SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

Employer Obligations in the Supplementary Pension Scheme in the Slovak Republic[1]

Viktor Križan

Abstract: *This article analyses the legal nature, scope, and justification of employer obligations under Slovakia's supplementary pension savings scheme (the third pillar), as regulated by the Act No. 650/2004 Coll. It places these duties within the post-2003 multi-pillar reform and the hybrid design of the third pillar, combining voluntary participation with mandatory employer and employee involvement for selected occupational groups. The paper details the employer's core duties – concluding an employer agreement, enrolling eligible employees, remitting statutory minimum contributions, and meeting administrative and equal-treatment requirements – drawing primarily on systematic and teleological interpretation of the Act and the constitutional right to adequate material security in old age under the Article 39(1) of the Slovak Constitution. It argues that mandatory contributions for hazardous or physiologically limited professions serve legitimate compensatory and preventive aims, yet interfere with contractual autonomy and may produce economic and competitive distortions. The article, therefore, identifies proportionality-based limits to the current model and outlines de lege ferenda options to recalibrate mandatory participation, strengthen review mechanisms, and enhance flexibility and incentives.*

Key Words: *Social Security Law; Supplementary Pension Savings; Third Pillar; Employer Obligations; Mandatory Participation; Hazardous Work; Contractual Autonomy; Proportionality; Slovak Pension Reform; Act No. 650/2004 Coll.; Constitutional Right to Old-age Security; the Slovak Republic.*

[1] The paper is an outcome of the grant project VEGA No. 1/0335/23 *"Guarantee of Social Rights through the Pension System of the Slovak Republic"*, in the Slovak original *"Garancia sociálnych práv dôchodkovým systémom Slovenskej republiky"*, responsible researcher doc. JUDr. Miloš Lacko, PhD. The author used ChatGPT (OpenAI GPT-5) solely as an assistive tool for language refinement, stylistic editing, and improving the manuscript's formal clarity. The tool was not used to develop legal analysis, interpret legal sources, formulate arguments, or draw conclusions. All substantive content, legal reasoning, and references are the result of the author's independent scholarly work.

Introduction

In the Slovak Republic, the pension system is based on a three-pillar structure, consisting of the mandatory public pay-as-you-go scheme governed primarily by Act No. 461/2003 Coll. on Social Insurance, as amended, the mandatory funded pillar regulated by Act No. 43/2004 Coll. on Old-age Pension Savings and on Amendments to Certain Acts, as amended and the voluntary supplementary pension scheme regulated by Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Act No. 650/2004 Coll.").

Supplementary pension savings, as the third pillar of the pension system of the Slovak Republic, constitutes a specific institution of social security that complements the mandatory public schemes with a voluntary, or partly mandatory, element of employer and employee participation in financing supplementary pension benefits. From a labour-law perspective, the employer appears to be the key actor within the system, performing intermediary, financial, and social functions.

Participation in the third pillar is voluntary for the majority of employees; however, the legislature, by the Act No. 650/2004 Coll., introduced mandatory participation for specific categories of employees, thereby creating a hybrid model – savings that are voluntary as a rule, yet required in particular cases. Employer obligations must, therefore, be analysed not only in terms of their legal content, but also in terms of their social function and the constitutional context of the right to adequate material security in old age under the Article 39 of the Constitution of the Slovak Republic.[2]

This paper aims to analyse the legal nature and scope of the employer's obligations within the supplementary pension savings system, with particular attention to mandatory participation for selected categories of employees. The central research question is whether the current configuration of these obligations satisfies the requirement of proportionality and strikes an appropriate balance between the system's social function and the protection of the employer's contractual autonomy. The paper also seeks to show to what extent the duty to contribute constitutes an appropriate instrument of social policy, and where its normative limits begin.

[2] *Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended.*

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

A specific doctrinal treatment of employer obligations within the system of supplementary pension savings is virtually absent from the Slovak legal scholarship. The analysis, therefore, relies primarily on the interpretation of the Act No. 650/2004 Coll., the constitutional framework, relevant explanatory memoranda, and comparative trends in multi-pillar pension systems.

Methodologically, the paper proceeds from an analysis of the law in force (the dogmatic method), focusing on a systematic and teleological interpretation of the Act No. 650/2004 Coll. and related legal instruments. Given the relative lack of coherent doctrine and case law concerning mandatory employer participation in supplementary pension savings, the argumentation is grounded primarily in the statutory text, its internal structure, the constitutional context of the right to adequate material security in old age, and the principle of the social State. The analysis also includes an evaluative assessment of the proportionality of the interference with the employer's contractual autonomy, as well as *de lege ferenda* considerations responding to the practical application problems identified.

