Part 2: Social Protection in Bulgaria

A. Functional Systematization of the Bulgarian Social Protection

I. The Concept of Social Protection

The present study necessitates a definition of social protection due to the concept's ambiguous character.[60] Despite the term being widely used, there is no commonly accepted definition neither in the scholarship[61] nor in international law.[62] Therefore, several steps will be undertaken to arrive at a definition of social protection suitable for the research. The steps mentioned below are performed to detect distinctive conceptual features that will contribute to the optimal understanding of the term and inform some of the following research steps.

First, the development and usage of the concept at the international, EU, and national (Bulgarian) level are traced in the assessment of whether an overarching definition could be extracted. Apart from uncovering the supranational nuances of the term, the examination in international and EU law will also conceptually prime the following steps needed for studying international and EU law influences on the national system. Moreover, the assessment of the Bulgarian understanding of the term will demonstrate the national specifics of the concept's scope. The awareness of these national specifics will contribute to the preparation of functional systematization.

Afterward, some conceptual considerations on the abstract meaning of the term are presented. The discussion on the abstract conceptual aspects will enrich the understanding of social protection by focusing on the latter's general purposes. Finally, by building on the conclusions from all previous steps, a summarizing part is to determine how the concept is defined in the study's framework.

60 For similar conceptual concerns on the term of social protection, *see* Becker, in Becker and Reinhard, *Long-Term Care in Europe* (2018) 6 ff.

61 Authors point out to the lack of definition of the similar term of "social security". For instance, *see* Paju, *The European Union and Social Security Law* (2017) 8.

62 Pieters, *Social Security* (2006) 1 ff.

1. Development and Usage of the Term "Social Protection"

a. Development and Usage of the Term in the International and European Union Law

aa. International Law and Policy

The term social protection is a comparatively young concept that has come to the fore alongside the work of different international organizations. A historical examination reveals that the conceptual development in the international realm went hand in hand with the changing international social protection goals for the given period and the intended personal scope. Nowadays, social protection is the leading concept for the most relevant international organizations due to its broad and open spectrum that extends beyond classical social rights.[63]

To begin, the International Labour Organization ("ILO") has progressively embraced the term social protection until it gradually became the predominant concept in its work. A historical and conceptual examination of the decades of development of social security standards reveals different stages in the activities of the ILO.[64] The first period encompasses the period up to the end of the Second World War that relied mainly on the concept of social insurance.[65] The primary goal of the standard-setting concerned the main categories of workers and insurance against risks associated with the key types of economic activities at the time.[66]

The following period encompassed the post-war stage from 1944 up to 1952. The period was characterized by the conceptual reorientation from social insurance to social security due to the extension of the personal scope and the definition of more elaborated social benefit goals. In 1944, the Declaration of Philadelphia adopted an expansive view of social security[67] that aimed at "the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical

63 Brunori and O'Reilly, 'Social Protection for Development' (2010) 12 <https://socialprotection.org/discover/publications/social-protection-development-review-definitions> accessed 18 February 2019.
64 Pennings and Schulte, in Pennings, *Between Soft and Hard Law* (2006) 5.
65 ibid 6.
66 ibid.
67 ibid 2.

care".[68] As a result, the ILO attempted to prepare two conventions on social security, respectively, on the minimum and extended standards. In 1952, Convention 102 established the minimum social security standards in nine different areas, i.e., medical care, sickness, unemployment, old-age, employment injury, family benefit, maternity benefit, invalidity benefit, and survivors' benefit.[69] However, no consensus was reached concerning the proposal on the extended standards.[70]

Regarding the personal scope, instead of engaging with the whole population, the Convention on the minimum standards left it to the contracting parties to tie their compliance to the protection of prescribed classes of persons.[71] The intended higher standards were included and elaborated in a number of following conventions that symbolize the third main period of social security standard setting.[72] These conventions could be characterized by more comprehensive coverage and greater protection; yet, they also entail greater flexibility in terms of the resulting obligations for the given country.[73]

Convention 102 and its social risks formed the backbone understanding of social security.[74] In 1961, the European Social Charter was adopted, and it referred to the ILO's Convention 102 in relation to the right to social security.[75] In its revised version ("ESCR"), the Charter saw the right to social security as the right of workers and their dependents.[76] However, in addition to the rights of the employed ones falling under the term social security, the Charter further envisioned everyone's right to benefit from

68 Part III (f), 'Declaration of Philadelphia' (*Declaration concerning the aims and purposes of the International Labour Organisation*) <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf> accessed 18 February 2019.

69 The Convention does not refer to "social protection" as a term. Still, "social protection" does appear in some of international labour standards where it seems to be used as a synonym to "social security". For instance, *see* Article 17, C130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130) 1969.

70 Pennings and Schulte, in Pennings, *Between Soft and Hard Law* (2006) 8.

71 Article 5, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) 1952.

72 Pennings and Schulte, in Pennings, *Between Soft and Hard Law* (2006) 8.

73 ibid.

74 Nußberger, 'Social Security, Right to, International Protection' (2009) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e987?prd=EPIL> accessed 20 May 2021.

75 Article 12.2, Part II, European Social Charter 1961.

76 "All workers and their dependents have the right to social security." *See* Part I, ESCR.

welfare services and social assistance.[77] Last but not least, the ESCR incorporated the term "protection" (including "special protection" and "social protection") concerning a variety of provisions regarding the situations of pregnant women, children and young people, family protection, and provision of social protection to all elderly.[78] In addition to the Charter, there were no substantial social and economic rights provided for in the European Convention on Human Rights.[79]

Following the example of the Declaration of Philadelphia, the Universal Declaration of Human Rights was the second international instrument that recognized social security as a human right[80] of all members of society.[81] The Declaration further included the right to security with regard to a list of social risks in Article 25.1 that was comparatively consistent with ILO's Convention 102. In the same Article, alongside these classical risks, the Declaration also established the right to basic social benefits "including food, clothing, housing". Article 22 of the Declaration used social security as a "generic term" that covered social insurance.[82] The term social protection was also featured in the international document concerning social benefits and served to designate measures that could, if necessary, supplement the benefits provided to those who work.[83] Moreover, social protection indicated a prerogative that is to be enjoyed by all children, regardless of whether they are born in or outside marriage.[84]

The Universal Declaration laid the foundation for the subsequent preparation of the International Covenant on Economic, Social and Cul-

77 Part II, Article 13, ESCR.

78 For instance, Article 23 provides that "[e]very elderly person has the right to social protection."

79 However, despite the lack of a substantial right to social security in the Convention, over the years the European Court of Human Rights has interpreted civil and political rights in a broad manner that includes social and economic rights. For more on this issue, *see* Dahlberg, 'Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?' (2014) 16 EJSS 252. When discussing social rights matters, the Court tends to refer to the term "social security". For instance, *see Luczak v Poland, Application no 77782/01* para 52.

80 Heredero, *Social Security - Protection at the International Level and Developments in Europe* (2009) 7.

81 Article 22, Universal Declaration of Human Rights.

82 Riedel, in Riedel, *Social Security as a Human Right* (2007) 23.

83 Article 23.1.

84 Articles 23 and 25.

tural Rights (ICESCR),[85] adopted by the United Nations General Assembly in 1966. Accordingly, the Covenant provides for the right to an adequate standard of living, including adequate food, clothing, and housing (Art. 11.1) and access to health care (Art. 12). The ICESCR further recognizes the right to social security (Art. 9). As experts point out, however, the right to social security is stated in a very vague and open language and is further part of the shortest Article in the entire Covenant.[86] Therefore, there are debates on whether Article 9, apart from social insurance, also encompasses the right to tax-financed and non-contributory social assistance.[87] The practice of the Committee on Economic, Social and Cultural Rights is also not conclusive in this regard.[88]

The listed above international social security tools have been heavily influenced by Convention 102, which on its own reflected concerns of the aftermath of the Second World War. Yet, the socio-economic circumstances transformed dramatically over the next decades, leading to a post-industrial era that brought along new challenges and concerns.[89] The growth of the service-dominated economy, the development of the process of globalization, and the reorganization of the traditional gender roles were just some of the factors that grew to challenge the classical social security models.[90] The work of the international organizations thus started to focus on the greater range of risks resulting from the new social realities.[91] Accordingly, the International Labour Conference in 2001 paid special attention to challenges related to poverty, the lack of social protection coverage for certain groups, obstacles stemming from globalization processes and informal economy,[92] and the need for pursuing greater equality in terms of gender and

85 Article 22 of the Universal Declaration was the blueprint for Article 2(1) ICESCR and Article 25 of the Universal Declaration served as a foundation for Article 11 ICESCR. *See* Riedel, in Riedel, *Social Security as a Human Right* (2007) 17.

86 ibid.

87 Scholars consider that Article 9 of ICESCR was formulated in such an open manner in order to achieve comprehensiveness and inclusion of social assistance. *See* ibid 23 ff.

88 ibid 24.

89 Reynaud, in Riedel, *Social Security as a Human Right* (2007) 5.

90 ibid.

91 ibid 14.

92 International Labour Office, 'Social Security' (2001) 29 <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_209311.pdf> accessed 18 February 2019.

disability,[93] and others. The Conference concluded that the present social rights hurdles could be addressed by extending social protection, which included "extending statutory social insurance, promoting microinsurance, developing universal schemes and providing means-tested benefits".[94]

Therefore, social protection began to establish itself as a broader term built above and beyond the classical understanding of "social security risks".[95] This conceptual transformation came to fruition with the Social Protection Floors Recommendation adopted by the International Labour Conference in 2012. Paragraph II.2 of the Recommendation stated that the social protection floors were defined as basic social security entailing "secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion".[96]

Nowadays, in its work, the ILO relies primarily on the broad concept of social protection,[97] which plays a critical role in the "realization of the human right to social security for all, reducing poverty and inequality, and supporting inclusive growth".[98] In addition, in the work of some international organizations, the concept of social security has become a synonym for social protection, leading it to outgrow its origin of addressing classical social rights of the employed population.[99] Following the example of the

93 ibid 5.

94 ibid 40.

95 Drolet, *Social Protection and Social Development* (2014) 23.

96 Authors point out that "vulnerability" is one of the most often recurring concepts in the social protection definitions in both international policy sources as well as in the scholarship. *See* Brunori and O'Reilly, 'Social Protection for Development' (2010) 3 ff.

97 For instance, refer to the main areas of work of the ILO, *see* ILO, 'Topics' (2022) <https://www.ilo.org/global/topics/lang--en/index.htm> accessed 20 March 2022. One of the social protection definitions provided by the ILO states that the concept indicates "the set of public measures that a society provides for its members to protect them against economic and social distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and, the provision of benefits for families with children". *See* García and Gruat, 'Social Protection' (2003) 13–14 <https://gsdrc.org/document-library/social-protection-a-life-cycle-continuum-investment-for-social-justice-poverty-reduction-and-sustainable-development/> accessed 20 May 2020.

98 International Labour Office, 'World Social Protection Report 2014–15' (2014) xxi <https://www.ilo.org/global/research/global-reports/world-social-security-report/2014/WCMS_245201/lang--en/index.htm> accessed 20 May 2020.

99 "Social protection, or social security, is a human right and is defined as the set of policies and pro-grammes designed to reduce and prevent poverty and vulnerability

ILO, other international organizations and UN bodies have also opted to primarily rely on social protection rather than social security to indicate a range of mechanisms. These mechanisms included providing universal protection against poverty, efforts on social inclusion of disadvantaged groups, and enhancing overall access to social insurance and assistance to marginalized groups.[100] Overall, organizations tend to often rely on social protection to indicate the need for measures that target "social and economic vulnerabilities".[101]

To sum up, this succinct examination of the terms social security and social protection demonstrated how terminology has evolved to embrace more and more social risks encountered throughout the endless variety of human lives. The historical developments suggest the need for a concept that reaches outside of the rights of workers and the "classical social risks". Social protection has addressed this conceptual need and established itself as a term that also concerns measures aiming at "preventing or alleviating poverty, vulnerability and social exclusion".[102] Furthermore, some authors argue in favor of the open international understanding of the term.[103] This approach enables conceptual accommodation that, apart from comprehensiveness concerning the covered life contingencies, can also be adapted to the given national and economic situation.[104] Such considerations indicate that the present research necessitates broad and flexible terminology that allows for examining the broad muster of possible state measures targeting modern life contingencies.

throughout the life cycle." International Labour Office, 'World Social Protection Report 2017–19" (2017) xxix.

100 *See* World Bank and ILO, 'Universal Social Protection' (2016) 1 <https://socialprotection.org/discover/publications/universal-social-protection-country-cases> accessed 20 May 2020; UN, 'Social Protection Systems and Floors Partnerships for SDG 1.3' (2020) <https://sustainabledevelopment.un.org/partnership/?p=16346> accessed 20 May 2020; García and Gruat, 'Social Protection' (2003) 13–14.

101 UNICEF, 'Integrated Social Protection Systems' (2012) 13 <https://www.unicef.org/lac/sites/unicef.org.lac/files/2019-10/UNICEF_Social_Protection_Strategic_Framework_full_doc_std.pdf> accessed 20 May 2020.

102 Part I.2, R202 - Social Protection Floors Recommendation, 2012 (No. 202) 2012.

103 Drolet, *Social Protection and Social Development* (2014) 25.

104 ibid.

bb. EU Law and Policy

The terms social security and social protection have permeated different EU legal and social policy aspects. Examining the terms' applications in diverse spheres of law and policy leads to fluctuating understandings. Namely, although the terms are used in various ways, including in legal documents, often there are no available definitions.[105] Moreover, the EU level has not yet sufficiently engaged in a systematic conceptual definition of the ever-so-popular term of social protection. From the outset, it needs to be clarified that the respective powers of the EU imminently influence the term's content in the given sphere. Yet, the respective EU prerogatives in social protection are reviewed in more detail in the research section of the definition of "European Union law" for the purposes of the present research. Therefore, the following would mainly focus on the nuances of the relevant conceptual aspects.

A look at the legal framework demonstrates that social security is relied upon in EU migration law, labor law, and social law.[106] Regarding the latter, some consider that in the realm of the EU coordination regime, "social security" represents a more or less clearly defined term when the related case law of the CJEU is taken into account.[107] Namely, the Court has established the formula that social security encompasses measures concerning one of the risks expressly listed in the nowadays Article 3 of Regulation No 883/2004.[108] Additionally, the covered benefits must be provided "without any individual and discretionary assessment of personal needs to recipients based on a legally defined position".[109] Therefore, following the logic of the Regulation, since social assistance measures are excluded from the coordination regime based on Article 3(5), they are not considered part of social security. However, the coordination regime covers measures that fall

105 Lhernould and others, 'The Interrelation between Social Security Coordination Law and Labour Law' (2017) 23 <https://ec.europa.eu/social/BlobServlet?docId=19404&langId=en> accessed 20 May 2020.

106 ibid.

107 ibid.

108 The benefits covered by Regulation No 883/2004 are sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits.

109 Case C-66/92 *Genaro Acciardi v Commissie Beroepszaken Administratieve Geschillen in de Provincie Noord-Holland* [1993] ECLI:EU:C:1993:341 para 14.

between social security and social assistance,[110] i.e., the so-called non-contributory cash benefits.[111]

Others, however, contest the view on the clear-cut concept of "social security" in the realm of coordination rules. The debated case law of the CJEU on the distinction between social assistance and non-contributory cash benefits provides a suitable example in this regard.[112] Initially, benefits used to be categorized as non-contributory cash benefits belonging to the broader scope of social security if they granted the recipient a clear subjective legal position and if they belonged to the risks listed in Article 3 of the coordination Regulation.[113] Nevertheless, the development of the case law[114] in the area has made the non-contributory cash benefits subject to the residence requirements of Directive 2004/38.[115] The development implied that the non-contributory cash benefits possessed a social assistance character and thereby fell outside the scope of the coordination Regulation. Apart from these controversial aspects, it could be held that the "social security" concept would still address the rest of the types of benefits in Article 3 of Regulation No 883/2004 that mainly tend to target the category of the classical social risks.

Social security is also the primary term used by the Charter of Fundamental Rights of the European Union ("EUCFR"). In Article 34.1, the term encompasses some classical social risks such as maternity, illness, industrial accidents, dependency or old age, and loss of employment. Next, social assistance is clearly distinguished in Article 34.3 as a separate concept that addresses risks such as social exclusion and poverty. "Social protection" is mentioned as a third and distinct term that concerns, among others, the provision of "social protection" to families in Article 33.1.

Social protection is utilized in diverging ways throughout EU law and policy sources. In some regards, it seems to have a narrow meaning that

110 Lhernould and others, 'The Interrelation between Social Security Coordination Law and Labour Law' (2017) 23.

111 Article 3(3), Regulation No 883/2004.

112 On this issue, *see* Vonk, 'The EU (Non) Co-Ordination of Minimum Subsistence Benefits' (2020) 22 EJSS 142 ff.

113 ibid 142.

114 For instance, *see* Case C-333/13 *Elisabeta Dano, Florin Dano v Jobcenter Leipzig* [2014] ECLI:EU:C:2014:2358 para 84.

115 Paju, *The European Union and Social Security Law* (2017) 126 ff.

excludes social security and social assistance.[116] For example, Article 153 of the TFEU provides that the EU is to "support and complement" the Member States' activities in the field of "social security and social protection of workers" and in "the modernisation of social protection systems". Similarly, in some secondary sources, the term appears as a narrower designation of forms of aid differing from social security and social assistance.[117] Yet, other secondary sources apply the concept broadly, such as an overarching term encompassing social security, social assistance, and other benefits or programs.[118]

In the non-legal sources, social protection indicates broader protection than the classical social risks. In this regard, the concept comprises policy objectives and addresses comprehensive program goals for governmental action.[119] For instance, the European Pillar of Social Rights engages with the right to "adequate social protection" and groups various risks related to some traditional social risks under "Social Protection and Inclusion".[120] Moreover, the Pillar includes further aspects, such as integrating people with disabilities, minimum income, long-term care, housing and assistance for the homeless, and access to essential services. In a similarly broad fashion, the European Commission defines the concept "as protection against the risks and needs associated with: unemployment, parental responsibilities, sickness and healthcare, invalidity, loss of a spouse or parent, old age, housing, and social exclusion".[121]

116 Lhernould and others, 'The Interrelation between Social Security Coordination Law and Labour Law' (2017) 23.

117 For instance, Article 11 in Directive 2003/109/EC concerning the status of third-country nationals, who are long-term residents, grants upon such long-term residents the right to equal treatment in terms of "social security, social assistance and social protection as defined by national law". *See* Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, 44–53.

