn't create unfair privileges or violate equality principles, as equal treatment is only mandatory for citizens in identical situations.

2.2. Slovak Republic

Constitution of the Slovak Republic¹¹ does not define the state as a welfare state. However, it mentions the standard of living in 2 articles, Article 36, and Article 39, both in the "Economic, social and cultural rights" section of the 2nd title of the Constitution, which refers to fundamental rights and freedoms.

Article 36 states that "[e]mployees shall have the right to fair and satisfactory conditions of work. The law shall ensure, in particular: a) the right to wages for the work performed, sufficient to secure a dignified standard of life, b) the protection from arbitrary dismissal and discrimination at work, c) the protection of safety and health at work, d) the setting of maximum working hours, e) appropriate rest time after work, f) the minimum admissible length of paid vacation, g) the right to collective negotiations".

Also, Article 35 mentions that "[c]itizens shall have the right to work. The State shall guarantee, within appropriate extent, the material welfare of those who cannot enjoy this right without their own fault".

The Article 35 is linked with Article 39 para. (2) which states that "[a]ny person suffering material need shall have the right to such kind of assistance that is necessary to secure his or her basic standard of life". Besides that, first paragraph

¹⁰ The Constitutional Court of Romania, Decision no. 224/07.12.1999, <https://codices.coe.int/codices/results/precis/81447B88-43EF-4779-2220-08DC225DC81B>, 2 April, 2024.

¹¹ Constitution of the Slovak Republic, Official Gazette no. 460/1992, available on <https://www.prezident.sk/upload-files/46422.pdf>, 2 April, 2024.

of the Article 39 states that “[c]itizens shall have the right to adequate material security in their old age, as well as in cases of incapability for work and death of the breadwinner of a family” thus regulating the pension system.

Slovakia’s Constitution also stipulates “right to free health care and medical equipment for disabilities” in Article 40, special protection of children in Article 41 and “right to free education at elementary and secondary schools” in Article 42.

In a comparative study¹², the Slovak Constitution was noted for its absence of explicit mention of a social state. Instead, Article 55 outlined principles resembling those of a social state, emphasizing a socially and ecologically oriented market economy. The Constitution's lack of the term “social security” was highlighted, with a more abstract formulation defining the right to appropriate material security in cases of explicitly defined social risks. Notably, the Constitution refrained from explicitly mandating state intervention in regulating or maintaining social insurance systems, except for provisions related to health protection. Despite the absence of explicit insurance principles in the constitutional text, particularly outside of health protection, it was emphasized that their implicit utilization in the legislative process was evident. The robust case-law of the Slovak Constitutional Court was cited as evidence of legislators' reliance on these principles in shaping Slovakia's social security system.

Slovakia’s Constitutional Court issued some decisions regarding decent standard of living. For example, in PL. ÚS 13/12 of 19-06-2013¹³, the Court examined a law aiming to raise nurses' wages, ruling that it didn't violate their right to a decent standard of living. Although economic considerations were deemed not grounds for unconstitutionality, the law failed the proportionality test due to its heavy financial burden on private health care providers, particularly small ones. The Court stressed that economic matters are best handled by legislative and executive branches.

Despite concerns, the law didn't breach other constitutional norms, as it didn't discriminate against nurses and justified wage increases based on their specific

¹² Kšiňan, J., *Comparison of Constitutional Aspects of Social Security Systems of Slovakia and Slovenia*, Soziale Aspekte der Verfassung der Slowakischen Republik, Wien, 2013, p. 51,

https://uniba.sk/fileadmin/praf/Pracoviska/Katedry/KPPPSZ/Publikacne_vystupy/A1301490_Soziale_Aspekte_SK_Kern.pdf, 25 April, 2024.

¹³ The Constitutional Court of Slovakia, Decision no. PL. ÚS 13/12 of 19-06-2013, https://www.ustavnysud.sk/documents/20121/78884/PL_13_12.pdf/a185aeed-54fe-a6fe-13fc-02b1f4666b58, 2 April, 2024.

characteristics. The Court declined to categorize health care providers as state or non-state, deeming it impractical due to mixed nature.

In a case regarding the pensions, the Constitutional Court¹⁴ asserted that the fundamental right to adequate material security, regulated by law in accordance with the Constitution, primarily encompasses ensuring sufficient material security in old age through the pension system. This system, based on social insurance principles, incorporates personal contributions, social solidarity, and state guarantees. The mechanism for annual pension adjustments, mandated by Law no. 461/2003 Coll., considers factors such as consumer price growth and average wage increases. These adjustments, integral to the social insurance system, ensure its functionality and reliability. Therefore, they are considered part of the constitutional right to adequate material security in old age.