1 Legal framework of supplementary pension savings

The pension reform of 2003 – 2004 introduced a three-pillar model in Slovakia: the pension insurance scheme (1st pillar), old-age pension savings (2nd pillar), and supplementary pension savings (3rd pillar). Old-age pension savings and supplementary pension savings display a predominance of private-law insurance elements; they differ, inter alia, in the extent to which insurance risk is taken into account, the linkage of entitlement to the completion of a specified insurance period, the existence of a contractual legal basis, participation in investment returns, and the consequences of non-payment of contributions.[3] The core idea underlying this model was to increase the system's financial stability, create room for higher pension benefits, and diversify risks threatening classic pay-as-you-go schemes, including those arising from demographic developments and labour-force mobility.[4] Within this architecture, supplementary pension savings serve as an auxiliary funded pillar based on contractual relationships among the participant, the supplementary pen-

[3] LACKO, M. Poistná zásada vo svetle aktuálnych zmien. *Právny obzor*. 2011, roč. 94, č. 1, p. 90. ISSN 0032-6984.

[4] LACKO, M. *Hmotné zabezpečenie v starobe*. 1. vyd. Bratislava: Sprint dva, 2011, pp. 42-43. ISBN 978-80-89393-65-7.

sion company, and, where applicable, the employer.[5] Macková, however, interprets the introduction of old-age pension savings and supplementary pension savings as a manifestation of a shift from public-law social security towards private-law saving, amounting even to a "dismantling of the social state".[6] In the context of the multi-pillar model, Lacko emphasises that complete constitutional protection of pension entitlements is primarily attached to the basic pension insurance scheme. In contrast, funded pillars are subject to legal regulation and supervision, but not to a direct guarantee of a specific benefit level.[7] The purpose of supplementary pension savings is to provide an individual with supplementary income aimed at raising his or her standard of living in post-productive age.[8]

Supplementary pension savings is governed by the Act No. 650/2004 Coll. on Supplementary Pension Savings, effective from 1 January 2005. According to Lacko, a supplementary pension savings scheme is a defined-contribution, funded scheme in which contributions by the participant, the employer, or a third party are accumulated in individual accounts within supplementary pension funds and used to finance supplementary old-age and supplementary service (early-retirement) benefits.[9] The legal framework of the scheme is characterised by a linkage of private-law elements (contractual relations between the participant, the employer, and the supplementary pension company) with public-law regulation, in particular the supervision of the National Bank of Slovakia and the statutory delineation of employer obligations.

The principal institutional actor of the scheme is the supplementary pension company, which manages the assets of participants and employers through supplementary pension funds. The participant – typically an

[5] LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, p. 36. ISBN 978-80-7380-259-2.

[6] MACKOVÁ, Z. Dvadsať rokov transformácie sociálneho zabezpečenia (Jeden krok vpred, dva kroky vzad alebo od sociálneho zabezpečenia cez sociálne poistenie, ba dokonca sporenie opätovne k sociálnemu zabezpečeniu na úrovni životného minima – t.j. k odvodovému bonusu?). *Právny obzor*. 2011, roč. 94, č. 1, p. 63. ISSN 0032-6984.

[7] LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, p. 16. ISBN 978-80-7380-259-2.

[8] SLEZÁKOVÁ, A. Komparácia zákonných podmienok pre distribúciu doplnkového dôchodkového sporenia v SR a doplnkového penzijného sporenia v ČR. *Studia Iuridica Cassoviensia* [online]. 2021, roč. 9, č. 1, p. 87 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://doi.org/10.33542/SIC2021-1-07.

[9] Cf. LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, pp. 39-40. ISBN 978-80-7380-259-2.

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

employee – concludes a participant agreement by which he or she undertakes to pay contributions into an individual account and simultaneously acquires the right to a supplementary pension benefit. The employer may enter the scheme as a contributing entity in respect of its employees' supplementary pension savings. The contractual relationship between the employer and the supplementary pension company is subject to a specific legal regime and is referred to as an employer agreement.

The supplementary pension savings scheme is designed as a complement to the public pension insurance system; its purpose is not to replace statutory pension benefits but to secure an above-standard or earlier pension income. From a constitutional perspective, it represents one of the instruments through which the Article 39(1) of the Constitution of the Slovak Republic is implemented, providing that citizens have the right to adequate material security in old age and in the event of incapacity for work. The Act No. 650/2004 Coll. thus establishes a specific legal mechanism by which this right is realised not only by the State but also by private and employer-based actors.

The legal framework is hybrid, combining voluntary and mandatory participation. The general rule is that participation in supplementary pension savings is voluntary and applies to the majority of employees and employers. Voluntariness means that the participant decides whether to conclude a participant agreement, and the employer decides whether to join the scheme as a contributing entity. An exception to this principle is mandatory participation for specific categories of employees and employers. The employer's duty to conclude an employer agreement with a supplementary pension company and to pay contributions to supplementary pension savings arises where the employer employs persons performing work classified in the third or fourth risk category pursuant to a decision of the public health authority, as well as where the employees concerned perform the profession of a dancer or a wind-instrument musician.

Within the scope of statutorily defined duties, the employer is bound to perform a range of legal acts and payments of both public-law and private-law character. These duties include, in particular, concluding an employer agreement, keeping records of participants, remitting contributions to supplementary pension savings in the statutory amount, and notifying the supplementary pension company of changes relating to the employment relationship. Employer contributions constitute a financial

performance linked to the employment relationship, while their tax and social-contribution treatment is regulated by separate legislation.