118 For instance, *see* Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180, 15.7.2010, 1–6.

119 Becker, in Becker and Reinhard, *Long-Term Care in Europe* (2018) 7.

120 These include, among others, children support, unemployment benefits, old-age pensions and health care. *See* 'European Pillar of Social Rights' (2017) <https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf> accessed 20 May 2020.

121 European Commission, 'Social Protection' (2020) <https://ec.europa.eu/social/main.jsp?catId=1063&langId=en> accessed 20 May 2020.

To wrap it up, in a sense, the examination of the utilization of social security and social protection at the EU level leaves more questions than answers. Yet, some tentative conclusions about general tendencies are possible. The overall impression is that, based on the coordination rules, social security is still mainly entrenched in addressing classical risk-related benefits. Nonetheless, social protection seems to be gaining greater popularity in the realms of EU social policy due to the concept's versatility and suitability as a collective term for comprehensive policy goals. This increasing usage on the EU level has contributed to the term's popularization and spread over to the national domains.[122] Yet, the conceptual borders remain unclear. In this regard, scholars note that "[w]hat is still missing is a more systematic approach based on the specific objectives and functions of benefits".[123]

b. The Usage of the Term "Social Protection" in Bulgaria

A concise overview of the term social protection on the Bulgarian national level is required to assess whether the national approach could contribute to the term's understanding in a manner supporting the research goal of functional systematization. Yet, an examination immediately reveals that the concept is nationally used in a heterogenous and narrow mode which does not enable the reliance on the domestic approach for the conceptual needs of the present work. Moreover, this varying and limited national usage sometimes results in different meanings of the same concept for the purposes of national law and EU law and policy.

To begin, the literal translation of the term "social protection" in Bulgarian ("социална закрила") is mainly associated with either the fields of social assistance or social services. Concerning its first meaning, the concept's use in the social assistance legislation entails the provision of minimum protection to those who are materially deprived.[124] As to its second meaning, the concept encompasses the provision of social services and the carrying out of targeted social programs for social integration.[125] In these two regards, social protection has a narrow meaning adhering only to the respective purposes of minimum income and social inclusion.

122 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 55.
123 Becker, in Becker and Reinhard, *Long-Term Care in Europe* (2018) 7.
124 The term is also used as the name of the fund financing social assistance benefits. *See* Article 24, Law on Social Assistance, SG 56/19.05.1998 (with later amendments).
125 Article 27(1), Law on Social Assistance.

In any case, the term has not been associated with risk-related benefits and the broad coverage accompanying, for instance, the international conceptual understanding. However, alongside the growing usage of social protection in the domain of EU law and policy, the concept has started to slowly obtain greater popularity in the national context through the translation of the respective legal and policy materials.[126] Furthermore, due to the broad scope of the concept on the EU level, especially the outlined above usage in the European Pillar of Social Rights, the term is nowadays understood by some national authorities as encompassing risk-related benefits as well as measures addressing minimum income and social inclusion.[127]

In the realm of social security,[128] the most commonly used term in the country is "social insurance" ("обществено осигуряване"), which embodies the traditional social risks.[129] At the national level, the concept has origins dating to the 1910s.[130] Back then, the term was used in the regulation of the risks of accidents at work and occupational diseases, as well as of old age and death.[131] In 1924, with the adoption of the Law on Social Insurance, the range of social risks covered by the concept was enlarged with mater-

126 For example, based on the broad meaning of the term in the European Pillar of Social Rights, the term is nowadays used extensively by some state authorities. *See* Economic and Social Council of the Republic of Bulgaria, 'European Pillar of Social Rights and the Organized Civil Society/Европейският стълб на социалните права и ролята на организираното гражданско общество' (2018) <https://esc.bg/становища/европейският-стълб-на-социалните-пра-3/> accessed 20 May 2020.

127 The broad range of risks covered by the concept in the European Pillar of Social Rights became the basis for the understanding of the term in the work of some state authorities. *See* ibid.

128 The literal Bulgarian translation of the concept of "social security" ("социална сигурност") did not use to play a role in the national legislation. Yet, the term started to acquire particular popularity alongside the different relevant legislation on social security coordination, such as the EU law sources and bilateral treaties on social security coordination. For instance, *see* Ministry of Labor and Social Policy, 'Social Security Treaties/Договори за социална сигурност' (2020) <https://www.mlsp.government.bg/dogovori-za-sotsialna-sigurnost> accessed 20 March 2021.

129 Sredkova, *Social Security Law/Осигурително право* (2016) 39.

130 For more detailed historical review, refer to the section on the historical development of social protection in the research section on the analysis of the Bulgarian social protection.

131 Sredkova, *Social Security Law/Осигурително право* (2016) 33.

nity, sickness, and disability.[132] The concept has occupied a strong place in the country's legislation from then on.

In general, a comprehensive scientific discussion in Bulgaria on the precise content of the term social insurance has failed to take place. Debates have occurred on whether health insurance and social insurance form together one greater public system of social insurance that could be conceptually brought together.[133] Some scholars claim that since both health and social insurance compensate for the consequences of realized risks, the two belong to one greater social insurance system.[134] Others, however, disagree by arguing against the idea that health insurance can be viewed as belonging to social insurance. Such views consider health and social insurance as two separate elements of the public insurance law that could not be conceptually unified.[135] This view is further supported by the varying constitutional basis for the health and social insurances and the different framework laws and institutional structures in the respective fields.[136]

All in all, in Bulgaria, the term "social protection" is still viewed narrowly by indicating certain fields that only pertain to minimum protection and social integration. It can be concluded that "social insurance" remains the dominant concept in the country and only encompasses classical social risks. Hence, this national approach is insufficient for the comprehensive goals of the study. Moreover, the national understanding cannot reflect the described tendencies on the international and EU levels for reliance on more versatile conceptual understanding, given the plethora of modern life contingencies.

132 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 75; Sredkova, *Social Security Law/Осигурително право* (2016) 33.

133 Sredkova, *Social Security Law/Осигурително право* (2016) 42; Mrachkov, *Social Security Law/Осигурително право* (2014) 30.

134 The argument that health and social insurance form one contribution-based system was additionally motivated by the approach of the legal scholarship in Germany. *See* Sredkova, *Social Security Law/Осигурително право* (2016) 42.

135 Mrachkov, *Social Security Law/Осигурително право* (2014) 30.

136 ibid.

2. Conceptual Considerations: Perspective and Purposes of Social Protection

What is social protection? In very general terms, the concept designates measures aimed toward the protection against certain social dangers. One may wonder what these dangers are. After all, public security threads could also be seen as social dangers. However, while general public security predominantly aims at protecting the community, social protection is engaged with the individual.[137] Even if social protection's primary object of concern is the individual, social protection is existential for the given community. By managing social relations, social protection targets dangers that can ultimately endanger a society[138] and undermine its prosperity as a whole.[139]

However, the regulation of social relations could not be left to every individual's discretion. Throughout history, the state progressively undertook this regulation to secure the economic and social progress of the community-bonded individuals. [140] Social protection thus evolved into the legal responsibility of the political community for those living on its territory.[141] In this sense, social protection is understood as an expression of the common responsibility that can drive forward the well-being of the state and its inhabitants.

By securing the whole, social protection then enables the person living in a community to have a successful and, more importantly – free life.[142] It does so by providing protection to the individual through joint solutions and dealing with potential risks on a social level. Naturally, the goal of achieving a state in which society faces no threats is a utopia. Even so, this unattainable state of affairs can still be the goal for certain actions, regardless of the general, vague nature of social protection.[143]

Nonetheless, collective protection is supplementary to one's self-security. It is grounded on the basic social rule that adults have the possibility

137 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 49.
138 Waltermann, *Sozialrecht* (2009) 2.
139 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 52.
140 ibid 53.
141 ibid.
142 Becker, 'Sozialrecht und Sozialrechtswissenschaft' (2010) 65 ZöR 611; Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 52.
143 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 49.

and the responsibility to earn a living for themselves and their families through dependent or independent work.[144] The collective protection is to be involved only when there are some shortfalls on this individual level. The basic social rule represents the realization that freedom goes hand in hand with personal responsibility.[145]

In general, people could be expected to act according to a solidarity principle of social protection only if they first and foremost provide for themselves and their relatives.[146] A balance is thus sought between allowing personal responsibility for one's well-being and maintaining the state's obligation to intervene in case of shortfall of the former.[147] State measures founded upon the condition of the basic social rule can be qualified as social protection measures. These measures ensure that individuals are initially placed in a position to guarantee their security. The shortages occurring due to the realization of certain risks are to be compensated. Then, the community is to decide upon these risks whose realization triggers the compensation for the occurred shortages.

It can be concluded that, in general terms, social protection aims at achieving specific social purposes by solving social problems. In other words, social protection addresses social needs and aims to satisfy them by adopting certain measures. Political decisions need to be taken in this regard, and they are then formalized through enactment into social law.[148] Social benefits law, therefore, lies at the heart of the matter.[149] The provision of benefits can be carried out by the state or by third parties controlled by the state. The inclusion of such third parties in social protection can be of quite varying degrees.[150]

Yet, it needs to be assessed more precisely what the social purposes of addressing the social needs could be. A historically comparative overview can reveal any commonalities in respective state actions.[151] The first object-

144 Zacher, in Bogs, Gitter and Wannagat, *Die Sozialgerichtsbarkeit* (1982) 330; Eichenhofer, *Sozialrecht* (2019) 9.
145 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 61.
146 Eichenhofer, *Sozialrecht* (2019) 9 ff; Becker, in Pichrt and Koldinská, *Labour Law and Social Protection in a Globalized World* (2018) 205 ff.
147 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 61.
148 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 2.
149 Zacher, in Bogs, Gitter and Wannagat, *Die Sozialgerichtsbarkeit* (1982) 330 ff; Becker, 'Sozialrecht und Sozialrechtswissenschaft' (2010) 65 ZöR 613.
150 Becker, 'Sozialrecht und Sozialrechtswissenschaft' (2010) 65 ZöR 613.
151 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 53.

ive that needs to be mentioned is alleviating poverty. In positive terms, it is related to providing a material subsistence minimum. Throughout the history of human development, this objective was initially within the domain of the family and the church. Later on, the task was shifted to the cities until it became an obligation of the state, including by acquiring constitutional foundations.[152]

The examination of the conceptual development on the international level revealed that further social protection purposes occurred alongside the industrialization process and entailed state protection against general life risks. Some of these risks are regarded as "bad", such as sickness, disability, and unemployment, and others, for instance, old age and maternity, could be referred to as "good".[153] The already discussed ILO's Convention 102 represents one of the first more comprehensive international legal documents dealing with these social purposes. Yet, nowadays, the Convention could be seen as lagging behind since recent developments have surpassed its legal solutions.[154]

Finally, social integration represents a more contemporary objective of social protection.[155] State measures in this regard strive to ensure social participation by supporting people who have special needs or find themselves in special life situations. In general, all social protection purposes outlined above are pursued in developed countries, but the extent of state intervention and the ways of realization will vary.[156]

3. Conclusion and Concept Definition

The social measures provided through collective responsibility for events related to the classical risks form the core of "social protection" due to the latter's inherent overlapping with the concept of "social security". However, as both the international and EU levels have revealed, the comprehensive nature of the term "social protection" also goes beyond this traditional

152 For instance, the constitutional obligation for the protection of human dignity in Germany results in a subjective right to the granting of a subsistence minimum. *See* ibid 54.

153 Becker, 'Sozialrecht und Sozialrechtswissenschaft' (2010) 65 ZöR 613. Similarly, in the Bulgarian legal literature, a distinction is made between "favorable" and "unfavorable/undesirable" risks ("благоприятни" и "неблагоприятни" рискове). *See* Mrachkov, *Social Security Law/Осигурително право* (2014) 193.

154 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 54.

155 ibid.

156 ibid.

approach and aims at encompassing further state measures dealing with the deficits in the basic social rule outlined in the previous section. Thus, in the present research, measures that are tax-financed and provide a safety net against undesirable situations, or are linked to special needs situations, are also considered part of social protection. After all, the satisfaction of the most elementary needs is a prerequisite for the basic social rule in an abstract sense. Furthermore, the predominant utilization of social protection by international and EU organizations upholds the view that the concept outreaches the more limiting understanding of social security. The term is thus not equated to social insurance and includes different measures addressing various deficits in the basic social rule.

Next, state measures should be regarded as social protection if they have a clear and direct connection to the basic social rule. For instance, measures addressing the risk of unemployment are seen as falling within the scope of social protection since they aim to contribute to the realization of the basic social rule on an individual and targeted level. However, measures that may contribute only as a side effect to the primary aim of creating and maintaining work are not part of the subject of social protection. Thus, labor law that mainly aims to balance the relationship between the employer and the employee does not form part of social protection.[157] In addition, measures that private law institutions administer can also be seen as part of social protection if they are the object of regulation, promotion, and support from the side of the state and are specifically intended to safeguard and contribute to the basic social rule. Thus, on an abstract level, the legal form in which the collective responsibility is assumed is irrelevant and thus could be of public or private law nature.

To wrap it up, social protection encompasses the state measures that remedy the shortages resulting from the realization of specific risks. State measures that compensate for the deficits occurring in the basic social rule by means of collective responsibility can be considered social protection. In addition, these measures need to serve one of the aforementioned social purposes, namely protection against general life risks, granting minimum subsistence levels, and supporting social integration. Yet, the plenitude of issues concerning establishing the exact scope of social protection proves the need for an open understanding of the concept. This need is suggested by the concept's use as a more comprehensive synonym for social security

157 For a similar approach, *see* Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 51.

since social protection is flexible enough to accommodate diverse measures targeting shortages in the basic social rule. Finally, further future developments will probably necessitate the inclusion of additional aspects to the concept of "social protection".

II. Functional Systematization of Social Protection

The question of the systematization of social protection is as equally challenging as the definition of the external borders of the concept. Yet, systematization is crucial for uncovering the functional aspects of the individual categories of social protection. First, different existing comparative law systematization approaches will be outlined to inform and contribute to the systematization of Bulgarian social protection. Next, the Bulgarian system-inherent structure is explained to facilitate the following systematization. Last but not least, the structure of the systematized Bulgarian social protection is laid out.

1. Comparative Law Perspective

The methodology part already revealed that the examination of the Bulgarian social protection will follow the functionality method of comparative law. The systematization to be applied in the present research needs to be sensitive to its twofold purpose. On the one hand, through the exogenous approach of comparative law, the structural aspects of the system can become clear, and the work could be used for further comparative purposes. On the other hand, the systematization approach has to support the following investigation of the influence of constitutional law on social protection. Therefore, the systematization must be capable of recognizing and reflecting upon the different normative requirements of the individual categories.

There have been different approaches toward the systematization of social protection that have assumed different concepts as starting points. Each systematization begins with the determination of the relevant differentiation criteria. The grouping of more of these factors results in more complicated systematization models. There are numerous options for differentiation criteria in social protection. First, single basic properties could be used as broad and overarching criteria, like a scheme's universality or

selectivity in terms of the covered circle of persons.[158] Next, the type of financing can point out whether taxes or contributions finance a given benefit. Third, the basis upon which the benefit is granted indicates the prerequisites for entitlement, such as whether a benefit is dependent on need or not.[159] Then, the purpose of the benefit reveals the general goal a benefit is intended to serve, including income replacement, subsistence minimum, meeting of extra costs, and so on.[160] Further criteria can include the type of benefit (cash or in-kind)[161] and whether the determination of the benefit is abstract or concrete.[162] Finally, the social risks and life situations related to the benefit can also serve as criteria.[163] All of the mentioned criteria can be grouped in various ways, but reaching a comprehensive systematization model is challenging.[164]

For a considerable amount of time, the German-speaking scholarly work, which has a leading role in social protection legal research, had been dominated by a tripartite division into the so-called *Sozialversicherung*, *Versorgung*, and *Fürsorge*.[165] *Sozialversicherung* referred to protection against the typical social risks via contribution-based insurance. The term *Versorgung* covered tax-financed benefits targeting increased need or compensations for certain victims. Next, *Fürsorge* encompassed means-tested benefits intended to guarantee the minimum subsistence levels. The main differentiating factor between the *Sozialversicherung* and the other two categories was the mode of financing. Concerning the development of the systematization in Germany, the main term in the social legislation in the country is "social law" ("Sozialrecht").[166] Generally, when using other terms as synonyms for "social law", authors rely on "social security" and use it as a "collective term" covering *Sozialversicherung*, *Versorgung*, and *Fürsorge*.[167]

158 For instance, *see* Zacher, in Zacher, Mager and Eichenhofer, *Alterssicherung im Rechtsvergleich* (1991) 25 ff.
159 Harris, in Harris, *Social Security Law in Context* (2000) 158.
160 ibid 156.
161 Zacher, in Bogs, Gitter and Wannagat, *Die Sozialgerichtsbarkeit* (1982) 335.
162 Zacher, in Fürst, Herzog and Umbach, *Festschrift für Wolfgang Zeidler* (1987) 590.
163 ibid 582 ff.
164 Becker, 'Sozialrecht und Sozialrechtswissenschaft' (2010) 65 ZöR 638.
165 Wannagat, *Lehrbuch des Sozialversicherungsrechts* (1965) 1–9.
166 On the development of the concept of "social law", see Zacher, in Gitter, Thieme and Zacher, *Im Dienst des Sozialrechts* (1981) 726–728.
167 Zacher, in Zacher, Mager and Eichenhofer, *Alterssicherung im Rechtsvergleich* (1991) 35.

The three outlined categories have historically occurred in different periods to address the respective needs at the time. With the development of social security, however, they became more and more unsuitable for accommodating new benefits and consequently for providing a comprehensive systematization of the right to social security. As a result, a reformulated systematization of social security emerged, distinguishing between *Vorsorge*, *Entschädigung*, *Vorsorge*-analogue systems, *Hilfssysteme,* and *Förderungssysteme*.[168] With this newer systematization model, the function of the separate system was emphasized.[169] The *Vorsorge* and *Entschädigung* were both intertwined with the history of the beneficiaries by engaging with the contribution records or certain responsibilities. The three other categories were grouped under the umbrella of being situation-related systems.

The hallmark of *Vorsorge* was its contribution financing. Hence, the *Vorsorge* systems were related to specific risks, and thus these systems were selective as they tended to cover specific groups of beneficiaries. The *Entschädigung* covered tax-financed compensation systems for harms due to causes for which the community assumed responsibility. Concerning the situation-related systems, the *Vorsorge*-analogue systems linked the realization of typical risks to tax-financed abstract benefits. Such benefits were not granted in view of the standard of living but were rather based on typical needs. The tax-financed *Hilfssysteme* were characterized by their purpose for meeting urgent needs which are not provided for elsewhere. Finally, the *Förderungssysteme* aimed to balance increased needs by providing development assistance to support equal opportunities.