In decision PL. ÚS 16/05-116¹⁵, the Constitutional Court emphasized, as in previous proceedings, that health insurance does not cover all health risks indiscriminately, but only those recognized as insured events. Thus, healthcare provided under insurance is not limitless but subject to legal conditions defining the scope and content of covered care. The Court cautioned against interpreting health insurance as an unlimited provision of free healthcare, as this would imply a universal and absolute solidarity-based system. Such an interpretation would likely necessitate funding from other sources, such as general taxation, without requiring further patient participation.

2.3. Republic of Croatia

In Constitution of the Republic of Croatia¹⁶, Article 1 states that “[t]he Republic of Croatia is a unitary and indivisible democratic welfare state”. Then, Article 56 states that “[e]ach employee shall be entitled to remuneration enabling him/her to ensure a free and suitable life for himself/herself and his/her family” while Article 63 states “[t]he state shall protect maternity, children and youth, and shall

¹⁴ The Constitutional Court of Slovakia, Decision PL. ÚS 16/06-39, <https://www.ustavnysud.sk/docDownload/91fcc873-9fd5-4a08-bbfd-e5c4928b21c6>, 2 April, 2024.

¹⁵ The Constitutional Court of Slovakia, Decision PL. ÚS 16/05-116, <https://www.ustavnysud.sk/docDownload/21f6f30d-0b16-4c6e-999b-f1ae62854142>, 2 April, 2024.

¹⁶ Constitution of the Republic of Croatia (consolidated text), Official Gazette no. 56/90, 135/97, 8/98 – consolidated text, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, available on <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>, 2 April, 2024.

create social, cultural, educational, material and other conditions promoting the achievement of the right to a suitable life”.

According to an analysis¹⁷, the State's responsibility extends to fostering social, cultural, educational, material, and other conditions conducive to the realization of a decent standard of living. The author underscores the importance of including environmental and health considerations among these “other conditions,” emphasizing that a healthy environment is indispensable for securing a decent life, especially for younger generations. This highlights the intrinsic link between decent living and environmental wellbeing, a fundamental aspect deserving recognition and protection within constitutional frameworks.

In Croatia, Constitutional Court issued several decisions relating to right to decent living. I selected the ones that I believe are the most relevant for this paper.

In a 2007 court decision,¹⁸ addressed unequal treatment regarding extra pay for night work, specifically concerning employees at the Ministry of Internal Affairs compared to officials in other departments. The court ruled this discrepancy violated constitutional rights against discrimination and for fair remuneration. However, the decision was not unanimous; one judge argued that including extra pay for night work in the constitutional guarantee of fair remuneration could broaden the scope of this right beyond its intended purpose. They advocated for a limited interpretation focusing solely on ensuring a decent standard of living for workers and their families.

In 2009, the court retained that the concept of a social state, integral to European constitutional identity and affirmed in the Constitution of the Republic of Croatia, embodies a normative framework for organizing a welfare state. Scholars emphasize its role in realizing social rights, advocating state intervention to ensure economic and social well-being. The social state operates on three main principles: enabling government intervention in the economy, promoting social rights and equality, and preventing the erosion of welfare state structures. Constitutionalizing social rights entails equitable redistribution of

¹⁷ Staničić, F., *Croatia: Constitutional Protection of the Right to a Healthy Life—Do We Need More to Safeguard the Environment and Future Generations?*, Constitutional Protection of the Environment and Future Generations, 2022, p. 153, https://real.mtak.hu/158060/1/CEA-ProfNet06Szilagyi-ConstitutionalProtectionEnvironment_EBOOK.pdf, 25 April, 2024.

¹⁸ The Constitutional Court of the Republic of Croatia, Decision No.: U-III-1600/2004 of 17 October 2007, <https://sljeme.usud.hr/usud/prakswen.nsf/9999C0D7DCF62AB2C1257E5F003E2279/%24FILE/U-III-1600-2004.pdf>, 2 April, 2024.

resources and balancing social goals with budget constraints. It guarantees individuals a minimum level of welfare essential for human dignity, extending beyond subsistence to include culturally implicit benefits. Fulfilling social state principles is intertwined with the rule of law, requiring authorities to undertake social activities through statutory means and in accordance with legal principles.¹⁹

This decision was later brought to reject other constitutional review request against laws.²⁰ In a 2015 decision²¹, the court affirmed that the Constitution guarantees employees the right to remuneration ensuring a decent standard of living for themselves and their families. However, the Constitution does not specify the exact amount or components of this remuneration, leaving it to be defined by law and collective agreements. The court clarified that stimulative supplements, specific working condition supplements, status supplements, and salary increases are not constitutionally guaranteed. Furthermore, it stated that holiday allowances and Christmas bonuses in the public service are not mandated by the Constitution. The decision also acknowledged the economic crisis faced by the Republic of Croatia and the necessity of reducing public costs. Withholding holiday allowances and Christmas bonuses was seen as a means of fiscal saving, contributing to the stabilization of the State Budget, despite their absence in the State Budget's quantitative share.