Accordingly, the legal framework of supplementary pension savings establishes a tripartite system of relationships among the participant, the employer, and the supplementary pension company, complemented by public-law supervision and a sanctions mechanism. This model combines elements of individual responsibility and social solidarity; the employer's specific position reflects the societal requirement that entities that benefit from an employee's work should also contribute to that employee's pension security.

2 Participation in supplementary pension savings

The system of supplementary pension savings is characterised by its hybrid nature, in which elements of voluntariness and statutory obligation interweave. This duality reflects the legislature's effort to create a mechanism that enables the broadest possible segment of the population to participate in old-age provision, while preserving space for individual responsibility and freedom of choice. A model has thus emerged that combines market-based and social components – supplementary pension savings as a private instrument serving a public objective.

The foundational principle of the scheme is the voluntariness of participation, manifested in the participant's autonomy to decide whether to enter into a participant agreement with a supplementary pension company and to determine the amount of his or her contributions. The voluntary character also operates on the employer's side: the employer may decide whether to join the scheme as a contributing entity and, if so, to what extent it will provide contributions for employees. In such cases, the employer may conclude an employer agreement with a supplementary pension company, thereby establishing the contractual framework for making contributions in favour of employees. This model is particularly used by undertakings that pursue a social policy beyond statutory minima and view contributions to supplementary pension savings as an employee benefit, thereby enhancing loyalty and workforce stability.

Conversely, in some instances, the legislature has departed from the principle of voluntariness and has imposed mandatory participation of both employers and employees in supplementary pension savings. These are situations in which the nature of the work performed or the characteristics of the profession justify an increased need for old-age security.

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

Mandatory participation applies to employees performing so-called hazardous work, which, by decision of the public health authority, is classified in the third or fourth risk category under the Act No. 355/2007 Coll. on the Protection, Support and Development of Public Health,[10] as well as to employees working in the professions of dancer or musical artist – wind-instrument performer. An employer who employs such persons is obliged to conclude an employer agreement with a supplementary pension company and to pay contributions for those employees into supplementary pension savings.

The origins of mandatory participation lie in the transformation of the former special pension security scheme, which, before 2004, provided preferential pension conditions for employees in the so-called first and second occupational categories.[11] The pension reform dismantled this publicly funded model while seeking to preserve a compensatory mechanism for employees in occupations that entail greater wear and tear on the workforce. The legislature, therefore, transferred responsibility for their supplementary old-age provision to the employer, as an actor forming part of the causal chain of risk and able to influence working conditions. The employer's duty to contribute in these cases thus serves as a means of mitigating social disparities and, simultaneously, as a preventive instrument incentivising employers to reduce workplace risk.

The hybrid character of the scheme entails several legal and social implications. On the one hand, it allows employers and employees to voluntarily and flexibly build supplementary pension provision according to individual capacities and needs. On the other hand, it establishes binding rules where required by health protection and social justice. In this way, a balance is struck between the participants' autonomy and the public interest in ensuring a dignified old age.

From the perspective of legal theory, this model represents an interesting example of normative symbiosis between private-law and public-law regimes. Voluntary participation derives from freedom of contract and economic motivation, whereas mandatory participation is grounded in peremptory statutory provisions and pursues the constitutionally pro-

[10] *Act No. 355/2007 Coll. on the Protection, Support and Development of Public Health and on Amendments to Certain Acts, as amended*.

[11] In particular, citizens who satisfied the conditions laid down in Section 21(1) and Section 174 of the *Act No. 100/1988 Coll. on Social Security* [effective until 31 December 2003] were subject to a specific (more favourable) retirement age for the purposes of assessing entitlement to an old-age pension and to an early old-age pension.

tected aim of social protection. From the employer's perspective, this creates a situation in which a voluntary decision to make contributions is transformed into a legal obligation once certain factual conditions are met. This shift from contractual autonomy to statutory duty underscores the scheme's dynamic nature. It demonstrates that supplementary pension savings is not merely a private form of investment, but also a constituent part of the broader framework of social law.

The hybrid third-pillar model, therefore, appears to be a balanced compromise between the individualisation of pension provision and its social function. It enables a combination of the principles of solidarity and responsibility. At the same time, the employer's participation – whether voluntary or mandatory – is a key link in the implementation of the constitutional right to adequate material security in old age.

3 Scope of the employer's obligations

The scope of an employer's obligations under the supplementary pension savings scheme is determined by the employer's legal position as an intermediary between the employee, who is the participant in the savings scheme, and the supplementary pension company, which manages the funds. The employer's obligations are, therefore, mixed in nature – they include contractual elements typical of private-law relationships, yet they also have a public-law dimension, since compliance is subject to supervision and a sanctions mechanism.

Under the Act No. 650/2004 Coll., the employer's obligations depend primarily on whether the employer has entered the scheme voluntarily or whether the Act imposes on it a duty to conclude an employer agreement and to contribute to supplementary pension savings. In the case of voluntary participation, the legal relationship between the employer and the supplementary pension company rests on contractual autonomy, and the content of the obligations follows from the employer agreement concluded. Where, however, the employer employs persons performing work within the meaning of Section 2(2)(b) of the Act No. 650/2004 Coll., its obligations are mandatory (peremptory) in character. They cannot be validly waived or modified in a manner that would reduce the level of statutory protection afforded to employees.