However, apart from the division of benefits between pre-history and situational reference, there is a need for an independent reflection upon the institutional structures for the building of an overarching systematization.[170] The reason for doing so lies in the fact that even if social law takes care of questions posed by life, institutions need to be created to secure redistribution.[171] Moreover, these institutions have certain characteristics that in turn shed light upon their specific social purposes. The first important institutional characteristic is benefit financing, which could be based

168 Zacher, in Fürst, Herzog and Umbach, *Festschrift für Wolfgang Zeidler* (1987) 583–588.

169 Fichtner-Fülöp, *Einfluss des Verfassungsrechts und des internationalen Rechts auf die Ausgestaltung der sozialen Sicherheit in Ungarn* (2012) 69.

170 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 57.

171 ibid.

on contributions or taxes.[172] The contribution financing distinguishes the insured persons from redistribution communities through the obligation of contribution payment. Furthermore, the payment of contributions allows the individualization of benefits and their connection to the achieved standard of living.

A second crucial feature is the relation of the benefit to the economic situation of beneficiaries.[173] The payment of contributions determines the reason for the benefit and reflects on its amount. There is no reference to history when it comes to tax-based benefits. The need-based granting of benefits is conditioned within the confines of certain assets and income limits. Such limits depend on the general function of the overall social system and the function of the given social benefit. Finally, social benefits differ in terms of their purpose ("Bestimmung") and direction ("Ausrichtung").[174] The purpose of the benefit tackles the abstract or concrete determination of the benefit and its amount. The direction concerns the final or causal benefit orientation, which in its turn can be examined concerning, first, the reason for the benefit, and second – the benefit's content and amount.

The combination of the functional and institutional systematizing criteria can provide a fourfold division of the German system.[175] Namely, *Sozialversicherung* is predominantly structured according to the social risks, and only in a few parts is organized in view of the insured groups of people. Compulsory insurance and financing through contributions are hallmarks of the system. The benefits partially aim at income replacement, maintenance, avoiding risks, or improving impairments. The *soziale Entschädigung* assumes collective responsibility for damage in some specific and exceptional situations, such as the classic example of war victims. The securing of basic minimum is carried out by the *soziale Hilfe* system, which is tax-financed and dependent on need. The system aims at avoiding undesirable situations. Finally, the tax-financed system of *Förderleistungen* deals with situations of special need. This need could either be recognized as an important one for leading a life or can reflect generally accepted public purposes.

172 ibid.
173 ibid 58.
174 ibid 59.
175 ibid 59–60.

2. Bulgarian Social Protection – System-inherent Structure

After the review of different comparative law approaches on systematization, the following aims to provide a succinct overview of the structure of the Bulgarian system according to its own perspective. This concise examination aims at informing better the following systematization. The examination will also enable a better understanding of the system's internal logic that should not be blindly and automatically assimilated into any template of a systematization matrix.

a. Social Insurance System

The Bulgarian social protection system did not occur due to a single legislative effort but was rather eclectically built and developed over time. Particularly, the system was heavily reformed in the late 1990s and the beginning of the 2000s when efforts were made to remove the socialist legal inheritance. As a result, a plethora of different laws occurred addressing the variety of possible social protection branches.

Through a widescale reform in the year 2000 and the enactment of the Compulsory Social Insurance Code, an attempt was made to codify the legislation on the social insurance risks. The Code was subsequently reformed on multiple instances and nowadays, bearing the name of Social Insurance Code ("SIC"), represents the main framework law in the field.[176] According to the Code, the participation in the "Social Insurance System" ("Социална осигурителна система") is mandatory for the majority of the economically active individuals, including the self-employed (Art. 3, SIC). An initial general distinction between the different social protection benefits depends on whether the benefits have a short-term or long-term nature. The regulation of the short-term benefits is separated into two main branches. The first one embraces the short-term benefits provided in the case of temporary work incapacity, maternity, and unemployment. The second branch is constituted by the short-term benefits provided in cases of accidents at work and occupational diseases. These risks are regulated separately, partly due to the overall more favorable conditions in the treatment of the work-related risks.

176 Social Insurance Code, SG 110/17.12.1999 (with later amendments).

Moreover, apart from the short-term benefits, the Social Insurance System contains long-term benefits. Some of these are statutory pensions that form a separate sub-system within the Insurance System, the so-called "Statutory Pension System" ("Държавната пенсионна система").[177] The public Statutory Pension System covers four main groups of pensions, namely disability pensions, contributory old-age pensions, survivor pensions, and non-contributory (social) pension schemes.[178] The disability pension schemes address the long-term risks of general sickness (Art. 74, SIC) and occupational accidents and diseases (Art. 78, SIC). The statutory old-age pension scheme represents a contribution-based scheme, consisting of different benefits depending on the period of contribution and the different qualifying conditions for the various occupational groups and labor categories.

The non-contributory pensions ("пенсии, несвързани с трудова дейност")[179] are not related to the history of contributions and are tax-financed. The first type of these pensions includes benefits granted based on disability acquired due to military activities or during an act of civic responsibility. It needs to be pointed out that these two pensions have a special status in the Social Insurance Code. Both schemes address the element of commendable behavior that has led to one's disability. Hence, the pensions aim at social compensation and are the only non-contributory pensions that can be received together with the statutory old-age pension.

The second type of non-contributory pensions is granted in case of need to elderly persons who are not eligible for any other pension. One of these pensions is the social old-age pension granted at age 70. The scheme is means-tested and takes into account the annual income of the applicant and other family members, and provides a very modest safety net against old-age poverty to elderly persons. The other non-contributory pension addresses specific groups, such as elderly mothers of numerous children and persons taking care of sick family members for more than ten years. These means-tested pensions, named "personal pensions", are granted on a more exceptional and individual basis.

177 The state pensions are defined in Chapter 6 "Mandatory State Pension Insurance", in the Social Insurance Code.

178 For the purposes of the research, a pension scheme is defined on its legal basis, its coverage (i.e., the population group(s) with the right to participate in the scheme), and its administrative authority regulating the scheme.

179 Such pensions are defined in the law as "pensions not related to labor activity" (translation from Bulgarian by author).

Apart from the public pensions, the Social Insurance System further comprises private social insurance schemes. These capital-funded schemes take part both in the mandatory and voluntary social insurances and form a sub-system on their own called "Supplementary Social Insurance" ("Допълнително социално осигуряване"). The mandatory private schemes are part of the mandatory pension insurance and are addressed by the law as the so-called "Mandatory Supplementary Pension Insurance" ("Допълнително задължително пенсионно осигуряване"). The insurance in the schemes involves transferring a part of the mandatory pension contributions. Consequently, the name given by the law to these mandatory private schemes can be misleading. The character of the insurance is in no way "supplementary" to the general statutory pension insurance but rather represents an inherent part of it.

There are two types of mandatory private schemes, i.e., the Universal Pension Funds ("UPFs") and the Professional Pension Funds ("PPFs"). Participation in the UPFs is based on auto-enrolment for all economically active citizens, including the self-employed and the greatest part of the civil servants. In contrast, the PPFs cover just employees working under hazardous conditions and aim at providing those individuals with fixed-term early pensions. Initially, the participation in both schemes was of purely mandatory character with no opting-out possibilities for the covered populations. However, reforms introduced the options of subsequent opting-out from both the UPFs and the PPFs.[180] The opting-out from the schemes implies the redirection of all of the owed contributions towards the fund of the public old-age pension scheme. Hence, to be precise, the actual participatory character in the private schemes is not strictly "mandatory", despite that the law continues to rely on this definition.

Apart from the private schemes involved in the mandatory insurance, there are further options for voluntary pension insurance in private schemes that involve individual pension provision and occupational pension insurance. The regulation of voluntary pension insurance was initially dealt with in a separate law on voluntary insurance. Subsequently, voluntary private insurance was incorporated into the Social Insurance Code in

180 A succinct overview of the related reforms is provided in the research section on the historical development of the Bulgarian social protection system. Some of these reforms were subject to constitutional review. The constitutional decisions in this regard are explored in detail in the research section on the concrete constitutional influences on the social protection system.

the sub-systems of "Supplementary Social Insurance", where it currently forms a section of its own of "Supplementary Voluntary Pension Insurance" ("Допълнително доброволно пенсионно осигуряване").[181]

In addition to the voluntary private pension insurance, the law foresees the possibilities for voluntary private insurance for the risk of unemployment and professional qualification.[182] This type of voluntary insurance bears the name of "Supplementary Voluntary Unemployment Insurance and/or Professional Qualification Insurance" ("Допълнително доброволно осигуряване за безработица и/или професионална квалификация").[183] However, despite the legal regulation of this option, its practical realization has been almost non-existent.[184]

b. Healthcare

Healthcare regulation does not form part of the Social Insurance Code. Instead, there are two main laws regulating healthcare, namely the Law on Health Insurance ("LHI")[185] and the Law on Health ("LH").[186] The first one defines the regulation of health insurance in the country. In contrast, the second establishes the framework for the organization of the general healthcare measures and provides the specifics of the right to free medical care. Thereby, the two laws deal with aspects related to two separate rights in the Constitution, which establishes the right to health insurance and free medical care (Art. 52(1), CRB).

The Law on Health Insurance acts as framework legislation for mandatory and voluntary health insurance. A distinction must be made between public and private (voluntary) health insurance. The former falls under the

181 Part III "Supplementary Voluntary Pension Insurance", SIC.

182 The private insurance for professional qualification involves the possibility for insurance through capital-funded individual accounts for the purposes of: initial vocational qualification (for persons who do not have such a qualification); additional qualifications; retraining; degree of higher education. *See* Article 294 ff, SIC.

183 Part IV "Supplementary Voluntary Unemployment Insurance and/or Professional Qualification Insurance", SIC.

184 According to authors, the reason for the little reliance on this insurance option is the fact that those who would need it most, would not be able to afford to voluntary insure themselves in the first place. *See* Mrachkov, *Social Security Law/ Осигурително право* (2014) 431.

185 Law on Health Insurance, SG 70/19.06.1998 (with later amendments).

186 Law on Health, SG 70/10.08.2004 (with later amendments).

auspices of the single public health insurance fund and has the greatest mandatory coverage of all public insurance systems in the country.[187] Public health insurance is organized as a solidary system based on mandatory contributions and equality of the insured individuals in terms of the scope of provided medical services.[188] There are no voluntary forms of public health insurance. Conversely, voluntary health insurance is grounded on private law and capital funding[189] and can supplement or cover services that are nevertheless also covered by mandatory health insurance [190]. The voluntary health insurance agreements could be concluded on an individual, family, or company basis. Due to the private and insurance law nature of voluntary health insurance, the latter is further regulated by the Insurance Code.[191]

The Law on Health encompasses the national system of healthcare ("национална система за здравеопазване"), which "settles the public relations in connection with the preservation of the health of the citizens" (Art. 1, LH). The law also establishes a system of free medical care services ("безплатна медицинска помощ") that fall outside of the scope of the mandatory health insurance and is financed through taxes (Art. 82(5), LH). Some free medical care services cover individuals who have an interrupted health insurance status or are recipients of social assistance benefits. The rest of these services concern state-financed measures, such as the provisions of certain vaccinations that cover all individuals, regardless of their health insurance status.

c. Social Assistance

The Law on Social Assistance ("LSA") states that the "Social Assistance System" ("Система на социално подпомагане") aims to develop the "public relations required for guaranteeing the right to social assistance" (Art. 1(1), LSA). The latter is a right that is also provided for in the Constitution (Art. 51(1), CRB). Social assistance consists of granting monthly, targeted, or one-off (Art. 12(1), LSA) cash or in-kind benefits on a means-tested basis. The social assistance measures are primarily financed via taxes

187 Article 33(1), LH.
188 On the principles of the public health insurance, *see* Article 5, LHI.
189 Article 82, LHI.
190 The exact scope of the voluntary health insurance is determined in the contract for medical insurance (Art. 82(1), LHI).
191 Insurance Code, SG 102/29.12.2015 (with later amendments).

(Art. 24(1), LSA) and, in general, aim at the provision of a modest safety net for the neediest members of society (Art. 1(2), LSA).

d. Further Tax-financed Measures Part of Different Legislations

Until 2019, the Law on Social Assistance was used to regulate the provision of social services aiming to prevent or overcome social exclusion. However, the provision of these services was mainly not means-tested. Ultimately, the social services were placed in a separate law on their own, namely the Law on Social Services ("LSS").[192] The logic behind the reform was based on the different function of the social services system. In contrast to social assistance, social services are not grounded on the aim of safety net provision. Instead, social services are intended to prevent or overcome social exclusion.[193] The broad goal of the social services results in a plethora of measures that are covered by the term. These include both measures targeting community goals as well as personal development goals pertaining to inclusion in certain training and educational programs. Social services also provide support to people in need of assistance in their daily living. Accordingly, social services represent one of the two main pillars of long-term care in the country, the second pillar being the services and benefits covered by the health insurance system.

Some other tax-financed measures also aim to address the specific needs of particular groups in society. These measures belong neither to the Social Insurance System nor to the System of Social Assistance. These measures do not have the characteristics of social assistance benefits in terms of their purpose and prerequisites. When these measures rely on some income assessment, the tests are based on higher thresholds and more lenient conditions compared to the social assistance benefits. A number of these tax-funded benefits target the protection of the family and the children. These are mainly regulated by the Law on the Family Benefits for Children ("LFBC")[194] and can either be means-tested or not means-tested. The Bulgarian legal scholarship has established that these benefits cannot simply

192 Law on the Social Services, SG 24/22.03.2019 (with later amendments).

193 'Motives in Draft of the Law on Social Services, No 802-01-57' (2018) <https://parliament.bg/bg/bills/ID/156809> accessed 20 May 2020.

194 *See* Law on the Family Benefits for Children, SG 32/29.03.2002 (with later amendments).

be attributed to the social assistance branch.[195] The benefits are not based on material need but address the presence of children in the given family, which is viewed as a precondition for providing supplementary support for the children's raising.[196] Apart from the family benefits, further measures address specific needs related to disabilities. The Law on People with Disabilities ("LPD")[197] embraces the main protection measures in this regard. These benefits do not rely on means-testing and detect specific needs that have to be addressed to enable greater equal participation in life.

e. Conclusion and Schematic Representation

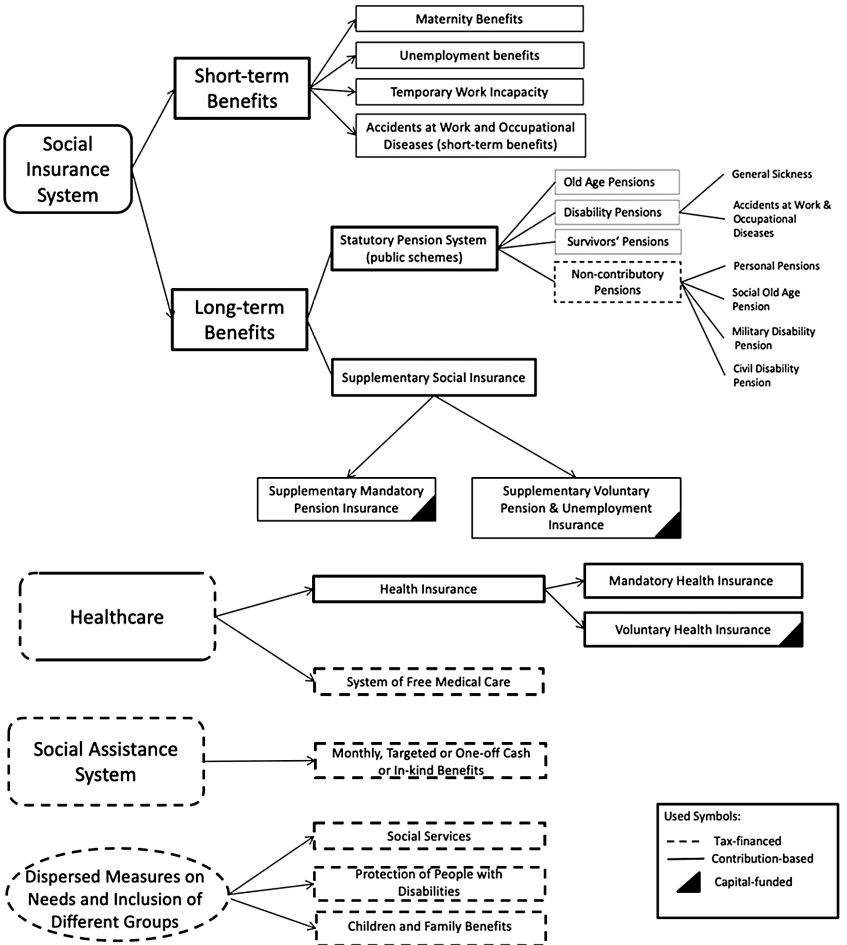
In conclusion, the Social Insurance System is one of the main building blocks of Bulgarian social protection that provides short-term and long benefits related to the classical social insurance risks. The system incorporates both public and private aspects but remains predominantly public in its nature. The healthcare sector has its framework laws and comprises both contribution and tax-based systems. Social assistance measures aim to provide some safety net through benefits that are always means-tested. Finally, there's also a variety of tax-financed social services and measures and benefits that support specific needs of concrete groups and aim at promoting social integration.

195 Guenova, 'Regulation and Legal Nature of the Family Allowances from the Law on Family Benefits for Children/Нормативна уредба и правна природа на помощите по закона за семейни помощи за деца' (2004) 45 Legal Thought/Правна мисъл 48.

196 ibid.

197 Law on People with Disabilities, SG 105/18.12.2018 (with later amendments).

Figure 1: System-inherent Structure of the Bulgarian Social Protection.



3. Systematized Structure of the Bulgarian Social Protection

The system-inherent structure of the Bulgarian social protection does not correspond to the discussed comparative law systemization models. Therefore, a question emerges on how to proceed with the systematization of national social protection. On the one hand, straightforward use of systematization models might not be able to correctly accommodate the peculiarities of Bulgarian social protection. Yet, on the other hand, the work

should also not follow the system-inherent structure of the Bulgarian social protection. This current structure occurred sporadically through various reform efforts and hence might be unable to systematically uncover the functions behind the different branches. In addition, a presentation based on the divisions inherent to the system might obstruct future comparative utilizations of the present work.