In response to the COVID-19 epidemic, restrictions were imposed to protect public health, affecting businesses and economic stability. These measures prompted concerns about the constitutional right to earnings and social security, crucial for ensuring a decent life, as stipulated in Article 55.1 of the Constitution, now Article 56. Decision from July 13, 2021, addressed the impact of these restrictions on fundamental rights, particularly access to justice and property

¹⁹ The Constitutional Court of the Republic of Croatia, Decision No.: U-IP-3820/2009 of 17 November 2009, <https://sljeme.usud.hr/usud/prakswen.nsf/75934C0CCA94571DC1257E5F003E7996/%24FILE/U-IP-3820-2009.pdf>, 2 April, 2024.

²⁰ The Constitutional Court of the Republic of Croatia, Decision No.: U-I-1694/2017 of 02.05.2018, <https://sljeme.usud.hr/usud/prakswen.nsf/fOdluka.xsp?action=openDocument&documentId=75FCDF0695D7B413C12584F7004784FE>, 2 April, 2024. Decision No.: U-I-3685/2015 of 04.04.2017, <https://sljeme.usud.hr/usud/prakswen.nsf/fOdluka.xsp?action=openDocument&documentId=E2FDAE001D835F1EC125833D0052ECD4>, 2 April, 2024.

²¹ The Constitutional Court of the Republic of Croatia, Decision No.: U-I-4405/2013 of 31.03.2015, <https://sljeme.usud.hr/usud/prakswen.nsf/fOdluka.xsp?action=openDocument&documentId=0370C61BF73CE809C125800B00295FF4>, 2 April, 2024.

rights.²² Despite recognizing the necessity of public intervention, the Constitutional Court assessed the proportionality of these measures, considering their aim to preserve social security and the right to a decent life amidst the crisis.

2.4. Discussion

The constitutions of Romania, Slovakia, and Croatia illustrate different approaches to the concept of a welfare state and the provision of social rights. Romania's Constitution explicitly defines the country as a social state, with Article 47 emphasizing the state's duty to ensure a decent living standard for its citizens through economic development and social protection measures. Additional articles, such as those guaranteeing the right to education and health protection, further underscore Romania's commitment to social welfare.

In contrast, while Slovakia's Constitution does not explicitly label the state as a welfare state, it includes provisions aimed at safeguarding the standard of living. Article 36 guarantees fair work conditions and adequate wages, while Article 39 ensures assistance for those in material need and adequate security in old age or incapacity for work. Similarly, the Republic of Croatia's Constitution declares the country as a welfare state, emphasizing entitlements to remuneration enabling a suitable life and the state's responsibility to protect maternity, children, and youth, as well as to create conditions conducive to a suitable life. These constitutions reflect varied approaches to social welfare, with Romania and Croatia explicitly embracing the concept of a welfare state, while Slovakia addresses social rights within a broader framework of ensuring a decent standard of living.

While Romania's Constitutional Court has made efforts to address the right to a decent standard of living, its jurisprudential framework remains insufficiently robust. Decision-making appears inconsistent, with contextual factors not consistently considered. In contrast, Slovakia and Croatia's Courts demonstrate a more balanced approach, weighing economic factors alongside constitutional rights. To enhance Romania's framework, clearer guidelines, stakeholder engagement, and increased consistency in rulings are recommended. This would better protect citizens' fundamental rights and advance social justice within the country. However, in all three countries, the constitutional courts seem to take a

²² The Constitutional Court of the Republic of Croatia, Decision No.: U-I-3403/2020 of 13.07.2021,
<https://sljeme.usud.hr/usud/prakswen.nsf/fOdluka.xsp?action=openDocument&documentId=6721D87833FC1489C12587E40041A3D7>, 2 April, 2024.

precautionary approach, refusing to assume the role of guardianship of right to decent living.

3. LEGAL IMPLEMENTATION OF THE RIGHT TO A DECENT LIVING

In this section of the paper, I will analyse how Romania, Slovakia, and Croatia implemented a safeguard to living standard regarding minimum wages, pensions system and social assistance. The reason I selected these three action domains is to see the practical implementation and legal enforcement of constitutional principles concerning living standards in Romania, Slovakia, and Croatia. Legal frameworks, social policies, and governmental initiatives are evaluated to determine the efficacy of each country's legal approach in protecting citizens' standard of living.