The employer's fundamental obligation is to conclude an employer agreement with a supplementary pension company. This agreement constitutes a specific legal instrument without an equivalent in other areas

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

of labour law or social security law. Its purpose is to regulate the method and periodicity of contribution payments, to identify the categories of employees for whom contributions are remitted, and to ensure proper registration of participants. By agreeing, an obligation relationship arises between the employer and the supplementary pension company; although contractual in form, its essential content is determined by mandatory statutory provisions. The duty to agree must be fulfilled within thirty days from the commencement of employment of an employee performing work classified in the third or fourth risk category, thereby making explicit that failure to do so constitutes unlawful conduct.[12]

Closely linked to the conclusion of the employer agreement is the employer's obligation to register the employee in the supplementary pension savings scheme and to remit contributions regularly to the employee's individual account. The Act sets a minimum contribution of 2 % of the employee's assessment base, which is identical to the assessment base for social insurance.[13] This minimum is peremptory and represents a binding floor below which the employer may not go.

The employer is further obliged to ensure proper administration connected with supplementary pension savings. This obligation has several layers. First, there is a record-keeping duty to maintain a list of employees participating in supplementary pension savings and to record all changes affecting their employment status. Second, the employer has a notification duty vis-à-vis the supplementary pension company: pursuant to the employer agreement, the employer must inform the company of facts affecting the duration, course, and termination of the employer's and employees' participation in the scheme. This entails, in particular, notifying without undue delay events such as the termination of a participant's employment, the participant's death, organisational changes and their consequences for participation by the employer and participants. Third, the employer must ensure timely remittance of contributions within the deadlines set by the employer agreement, typically monthly after wages are paid.

Employer contributions are subject to a specific tax regime. The Act No. 595/2003 Coll. on Income Tax recognises employer contributions to

[12] Cf. Section 5(2) of the *Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended*.
[13] Cf. Section 13(3) of the *Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended*.

supplementary pension savings as tax-deductible expenses up to 6 % of the employee's accounted wage, wage compensation, and remuneration.[14] At the same time, such contributions are treated as part of the employee's taxable income, subject to personal income tax and included in the assessment base for social contributions. This regime balances the State's interest in fiscal neutrality with the need to preserve employers' incentives to contribute to supplementary pension savings.

Particular attention should be paid to equal treatment. The Act expressly prohibits discrimination against employees in the provision of contributions to supplementary pension savings, meaning that the employer may not determine the circle of eligible persons on the basis of criteria contrary to the principle of equality in remuneration and social benefits. Suppose the employer provides contributions only to a particular group of employees. In that case, it must demonstrate an objective justification for such differentiation, for example, differences like work, function, or length of employment. This ensures that supplementary pension savings do not deepen workplace inequalities but instead contribute to social cohesion.

Failure to fulfil employer obligations gives rise to liability under the public-law supervisory regime. The National Bank of Slovakia, as the financial-market supervisory authority, is empowered to impose a fine of up to EUR 30,000 on the employer for breaches of obligations arising from the Act or the employer agreement. In addition, civil liability towards employees may arise where non-payment of contributions has caused them damage. The Act thus establishes a multi-layered system of legal responsibility with both preventive and repressive functions.

The scope of the employer's obligations within the third pillar, therefore, reflects a broader trend towards employer participation in employees' social security. It is not merely a formal duty to remit contributions, but part of a comprehensive concept of responsible enterprise, in which the employer becomes a co-bearer of society's social commitment. The statutory obligations cannot be interpreted in isolation, but as an integral

[14] Cf. Section 19(3)(l) of the *Act No. 595/2003 Coll. on Income Tax, as amended*; and SCHNEIDER, S. M., T. PETROVA and U. BECKER, eds. *Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond* [online]. 2nd ed. Munich: Max Planck Institute for Social Law and Social Policy, 2021. 545 p. [cit. 2025-11-03]. Available at: https://doi.org/10.17617/2.3359088.

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

component of the protection of social rights and as a means of balancing economic freedom with social justice.

4 Employer obligations: a teleological perspective

The statutory duty of the employer to conclude an employer agreement with a supplementary pension company and to contribute to supplementary pension savings for employees performing hazardous work or physically limited professions has a clear teleological foundation. Its purpose does not lie in an administrative transfer of responsibilities from the State to private actors, but rather in maintaining social equilibrium within the pension system and in giving effect to the constitutionally protected right to adequate material security in old age. This duty reflects the fact that certain occupations are objectively disadvantaged in terms of the length of working life and the impact of the working environment on health, and, therefore, require a specific compensatory mechanism.