Instead, an amalgamation of those two outlined perspectives is sought to balance the two goals of reflecting upon the realities of social protection and allowing the abstraction of the legal solution from the given problem. The presentation will heavily rely on the system types built according to the institutional and general functional systematization criteria,[198] namely *Sozialversicherung, soziale Entschädigung, soziale Hilfe,* and *Förderleistungen*. In cases of doubt on the category of a given benefit, the dominant feature of the benefit is necessary to be determined. Namely, an assessment should define the greater motive attached to the design of the concrete benefit so that its underlying function can be uncovered.[199]

The main components of the *Sozialversicherung* are the insurance-based branches in Bulgaria that are mainly financed by contributions. With all of its short and long-term benefit branches, the contribution-based Social Insurance System belongs to such a system. This system includes the maternity, unemployment, and temporary work incapacity benefits, as well as the short-term benefits in cases of accidents at work and occupational diseases. In addition, the long-term contribution-based pensions appertain to this system. They include the public and private pension schemes of mandatory and voluntary participatory character. The contribution-financed features of the healthcare system also belong to this system, i.e., the health insurance that includes both its mandatory and voluntary branches. For the purposes of systematization, all of these social protection branches would be grouped under the title "*Contribution-based Systems*".

S*oziale Entschädigung* refers to social protection measures aiming at providing compensation for certain situations where collective responsibility is assumed. This social protection branch is fairly small in Bulgaria. Still, it contains two pension schemes that are not connected to one's contribution record, namely the Military Disability Pension and the Civil Disability Pension. Both schemes can be seen as providing benefits due to

198 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 59–60.

199 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 61.

the assumed collective responsibility for the given damages of disability that occurred due to military duty or the performance of civic duty. Therefore, this social protection branch would be referred to as "*Social Compensation*" in the present systematization approach.

As it becomes clear from the succinct overview of the social protection system in Bulgaria, there are different tax-financed measures addressing the situation of need as postulated by the *Sozial Hilfe* system. On the one side, there are means-tested old-age pension schemes that provide minimum income support to the destitute elderly. On the other side, general social assistance measures grant modest minimum income support to those who cannot secure their basic living necessities by themselves. Therefore, based on their common logic of providing some safety net, the social assistance measures and the non-contributory social pensions can be grouped in a, so to say, "*Minimum Protection*" system that aims to support destitute individuals and protect them from deep poverty and undesirable situations.

Further, *Förderleistungen* encompasses benefits that either target increased necessity or provide support in situations where a need is generally recognized as essential for leading a full life. Such benefits are not based on contribution history and are tax-financed. First, the children and family benefits address situations characterized by increased costs due to the birth and upbringing of a child. Some of the benefits contain a means-testing component. Yet, these measures do not have the characteristics of social assistance benefits in terms of their purpose and prerequisites. Hence, the relationship to the social situations covered by the benefits is to be regarded as decisive and such measures are accordingly assigned to a system bearing the *Förderleistungen* logic.

Second, the different measures on the support and integration of people with disabilities aim at greater societal participation. And third, social services include various social integration aims for different social groups and involve providing support to people dependent to care in their everyday lives. In this sense, a certain overlap appears between the measures on the inclusion of people with disabilities and the social services addressing the needs of people dependent on care.[200] However, the distinction between the measures is possible only in terms of their specific functionality, namely that measures on disability aim at greater inclusion, whereas measures con-

200 Similar overlaps are often observable countries since a number of measures usually target the same goal of supporting persons in need of daily care. *See* Becker, in Becker and Reinhard, *Long-Term Care in Europe* (2018) 10–11.

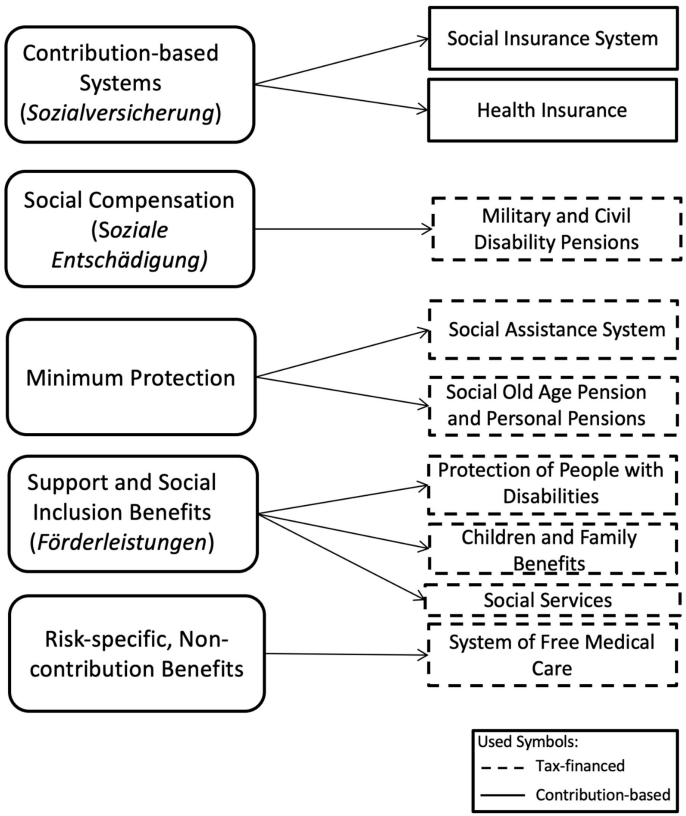
cerning dependency provide support with the activities of daily life.[201] All in all, the system covering the family benefits for children, the social inclusion services for people with disabilities, and the so-called social services will be referred to as the "*Support and Social-inclusion Benefits*" in the present systematization.

Last but not least, there is a need to categorize the free medical care services provided by the free medical care services. These in-kind benefits differ from health insurance because they are financed by taxes and have no reference to contribution records. Still, the risk that these free medical services address belongs to the risks, which are usually dealt with via insurance schemes. Hence, the free medical services of the National System of Healthcare represent a risk-specific structure, and the benefits the system grants aim to restore or preserve health. Therefore, alongside the above-mentioned main categorizations, the systematization needs to reflect measures that provide protection against specific risks and are tax-financed. The free medical care of the National System of Healthcare falls into this category of "*Risk-specific, Non-contribution Benefits*".

The analysis of the different systems identified above will mind the institutional imprints of the different benefits. Attention will be paid to the coverage and conditions of the given benefit, but the research will also capture the institutional organization and financing. Whenever the institutional and financing aspects of several branches of a given system are the same, there are to be dealt with altogether to avoid unnecessary repetition in analyzing the different benefits.

201 ibid 4.

Figure 2: Functional systematization of the Bulgarian social protection that is to be used for the purposes of examining the system.



B. Analysis of the Bulgarian Social Protection System

I. Development and Organization

The social protection system analysis begins with an overview of some general questions that concern the whole social protection framework. This section contains a concise historical examination of the country's system's development and provides a background to better understand the current social protection stand. Next, the research briefly presents the socio-economic context to illuminate the challenges that the social protection system

faces. Finally, the system analysis examines the financing and institutional organization of the different social protection branches.

I. Historical Development

An examination of the historical development of social protection in Bulgaria can identify three different stages. The first stage encompasses the time after the country's liberation from the Ottoman Empire and spans approximately until the end of the Second World War in 1945. The next part is constituted by the socialist period in the country. Finally, the last stage represents the construction of the modern social protection system after 1990.

a. The Beginning of the Social Protection System in Bulgaria

There are different opinions on the exact beginning of social protection in Bulgaria.[202] Still, already with the enactment of the first Constitution in 1879 after the country's liberation from the Ottoman Empire, a constitutional article envisioned the right to an old-age pension for the civil servants.[203] The building of the fund structure for social protection in the country dates back to 1888 and the Law on Teachers' Pensions that established the Fund on Pensions and Temporary Benefits. The Fund was created with the state's initial capital and involved annual contributions for the teachers.[204] Several legislations established various further funds that concerned risks for different social groups in the subsequent years. The funds predominantly tended to address the risks in the industrial sectors, such as occupational accidents, death, old age, and disability.[205]

202 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 68; Sredkova, *Social Security Law/Осигурително право* (2016) 32.

203 Article 166, 'Tarnovo Constitution' (*140 Years of Bulgarian Parliament*) <https://www.parliament.bg/pub/Konstitutsiya_1879.pdf> accessed 20 November 2021.

204 Kirilova, in Sivkov, *Application of Constitutional Principles in Public and Private Law* (2017) 251.

205 Sredkova, *Social Security Law/Осигурително право* (2016) 33.

A significant milestone in social protection development was unifying the dispersed, unrelated funds into an organized and fund-based social protection system.[206] The unification process occurred through two central legislations, namely the Law on the Unification of the Funds on the Employees' Contributions, enacted in 1914, and the Law on the Insurance of Employees in Case of Accident and Sickness, enacted in 1918.[207] The latter law extended insurance against occupational accidents and old age to encompass the employees of public and private enterprises.[208] In 1920, the country became part of the ILO.[209] This historical period was particularly turbulent and troublesome for the state.[210] Being one of the Central Powers defeated in the First World War, Bulgaria was forced to cede different territories and pay considerable reparations.[211] Therefore, the ILO membership was a way for the country to overcome the considerable international isolation at the time.[212] The country's efforts to reintegrate at the international level were further evidenced in its avid participation in the organization's norm-making process. By the end of 1934, out of 43 existing ILO conventions, the country had already ratified 40.[213]

The country's opening towards international law accompanied different national legislative efforts in social protection. The Law on Social Insurance enlarged the scope of the insured social risks in 1924. Apart from the occupational accidents and old age risks already addressed by previous legislations, this law further targeted sickness, maternity, and disability. Moreover, the Law on Social Insurance introduced for the first time the principle of mandatory insurance for the employees against the risks of sickness, maternity, occupational accidents, and old age.[214] The insurance

206 ibid.
207 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 71.
208 Sredkova, *Social Security Law/Осигурително право* (2016) 33.
209 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 22.
210 Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 43.
211 ibid.
212 ibid.
213 ibid.
214 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба

was carried out based on contributions made by the respective employer. This period can also be characterized by the enactment of the first social assistance legislation in 1934, which established a minimum level of protection for the most materially deprived citizens.[215]

Some scholars point out that despite the extension of the social protection's personal scope, a considerable flaw in the system was its dependency on the exercised labor activity.[216] Therefore, the social protection rights of family members who were not employed were derived from and conditional upon the breadwinner's labor activity. Consequently, the breadwinner's labor activity ceasing led to losing the family members' rights.

b. Social Protection in the Socialist Period

The beginning of socialism in the country is associated with enacting a new Constitution in 1947, namely the Constitution of the People's Republic of Bulgaria.[217] The changed political and economic order inevitably affected the social protection in the country. The new Constitution provided for some social rights, such as the right to benefits in cases of sickness, accidents, disability, unemployment, and old age and a right to affordable medical help (Article 75), as well as mothers' right to free obstetric and medical care (Article 72). In addition, the Law on Social Insurance from 1949 again proclaimed the principle of mandatory social insurance introduced in the country in 1924.[218] The law centralized social protection by dismantling the existing social insurance funds and directing their finances to the state

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на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 75; Sredkova, *Social Security Law/Осигурително право* (2016) 33.

215 Sredkova, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 19.

216 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 91–92.

217 'Constitution of the People's Republic of Bulgaria 1947' <https://www.parliament.bg/bg/18> accessed 20 November 2021.

218 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 83.

budget.[219] Instead, a single institution was established, the State Institute on Social Insurance, to manage the social protection in the country.[220] The employers covered the social insurance contributions for their employees. Self-employed persons, individuals who exercised liberal professions, and farmers had to pay the mandatory contributions themselves. In terms of the right to health insurance, the realization of the right depended on the respective contributions' payment. The non-working members of the breadwinner's family had derivative rights to health insurance from the breadwinner's health insurance.

At a later point, the period of socialism dramatically altered healthcare organization in the country. With the Decree on Nationwide Medical Care issued in 1951, tax-financed medical care replaced the health insurance model.[221] The reform relocated healthcare financing and organization to the competences of the Ministry of People's Health. Consequently, the right to medical care did no longer depend on health insurance status and occupational activity but was instead provided to all Bulgarian citizens. The right to free medical care was later declared at a constitutional level with the enactment of the Constitution of 1971.[222]

Another social protection hallmark of the socialist period was enacting a more developed social assistance legislation.[223] The related reforms involved the evolution of monetary and in-kind benefits, the establishment of centers supporting the materially deprived part of the population, and others. The period of socialism also resulted in some fundamental changes in pension insurance. In the pre-socialism period, pension insurance was primarily based on the earnings-related levels of benefits. The Law on

219 National Social Insurance Institute, 'Historical Overview of the Social Insurance Legislation in Bulgaria/Исторически преглед на социалноосигурителното законодателството' (2015) <https://www.noi.bg/en/aboutbg/historynoi/3833-135godiniosiguriavane> accessed 20 November 2021; Terziev and Nichev, in *The Insurance Market/Застрахователният и осигурителният пазар* (2016) 231.

220 Nedkova, 'Development of the Legal Framework of the Insurance Relations of Mandatory Health Insurance in Bulgaria/Развитие на правната уредба на осигурителните отношения по задължителното здравно осигуряване в България' (2009) 10 Juridical World/Юридически свят 83.

221 ibid 87.

222 Article 47(3), 'Constitution of the People's Republic of Bulgaria 1971' <https://www.parliament.bg/bg/19> accessed 20 November 2021.

223 Sredkova, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 19.

Pensions[224] enacted in 1957 replaced this principle by the idea that pension rights were mainly dependent on the combined basis of the required years of exercised labor and retirement age, specific for the given professional category.[225] In addition, a range of legal provisions established privileged and more beneficial rights in terms of pension formation for those who worked in governmental establishments.[226]

It needs to be added that despite the period of socialism, the country did not interrupt its participation in the international social protection sphere. On the contrary, international social and labor law yet again became the bridge for reintegration at the international level. After the end of the Second World War, the country was once again in deep international isolation.[227] On the one side, the country was part of the defeated Axis powers. On the other, establishing socialist governance further contributed to the alienation from the international level. To tackle this situation of stagnation, in 1949, the country actively reinstated the ratification of international standards by ratifying 29 ILO conventions in the same year[228].

c. Development of the Social Protection System after 1990

After the end of socialism in Bulgaria, social protection required various reforms to support the country's efforts to transition to democracy and develop a more sustainable system. The introduction of a market economy was accompanied by new social risks that did not have legal regulation at the time, such as the rapidly growing unemployment, which was officially non-existent during the previous 50 years.[229] In a legislative sense, social

224 Law on Pensions, SG 91/12. 11.1957; repealed with the Social Insurance Code, SG 110/17.12.1999.

225 Terziev and Nichev, in *The Insurance Market/Застрахователният и осигурителният пазар* (2016) 225. These privileged pension rights were targeted by a restrictive reform after the fall of socialism and became a subject of the first social protection judgment of the Constitutional Court. The concrete case is reviewed in the research section on the concrete constitutional influences.

226 ibid 226.

227 Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 44.

228 ibid.

229 Vladimirova, in Lefresne, *Unemployment Benefit Systems in Europe and North America* (2010) 294–295.

protection necessitated the development of its legislative basis since the socialist period considered it mostly adjacent to labor law regulation.[230]

First and foremost, the development of separate legislation addressed the necessity for creating social protection funds that were dismantled during socialism. The Law for the "Social Insurance" Fund separated the social security budget from the state budget in 1995.[231] According to the law, annual laws were to regulate social insurance budgets each year. In practice, the separation was implemented with the Law on the Budget of the "Social Insurance Fund", which entered into force in 1997.[232]

Next, a diversification of the various social protection funds was introduced with the so-called Mandatory Social Insurance Code, later renamed Social Insurance Code. The legislation established differentiated funds, each addressing different social risks and having their incomes and expenses (Art. 18 and Art. 19, SIC).[233] Apart from introducing the various social protection funds, the law attempted to codify the dispersed social protection legislation. However, some scholars have criticized the results. Namely, a severe point of critique was that the collection of the social insurance contribution was not only not regulated by the new Code but was also excluded from the National Insurance Institute's competences, despite it being the responsible institution for social insurance management.[234] Instead, collecting mandatory social insurance contributions was later provided to the institution responsible for tax collection, i.e., the National Revenue Agency.[235] Accordingly, the contribution collection was included in the

230 Mrachkov, *Social Security Law/Осигурително право* (2014) 19.

231 Law for the Social Insurance Fund, SG 104/28.11.1995; repealed with the Social Insurance Code, SG 110/17.12.1999.

232 Law on the Budget for the Social Insurance Fund for 1997, SG 55/11.07.1997.

233 Each of the funds is linked to different social security risks, namely "Pensions" covering risks such as disability due to general sickness, old-age and death, "Occupational Accidents and Profession-related Diseases" addressing occupational accidents or disease, and "Sick Leave and Maternity" concerning general sickness, maternity, and temporary working incapacity.

234 Sredkova, *Social Security Law/Осигурително право* (2016) 35. Initially, one common social insurance fund was established in 1995. With the adoption of the Social Insurance Code in 2000, the common fund was divided into three funds. The number of the funds governed by the Social Insurance Code increased again in 2002 and in 2015 to seven in total.

235 Article 3(1)1, Law on the National Revenue Agency, SG 112/29.11.2002 (with later amendments).

scope of the Tax-Insurance Procedure Code ("TIPC").[236] Such a legislative approach mixed the regulation of two different public financing sources, i.e., taxes and social insurance contributions. Some experts considered this legislative decision incompatible with the foundation of social insurance of being a unified system that accumulates and uses finances for strictly restricted purposes.[237]

Third, the health sector was also heavily reformed. The inherited socialist system of free medical help demanded an urgent alteration since it weighed heavily on the state budget. As a result, a new health insurance system was created based on mandatory participation and contribution payment (Art. 5, LHI). However, the free provision of medical services financed by the state budget continued to exist in a limited form in a free medical care system that provided several tax-financed medical services (Art. 82, LH).

Furthermore, the development of the new social protection system introduced capital-funded social insurance schemes in Bulgaria. The establishment of capital-funded plans, especially in pension insurance, was strongly advocated for by the World Bank.[238] The new social protection legislation provided capital-funded options for voluntary health insurance, voluntary pension insurance, as well as voluntary unemployment insurance. Nonetheless, the integration of capital-funded plans in mandatory social insurance fluctuated over time.

The Social Insurance Code introduced capital-funded schemes alongside the traditional public and pay-as-you-go (PAYG) old-age insurance as mandatory pension insurance. The systematization of the Bulgarian social protection has already revealed that two private pension schemes, the so-called UPFs and PPFs, were included in the scope of the mandatory pension insurance. Initially, the legal framework foresaw no options for opting out of the schemes. Yet, different reform attempts were undertaken to reverse the mandatory participation character due to estimated low pension benefits from the capital-funded plans. Concerns for the amounts of the first

236 As it becomes obvious from Article 1, Tax and Insurance Procedure Code, SG 105/29.12.2005.

237 Sredkova, *Social Security Law/Осигурително право* (2016) 85–86; Mrachkov, *Social Security Law/Осигурително право* (2014) 140.