3.1. Minimum wage

In Romania, the minimum wage is fixed by the Government of Romania through Government's Decision, according to Article 164 of Law no. 53/2003 - Labour Code of Romania.²³ This article states that the minimum gross national monthly base wage guaranteed in payment, corresponding to the normal working schedule, is established by government decision, after consulting trade unions and employers' associations. In cases where the normal working schedule is, according to the law, less than 8 hours daily, the minimum gross hourly base wages calculated by relating the minimum gross national base wage to the average number of hours per month according to the approved legal working schedule.

Currently, there is no established mechanism for increasing the minimum wage in Romania. However, according to Emergency Government Ordinance no. 217/2000 regarding the structure of the minimum consumption basket for a decent living in Romania, as amended by Law no. 174/2020²⁴, the minimum consumption basket for a decent living constitutes the main element for

²³ Labour Code of Romania, Law no. 53/2003, Official Gazette, Part I, no. 345/18.05.2011, available on <https://legislatie.just.ro/Public/DetaliiDocument/128647>(Romanian), 2 April, 2024.

²⁴ Emergency Government Ordinance no. 217/2000 regarding the structure of the minimum consumption basket for a decent living in Romania, Official Gazette, Part I, no. 606/25.11.2000, available on <https://legislatie.just.ro/Public/DetaliiDocument/228843>(Romanian), 2 April, 2024.

establishing the guaranteed minimum gross national base wage and wage policies. Unfortunately, the minimum consumption basket has never been used to establish the minimum wage, as minimum consumption basket has never been calculated according to the law by the National Institute of Statistics, which is under Government's control.

In the past, the minimum wage was increased by political decision alone, left-leaning governments leaning to a bigger increase of the minimum wage, while right-leaning governments favoured a freeze or a smaller increase of the minimum wage.

According to Government's Decision no. 900/2023 for establishing the guaranteed minimum gross national base wage²⁵, starting from October 2023, the minimum wage is 3.300 Lei (RON), which is roughly EUR 663, and 2.079 Lei after taxes. However, according to a report from Friedrich Ebert Stiftung Romania and Syndex Romania issued in October 2023²⁶, the cost for the minimum consumption basket for a decent living was, in September 2023, 3.807 Lei, after taxes. Therefore, the minimum wage set by the Government is 1.728 Lei short (3.807 Lei – 2.079 Lei), after taxes.

In Slovakia, the minimum wage is fixed according to the Labour Code – Law no. 311/2001.²⁷ According to Article 120, the general rule in Slovakia is that the minimum wage is set by collective agreements. However, if the employee's wage was not set by collective agreement, the employer must pay the statutory minimum wage set for the degree of work difficulty.

The employer must classify each position according to a scale of difficulty levels, based on the most challenging tasks expected of the employee within the agreed-upon job description in the employment contract. The Labour Code includes an annex with the criteria for establishing the degree of difficulty of the work position.

According to Ministry of Labour, Social Affairs and Family of the Slovak Republic's Announcement no. 372/2023 Coll.²⁸, the current minimum wage is

²⁵ Government's Decision no. 900/2023 for establishing the guaranteed minimum gross national base wage, Official Gazette, Part I, no. 877/28. 09. 2023, available on <https://legislatie.just.ro/Public/DetaliiDocument/275787> (Romanian), 2 April, 2024.

²⁶ See https://romania.fes.de/fileadmin/user_upload/pdf-files/comunicat_Cosul_Minim_Trai_Decent_2023.pdf (Romanian), 2 April, 2024.

²⁷ Labour Code, Law no. 311/2001 Coll., <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20240301> (Slovak), 2 April, 2024.

²⁸ Ministry of Labour, Social Affairs and Family of the Slovak Republic, Announcement no. 372/2023 Coll., <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2023/372/20230927> (Slovak), 2 April, 2024.

Slovakia is EUR 750 for the first degree of difficulty and EUR 1.330 for the most complex jobs.

In Croatia, the minimum wage is fixed according to Minimum Wage Act.²⁹The minimum wage within the meaning of this act is lowest monthly amount of gross wage paid for full-time work.

According to Article 5 and Article 6, the minimum wage is established once a year, no later than 31 October for the following year, by the Government of the Republic of Croatia at the proposal of the Minister competent for labour.

The Minister shall, considering the rise in the proportion of the minimum wage compared to the average gross wage paid in legal entities from January to July of the current year, inflation, wage dynamics, unemployment and employment patterns, demographic shifts, and the overall economic condition, and with particular attention to low-wage occupations and vulnerable employee groups, propose to the Government of the Republic of Croatia the minimum wage amount, after consultation with social partners. Typically, regular annual consultations with the social partners shall take place in September and October.