The intended rationale of mandatory participation in supplementary pension savings was to replace the abolished system of special pension provision for employees formerly classified in Occupational Categories I and II. The legislature recognised that the complete removal of that mechanism would have reduced the level of social protection for population groups which, for objective reasons, cannot rely on full participation in the basic pension insurance scheme. Mandatory supplementary pension savings thus constitute compensation for premature wear and tear on the workforce and for a shortened duration of gainful activity. It is a solution grounded in the principle of solidarity, yet implemented through private-law relationships.

The teleological justification of this duty may also be assessed through the lens of proportionality between the public interest and the interference with the employer's contractual autonomy. The legislature imposed the duty to contribute to supplementary pension savings only to the extent strictly necessary, i.e., where a real and objectively demonstrable reason exists – either an increased health risk or a structurally limited period during which the profession can be performed. The measure pursues a legitimate aim: the protection of workers' social rights and the correction of disparities arising from the physical and economic conditions of work. This objective is consistent with the Article 39(1) of the Constitution of the Slovak Republic, which guarantees everyone the right to adequate material security in old age, and with the principle of the social State under the Article 1(1) of the Constitution.

Mandatory employer contributions also serve an essential preventive function. By shifting part of the financial responsibility to the employer, the law creates an economic incentive to improve working conditions and to reduce the riskiness of work. An employer who, through investments in occupational safety or technological innovation, succeeds in having a given activity removed from the hazardous-work category simultaneously ceases to be subject to the duty to contribute to supplementary pension savings. The system thus implicitly rewards prevention and internalises social costs that the public pension scheme would otherwise bear. From the perspective of social-policy theory, the employer's duty may, therefore, be understood as an expression of the concept of the "responsible employer", i.e., an employer obliged to share in the social consequences of its entrepreneurial activity.

The teleological basis for mandatory contributions is equally evident in artistic professions, particularly in dancers and wind instrument musicians. In these occupations, physiological limits on the duration of professional performance exist independently of the will of either the employer or the employee. Mandatory participation in supplementary pension savings here operates as a specific form of protection for the period following the end of an artistic career, which typically precedes the attainment of statutory retirement age. The legal regulation, therefore, carries not only a social but also a cultural-policy dimension, insofar as it safeguards professions of significant societal value.

From the standpoint of legal systematics, the employer's duty within the third pillar may be viewed as an expression of the principle of private-sector participation in fulfilling the State's social function. This principle is inherent in modern social law and rests on the premise that ensuring a dignified old age is a common objective of both the public and private spheres. The employer's duty should, therefore, not be interpreted as a unilateral burden, but as an instrument of social responsibility and solidarity within employment relationships.

Teleological analysis thus confirms that the legal regulation of mandatory employer participation in supplementary pension savings pursues a constitutionally legitimate and socially desirable aim. At the same time, it represents a compromise between individual responsibility and the public interest, emphasising a fair allocation of the costs of social protection among the State, the employer, and the employee. This approach aligns with European trends favouring a pluralistic model of old-age pro-

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

vision that combines mandatory and voluntary elements and involves the co-participation of multiple actors.

5 Value-based and constitutional aspects

Employer participation in the supplementary pension savings scheme cannot be conceived merely as a technical-financial mechanism; rather, it is above all a legal and value-laden expression of social solidarity within employment relationships. The employer's obligations under the third pillar acquire their whole meaning only when viewed through the constitutional framework of social rights, in particular the right to adequate material security in old age enshrined in the Article 39(1) of the Constitution of the Slovak Republic. This provision embodies the State's commitment to ensuring conditions that enable citizens to live with dignity even after the end of their economically active lives. The Act No. 650/2004 Coll. serves as an instrument for implementing this constitutional commitment in cooperation with private-law actors.

In this context, the employer acts as an intermediary of constitutionally guaranteed social security. This does not amount to a transfer of a public-law task in the narrow sense, but rather to a manifestation of cooperation between the public and private sectors in the realisation of social rights. The employer's duty to contribute to supplementary pension savings thus reflects the principle of participation inherent in the modern social State. That principle rests on the idea that ensuring a dignified old age is not the exclusive responsibility of the State, but a societal commitment shared by all relevant actors – individuals, employers, and the State alike.

From the standpoint of the legal order's value orientation, supplementary pension savings embody two fundamental principles: solidarity and responsibility. Solidarity is expressed in the employer's contributions to employees' supplementary provision not merely as part of an economic exchange for labour, but also as recognition of social responsibility for the consequences of the working environment and conditions under which work is performed. Responsibility is reflected in the individual dimension: each employee has the opportunity to co-participate in his or her future security through personal contributions and decisions concerning the savings profile. In this way, the scheme integrates the principles of individual initiative and collective co-responsibility.

A teleological and constitutional interpretation of the Act No. 650/2004 Coll. confirms that the employer's duty has not only an economic, but also a moral and societal dimension. It forms part of a broader concept of decent work, grounded in the idea that the employer should bear an appropriate share of responsibility for ensuring employees' dignified living standards even after they cease active work. This approach aligns with international instruments, in particular the European Social Charter[15] and the recommendations of the International Labour Organisation, which emphasise States' obligations to create an environment that supports supplementary old-age schemes and employer participation in their financing.