238 Ortiz and others, 'Reversing Pension Privatization' (2018) 1–8 <https://www.ilo.org/secsoc/information-resources/publications-and-tools/Workingpapers/WCMS_648639/lang--en/index.htm> accessed 20 November 2021.

pensions that the PPFs would have paid motivated a reform in 2010.[239] The reform partly overturned the mandatory insurance in the PPFs for some of the covered participants. This change was subjected to a constitutional review and was declared unconstitutional.[240] The constitutional ruling temporarily slowed the reform attempts. However, the reform efforts were renewed a couple of years later. Changes introduced from 2014 to 2015 gradually turned mandatory participation in both the UPFs and the PPFs schemes into an opting-out insurance possibility.[241]

Apart from these structural reforms, the social protection development after 1990 can also be characterized by various smaller-scale reforms that aimed to adjust the social protection system to the current demographic and economic challenges. Some of these reforms included raising the retirement age and the contributions periods. However, the introduction of these increases was a long and difficult process that experienced a number of setbacks and revisions, thereby causing political and social divides along the way. The 1957 Law on Pensions had set the retirement age at 60 years for men (in addition to 25 years of work experience) and 55 years for women (in addition to 20 years of work experience). These retirement ages remained in force until 2000 when the Compulsory Social Insurance Code raised them and introduced in Article 69(1) a point system of the sum of the age and the contribution periods as a qualifying condition. The law also envisioned a further increase of the sum of the retirement age and the contribution periods, namely an increase of the retirement age by six months on the first day of every following year, until it reached 63 years for men and 60 years for women. Furthermore, the sum of the duration of the insurance periods and the age also increased by one, until it reached 100 for men and 90 for women. Then, as of 2004, the sum for women was to increase on the first day of every following year with one until it reached 94.

239 § 48, Law Amending and Supplementing the Social Insurance Code, SG 100/21.12.2010. For more on these reforms, *see* Petrova, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 367.

240 Constitutional Decision No 7/2011 on case 21/2010. The constitutional ruling is discussed in detail in the research section examining the concrete constitutional influence on social protection.

241 The two main reforms which reversed the mandatory participation in the capital-funded UPFs and PPFs schemes were enacted in 2014 and 2015. *See* Law on the Budget for the Public Social Insurance for 2015, SG 107/24.12.2014; Law Amending and Supplementing the Social Insurance Code, SG 61/11.08.2015.

An amendment of the SIC in 2010 eliminated the so-called point system for retirement for the 3rd labor category (non-hazardous jobs) and provided that, as of 2011, people could retire in accordance with the new rules that combined requirements on the age and contribution years.[242] The reform did not further increase the retirement age reached at the time based on the previous amendment. The law, however, introduced an annual increase from 2012 of the insurance periods with four months for both genders; the contribution periods were to increase until they reached 40 years for men and 37 years for women.[243] Second, the law introduced a planned further gradual increase of the retirement age as of 31 December 2020, namely an increase of six months on the first day of every following year, until the age would reach 65 years for men and 63 years for women.[244]

The planned future increase was jumpstarted nine years earlier with the Law on the Budget for the Public Social Insurance for 2012. The earlier increase caused a wave of disapproval and protests.[245] The reform introduced changes in the Social Security Code by increasing the retirement age as of 2012 by four months on the first day of every following year for both genders until the age reached 65 years for men and 63 years for women. Nevertheless, the changes were in force only for two years, when the previously legislated increase of the retirement age was frozen.[246] The retirement age remained frozen also during 2015.[247] However, the law raised the previously halted increase in the insurance periods by two months, setting them at 38 years for men and 35 years for women.

Eventually, an amendment of the SIC adopted in 2015 increased the retirement age by two months for 2016, setting it at 63 years and ten months for men (along with contribution periods of 38 years and two months) and 60 years and ten months for women (along with 35 years and two months

242 § 23, Law Amending and Supplementing the Social Insurance Code, SG 100/21.12.2010.
243 ibid.
244 ibid.
245 NOVA, 'A Day after the National Protest - How Will the Government Respond to Popular Discontent?/Ден след националния протест - как управляващите ще отговорят на народното недоволство?' (1 December 2011) <https://nova.bg/news/view/2011/12/01/24001/ден-след-националния-протест-как-управляващите-ще-отговорят-на-народното-недоволство/> accessed 20 November 2021.
246 § 4, Law on the Budget for the Public Social Insurance for 2014, SG 106/10.12.2013.
247 § 3, Transitional and Final Provisions, Law on the Budget for the Public Social Insurance for 2015, SG 107/24.12.2014.

of insurance periods).[248] The amendment also introduced planned further gradual increases on the first day of every following year of the retirement ages as of 2017 and determining the retirement age in accordance to life expectancy as of 2038. These increases are still in place and are examined in the section on the qualifying conditions of the old-age pension. The "one step forward, two steps back" reforms concerning the increase of the retirement age were accompanied by changes in governments and general political instability that stirred a greater loss of trust in the society in the system's reliability.[249]

Apart from the different structural and peripheral reforms examined above, various further social protection changes occurred through the influence of constitutional, international, and EU law. Such reforms could be seen as part of the country's aspiration of bringing its social protection system closer to Western European solutions. These concrete reforms are reviewed in detail in the research section examining the constitutional, international, and EU law influences social protection.

2. Social Protection's Demographic and Economic Background

A concise presentation of the demographic and economic background behind social protection can portray the main challenges that the system both needs to address and overcome to sustain its functioning. Bulgaria faces different obstacles that considerably affect the various social protection branches. The issues pertain to the unfavorable economic situation, demographic collapse, and considerable emigration from the country.[250]

In economic terms, the country's GDP per capita remains the lowest in the EU.[251] Moreover, on top of the humble economic performance, the country is plagued by widespread corruption practices that considerably

248 § 20, Law Amending and Supplementing the Social Insurance Code, SG 61/11.08.2015.

249 Zhelyazkov, 'The Pension Reform: Increase of Age and Higher Contributions/Пенсионната реформа: вдигане на възрастта и по-високи осигуровки' (2014) <https://www.capital.bg/politika_i_ikonomika/bulgaria/2014/10/21/2404395_pensionnata_reforma_vdigane_na_vuzrastta_i_po-visoki/> accessed 20 November 2021.

250 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 422.

251 Eurostat, 'Real GDP per Capita' (2021) <https://ec.europa.eu/eurostat/databrowser/view/sdg_08_10/default/table?lang=en> accessed 20 November 2021.

harm the financial balance in the state. Namely, estimates point out that corruption practices cost the country between 14% to 22% of its GDP.[252] Turning on demographics, the country's population has dramatically declined from approximately 9 million people after the fall of socialism to 6,951,482 at the end of 2019.[253] Apart from the decline of 2 million, the country's population is further projected to drop by 23% by 2050 compared to 2019.[254] The fall in the population numbers and the additional factor of the emigration of working-age individuals naturally pose the risk of fewer contributions for the pay-as-you-go financing of the social insurance systems.

The resulting challenges are especially evident in the old-age pension insurance. Despite a range of reforms that introduced an increase in retirement age and the minimum insurance periods, social insurance budget deficits continue to grow and need to be covered by greater and greater tax-based transfers. For example, in 2021, a record transfer from the general state budget of approximately 6.2 billion BGN had to be provided to cover the existing gap for pension payments.[255] Simultaneously, the higher retirement age has been criticized by social insurance experts because the average life expectancy in the country is still lower than most of the EU member states.[256] Analogically, the increase of the minimum contribution periods for the old-age pension is considered by scholars as hardly achiev-

252 Avdjiiski, 'Anticorruption Policy in Bulgaria: Overview and Reform Recommendation' (2016) 6 <https://ime.bg/en/articles/why-does-the-fight-against-corruption-in-bulgaria-not-give-results/#ixzz4tKYV1Sp9> accessed 20 November 2021.

253 National Statistical Institute, 'Population and Demographic Processes in 2019/ Население и Демографски Процеси През 2019 Година' (2019) <https://www.nsi.bg/bg/content/18126/прессъобщение/население-и-демографски-процеси-през-2019-година> accessed 20 November 2021.

254 Department of Economic and Social Affairs, 'World Population Prospects 2019' (2019) 12 <https://population.un.org/wpp/Publications/Files/WPP2019_Highlights.pdf> accessed 20 November 2021. According to these projections, Bulgaria is one of the countries with the fastest shrinking populations in the world.

255 Article 1(1), Law on the Budget for the Public Social Insurance for 2021, SG 103/04.12.2020. Also, *see* Katanska, 'The Members of Parliament Approved on First Reading the Law on the Budget for the Public Social Insurance/Депутатите приеха за първо четене Закона за бюджета на общественото осигуряване' (2020) <https://bntnews.bg/news/deputatite-prieha-za-parvo-chetene-zakona-za-byujeta-na-obshtestvenoto-osiguryavane-1081705news.html> accessed 20 November 2021.

256 Koicheva, in *The Ecomic crisis and Bulgaria - Legal Aspects/Световната криза и България - правни аспекти* (2011) 53. In this relation also *see* Eurostat, 'Life Expectancy by Age, Sex and NUTS 2 Region' (2021) <https://data.europa.eu/data/datasets/hkmclok7z575xxdc9masw?locale=en> accessed 20 November 2021.

able for a great number of the population especially given the complicated labor market situation.[257] The efficiency of the reforms towards achieving sustainable financial balance has been examined by the economic scholarship in the country.[258] Namely, scholars argue that even if these reforms can contribute to certain temporary budget sustainability of the public system, they are not enough to counterbalance the demographical challenges and ensure long-term fiscal stability, especially given the pension rights of the future pensioners.[259] Other social insurance funds, such as the one on unemployment, undergo similar deficit problems, albeit at a much smaller scale.[260]

The healthcare system represents another considerable impediment to achieving sustainability in social protection financing.[261] An estimate of almost the third of all working-age people do not pay their mandatory health insurance contributions and are therefore not covered by health insurance.[262] In addition, the general decrease in the working-age population is another crucial factor in lowering the system's contribution-based financing.[263] Such challenges lead to a greater need for tax subsidies for mandatory health insurance that are only likely to increase in the future.[264]

Moreover, accessibility deficits are triggered by the high levels of the so-called out-of-pocket payment by individuals for healthcare and the gaps in health insurance coverage.[265] In 2017, out-of-pocket spending amounted

257 Sredkova, in *Topical Issues of the Labour and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2016) 87.

258 Petkov, 'The Bulgarian Pension System Reform and Implicit Pension Debt/ Реформата на българската пенсионна система и скритият пенсионен дълг' (2020) 22 Economic and Social Alternatives/Икономически и социални алтернативи 5.

259 ibid 19.

260 Spasova and Ward, 'Social Protection Expenditure and Its Financing in Europe' (2019) 112 <http://www.sozialpolitik-aktuell.de/files/sozialpolitik-aktuell/_Politikfelder/Europa-Internationales/Dokumente/2019_10_EUKommi_Social protection expenditure and its financing in Europe.pdf> accessed 20 November 2021.

261 Zahariev, 'Financing Social Protection' (2019) 17 <https://ec.europa.eu/social/BlobServlet?docId=21867&langId=sl> accessed 12 March 2022.

262 ibid 23.

263 European Commission, 'State of Health in the EU' (2019) 19 <https://ec.europa.eu/health/sites/health/files/state/docs/2019_chp_bulgaria_english.pdf> accessed 12 March 2022. As it will be explained in more detail in the research section of the financing of health insurance, children's and pensioners' health insurance contributions are covered by the state budget.

264 Zahariev, 'Financing Social Protection' (2019) 17.

265 European Commission, 'State of Health in the EU' (2019) 3.

to 46.6% of the overall healthcare expenditure. This expenditure represented the greatest amount in the EU, where the average lies at 15.8%.[266] Even though reported unmet medical needs are currently at their lowest point since 2008,[267] accessibility problems are observable in less urbanized areas, mainly populated by the elderly population.[268] Low-income groups, in general, tend to be more heavily affected by accessibility shortages.[269]

Furthermore, the country's social protection needs to operate in the background of the considerable nationwide poverty rates.[270] Bulgaria has the greatest percentage of people at risk of poverty and exclusion in the EU,[271] despite the national progress on lowering absolute poverty made in the last decay.[272] High poverty rates can also be examined in relation to the high-income equality,[273] which is the greatest in the EU, and the related high disposable income inequality levels.[274]

The risk of poverty is exceptionally high for the elderly[275] and is even more pronounced for elderly women, who are more than two times more likely to be in poverty.[276] The old-age pension insurance reforms mentioned in the preceding section did lead to lower social protection spending.[277] However, the reforms also had the effect of making retirement subject to more stringent conditions. As a result, despite Bulgaria's aging demographics, the number of pensioners has been decreasing,[278] leaving people who do not qualify for the old-age pension to rely on the minimum income

266 Eurostat, 'Healthcare Expenditure Statistics' (2020) <https://ec.europa.eu/eurostat/statistics-explained/index.php/Healthcare_expenditure_statistics#Healthcare_expenditure_by_financing_scheme> accessed 12 March 2022.
267 European Commission, 'State of Health in the EU' (2019) 3.
268 European Commission, 'Pension Adequacy' (2018) 21.
269 European Commission, 'State of Health in the EU' (2019) 3.
270 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 426; Hallaert, 'Poverty and Social Protection in Bulgaria' (2020) <https://www.imf.org/en/Publications/WP/Issues/2020/07/31/Poverty-and-Social-Protection-in-Bulgaria-49552> accessed 12 March 2022.
271 Eurostat, 'People at Risk of Poverty or Social Exclusion' (2021) <https://ec.europa.eu/eurostat/databrowser/view/sdg_01_10/default/table?lang=en> accessed 12 March 2022.
272 Hallaert, 'Poverty and Social Protection in Bulgaria' (2020) 5.
273 Eurostat, 'Income Inequality in the EU' (2018) <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20180426-1> accessed 12 March 2022.
274 Hallaert, 'Poverty and Social Protection in Bulgaria' (2020) 5.
275 ibid.
276 European Commission, 'Pension Adequacy' (2018) 20.
277 Hallaert, 'Poverty and Social Protection in Bulgaria' (2020) 22.
278 ibid.

benefits for subsistence. Consequently, some authors attribute the alarming poverty rates to the social assistance's stringent qualifying conditions and less than modest minimum benefits levels.[279]

3. Institutional Organization

The overall presentation of social protection's institutional organization divides the examination into public and private institutions due to the different nature of the two categories. Public institutions are public authorities directly based on statutory social insurance requirements.[280] In contrast, private institutions are private law entities that carry out social insurance in the country grounded on a private law basis. The rest of the structure adheres to the functional systematization by beginning with the public institutions in the Contribution-based System (i.e., social and health insurance) and following with the public institutions in the rest of the identified tax-based social protection branches (i.e., the Minimum Protection and the Support and Social Exclusion Benefits). Since the institutional organization of the Contribution-based System also applies for the Social Compensation Benefits, the latter are not examined separately. Finally, the examination proceeds with the private institutions in social and health insurance.

a. Public Institutions

aa. Social Insurance System

The social insurance institutions can be divided into institutions with regulatory powers in terms of overall social policy management and institutions responsible for administering the social insurance branches. Starting with the former, the Council of Ministers ("Министерски съвет"), being the supreme executive body of state power, heads and manages the entire system of executive bodies in the country.[281] The Council is involved in social protection not only through its general right to a legislative initiative (Art. 87(1), CRB) but further has the powers to adopt decrees, ordinances,

279 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 423.
280 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 66.
281 Article 19 ff, Law on the Administration, SG 130/5.11.1998 (with later amendments).

and resolutions pursuant to and in the implementation of the relevant social laws (Art. 114, CRB). It can also exercise specific control over the actions of the Minister of Labor and Social Policy by its power to rescind any unlawful or improper act issued by a Minister (Art. 107, CRB). The Minister of Labor and Social Policy ("Министър на труда и социалната политика") is at the top of the "development, coordination, and implementation" of the state policy concerning the social insurance (Art. 33, SIC).[282] A significant number of the Minister's competences pertain to the management, strategic use, and development of the Ministry of Labor and Social Policy and its resources.[283]

According to the Social Insurance Code, the Council of Ministers can decide on crucial issues for the annual social insurance process. An essential prerogative includes preparing the draft of the law on the yearly social insurance budget based on a project of the National Social Insurance Institute that is then submitted for voting in the National Assembly (Art. 19(2), SIC). As scholars have pointed out, even though by the Constitution, the Council of Ministers can only act in the implementation of the laws, in practice, the tandem of the government and its majority in the Parliament drive the legislative process in the country.[284] Hence, the Council can considerably shape various annual social insurance expenditures. In addition, the Council is provided with further individual tasks such as developing the categorization of the types of labor that then entails different qualifying conditions and contributions rates in social insurance. The Council of Ministers also decides on the degree of hazard involved in certain occupations resulting in different social insurance rules (Art. 104(1), SIC).

The core institution in the management of the Social Insurance System is the National Social Insurance Institute ("NSII", "Национален осигурителен институт"). The NSII is an independent public body[285] defined by the law as a legal entity (Art. 33(2), SIC). There is no unified legal framework embracing the competences and work of the institution. Instead, the regulation is dispersed throughout different legal sources, ranging from overarching laws to relevant rules of procedure defining the internal

282 The roles of the Minister are further elaborated in Article 3(1), Rules of Organization of the Ministry of Labor and Social Policy, SG No 91/17.11.2009 (with later amendments).

283 An extensive list of the competence of the Minister of Labor and Social Policy is provided in Article 3 of the internal rules of organization of the Ministry. *See* ibid.

284 Belov, *Constitutional Law in Bulgaria* (2019) 338.

285 Sredkova, *Social Security Law/Осигурително право* (2016) 267.

institutional functioning. The budget of the NSII is adopted annually by the National Assembly with the yearly law on public social insurance. The annual law also provides the budgets of the various social insurance funds (Art. 19(1), SIC).[286]

The NSII "manages the public social insurance" (Art. 33(1), SIC), most notably by administering mandatory insurance for the risks of general sickness and maternity, unemployment, occupational accidents and diseases, disability, old age, and death. The NSSI also administers voluntary public social insurance for certain social risks for some groups, such as, for instance, the voluntary option for insurance for general disease and maternity for self-employed persons (Art. 4(4), SIC).[287] Last but not least, the NSII is endowed with controlling functions for monitoring compliance with the social insurance legislation (Art. 33(5)4, SIC).

NSII's "management" of the public social insurance boils down to receiving the mandatory social insurance contributions, administering them into the various funds' incomes, and processing the benefit payment from the respective funds (Art. 33(5)6, SIC). Consequently, the "management" exercised by the NSII entails administering the finances of the public social insurance funds.[288] It needs to be clarified that in accordance with Article 1 of the Tax and Insurance Procedure Code, the gathering of the mandatory contributions is entrusted to the National Revenue Agency ("NRA", "Национална агенция по приходите").[289] The NRA is not a social insur-

286 The fund structure is discussed below in the research section on the financing of the Social Insurance System.

287 The coverage of the public social insurance and its options for voluntary participation are reviewed below in the part on the coverage of the system.