It is important to note that, in Croatia, the Minister shall set up an expert commission to monitor and analyse the development of the minimum wage, according to Article 7. The current minimum wage in Croatia is EUR 840.³⁰

In conclusion, the comparative analysis highlights diverse methods for setting minimum wages in Romania, Slovakia, and Croatia. Romania relies on government decisions but lacks a formal mechanism for adjustments, potentially leading to discrepancies between wages and living costs. In Slovakia, minimum wages are primarily determined through collective agreements, with statutory minimums for jobs lacking such agreements. Croatia employs a structured process involving consultations and expert commissions to propose minimum wage adjustments. These distinct approaches reflect each country's socio-economic context and policy priorities, influencing wage levels and labour market dynamics. In my opinion, the mechanism described above are not sufficient for safeguarding the decent living standard, because establishing the minimum wage remains a simple political decision.

²⁹ Minimum Wage Act, Official Gazette no. 118/18, 120/21, https://uznr.mrms.hr/wp-content/uploads/minimum_wage_act.pdf, 2 April, 2024.

³⁰ Regulation, Minimum Wage 2024, Official Gazette no. 125/2023, https://narodne-novine.nn.hr/clanci/sluzbeni/2023_10_125_1740.html(Croatian), 2 April, 2024.

3.2. Pensions

In this section, I will present how the old-age pensions are calculated in Romania, Slovak Republic, and Croatia. Also, I will assess if there is a minimum pension and how it is calculated.

Regarding the pension system, Romania implemented a pension system based on personal contributions, which are mandatory and are collected usually through employers, as a withholding tax. The system is regulated by Law no. 360/2023 regarding public pensions system.³¹

According to this law, the pension amount for old ageis determined by multiplying the total number of points accrued by the insured individual with the value of the reference point. The value of the reference point represents the ratio between the pension point value at the time of the law's enactment and the average level of contribution periods under previous legislation, specifically level 25. At the law's enactment, the value of the reference point is 81 Lei.

Starting from the year following the law's enactment, the value of the reference point is annually increased at the beginning of each year, in January, by the average annual inflation rate, plus 50% of the real increase in the average gross wage earnings, definitive indicators known in the current year for the previous calendar year, communicated by the National Institute of Statistics. However, in practice, the value of the pensions' growth is set by the Government, as a political decision.

If the pension is lower than a certain amount, the pensioner will receive a difference, as a social allowance, according to Emergency Government Ordinance no. 6/2009 regarding social benefit for pensioners.³²The amount mentioned above is currently 1.281 lei, according to Emergency Government Ordinance no. 115/2023on certain fiscal-budgetary measures in the field of public expenditure, for fiscal consolidation, combating tax evasion, amending, and supplementing certain normative acts, as well as for extending certain deadlines,³³ therefore no pensioner receives less than 1.281 Lei monthly.

³¹ Law no. 360/2023 regarding public pensions system, Official Gazette, Part I, no. 1089/2023, <https://legislatie.just.ro/Public/DetaliiDocument/276927>(Romanian), 2 April, 2024.

³² Emergency Government Ordinance no. 6/2009 regarding social benefit for pensioners, Official Gazette, Part I, no. 107/2009, <https://legislatie.just.ro/Public/DetaliiDocumentAfis/248219>(Romanian), 2 April, 2024.

³³ Emergency Government Ordinance no. 115/2023 on certain fiscal-budgetary measures in the field of public expenditure, for fiscal consolidation, combating tax evasion, amending, and supplementing certain normative acts, as well as for extending certain

Like the minimum wage, the minimum pension, composed of the pension and the social allowance mentioned above, is fixed by the political decision of the Government, through emergency government ordinance.

In Slovakia, the pensions are regulated through Law no. 461/2003 Coll. on Social Insurance.³⁴ This system is also based on points. According to Article 61-63, the personal assessment basis in the specified context is determined by aggregating assessment bases for the relevant calendar year, from which pension insurance contributions have been paid. The personal pay point, crucial for calculating retirement benefits, is computed by dividing the personal assessment base by the general assessment base, rounded up to four decimal places. If the pension insurance period lasted for a whole calendar year, a personal pay point of 0.3 is allocated; otherwise, it's prorated based on the duration of the period. The maximum personal pay point is set at 3. According to Article 11 para. (1), the general assessment base is 12 times the average monthly salary in the economy of the Slovak Republic as determined by the Statistical Office of the Slovak Republic for the relevant calendar year.

The average personal pay point, pivotal for pension benefit calculations, is calculated by summing personal pay points achieved in each calendar year and converting pension insurance days into years. An average personal pay point exceeding 3 is disregarded. Values below 1.25 are considered in full, while adjustments are made for averages between 1.25 and 3 based on specified percentages over the years. Additional adjustments are applied for averages below 1.0. The resulting average personal pay point is rounded up to four decimal places after adjustments.