From a constitutional-law perspective, the employer's duty may also be interpreted through the principle of the social State under the Article 1(1) of the Constitution. This principle implies an obligation on the State to create legislative and institutional conditions for social inclusion and for protecting individuals against social exclusion. The supplementary pension savings scheme exemplifies how this principle may be fulfilled through a normative framework that activates private actors without diminishing the level of constitutionally guaranteed protection. In this setting, the employer becomes a partner of the State in pursuing social objectives, thereby strengthening the legitimacy and sustainability of the pension system as a whole.

The constitutional significance of the employer's duty can further be perceived in terms of equality and justice. Mandatory employer participation in hazardous or physically demanding professions aims to eliminate inequalities in access to pension security caused by differences in working life length and varying degrees of exposure to health-damaging factors. The Act thus reinforces the material dimension of the equality principle and meets the requirement of proportionality between the level of societal contribution and the level of social protection. This approach accords with the understanding of social law as a dynamic system that responds to objective social disparities and, through normative instruments, mitigates them.

The value basis of supplementary pension savings, therefore, goes beyond the confines of individual retirement financial planning. It is an institution combining economic rationality with an ethical dimension of social responsibility. The employer's duty to contribute to supplementary

[15] *European Social Charter* [1961].

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

pension savings is a legal expression of a prevailing social-policy orientation: that a dignified old age is not solely a matter for the individual, but the product of collective effort to distribute the consequences of working life more fairly. From this perspective, the third pillar performs not only a supplementary but also an integrative function – linking economic efficiency with the normatively anchored requirement of shared bearing of social risks and participatory responsibility.

6 Critical aspects of the employer's duty to contribute to an employee's supplementary pension savings

The foregoing analysis has shown that the employer's duty to contribute to supplementary pension savings can be justified teleologically and constitutionally, in particular by reference to the principles of the social State, participation, and solidarity. For the sake of completeness, however, it is necessary to take account of arguments that question the scope and the specific form of this interference with the employer's legal position. A critical reflection on the duty to contribute is essential not only from the perspective of systemic coherence of the legal regulation, but also for assessing its value-based legitimacy in a market-economy environment.

One of the basic critical starting points concerns contractual autonomy and freedom of enterprise. The employer's statutory duty to conclude an employer agreement and to remit contributions to supplementary pension savings constitutes an interference with the employer's decision-making autonomy as regards the forms of remuneration and social provision for employees. An employer who already bears the burden of mandatory contributions to public social-insurance schemes is legally compelled to enter into a specific type of funded (capitalisation-based) product, without the possibility of choosing an alternative mechanism of supplementary provision (such as an in-house occupational scheme, an individual investment strategy for employees, or another form of long-term benefit). From the standpoint of classical private-law principles, this reveals a tension between freedom of contract and the peremptory character of the contribution duty.

Closely related is the economic dimension of the duty. Employer contributions constitute a financial performance linked to the employment relationship and, together with mandatory payments into public schemes, increase overall labour costs. In low-margin sectors or within small and medium-sized enterprises, mandatory supplementary savings may

exert real pressure on wages, employment levels, or the undertaking's investment capacity. Although the legal framework grants tax advantages to such contributions, it cannot be overlooked that they represent another element of the "socialisation" of costs through the employer, potentially affecting competitiveness and market behaviour in the long term.

A further layer concerns possible distortions of equality and competition among employers. The duty to contribute attaches only to employers who employ persons performing work classified in the third or fourth risk category, or specific artistic professions. In practice, however, risk classification often depends on the correct application of criteria by public health authorities and on the organisation of work. An employer whose processes are classified as hazardous is thus exposed to an additional financial burden. In contrast, another employer in a related sector – under a different classification – does not bear such a duty. This may create incentives to "optimise" classifications or organisationally circumvent the system, while undermining equality of competitive conditions.

The legitimacy of transferring part of the State's social function to the private sector is also open to critique. The right to adequate material security in old age is primarily addressed to the State, which must create systemic conditions for its fulfilment. Mandatory employer participation in the third pillar may, therefore, be perceived as a form of "privatisation" of social policy, in which private actors finance part of a public commitment. Although this is a tendency typical of modern pluralistic pension systems, the question remains whether the scope and intensity of that transfer are proportionate and whether adequate compensatory mechanisms accompany it.

A particular problem is the tying of mandatory contributions to a specific financial product administered by supplementary pension companies. The third pillar is based on the capitalisation principle, while the employer has no real control over investment strategy or the long-term performance of the funds. Suppose it later proves that fund returns are low or the fee structure is excessive. In that case, a situation may arise in which mandatory employer contributions fail to generate an adequate social effect for employees. From this perspective, one may object that the legislature compels employers to finance a specific investment product without allowing a rational choice among alternative forms of retirement provision.

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

Finally, the paternalistic dimension of the regulation vis-à-vis the employee should be noted. Mandatory employer contributions form part of a wider remuneration package that employees cannot flexibly convert, for example, into higher wages or different benefits. Even if a legitimate aim is pursued – protecting future old-age security – this represents a restriction of individual autonomy in determining one's own retirement-saving strategy in conditions of increasing financial literacy and a growing diversity of investment options, such paternalism may be regarded as contestable.