288 The High Administrative Court has also concluded that the NSII's work, as well as the work of its territorial units, entail the processing of contributions, administering the incomes of the social insurance funds and the carrying out of benefit payments. *See* Decision No 3991/2004 of the High Administrative Court on case 5583/2003.

289 As mentioned above, the legislative decision on the inclusion of the NRA in the social and health insurance processes has been heavily criticized by the legal scholarship. The main point of critique is that the social and health insurance contributions represent separate sources of public income that should not be mixed with the obligation of the NRA for tax-collection. *See* Sredkova, *Social Security Law/Осигурително право* (2016) 85–86; Mrachkov, *Social Security Law/Осигурително право* (2014) 140. On the different legal nature of taxes and social insurance contributions, *see* Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 57–58.

ance institution but rather serves as an intermediator[290] that then transfers the gathered contributions into the respective accounts of the NSII.[291]

The NSII consists of central administration with a registered legal seat in Sofia and territorial units in the 28 territorial districts of the country.[292] This organization mirrors the territorial governance division of the country in districts and municipalities.[293] The NSII territorial units do not have their own legal personalities[294] and exercise their competences over those who have their residency or legal seat registered on the municipalities' territories comprising the given district. Notably, the NSII's territorial units assess benefit entitlement claims, calculate and pay out all of the respective public benefits in the cases of temporary work incapacity due to general illness, maternity, occupational sickness, and accidents,[295] unemployment benefits,[296] as well as disability, old age, and survivor pensions.[297] The NSII is also the institution responsible for the granting and payment of the non-contributory civil and military disability pensions belonging to the Social Compensation branch. Furthermore, based on the obligation of those who are recipients of unemployment benefits to be registered with the Agency for Employment, the Agency has to regularly provide information to the NSII that informs the granting, payment, and ceasing of payment of unemployment benefits (Art. 54h(1), SIC).

The managing bodies of the NSII are a tripartite Supervisory Board, the head of the NSSI, and his or her deputy (Art. 34, SIC). The head of the NSII and the deputy are elected for four years by the National Assembly

290 Sredkova, *Social Security Law/Осигурително право* (2016) 272.

291 Article 178(1), TIPC.

292 Article 9(1), Rules of Organization and Activity of the National Social Insurance Institute, SG 8/28.01.2014 (with later amendments).

293 The basic territorial division is founded upon Article 135 of the Constitution. For an extensive look into the competences of the territorial governance authorities, *see* Milanov, *Local Selfgovernment/Местно Самоуправление* (2001) 53.

294 Accordingly, no actions for damages could be brought against a territorial unit. This point has been underlined in the reasoning of different national case laws, for instance, *see* Order of the Administrative Court - Haskovo, 03.07.2017, on case 626/2017.

295 Article 2(1), Regulation on the Benefits Paid by the Public Social Insurance, SG 57/28.07.2015 (with later amendments).

296 Article 5(1), Regulation of the Granting and Payment of Benefits for Unemployment, SG 19/19.02.2002 (with later amendments).

297 Different provisions in Regulation on the Pensions and the Qualification Periods, SG 21/17.03.2000 (with later amendments). Also *see* Mrachkov, *Social Security Law/Осигурително право* (2014) 343.

(Art. 37(1), SIC). In general, the head of the NSII is responsible for organizing and managing the NSII's activities. The responsibilities include the approval of the mandatory instructions and other documents needed to carry out the activities of the institution and its territorial units (Art. 37(5), SIC). In the management of the NSII, the Supervisory Board represents an intriguing body due to its tripartite nature (Art. 35(1), SIC)[298] and wide-ranging competences.

Even though the managing body's name suggests controlling functions, the Supervisory Board is further endowed with certain governance prerogatives. Namely, the Board can decide on the main directions of the NSII's activities and adopt decisions on the acquisition and management of the NSII's property. Another essential competence relates to the NSII's participation in developing the draft of the annual laws on a social insurance budget and the related obligation to report to the National Assembly on implementing the social insurance budget from the previous year (Art. 31, SIC). Concerning these activities, the Supervisory Board also needs to approve the NSII's draft of the annual budget for social insurance. Further, the Board approves the draft of the report on implementing the social insurance budget from the preceding year (Art. 36(1), SIC). Due to the broad definition of the Supervisory Board's functions,[299] this managing body is in practice endowed with the possibility of exercising control over all of the activities of the NSII.[300] The tripartite bodies in the country predominantly have purely consulting functions.[301] In contrast, due to its wide-ranging competence, the Supervisory Board can exercise decisive authority over the activities of the NSII.

Last but not least, the Agency on Employment ("Агенция по заетостта") needs to also be mentioned due to its responsibilities in administering certain social policy aspects related to the risk of unemployment.[302]

298 The Supervisory Board is constituted by one representative of each of the trade unions and employer organizations that are considered to be representative within the meaning of the Labor Code, and an equal number of state representatives determined by the Council of Ministers.

299 Article 36(1)3 of the SIC provides that "the Supervisory Board exercises control over the activity of the National Social Insurance Institute, the council of the NSII's head, the NSII's head and the deputy" (translation from Bulgarian by author).

300 Mrachkov, *Social Security Law/Осигурително право* (2014) 112.

301 ibid.

302 Article 7(1), Law on the Incentivizing of Employment, SG 112/29.12.2001 (with later amendments).

The Agency is attached to the Ministry of Labor and Social Policy. Its territorial units exercise several activities in line with the relevant social policy agenda, including serving as an intermediary between employers and those seeking employment.[303] Moreover, the payment of unemployment benefits by the NSII is conditional on registration with the Agency and participation in its programs and meetings. Apart from the Agency on Employment, several other executive agencies are also attached to the Ministry of Labor and Social Policy. However, these manage the Minimum Protection branch as well as Support and Social Inclusion Benefits and are reviewed in different sub-sections below.

bb. Healthcare

(1) General Healthcare Organization

The functional systematization has identified that the Health Insurance and the System of Free Medical Care are two different healthcare branches. However, the Free Medical Care administration is managed by (parts of) the general healthcare institutional framework. Therefore, the following will portray the general public healthcare organization and indicate the particularly relevant aspects to the Free Medical Care system. The specific institutional organization of the Health Insurance is reviewed as a following separate point.

There are two institutions at the top of the healthcare policy in the country, namely the Council of Ministers and the Ministry of Healthcare ("Министерство на здравеопазването").[304] The Council of Ministers manages the overall national health policy (Art. 3(1), LH), whereas the Minister of Healthcare coordinates the National Healthcare System[305] and exercises control over related services and activities. The institution of the Council of Ministers influences healthcare in several ways. The Council is naturally relevant to healthcare through its general competence for

303 Article 26, ibid.

304 Ilieva, *The Control in Healthcare/Контролът в Здравеопазването* (2018) 89–90.

305 The "National Healthcare System" includes the medical and healthcare establishments, the state and municipal bodies and institutions involved in the organization, management, control and realization of healthcare in the country (Art. 4, LH).

the legislative initiative (Art. 87(1), CRB). It is also the body that can exercise control over the actions of the Minister of Healthcare (Art. 107, CRB).[306] Furthermore, the Council of Ministers approves the National Health Strategy that has been prepared by the Minister of Healthcare (Art. 3(2), LH) and necessitates subsequent approval by the National Assembly. The National Health Strategy is the principal strategic document that concretizes the goals for developing the healthcare system for a given year (Art. 3(4), LH).[307]

Turning to the Minister of Healthcare, his or her competences can be separated into two main groups, namely general and specialized ones, depending on the nature of the control prerogative.[308] On the one hand, the general competences pertain to the overall control that the Minister can exercise upon the healthcare system by overseeing the actions of natural and legal persons in the field of healthcare. Further, these broadly defined prerogatives also involve the Minister's responsibility to control the National Health Strategy implementation.[309] The Minister is also supposed to report annually on the Strategy's state of realization to the National Assembly (Art. 5(2), LH). On the other hand, the Minister's specialized competences refer to concrete prerogatives where it is clear who is the given subject upon whom the control can be exercised.[310] Such concrete competences include the Minister's responsibility for managing and overseeing the services provided in the framework of the system of Free Medical Care (Art. 5(1)2, LH). The concrete competences also include issuing methodological manuals for the healthcare facilities created by the Council of Ministers' auspices and the different ministries (Art. 5(4), LH).

306 For more on this power of the Council and its implications for healthcare, *see* Ilieva, *The Control in Healthcare/Контролът в Здравеопазването* (2018) 89.

307 The "National Health Strategy" sets the priorities for the healthcare policy on the basis of an assessment of the state of health and the existing needs, the demographic health-related factors and the available resources. *See* Ministry of Healthcare, 'National Health Strategy 2021/Национална здравна стратегия' (2020) <https://www.mh.government.bg/bg/politiki/strategii-i-kontseptsii/strategii/nacionalna-zdravna-strategiya-2020/> accessed 12 March 2022. For more on the national health strategy, *see* Ilieva, *The Control in Healthcare/Контролът в здравеопазването* (2018) 89–90.

308 ibid 92.

309 An extensive list of the competence of the Minister of Healthcare is provided in Article 5 of the internal rules of organization of the Ministry. *See* Rules of Organisation of the Ministry of Healthcare, SG No 26/29.03.2019 2019 (with later amendments).

310 Ilieva, *The Control in Healthcare/Контролът в здравеопазването* (2018) 92.

Different bodies and executive agencies are attached to the Ministry of Healthcare and support the exercise of its competences. The functions of these bodies can be grouped into three broad categories: administrative support in exercising control, decision-making in terms of concrete healthcare aspects, and advisory role. First, the control functions of the Minister are supplemented by different institutions attached to the Ministry. These institutions include the Chief State Health Inspectorates and its territorial units, the Regional Health Inspections (Art. 12(2), LH). The institutions exercise control on various issues, including through territorial control functions. All natural or legal persons must comply with the guidelines issued by the State Health Inspectorate. At the top of the institution is positioned the Chief State Health Inspector ("Главен държавен здравен инспектор"), who organizes, manages, and coordinates the activity of state health control over a wide range of issues on the goal of health protection.[311] The implementation of the healthcare policy on a regional level, as well as the exercising of local control over the activities of the healthcare establishments, is carried out by the Regional Health Inspections ("RHI", "Регионални здравни инспекции"). Those are legal entities financed by the Ministry of Healthcare (Art. 8(1), LH) that are created, abolished, or changed by the Council of Ministers (Art. 8(2), LH). Currently, 28 such inspections are located in each of the territorial districts of the country.[312] The work of the RHIs can be controlled and coordinated by the Chief State Health Inspector.[313]

Additional control functions are carried out by two agencies. The first one is the Executive Medicines Agency ("Изпълнителна агенция по лекарствата"). Its competences include issuing licenses for the production and retailing of medicines and medical devices and overseeing the vari-

311 Namely, the Chief Inspector leads the state control in relation to the observance and fulfillment of the health requirements established by law for: the public places; the products and goods that are of importance for human health; the activities that are of importance for human health; relevant environment factors; the supervision of infectious diseases; observance of the prohibitions and restrictions for advertising and sale of alcoholic beverages established by a normative act; the control over the observance of the prohibitions and restrictions for smoking. For a full list of the competences of the Chief Inspector, *see* Article 17, Rules of Organisation of the Ministry of Healthcare, SG No 26/29.03.2019.

312 Ilieva, *The Control in Healthcare/Контролът в здравеопазването* (2018) 96.

313 ibid 93.

ous processes involved in blood donation and transfusion.[314] The second agency endowed with controlling functions is the Executive Agency for Medical Supervision ("Изпълнителна агенция "Медицински надзор"). The Agency embodies different functions. On the one side, it constitutes the competent institutional body that controls, manages, and coordinates the transplantation of organs, tissue, and cells in the country.[315] On the other, it carries checks over medical establishments on adherence to relevant normative standards or observance of patients' rights.[316] Further, the Executive Agency for Medical Supervision oversees how the medical establishments are spending the state budget's finances for the medical services covered by the system of Free Medical Care.[317]

Second, certain councils and committees possess decision-making prerogatives in specified fields of healthcare. The council with decision-making powers is the so-called National Council on the Prices and Reimbursement of Medicine Products ("NCPRM", "Национален съвет по цени и реимбурсиране на лекарствените продукти") which is regulated by the Law on the Medicinal Products for Human Use ("LMPHU").[318] The NCPRM represents a legal entity (Art. 258(1), LMPHU) and has the power to modify the concrete medicine products featured in the so-called "Positive Medicinal List" ("Позитивния лекарствен списък"). The list specifies medicines (partly) paid for by the NHIF (Art. 259(1)5 and Art. 262(8), LMPHU).[319] The list further contains the medicines paid for by the medical

314 Article 38, Law on the Blood, Blood Donation and Blood Transfusion, SG 102/21.11.2003 (with later amendments).

315 Article 11(4), Law on the Transplantation of Organs, Tissues, and Cells, SG 83/19.09.2003 (with later amendments).

316 Article 7a, Law on the Medical Establishments, SG 62/9.07.1999 1999 (with later amendments).

317 Article 7b(1)15, ibid.

318 The members of the NCPRM are appointed and removed from their positions by the Council of Ministers on the basis of a proposal by the Minister of Healthcare (Art. 258(3), LMPHU). The constitution of the council consists of a chairman and six members, three of whom are doctors or pharmacists, two jurists and two economists, all with experience in the given sphere of not less than 5 years.

319 The list of such medications is further regulated by Regulation No 10 of 24 March 2009 on the Conditions and Procedure for Payment of Medicinal Products under Article 262, Paragraph 4, Item 1 of the Law on Medicinal Products in Human Medicine, Medical Devices and Dietary Foods for Special Medical Purposes, SG 24/31.03.2009 (with later amendments).

establishments, which are state- or municipality-owned.[320] The "Positive Medicinal List" also defines the medicines related to illnesses covered by the Free Medical Care; such medicines are financed by the Ministry of Healthcare and other public bodies (Art. 262(6), LMPHU). The Ministry of Healthcare and the NHIF may propose to the NCPRM to review the inclusion of given medicines in the "Positive Medicinal List" (Art. 262(7), LMPHU).

Furthermore, the National Expert Medical Commission ("NEMC", "Национална експертна лекарска комисия") and its territorial sub-units (Art. 103(2), LH)[321] are responsible for the attestation of the occupational type of temporal work incapacity and the establishment of permanent work incapacity (Art. 103(4), LH). The decisions of the territorial committees can be appealed in front of the NEMC (Art. 112(1)3, LH). In addition, the NEMC's decision can be appealed in front of the administrative court in the region according to the individual's permanent address (Art. 112(1)4, LH).

Third, two advisory councils, namely the High Medical Council ("Висш медицински съвет") and the High Pharmacy Council ("Висш съвет по фармация"), support the work and legislative initiative of the Minister of Healthcare. The High Medical Council[322] provides opinions on various issues concerning the priorities of the National Health Strategy, the drafting of healthcare legislation, as well as on ethical concerns in the spheres of medicine and biomedicine (Art. 6(3), LH). Analogically, the High Pharmacy Council[323] issues opinions on related draft legislation, questions the

320 A medical establishment is considered to be state- or municipality-owned when more than 50% of its equity capital is owned by the state or municipality. *See* Supplementary Provisions, §1.2, Law on the Medical Establishments.

321 The local sub-units are named Territorial Expert Medical Commissions ("Териториална експертна лекарска комисия").

322 The High Medical Council includes different members: five members are determined by the Minister of Healthcare; five members are representatives of the Bulgarian Doctors' Union; three members are representatives of the Bulgarian Dentists' Union; three members are representatives of the National Health Insurance Fund; one representative of the Bulgarian Association of the Healthcare professionals; one representative of the National Association of the Municipalities; one representative for each medical university in the country; one representative of the Bulgarian Red Cross. The Minister of Healthcare is the Chairman of the Council but has no right to vote on the discussed issues (Art. 6(3), LH).

323 The Council includes five representatives appointed by the Minister of Healthcare, five representatives of the Bulgarian Pharmaceutical Union, one representative of the Bulgarian Association of Assistant Pharmacists, two representatives of the NHIF

main priorities in the sphere of pharmacy, and debates the ethical questions of pharmacy.[324]

Apart from the bodies attached to the Ministry of Healthcare, healthcare's general organization and functioning are impacted by the work of two professional bodies. These organizations include the Bulgarian Doctors' Union ("BDoctU", "Български лекарски съюз") and the Bulgarian Dentists' Union ("BDentU", "Български зъболекарски съюз"). The organizations are regulated by the Law on the Professional Organizations of Doctors and Dentists[325] ("LPODD"). Participation in these organizations is mandatory for all doctors and dentists who exercise their profession (Art. 3(1), LPODD); once the individuals retire or cease to exercise these occupational activities, they might participate voluntarily in the organizations (Art. 3(2), LPODD). Therefore, doctors and dentists who are not members of the respective unions cannot exercise their professions.[326]

The Constitutional Court has defined these unions as corporations of the public law[327] whose creation aims to protect the citizens' health through the exercise of control over the practicing of medicine.[328] The unions' functions include, inter alia, the representation of the interests of the members, as well as the preparation of and supervision of the compliance with the Code of Professional Ethics (Art. 5(1)3, LPODD). The unions also formulate and accept the Good Medicinal Practice Rules (Art. 5(1)4, LPODD). The control over the adherence to these rules is carried out together by the respective union and the Executive Agency for Medical Supervision (Article 37(2), LPODD). Last but not least, the unions represent their members in the conclusion of the National Framework Agreements with the National Health Insurance Fund concerning the provided services in the mandatory health insurance (Art. 5(1)2, LPODD). The National Framework Agreements are examined in more detail below in the section concerning mandatory health insurance.

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and one representative of the universities' pharmaceutical faculties. The Minister of Healthcare is the Chairman of the Council but has no right to vote on the discussed issues. *See* Article 16(1), LMPHU.

324 Article 3, Rules of Organization of the Organisation and Activity of the High Pharmacy Council, SG 71/31.08.2007 (with later amendments).

325 Law on the Professional Organizations of Doctors and Dentists, SG 83/21.07.1998 (with later amendments).

326 Mrachkov, *Social Security Law/Осигурително право* (2014) 453.

327 Constitutional Decision No 29/1998 on case 28/1998 para I.3.

328 ibid para I.6.