According to Annex No. 3aa, the pensions growth formula is based on the 95% of the growth of the average monthly salary of the Slovak Republic as determined by the Statistical Office for the third quarter of the calendar year. The base for the growth is the pension value of the previous year, until 2005 when Article 64 para. (2) established the pension value to be 195 SKK.

Slovak Republic also established a minimum pension. According to Article 82b, the increase in old-age pensions to match the minimum pension is determined as follows: The minimum pension is either 145% of the subsistence minimum or a percentage increase based on the length of the pension insurance period. This

deadlines, Official Gazette, Part I, no. 1139/2023,
<https://legislatie.just.ro/Public/DetaliiDocument/277404>(Romanian), 2 April, 2024.

³⁴ Law no. 461/2003 Coll. on Social Insurance, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/461/20231001.html> (Slovak), 2 April, 2024.

increase ranges from 2.5 to 7.5 percentage points for each additional year of the pension insurance period after 30 years.

In Croatia, the pensions system is regulated through Pension Insurance Act³⁵ from 2013. Value points for determining pensions in Croatia are calculated based on salaries and insurance bases earned since January 1, 1970, according to Article 81. Each year's salary or base is divided by the average annual salary of all employees for that year. For years after January 1, 2003, if the insured person earns a salary or base exceeding the maximum annual basis for calculating contributions, the maximum annual basis for that year is used to determine value points proportionally to the insurance seniority earned. One value point equals the average salary for one calendar year. Personal points for pension calculation are obtained by multiplying the average value points by the total pensionable service and the starting factor. The current pension value is the determined amount for one personal point.

According to Article 88 para. (5), the annual growth rate of pensions in Croatia is determined by combining the rate of change in the average consumer price index and the rate of change in the average gross salary of all employees from the previous calendar year. If the consumer price index contributes less than 45% to the overall rate, the growth rate is determined by 30% of the consumer price index change and 70% of the wage change. If the index contributes 45% to 55%, the ratio becomes 50-50. If the index contributes more than 55%, the ratio shifts to 70% consumer price index change and 30% wage change.

Croatia has also a minimum pension, like Romania. According to Article 90 para. (2), the lowest pension is determined for each year of pensionable service in the amount of 0.825% of the average gross salary of all employees in the Republic of Croatia in 1998 according to data from the Croatian Bureau of Statistics.

In summary, the pension systems in Romania, Slovakia, and Croatia share commonalities in their basis for pension calculation, often relying on a points-based system derived from contributions and average salary levels. Additionally, all three countries have established mechanisms for adjusting pensions to ensure a minimum threshold, with variations in how this is calculated.

Romania's pension system, governed by Law no. 360/2023, calculates pensions based on accrued points multiplied by a reference value, with adjustments made annually. Emergency Government Ordinance no. 6/2009 provides for a social

³⁵ Pension Insurance Act, Official Gazette no. 157/2023, https://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_157_3290.html (Croatian), 2 April, 2024.

allowance to supplement pensions below a certain threshold, ensuring a minimum income level. Similarly, Slovakia's pension system, regulated by Act No. 461/2003 on Social Insurance, uses a points-based approach, with adjustments based on the average monthly salary and additional provisions for a minimum pension based on years of pension insurance.

Croatia's pension system, as governed by the Pension Insurance Act from 2013, calculates pensions based on value points derived from salary contributions since 1970, with adjustments made based on the annual growth rate determined by changes in the consumer price index and average gross salary. Furthermore, Croatia establishes a minimum pension amount based on a percentage of the average gross salary of all employees in 1998.

While all three countries implement a minimum pension, differences exist in the methodologies used for its calculation. Romania and Slovakia determine the minimum pension based on a percentage increase relative to the subsistence minimum or years of pension insurance, whereas Croatia sets its minimum pension based on historical salary data. These variations reflect the unique policy priorities and economic contexts of each country. In this context, it is difficult to assess if the minimum pension satisfies the right to a decent living. However, the idea of a minimum pension is a clear intent of the state to assure this right.

3.3. Social assistance

In this section, I will identify and assess the legal provisions of social assistance related to providing a minimum amount of money for people's basic needs in Romania, Slovakia, and Croatia. Although they are different kinds of forms of social assistance, I will be looking for the social assistance only to the basic needs, to compare how these countries implement such measure and how they safeguard the right to decent living.

In Romania, there was a recent reform of the social assistance policy for providing the allowance for the basic needs. Law no. 196/2016 regarding the minimum inclusion income³⁶ entered in force on January 1st, 2024, after almost 7 years of delays.