These critical aspects do not negate the teleological and constitutional justification of the employer's duty within the third pillar; they do, however, underscore the need to view it as a normatively limited institution that must comply with the principle of proportionality, the protection of contractual autonomy, and the requirement of economic rationality. These considerations should also inform any *de lege ferenda* debate aimed at striking an appropriate balance between the duty's social function and its practical effects on employers and employees alike.

7 *De lege ferenda* considerations

De lege lata, the employer's duty to contribute to supplementary pension savings for employees in hazardous and other specific professions constitutes a legitimate instrument of social policy. It builds on the discontinued special pension system and primarily pursues compensatory objectives. The purpose of the legal regulation of supplementary pension savings is to establish a stable and trustworthy scheme capable of contributing, in the long term, to dignified material security in old age. In contrast, the employer's obligations under this scheme are a critical element in the balance between individual responsibility and collective solidarity. In view of demographic developments, it is necessary to shift a greater share of responsibility for retirement income from the State to the individual, which increases the significance of the third pillar and the need to support it.[16]

As the critical analysis shows, however, this duty is not unproblematic in terms of the employer's contractual autonomy, its economic burden,

[16] SLEZÁKOVÁ, A. Právne inštitúty a návrhy de lege ferenda potenciálne vedúce k zvýšeniu účasti na doplnkovom dôchodkovom sporení. *Studia Iuridica Cassoviensia* [online]. 2017, roč. 5, č. 2, pp. 98-99 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://sic.pravo.upjs.sk/files/9_slezakova-_faktory_motivujuce_k_uzavretiu.pdf.

or equality among actors in the labour market. The current legislative and economic environment is changing rapidly, creating a need to strengthen the third pillar's functionality, effectiveness, and fairness. *De lege ferenda*, therefore, there is a requirement to seek solutions that preserve the scheme's protective function while mitigating its problematic aspects and enhancing legal certainty for participants.

First, it appears necessary to refine and tighten the criteria for mandatory participation. The current model ties the duty to occupational risk classification under special legislation, which, in practice, leads to differing assessments of comparable work activities and an uneven distribution of the burden among employers. Legislation should more precisely define the situations in which mandatory participation is objectively justified by increased wear and tear on the workforce or by physiological limits on the duration of professional performance. It should ensure a more effective mechanism for periodic review of risk classification in response to technological development, changing risk factors, and improved working conditions. This is linked to the need to clarify provisions of the Act No. 650/2004 Coll., in particular those governing the commencement and termination of the contribution duty following changes in risk classification or the transfer of employees to another employer, and to introduce precise procedural mechanisms for notifying such changes and determining their legal effects.

A further area for reform concerns proportionality and equality among employers and professions. The current legal framework assumes that only hazardous work and certain artistic professions justify mandatory contributions to supplementary pension savings. However, societal developments suggest that other occupations involving high physical or psychological strain should also be included. *De lege ferenda*, legislative revision should, therefore, take into account findings in the field of occupational health and safety and enable a more flexible response to evolving risk factors, either by expanding the range of affected professions or by creating mechanisms for the more agile inclusion of new groups of employees. Such solutions could strengthen the scheme's preventive function while reducing inequalities among employers.

At the same time, strengthening the role of collective bargaining and sectoral agreements appears promising. Mandatory contributions are currently based primarily on peremptory statutory rules. For the future, it would be appropriate to consider allowing greater scope for higher-

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

level collective agreements or sectoral arrangements to specify the manner and extent of employer participation in the third pillar with due regard to the particularities of individual sectors. Such an approach could contribute to a fairer allocation of costs, greater acceptance of the scheme by employers, and a perception of the third pillar as the result of social partnership rather than unilateral imposition.

Particular attention should also be paid to the relationship between mandatory contributions and alternative forms of retirement provision. At present, the employer is, in principle, tied to supplementary pension savings as a specific product. *De lege ferenda*, one might consider a model of "functional equivalence", under which part of the employer's duty could be fulfilled through other legally defined and supervised instruments – such as internal occupational pension schemes, collective life insurance with a savings component, or other long-term benefits. Such a solution would enhance contractual autonomy while preserving the scheme's social function.

Regarding employee participation, an automatic enrolment model with an opt-out option appears to be a suitable approach. This "soft" regulatory mechanism would be based on default employee participation with the possibility of subsequent withdrawal. It could increase participation rates, particularly among younger cohorts, without undermining the principle of voluntariness, and would align with current European pension-law trends centred on informed participant choice.

Finally, the further development of the scheme requires improvements in tax and contribution incentives, transparency, and administrative simplicity. Reassessing tax relief – taking into account the real capacities of small and medium-sized enterprises – could increase the attractiveness of voluntary employer contributions. At the same time, it is desirable to support the digitalisation of communication among employers, supplementary pension companies, and the National Bank of Slovakia, to introduce more efficient reporting of obligations, and to strengthen participants' direct access to information on contributions paid. This would reduce employers' administrative burden, enhance participants' trust, and improve the overall functionality of the third pillar.