(2) Health Insurance

To a certain extent, the institutional structure of health insurance resembles the one of the Social Insurance System.[329] Namely, similar to social insurance, the core of the administration of the health insurance system is constituted by one institution – the National Health Insurance Fund ("NHIF", "Национална здравноосигурителна каса"). Just like the NSII, the NHIF is an independent public body[330] that the law defines as a legal entity (Art. 6(1), LHI). The NHIF is responsible for the "realization of the mandatory health insurance" (Art. 6(1), LHI). The NHIF organizes the management of the mandatory health insurance finances in the framework of the budget approved by the National Assembly (Art. 29(2), LHI) for the realization of public health insurance. In addition, just as in the case of the NSII, the NHIF is not the institution responsible for collecting the health insurance contributions. This task is rather again left out to the NRA, which serves as an intermediary which collects the contributions (Art. 1, TIPC) and transfers them to the accounts of the NHIF (Art. 178(1), TIPC).

Despite the prima vista similarities between the NSII and the NHIF, a considerable difference between the two[331] is that while the NSII manages the budgets of the various social insurance funds (and has its own separate institutional budget), the health insurance budget is the budget of the NHIF (Art. 22(1), LHI). Therefore, the NHIF guarantees a certain package of medical services that are part of the mandatory public health insurance through its budget (Art. 2(1), LHI). The NHIF is not allowed to provide voluntary health insurance (Art. 6(6), LHI).

The NHIF consists of its central administration and territorial units whose location is determined by the Council of Ministers (Art. 6(2), LHI). Currently, the units are placed in the 28 territorial districts of the country. The territorial units, or the so-called Regional Health Insurance Funds ("RHIF", "Районни здравноосигурителни каси"), have no own legal personality.[332] The directors of the RHIFs represent the NHIF on the local level, organize the activities of the territorial units and conclude, alter, and

329 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 356.

330 Sredkova, *Social Security Law/Осигурително право* (2016) 267.

331 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 372.

332 Accordingly, no actions for damages could be brought against a territorial unit. This point has been underlined in the reasoning of different national case laws, for

terminate the agreements with the providers of medical help in the given territory of the unit (Art. 20(1), LHI).

The role of the RHIFs is also crucial for the organization of specialized nonhospital medical treatment. The mandatory health insurance provides only a limited number of medical referrals for further specialized medical help issued by the general practitioners (or by the given medical specialist in case of need of hospital care or another specialist). The NHIF determines the number of available medical referrals to specialized nonhospital medical and medical-diagnostic services every three months through its territorial units.[333] The directors of the RHIFs then allocate the available numbers of possible medical referrals to the different general practitioners working in their territories.[334]

Through reforms, the NHIF's internal institutional structure has been simplified and brought closer to the model of the organization of the NSII.[335] Similar to the NSII, the NHIF's management comprises a Supervisory Council and the head of the institution (Art. 6(3), LHI). The National Assembly elects the head of the NHIF for five years (Art. 19(1), LHI). The National Assembly is also the one that can decide on the early termination of the head's mandate (Art. 19(4), LHI). In contrast to the NSII, where also the deputy is elected by the National Assembly (Art. 37(1), SIC), in the case of the NHIF, the deputy is appointed by NHIF's head (Art. 19a(1), LHI). The competences of the head of the NHIF include, among others, the representation of the institution on the national and international level, the organization and management of the NHIF, the drafting of the internal rules that require the approval of the Supervisory Board, and the preparation of the draft law for the annual NHIF's budget (Art. 19(7), LHI). The draft is submitted for review to the Minister of Healthcare. Subsequently, it is provided for approval to the Supervisory Board together with the comments of the Minister (Art. 19(7)3, LHI).

After the Supervisory Board approves the draft budget law, the head of the NHIF submits it via the Minister of Healthcare for consideration to the Council of Ministers that needs to approve it to then submit the

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instance, *see* Order of the High Administrative Court No 10606/2002, 25.11.2002, on case 7700/2002.

333 Article 3(1), National Framework Agreement No. RD-NS-01-4 of 23 December 2019 for medical activities between the National Health Insurance Fund and the Bulgarian Medical Association for 2020 - 2022, SG 7/24.1.2020.

334 Article 3(2), ibid.

335 Mrachkov, *Social Security Law/Осигурително право* (2014) 446.

draft to the National Assembly. The NHIF's Supervisory Board[336] exercises control over the Head of the NHIF in terms of his or her actions regarding implementing the institution's budget. The Supervisory Board also oversees the implementation of the National Framework Agreements and the overall actions of the NHIF. The Board also monitors the actions of the RHIF directors (Art. 15(1)5, LHI). Moreover, representatives of the Supervisory Board participate in the creation and adoption of the National Framework Agreements (Art. 15(1)2, LHI).

One of the most important duties of the NHIF is to conclude the agreements for the realization of mandatory health insurance. There are two main types of such agreements, namely the already briefly mentioned National Framework Agreements (NFAs, "национални рамкови договори") and the agreements concluded between the NHIF and the providers of medical services. However, there are considerable dissimilarities between the two types of agreements that can be observed in the involved parties, the order for the agreements' conclusion, and the agreements' subject, content, and legal nature.

Two NFAs are concluded between the NHIF and the BDoctU and BDentU and address, respectively, either the medical or the dentist activities (Art. 53(1), LHI). These agreements are the basis for mandatory health insurance since they determine the rights and obligations of the contracting parties in the realization of the health insurance.[337] Further, the two NFAs contain the so-called "clinical pathways", which specify, in relatively great detail, what should happen to a patient after admission to an inpatient care facility with a specific diagnosis (for example, minimum length of stay, drug treatment, medical procedures, etc.).[338] The clinical pathway is the mechanism ensuring the quality of the provided hospital service.

336 The Board is made out of nine members (Art. 13(1), LHI): five members are part of different representative organizations, namely one representative of the organizations on the protection of the rights of patients, two representatives of the employees' organizations, two representatives of the employers' organizations, and four state representatives. One of the state representatives has to be the executive director of the National Revenue Agency.

337 Mrachkov, *Social Security Law/Осигурително право* (2014) 459.

338 The law defines the "clinical pathway" as "a system of requirements and guidelines for the conduct of different types of medical professionals in diagnostic and therapeutic procedures of patients with certain diseases requiring hospitalization in inpatient facilities" (translation from Bulgarian by author). *See* § 1, Regulation No 40 of 24 November 2004 on the Determination of the Basic Package of Health Activi-

The NFAs are generally concluded for a period of three years. Still, in case of need or at the request of either of the parties, the agreement could be updated by following the same order as the one for its conclusion (Ar. 53(1), LHI).[339] The agreement on the medical services is developed by ten representatives of the NHIF and ten representatives of the BDoctU (Art. 54(1), LHI). In contrast, the negotiations and conclusion of the agreement on the dentist services are done by nine representatives of the NHIF and nine representatives of the BDentU (Art. 54(2), LHI). The difference in the number of representatives in the NFAs' conclusion is based on the narrower material scope of the dental services covered by mandatory health insurance.[340]

Furthermore, there is a particular time frame during which the negotiations for the NFAs may be held. Namely, the debates in the process of agreements' conclusion have to coincide with the period in which the draft law on the budget of the NHIF has been submitted to the Parliament's consideration (Art. 54(6), LHI). This procedural design is based on the idea that the parallel debates on the draft law in the National Assembly and the draft agreement by the contracting parties are beneficial to the synchronization of both drafts, especially given the dependence of the NFAs on the NHIF's budget.[341] Therefore, the NFAs have to be concluded no later than the last working day of the ongoing year and enter into force from the first day of January of the following year (Art. 54(6), LHI). Upon the NFAs' conclusion, the latter must be promulgated in the official State Gazette by the Minister of Healthcare (Art. 54(7), LHI). If the parties are unable to reach an agreement within the conditions and deadlines set by the law, the NFAs, which are already in force, continue to be applicable (Art. 54(8), LHI).

The basic content of the NFAs consists of three main aspects (Art. 55(2), LHI). First, they deal with issues concerning the provision of medical services, such as the conditions that are to be met by the providers of medical services, the different types of covered medical services and the conditions for their provision, as well as the criteria for the assessment of the quality

ties Guaranteed by the Budget of the National Health Insurance, SG 112/23.12.2004 (with later amendments).

339 Some aspects of the NFAs are updated annually through annexes to the original agreement and concern issues such as the volumes and prices of the included medical services.

340 Mrachkov, *Social Security Law/Осигурително право* (2014) 460.

341 ibid.

of the services and their accessibility. Next, the agreement must address certain issues on documentation and information management. And third, the sanctions for non-compliance with the NFAs are stated. Naturally, the parties might also include other issues that they find relevant to the content. Concerning the legal nature of the NFAs, the law has made it clear that these specific types of agreements represent "normative administrative acts" (Art. 4a, LHI) that have a mandatory character for those involved in public health insurance.[342] As administrative acts, the NFAs fall under judicial control over the acts of the administrative bodies provided for in the Constitution (Art. 120(1), CRB) and the Administrative Procedure Code.[343]

The NFAs establish the minimum standards for mandatory health insurance that are also mandatory for the subsequent conclusion of agreements between the NHIF and the providers of medical services.[344] The NHIF concludes these subsequent agreements through the intermediary of the directors of the RHIF and the medical services providers in the territorial unit's respective region (Art. 59(1), LHI). The agreements concretize the conditions for medical services on a regional level (Art. 59(7), LHI) by defining the rights and obligations of the involved parties.[345] The provisions of the agreements cannot include conditions that are worse than the ones determined in the respective NFA (Art. 59(2), LHI). These agreements are concluded after the NFAs have entered into force (Art. 59a(1), LHI). In addition, the duration of the agreements is tied to the duration of the NFAs (Art. 59(3), LHI). The concluding of the agreements is preceded by the medical services providers' application to the respective RHIF that must contain the required documentation attesting that the applicant meets the criteria determined by the NFAs in force (Art. 59a(2), LHI). The legal nature of the agreements concluded between the NHIF, and the providers of medical services is a civil law contract.[346]

342 Some scholars argue that the provision of the law did not have to needlessly specify the mandatory character of the NFAs since the compulsory aspect follows directly from the defining of the NFAs as "normative administrative acts". *See* ibid 463.

343 Article 185 to Article 196, Administrative Procedure Code, SG 30/11.04.2006 (with later amendments).

344 Mrachkov, *Social Security Law/Осигурително право* (2014) 462.

345 ibid 465.

346 The peculiarity in the case of these contracts comes from the fact that the services that are to be provided due to the contractual basis are directed not towards the NHIF but at the insured individuals. These types of contracts lack certain hallmarks of the usual contracts that confer a right over a third person, such as the agreement of the third person for the conclusion of the contract. *See* ibid 466.

The overview of the institutional organization of the health insurance reveals clearly that the administration of mandatory health insurance is strongly situated under the competences of the NHIF. Some scholars claim that this regulatory setting results in the monopole position of the NHIF in public health insurance.[347] The NHIF had already been found to be misusing its central position on certain occasions by the relevant state authorities.[348] On another occasion, however, the Constitutional Court has concluded that the NHIF did not make profits and could not be characterized as having a monopolistic position since it did not exercise economic activity in the sense of Article19(2) of the Constitution.[349]

cc. Minimum Protection

According to the functional systematization, the Minimum Protection branch consists of two non-contributory social pensions as well as the Social Assistance System. The overview of the institutional structure of the two will examine them separately due to their different institutional backgrounds.

(1) Social Pensions

The social pensions represent an inheritance from the socialistic period in Bulgaria. After the transition to democracy, the development of the Social Insurance Code was initially confronted with six types of social pensions in the then applicable legislation.[350] Currently, only two types of social pensions are provided to impoverished individuals, namely the social old-age pension and the personal pensions. The social old-age pension represents a good example of the unstable social policy goals in the country.

347 In 2019, the Ministry of Healthcare announced that it is in the process of the preparation of a proposal for a reform that will create other private health insurance funds that will be placed in competition with the NHIF. *See* ibid 446.

348 'Commission for the Protection of the Competition, Decision No 286/06.12.2005' (2005) 23 <https://www.cpc.bg/ViewResult.aspx?type=Blob&id=3237> accessed 12 March 2022.

349 The decision of the Constitutional Court is reviewed in the research section on the concrete influences of constitutional and international law on social protection. *See* Constitutional Decision No 2/2007 on case 12/2006 para IV.

350 Mrachkov, *Social Security Law/Осигурително право* (2014) 314.

During the years of transition to democracy, the role of this type of pension became more and more prominent due to the rising poverty rates.[351] Still, the legislature opted to abolish this pension in 2010, only to reinstate it back into the law in 2012.[352]

Like the rest of the pensions, the social pensions are paid out by NSII (Art. 33(5)6, SIC). However, in contrast to the contributory pensions, whose entitlement and benefit calculation is governed by the Social Insurance Code, the social pensions' amounts and the conditions for entitlement are determined by the Council of Ministers (Art. 89a(2), SIC).[353] In addition, the assessment for the qualification for the social old-age pension is carried out by the NSII.

In contrast to the social old-age pension, there are some institutional specifics concerning the entitlement for personal pensions. The reason lies in the exceptional cases in which personal pensions are granted. These cases are not covered by the provisions of the Social Insurance Code and are instead determined by the Council of Ministers (Art. 92, SIC). In a few words, currently, personal pensions are granted in situations when specific individuals in need have no right to another pension. Such individuals can be mothers who have raised five or more children and have reached old age in a situation of material need. Beneficiaries could also be persons who have been nursing a sick family member for a long time and have reached old age, and suffer from material deprivations.

Regarding the administrative procedure for the granting of personal pensions, the Regulation on the Pensions and the Qualification Periods ("RPQP")[354] states that the requests for the pensions are addressed to the local municipal council (Art. 7(4)1, RPQP). Subsequently, the municipal council provides the request to the territorial unit of the NSSI so that the latter can assess whether all of the required preconditions are present. In case all of the requirements are met, the local municipal council makes a proposal to the Minister of Labor and Social Policy to grant the pension. The Minister then brings the issue to the Council of Ministers, which ultimately decides on granting the given pension (Art. 7(1), RPQP).

351 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 335.

352 ibid.

353 The proposals for the amount of the social pensions are made by the Minister of Labor and Social Policy and the NSII.

354 Regulation on the Pensions and the Qualification Periods, SG 21/17.03.2000 (with later amendments).

(2) Social Assistance System

The Council of Ministers determines the state policy in the sphere of social assistance (Art, 4(1), LSA). In addition, the Minister of Labor and Social Policy develops, coordinates, and implements the determined social assistance policy (Art. 4(2), LSA) and is supported in these activities by the regional administrations and local municipalities (Art. 4(3), LSA). For the implementation of the state social assistance policy, an executive agency has been created that is attached to the Minister of Labor and Social Policy (Art. 5(1), LSA). The so-called Social Assistance Agency ("SAA", "Агенция за социално подпомагане") is a legal entity registered in Sofia (Art. 5(2), LSA) that administers social assistance benefits (Art. 6(1)2, LSA), reports to the Minister of Labor and Social Policy on the granted social assistance benefits (Art. 6(1)8. LSA), and also participates in the preparation of draft laws pertaining to the sphere of social assistance (Art. 6(1)9, LSA). The Rules of Organization of the Social Assistance Agency ("ROSAA")[355] provide that the SAA carries out its work through 28 Regional Social Assistance Directorates ("RSAD", "Регионални дирекции за социално подпомагане") located in the territorial districts of the country (Art. 7(2), ROSAA). These units further branch out into smaller Social Assistance Directorates ("SAD", "Дирекции Социално подпомагане") placed in 147 different local municipalities.[356]

All of the territorial units of the SAA implement various aspects of the social assistance policy on local levels (Art. 14.1 and Art. 16.1, ROSAA). The SADs are responsible for identifying those in need of social assistance and managing the granting of the different types of social assistance benefits to the qualifying beneficiaries. This competence includes assessing whether the applicant meets the given criteria for the benefit (Art. 16, ROSAA). The RSADs oversee the activities of the SADs located in their regions and research the population's needs in the given territory to adapt accordingly to the coordination of the social policy on a regional level (Art. 14, ROSAA). The SAA and its territorial units have the right to access information provided by a range of other public institutions, including the territorial units of NSII, the NRA, and the Agency on Employment (Art. 6(2), LSA).

355 Rules of Ogranization of the Social Assistance Agency, SG 15/14.02.2003 (with later amendments).

356 'List of the Territorial Units of SAA/Списък на териториалните структури на АСП' <http://private.ciab-bg.com/uploads/common/gw300spb865qmr1x.pdf> accessed 12 March 2022.

Such information aids the SAA in the performance of their duties, including assessing whether the qualifying conditions are met for the granting of the social assistance benefits. In addition, the Agency on Employment establishes regular contact with the respective SAA territorial unit due to the obligation of the recipients of social assistance of working age to participate in the different qualification programs offered by the Agency (Art. 2(4)1, LSA).

Finally, the financing of social assistance is carried through a fund, the "Social Protection" Fund ("Социална закрила"),[357] which is also attached to the Minister of Labor and Social Policy. The Minister appoints the management of the Fund composed of a governing council (Art. 28(3), LSA) and an executive director (Art. 28(1), LSA). Among others, the executive director is entrusted with preparing the project for the annual budget of the Fund (Art. 29a(2)5, LSA). The project of the budget is submitted to the governing council for approval. If the council agrees with the proposed budget, it then provides it for approval to the Minister of Labor and Social Policy (Art. 29(1)2, LSA). The governing council further establishes the conditions and the order for allocating the Fund's finances (Art. 29(1)3, LSA).

dd. Support and Social Inclusion Benefits

The systematization of Bulgarian social protection has revealed that the branch of Support and Social Inclusion Benefits includes measures concerning the protection of people with disabilities, children and family benefits, and social services for the social integration of different individuals. There are some similarities and many differences in the institutional organization of these different Support and Social Inclusion Benefits. The Council of Ministers determines the state policy on all of these benefits (Art. 1a(1), LFBC; Art. 7, LPD; Art. 19, LSS). The implementation of these policies is provided to the Minister of Labor and Social Policy, who needs to coordinate the actions of the different involved public institutions (Art. 1a(2), LFBC; Art. 9(1), LPD; Art. 20(1), LSS). However, the concrete

357 The examination of the usage of the term "social protection" in Bulgaria has demonstrated that the concept is used to denote certain activities pertaining to the fields of social assistance and social services. Alongside the much broader understanding of the term on EU level, however, the concept is already acquiring a broader meaning in the country.

institutional ways to realize the various systems comprising the Support and Social Inclusion Benefits vary, and thus they are reviewed separately below.