Article 3 of Law no. 196/2016 establishes the concept of minimum inclusion income, which provides financial support to ensure a minimum standard of

³⁶Law no. 196/2016 regarding the minimum inclusion income, Official Gazette, Part I, no. 882/2016, <https://legislatie.just.ro/Public/DetaliiDocument/265018> (Romanian), 2 April, 2024.

living for eligible families and individuals, as well as to prevent child poverty and promote their participation in education. This income is comprised of two forms of financial assistance: inclusion allowances and family allowances. The minimum standard of living is defined by Article 54 of Law no. 292/2011 regarding social assistance³⁷ and represents the threshold expressed in money that ensures basic needs such as food, clothing, personal hygiene, household maintenance, and sanitation. It is calculated in relation to the poverty threshold according to the methodology used at the level of the European Union member states.

According to Article 9, both families and single individuals without income or whose income does not cover the minimum standard of living may benefit from the minimum inclusion income if they meet the eligibility conditions provided by this law, and their adjusted monthly net income is up to 700 Lei.

Article 15 establishes the maximum monthly amount for the inclusion allowance, which varies based on the recipient's circumstances. For most individuals, it is set at 275 lei per month, while those aged 65 or older can receive up to 400 lei per month. The maximum allowance is determined based on family size, using equivalence coefficients outlined in Article 9 para. (2). Article 16 outlines how the inclusion allowance is calculated as the difference between the maximum allowance and the recipient's monthly net income. For individuals who are single and at least 65 years old, the adjusted monthly net income limit and the maximum allowance amount are both set at 400 Lei, according to Article 17.

The assistance provided to families with children under the minimum inclusion income program is determined based on the family's adjusted monthly net income and the number of children. Families with incomes up to 275 Lei receive varying levels of monthly aid, with amounts increasing according to the number of children. For single-parent families and those with adjusted monthly incomes up to 700 Lei, assistance amounts are similarly determined based on the number of children. The assistance aims to alleviate financial strain and ensure the well-being of families with children, contributing to poverty prevention and supporting children's participation in the education system as there is a condition for the children to participate in the education system and not record absences.

According to Article 91, the minimum inclusion income level, and its associated components, along with the assistance amounts for families with children, are subject to annual automatic adjustments, beginning each March. These

³⁷Law no. 292/2011 regarding social assistance, Official Gazette, Part I, no. 905/2011, <https://legislatie.just.ro/Public/DetaliiDocument/232139> (Romanian), 2 April, 2024.

adjustments are based on the previous year's average annual inflation rate, as officially reported by the National Institute of Statistics. If the inflation rate is negative, the minimum inclusion income and its associated amounts remain unchanged.

In Slovak Republic, the minimum income threshold is regulated by Law no. 601/2003 Coll. on the subsistence minimum and amending certain laws.³⁸ According to Article 2, the subsistence minimum for individuals or households assessed collectively is determined as follows: EUR 178.92 monthly for each adult individual, EUR 124.81 monthly for additional adults assessed together, and EUR 81.66 monthly per dependent minor or child.

Regarding the adjustments of subsistence minimum amounts, Article 5 states that the subsistence minimum amounts are subject to adjustment annually on July 1st, except under special circumstances. This adjustment is determined by multiplying the amounts specified in Article 2 by the growth coefficient of the cost of living for low-income households, as determined by the Statistical Office of the Slovak Republic. Low-income households are defined as those whose incomes fall within the lowest 20% of all households ranked by net cash income per person.

The increase in the cost of living for such households is measured from April of the previous calendar year to April of the current calendar year. If the adjustment coefficient is equal to or less than one, no adjustment is made. The adjusted subsistence minimum amounts are formally established by the Ministry of Labour, Social Affairs, and Family of the Slovak Republic based on data provided by the Statistical Office and published in the Collection of Laws of the Slovak Republic.

In Croatia, the social minimum income is regulated through Social Welfare Act.³⁹ The minimum social income in Croatia is called Guaranteed minimum allowance. According to Article 22, the calculation basis for the guaranteed minimum allowance is established annually by a decision of the Government of the Republic of Croatia.

The guaranteed minimum allowance is a provision extended to individuals or households who lack the financial means to cover their basic needs, as stipulated

³⁸Law no. 601/2003 Coll. on the subsistence minimum and amending certain laws, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/601/20240101> (Slovak), 2 April, 2024.

³⁹ Social Welfare Act, Official Gazette no. 18/2022, https://narodne-novine.nn.hr/clanci/sluzbeni/2022_02_18_181.html (Croatian), 2 April, 2024.

by the Act. This allowance is granted based on specific eligibility criteria outlined in the legislation.

To qualify for the guaranteed minimum allowance, applicants' income sources and property ownership are assessed. There are exceptions to eligibility criteria based on circumstances. For instance, ownership of certain assets such as registered vehicles exceeding a specified value, or the existence of certain contractual agreements may disqualify applicants from receiving the allowance. Additionally, unemployed individuals must be registered as per the labour market regulations to be eligible.