These *de lege ferenda* considerations confirm that employer obligations in supplementary pension savings cannot be regarded as a closed normative system. Their future direction should lie in seeking an appropriate balance between the protection of dignified old-age living stand-

ards and respect for contractual autonomy, economic realities, and the evolving nature of the social State, with social partnership among the State, employers, and employees playing a decisive role.

Conclusions

The legal regulation of supplementary pension savings constitutes a significant pillar of the social security system in the Slovak Republic, distinguished by the interlinking of public-law objectives with private-law instruments. Employer obligations within this scheme cannot be viewed in isolation as merely technical or administrative measures; instead, they form part of a normatively considered framework in which the need for long-term old-age security intersects with the protection of the employer's contractual autonomy and economic stability.

The hybrid nature of the third pillar – combining voluntary and mandatory participation – reflects the legislature's effort to strike an appropriate balance between participant autonomy and enhanced protection for selected categories of employees. Mandatory employer participation for hazardous and physically demanding professions has a clear teleological justification and builds on the tradition of compensatory mechanisms within the pension system. At the same time, it is an institution that interferes with the organisation of employment relationships, increases labour costs, and may raise issues of proportionality and equality among market actors.

The analysis demonstrates that employer participation in the third pillar may be understood as a two-dimensional institution. On the one hand, it fulfils an important social function and contributes to the stability of the multi-pillar pension system; on the other hand, it requires continuous reassessment of the scope and form of employer duties in light of constitutional principles, legal certainty, and economic feasibility. *De lege ferenda*, it, therefore, does not appear appropriate to strengthen mandatory employer participation unilaterally, but rather to develop a normative framework that preserves the scheme's protective function while creating greater space for contractual autonomy, collective bargaining, and functionally equivalent solutions.

Ultimately, the employer's duty to contribute to supplementary pension savings may be seen as a legal compromise between the requirement of adequate material security in old age and the protection of entrepreneurial freedom and individual responsibility. The future legitima-

SOCIETAS ET IURISPRUDENTIA
2025, ročník XIII., číslo 4, s. 44-65
https://sei.iuridica.truni.sk
ISSN 1339-5467

cy of this institution will depend on the extent to which this balance can be maintained and on whether the third pillar remains a component of the pension system that is not only financially sustainable, but also normatively defensible.

References

Act No. 43/2004 Coll. on Old-age Pension Savings and on Amendments to Certain Acts, as amended.

Act No. 100/1988 Coll. on Social Security [effective until 31 December 2003].

Act No. 355/2007 Coll. on the Protection, Support and Development of Public Health and on Amendments to Certain Acts, as amended.

Act No. 461/2003 Coll. on Social Insurance, as amended.

Act No. 595/2003 Coll. on Income Tax, as amended.

Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended.

Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended.

European Social Charter [1961].

LACKO, M. *Hmotné zabezpečenie v starobe*. 1. vyd. Bratislava: Sprint dva, 2011. 120 p. ISBN 978-80-89393-65-7.

LACKO, M. Poistná zásada vo svetle aktuálnych zmien. *Právny obzor*. 2011, roč. 94, č. 1, pp. 86-94. ISSN 0032-6984.

LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010. 111 p. ISBN 978-80-7380-259-2.

MACKOVÁ, Z. Dvadsať rokov transformácie sociálneho zabezpečenia (Jeden krok vpred, dva kroky vzad alebo od sociálneho zabezpečenia cez sociálne poistenie, ba dokonca sporenie opätovne k sociálnemu zabezpečeniu na úrovni životného minima – t.j. k odvodovému bonusu?). *Právny obzor*. 2011, roč. 94, č. 1, pp. 25-65. ISSN 0032-6984.

SCHNEIDER, S. M., T. PETROVA and U. BECKER, eds. *Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond* [online]. 2nd ed. Munich: Max Planck Institute for Social Law and

Social Policy, 2021. 545 p. [cit. 2025-11-03]. Available at: https://doi.org/10.17617/2.3359088.

SLEZÁKOVÁ, A. Komparácia zákonných podmienok pre distribúciu doplnkového dôchodkového sporenia v SR a doplnkového penzijného sporenia v ČR. *Studia Iuridica Cassoviensia* [online]. 2021, roč. 9, č. 1, pp. 85-94 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://doi.org/10.33542/SIC2021-1-07.

SLEZÁKOVÁ, A. Právne inštitúty a návrhy de lege ferenda potenciálne vedúce k zvýšeniu účasti na doplnkovom dôchodkovom sporení. *Studia Iuridica Cassoviensia* [online]. 2017, roč. 5, č. 2, pp. 98-110 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://sic.pravo.upjs.sk/files/9_slezakova-_faktory_motivujuce_k_uzavretiu.pdf.

Doc. JUDr. Viktor Križan, PhD.

Faculty of Law
Trnava University in Trnava
Kollárova 10
917 01 Trnava
Slovak Republic
viktor.krizan@truni.sk
Scopus Author ID: 59147138300
Web of Science ResearcherID: N-2209-2015
https://orcid.org/0000-0003-3184-4647