The amount of the guaranteed minimum allowance is calculated as a percentage of a predetermined base, which varies depending on the category of the applicant. Different percentages are assigned to working-age individuals, elderly persons, single parents, and children, among others. Furthermore, allowances may be adjusted to accommodate specific circumstances, such as accommodation costs.

It's worth noting that the total amount of the guaranteed minimum allowance cannot surpass 150% of the gross minimum wage in the Republic of Croatia.

During the application process, the monthly allowance amount is calculated based on the applicant's income. Adjustments to the allowance amount are made continuously until a final decision on eligibility is reached. This ensures that the allowance amount accurately reflects the applicant's financial situation throughout the assessment period, which extends from the initiation of the application process until a decision is issued.

According to Government of Croatia, the guaranteed minimum allowance is EUR 150⁴⁰.

In conclusion, the analysis of social assistance provisions related to ensuring a minimum standard of living in Romania, Slovakia, and Croatia reveals both similarities and differences in their approaches.

In Romania, the recent implementation of Law no. 196/2016 establishes the concept of minimum inclusion income, providing financial support to eligible individuals and families to ensure a basic standard of living. The law outlines specific criteria for eligibility and determines the maximum monthly allowance based on various factors such as age and family size. Furthermore, adjustments

⁴⁰ See <https://gov.hr/en/guaranteed-minimum-benefit/714>, 2 April, 2024.

to the allowance amounts are made annually to account for inflation rates, ensuring that beneficiaries receive adequate support.

Similarly, in Slovakia, the subsistence minimum is regulated by Law no. 601/2003, with adjustments made annually based on the cost of living for low-income households. The subsistence minimum amounts are determined by the Statistical Office of the Slovak Republic and formally established by the Ministry of Labour, Social Affairs, and Family. This system aims to provide financial assistance to individuals and households in need, with allowances calculated based on specific criteria and adjusted regularly to reflect changes in living costs.

In Croatia, the social minimum income is governed by the Social Welfare Act, with the guaranteed minimum allowance serving as a provision for individuals or households lacking the means to cover basic needs. Like Romania and Slovakia, eligibility criteria are outlined, and the allowance amount is calculated based on predetermined bases, with adjustments made to accommodate specific circumstances. However, the total amount of the guaranteed minimum allowance in Croatia is capped at 150% of the gross minimum wage.

Overall, while each country has its own legal framework for providing social assistance, they share common goals of ensuring a minimum standard of living for vulnerable individuals and families. However, differences exist in the specific criteria for eligibility, the calculation of allowance amounts, and the mechanisms for adjustments, reflecting varying approaches to addressing social welfare needs. It is important to note that both Romania and Croatia have a more political approach, while Slovakia has a more data driven approach.

4. CONCLUSION

The constitutional frameworks of Romania, Slovakia, and Croatia exhibit diverse approaches to ensuring a decent standard of living for their citizens. Romania and Croatia explicitly embrace the concept of a welfare state within their constitutions, emphasizing the state's responsibility to safeguard social welfare through comprehensive measures such as economic development, social protection, and entitlements to education, health care, and minimum income. In contrast, Slovakia, while not explicitly designating itself as a welfare state, incorporates provisions aimed at safeguarding the standard of living through fair work conditions, assistance for those in need, and guarantees of material security in old age or incapacity for work. These differing approaches reflect each

country's unique socio-economic context and historical trajectory, shaping their strategies for addressing social welfare needs.

Moreover, the analysis of judicial interpretations and legal enforcement mechanisms reveals variations in the operational realities of constitutional safeguards for living standards in these countries. While all three nations have mechanisms in place to protect citizens' rights to a decent standard of living, there are discrepancies in the consistency and effectiveness of implementation. Romania's Constitutional Court, for instance, demonstrates inconsistency in decision-making and lacks a robust jurisprudential framework, suggesting a need for clearer guidelines and increased consistency in rulings. In contrast, Slovakia and Croatia exhibit a more balanced approach in their courts, considering economic factors alongside constitutional rights, although challenges persist in achieving optimal outcomes. However, constitutionality review does not represent an effective mechanism for safeguarding the right to a decent standard of living.

Furthermore, the comparative analysis sheds light on the mechanisms for setting minimum wages, pension systems, and social assistance programs in Romania, Slovakia, and Croatia. While all three countries have established measures to ensure a minimum standard of living, differences exist in the methodologies used, reflecting each nation's policy priorities and economic contexts. Romania and Croatia tend to adopt more political approaches, while Slovakia leans towards a data-driven approach in setting social welfare policies. Despite these variations, the overarching goal remains consistent: to provide a safety net for vulnerable individuals and families and promote socio-economic well-being within their respective societies. However, the minimum standard of life is not clearly defined, in a qualitative approach.

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