(1) Children and Family Benefits

In the case of children and family benefits, the SAA is responsible for the decision on entitlement and subsequent payment of benefits (Art. 1(3), LFBC). The SAA carries out its functions throughout its territorial units (Art. 16, ROSAA) described above. In short, the RSADs are responsible for receiving the applications for children and family benefits and providing their payment. In the case of the means-tested children and family benefits, the territorial units assess whether all conditions for qualification are met. The units can issue refusals for granting the benefits and can cease the payment of benefits (Article 16.5, ROSAA).

(2) Protection of People with Disabilities

Concerning the protection of people with disabilities, the Council of Ministers has been provided with the general task of determining the respective policy and has also been attributed relevant competences and bodies. In terms of the specific competences, the Council of Ministers adopts different programs for prevention and rehabilitation (Art. 28(1), LPD), some of which are proposed by the Minister of Healthcare (Art. 28(2), LPD). In addition, an advisory body on the issues of people with disabilities, i.e., the National Council on the People with Disabilities ("Национален съвет за хората с увреждания"), has been established and attached to the Council of Ministers (Art. 17(1), LPD). This advisory council gives opinions on normative acts, strategies, and programs for people with disabilities (Art. 17(4), LPD). Similar advisory councils must also be set up on regional levels by the regional district governors (Art. 19(1), LPD). The task of such councils is to support the district governors in the implementation of relevant policies and the development of strategies, plans, and measures for the protection of people with disabilities.

The territorial units of the SAA, i.e., the RSADs, are responsible for receiving applications and payment of benefits related to the protection of people with disabilities (Art. 21, LPD). In this regard, specialized departments have been created within the SAA's territorial units. These depart-

ments can carry out an individual assessment of what specific type of support is required and grant the given benefits (Art. 20(1), LPD).

Furthermore, several other administrative bodies take part in the institutional organization of the protection of people with disabilities. The first one is the executive Agency for the People with Disabilities ("APD", "Агенция за хората с увреждания") that is attached to the Minister of Labor and Social Policy (Art. 10(1), LPD). The Agency is a legal entity that mainly contributes to the coordination of policies in the sphere. The APD also maintains a data bank on people with disabilities and develops and finances programs aiming to rehabilitate and integrate people with disabilities, including by building a more accessible environment (Art. 10(3), LPD). In addition, the APD and the SAA both participate in the preparation of draft laws concerning people with disabilities (Art. 10(3)9, LPD; Art. 6(1)15, LSA).

The research section on the concrete international law influences discusses in detail the motives behind the current legislation, which claimed to translate into national law the UN Convention on the Rights of Persons with Disabilities.[358] Accordingly, to oversee the implementation of the Convention in the country, a special Monitoring Council has been established at the national level (Art. 11(1), LPD). The Council's tasks include, among others, the issuing of opinions and drafts to the responsible institutions on related matters and reporting on the undertaken activities for the implementation of the UN Convention (Art. 12, LPD).[359]

(3) Social Services

The SAA is the central administrative institution concerning social services. The Agency provides methodological support in assessing the need for social services and is responsible for the services' planning and provision (Art. 21.1, LSS). Moreover, the SAA contributes significantly to the overall organization of the social service provision in two ways. First, the SAA prepares both the development and actualization of the National Map for Social Services ("Национална карта на социалните услуги") that aims

358 'Motives in Draft of the Law on People with Disabilities, No 802-01-41' (2018) <https://www.parliament.bg/bg/bills/ID/78250> accessed 12 March 2022.

359 The Council must also report annually on its activity to the National Assembly (Art. 16, LPD).

to define the number of the annually available social services on the municipal level in view of the maximum number of people who would partake in the offered services (Art. 35, LSS). After the SAA prepares the National Map, it is presented for approval to the Council of Ministers by the Minister of Labor and Social Policy (Art. 34(1), LSS). Second, the SAA prepares the proposal for standard on financing the services delegated by the state budget (Art. 21.4, LSS). The standard is a crucial yardstick for determining the fees for the usage of social services by the different social groups.[360]

Apart from the SAA, another executive agency has been created to oversee the quality of the provided services. Namely, the Agency on the Quality of the Social Services ("Агенция за качеството на социалните услуги") is a legal entity that monitors the provision of social services and licenses the providers of such services (Art. 22, LSS). The Agency is attached to the Minister of Labor and Social Policy.

The organization and provision of social services are tightly intertwined with the different obligations of the local authorities.[361] The district governors have to support the coordination and cooperation between the various municipalities in their territories to assess the local needs and plan the amounts of available services. The municipal councils determine the local social services policy following the needs and the priorities determined on a national level (Art. 25(1), LSS).

The mayor then implements the municipal social services policy determined by the municipal council. The mayor must also conduct analyses of the existing needs and make analysis-based proposals to the municipal council for the organization and governance of the social services (Art.25(1), LSS). The mayor also governs the provision of social services financed by the state or the given municipality (Art. 25(2)5, LSS). Moreover, the mayor awards the contracts for the delivery of social services to service providers (Art. 25(2)7, LSS) that can either be natural or legal persons registered under the Bulgarian legislation or the law of another Member State (Art. 30, LSS). However, instead of relying on private services providers, the municipality may opt for delivering social services itself (Art. 29(1), LSS), or it may decide to establish legal entities that are specially

360 Article 72(1), Regulation on the Application of the Law on Social Services, SG 98/17.11.2020 (with later amendments).

361 The municipalities are endowed with the responsibility of local organization of the social services, due to their ability of territorial assessment of the needs for social services. *See* Kirilova-Andreeva, in *Topical Issues of the Labour and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2018) 185.

created for the provision of services (Art. 29(3), LSS). The municipalities are accountable for the social services financed by the municipal or state budgets (Art. 29(2), LSS). Finally, the municipalities have to provide the SAA with the required analysis of social services provision so that the latter may be able to develop a draft of the National Map of Social Services.

b. Private Institutions

Apart from the public institutional framework reviewed above, private institutions are involved in voluntary health insurance and mandatory and voluntary social insurance. These institutions are all joint-stock companies that are regulated by the Social Insurance Code or the Law on Health Insurance as well as by the Law of Commerce[362] and the Insurance Code ("IC")[363] concerning all matters not settled by the social law. Due to the involvement of private companies in the social insurance process, the law establishes certain precautionary peculiarities in their regulation[364] that this examination focuses on. These peculiarities include the companies' establishment, functioning, investment activities, and eventual liquidation.

aa. Social Insurance System

Private institutions are involved in the mandatory pension insurance through the management of private pension schemes where the majority of the working population is automatically enrolled with part of their mandatory pension contributions. The law also provides options for voluntary pension insurance and voluntary insurance for the risk of unemployment in private schemes. The following rules apply to all insurance companies involved in either mandatory or voluntary forms of social insurance.

The law stipulates that such companies can only carry out the specific type of social insurance as a business activity. This business activity can either be supplementary mandatory pension insurance (Art. 121(2), SIC), supplementary voluntary pension insurance (Art. 209(1)3, SIC), or voluntary unemployment insurance (Art. 123j(2), SIC). The exclusivity of the

362 Law of Commerce, SG 48/18.06.1991 (with later amendments).
363 Insurance Code, SG 102/29.12.2015 (with later amendments).
364 Sredkova, *Social Security Law/Осигурително право* (2016) 275–276.

activity of these companies is further promulgated as being one of the main principles of mandatory (Art. 125(1)3, SIC) and voluntary supplementary pension insurance (Art. 209(1)3, SIC). The regulatory framework further sets specific requirements for the minimum amount of capital of these companies and the structure of the capital base.[365]

The companies willing to engage in social insurance activities need to receive a respective license and registration. Namely, a crucial prerequisite for carrying out social insurance activity (Art. 122(1), SIC) is the acquiring of a license by the Financial Supervision Commission ("FSC", "Комисия за финансов надзор"). The licensing process assesses that the given company meets the specific criteria set by the law for carrying out supplementary pension insurance.[366] After granting the license, the Bulgarian insurance companies can be registered in the commercial register of the Registry Agency (Art. 122d(1), SIC) attached to the Ministry of Justice. In addition, companies may also be registered according to the legislation of another Member State (Art. 121(1), SIC). The FSC is then the institution that supervises the activities of the social insurance companies (Art. 120b(2), SIC).

Given the risks involved in capital-funded financing, certain precautionary steps in the legal framework aim to protect the interests of the individuals involved in private forms of social insurance. For instance, the private funds have a separate legal personality from the companies that are managing them (Art. 133(3) and Art. 215(1), SIC). Furthermore, the funds bear no responsibility for the losses of the companies administering them (Art. 134(2), Art. 215(3), SIC). In contrast, the companies bear financial liability for losses due to bad faith management of the funds (Art. 134(1), SIC).

There are also specific rules regarding the cases of transformation and liquidation of the insurance companies engaged with social insurance activities. Transformation of the company is allowed only when the company can prove that it will meet the solvency requirements after the transformation (Art. 317(1), SIC) and that it will be able to preserve the interests of the individuals insured in the funds (Art. 320(1), SIC). Liquidation of the private institution may occur via three scenarios: voluntary liquidation

365 A set of further requirements for the pension insurance companies are laid out in Regulation No 10 of 26.11.2003 on the Requirements for the Composition and Structure of the Capital (Capital Base) of the Pension Insurance Company and for the Minimum Liquidity Assets of the Company and of the Supplementary Pension Insurance Funds Managed by It, SG 109/16.12.2003 (with later amendments).

366 Sredkova, *Social Security Law/Осигурително право* (2016) 276.

that necessitates a prior permission by FSC and a subsequent decision by the company's general assembly (Art. 325 to Art. 328, SIC), compulsory wound up in the case of withdrawal of the license authorization by the FSC (Art. 331, SIC), or declaration of bankruptcy in the case of which the procedure for liquidation is initiated based on a request by the FSC (Art. 333 to Art. 339, SIC).

Finally, the law sets some additional precautionary requirements regarding the regulation of the companies taking part in the mandatory pension insurance. The functioning of the companies is limited to the establishment and management of only one type of supplementary pension insurance scheme (Art. 133(4), SIC). Namely, the pension insurance companies can manage only one of the UPFs and only one of the PPFs.

bb. Voluntary Health Insurance

The private institutions managing voluntary health insurance are likewise joint-stock companies established according to the rules set in the Law of Commerce or the Insurance Code. To exercise their activity of voluntary health insurance, these companies need to be licensed to provide specific kinds of insurance, namely insurance against the risks of "Accident" and "Illness" (Article 83(1), IC).

Voluntary health insurance is carried out based on a contract of medical insurance (Art. 82(1), LHI).[367] Usually, such a contract can settle the reimbursement of medical expenses or regulate the provision of medical products and services from healthcare providers who have concluded a contract with the insurer. Voluntary health insurance can also compensate for a loss of income due to an accident or sickness.[368] The contract can also combine the outlined insured cases (Article 427(1), IC). However, the law considers that some specific insured contracts do not belong to voluntary health insurance, such as the medical insurances concluded for cases of traveling outside of the country (Art. 82(2), LHI).

367 The insurance aspects of the contract for voluntary health insurance are regulated by Article 427, IC.

368 Sredkova, *Social Security Law/Осигурително право* (2016) 280.

4. Financing

The part on the systematization of social protection revealed that the differentiation between the tax and contribution financing of the various systems constitutes a main institutional characteristic.[369] By definition, the financing of Contribution-based Systems can be characterized by their reliance on contribution payments. In contrast, all of the rest of the identified social protection branches are tax-financed. Therefore, the examination of the financing mechanisms will first present the specifics of the Contribution-based Systems and will then move on to review the tax-financed social protection altogether due to the similarities in their financing organization.

a. Contribution-based Systems

Apart from the common aspect of contribution payments, the financing mechanisms of the different Contribution-based Systems can be differentiated between, on the one hand, the public schemes and, on the other, private schemes involved in mandatory and voluntary social insurance. While private schemes rely on the capital-funded mode of financing, which follows relevant investment law regulations, the public schemes' financing is tied to the annual budgets determined by the social and health insurance budgetary laws.[370] The significance of the yearly budgets for the financing of the public Contribution-based Systems is further evidenced in the fact that the budgets of the Social Insurance System and the Health Insurance, as well as the general state budget, are reviewed and debated altogether by the National Assembly (Art. 29(2), LHI; Art. 19(5), SIC). This procedural requirement ensures the synergism between the allocated finances of these three main budgetary pathways.[371] Scholars consider the annual budgetary laws of the Contribution-based Systems an expression of the increasing role of the parliamentary control over the finances for the realization of social and health insurance.[372]

369 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 57. Also *see* Eichenhofer, *Sozialrecht* (2019) 11.
370 Mrachkov, *Social Security Law/Осигурително право* (2014) 118.
371 ibid.
372 ibid.

aa. Social Insurance System

(1) Public Social Insurance

After the end of socialism, the law was gradually reformed to build a social insurance system that is financially organized through differentiated funds.[373] Currently, there are seven separate public funds regulated by the Social Insurance Code. Only one of them is not contribution-based and concerns the payment of non-contributory pensions; accordingly, this fund is reviewed below in the research section on the financing of the Minimum Protection benefits.

The public funds belonging to the Social Insurance System (Art. 20a to Art. 26b, SIC) target different social risks. The funds can be divided into three categories based on the duration of the benefit payment. Hence, common funds cover both short-term and long-term benefit payments, short-term funds payout just short-term social insurance benefits, and long-term funds cover long-term benefits.[374] Respectively, the "Accidents at Work and Occupational Diseases" Fund ("Трудова злополука и професионална болест") covers both short- and long-term payments (Art. 23, SIC). The "General Sickness and Maternity" Fund ("Общо заболяване и майчинство") and the "Unemployment" Fund ("Безработица") are both responsible for short-term benefits (Art. 25 and Art. 26a, SIC). Next, the long-term benefits funds address pension payments (Art. 20a to Art. 22b, SIC). These funds include the "Pensions" Fund ("Пенсии"), the "Pensions for the Individuals in accordance with Article 69" Fund ("Пенсии за лицата по чл. 69") concerning the persons working in the defense and security sector, and the "Teachers' Pensions Fund" ("Учителски пенсионен фонд"). All of the public funds function based on a PAYG mode of financing.[375]

The budgets of the funds and the separate budget of the NSII are determined annually by the National Assembly with the Law on the Budget of the Public Social Insurance (Art. 19(1), SIC). This budgetary law also envisions a common reserve shared by the different funds for a given

373 Sredkova, *Social Security Law/Осигурително право* (2016) 281.
374 ibid 282–283.
375 Sredkova, *Social Security Law/Осигурително право* (2016) 282; Mrachkov, *Social Security Law/Осигурително право* (2014) 114.

year (Art. 19(4), SIC).[376] The main sources of income for the funds are formed in similar ways, by first and foremost being acquired via the made contributions (Art. 21 to Art. 26a, SIC). The next sources of income are the transfers from the general state budget that have been decided upon in the annual budget for the social insurance. Fees and interest rates formed based on late contributions also represent funds' incomes.[377] Transfers from the state budget cover the payments of the social insurance contributions of the civil servants, which are financed by the state budget (Art. 21.4, SIC). In addition, the state finances the payment of the contributions for pension-relevant periods[378] and makes further transfers intended to cover certain budgetary deficits. Both the contributions to the funds and the benefits paid by them are tax-exempted.

The organization of the different contribution rates is either based on the labor category within which the insured individual falls[379] or depends on the specific occupation in case the existing labor categories do not encompass the given job.[380] There are three labor categories; the 3rd labor category involves the majority of the working population engaged in non-hazardous jobs. The 2nd and 1st labor categories include occupations involving a certain degree of hazardousness in the working conditions (Art. 104, SIC).[381] There is a ceiling on the insurable earnings determined annually by the Law on the Budget of the Public Social Insurance (Art. 6(2), SIC). The same annual law also sets the minimum insurable earnings. These are established as one common value for the self-employed (Art. 6(2)2, SIC) but are differentiated from the rest of the working population in terms of the given economic sector and the employee's qualification level (Art. 6(2)3, SIC).

376 In case the budgetary law is not adopted by the beginning of the new budgetary year, then the social insurance continues to function on the basis of the budgetary law that is already in force.

377 Some of the funds can also obtain incomes from other sources, such as, for instance, charities, inheritances, and incomes that have been foreseen for in other laws.

378 Such a period is, for instance, child raising up to the age of three (Art. 9(7), SIC).

379 Contribution rates also vary in terms of the date of birth of the insured individual. In general, the present work deals with the currently most up to date regulatory framework and will thus focus on the law concerning those who are born after 1959.

380 Occupations that do not belong to either labor category are for instance the ones of dances or ballet-dancers (Art. 6(1)2(a), SIC). On the general question of the classification of the social systems by the specific occupations, *see* Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 69–70.

381 Also *see* Regulation on the Labor Categories for Retirement, SG 123/23.10.1998 (with later amendments).

The insurance contributions for the risks of old age, death, and disability due to general sickness are paid to the "Pensions" Fund. The latter provides old-age pensions, disability pensions due to general sickness, survivor pensions, and any supplements paid alongside these pensions (Art. 22, SIC). The mandatory contributions against the risks of old age, death and disability amount to 19.80% for the 3rd labor category. However, individuals are enrolled with a part of the mandatory contribution (5%) in a capital-funded scheme upon commencing insurance. Therefore, in 2021 the contribution to the public "Pensions" Fund is 14.80% of the monthly gross earnings for the 3rd labor category. The contribution is shared (Art. 6(1)2, SIC) between the employer (8.22%) and the employee (6.58%). The self-employed (Art. 6(8), SIC) pay the amount of the owed contributions themselves (14.80%). The employer covers the contributions of the civil servants.[382] For the 1st and 2nd labor categories, the total amount of the pension contribution equals 22.8%. Yet, similarly to the insurance of the 3rd labor category, part of the old-age contribution is paid out in the capital-funded UPFs. Thus, for the two hazardous labor categories, the contribution to the "Pensions" Fund is 17.8%. The amount is again shared between the employer (9.97%) and the employee (7.83%).

It has already been explained that people are automatically enrolled in private pension schemes with the option to opt out of them. The contributions to the "Pensions" Fund for all three labor categories will increase if the insured individuals decide to opt out of the capital-funded UPFs. Individuals are enrolled in the UPFs with part of their mandatory pension insurance contribution (5%). The contribution is shared between the employer (2.80%) and the employee (2.20%). In case of an opt-out of the capital-funded scheme, individuals would pay the total amount of the owed contributions to the public "Pensions" Fund.

Individuals working in the defense and security sector (such as police, military, and some related categories of civil servants) pay contributions against the social risks of old-age, death, and disability due to general sickness to the Fund of "Pensions for the Individuals in accordance to

382 The insurance against the different social risks is always carried by the civil servants' employer. *See* Article 67(2), Law on the Civil Servant, SG 67/27.07.1999 (with later amendments).

Article 69". The employer entirely covers the contributions ranging from 19.8% to 60.8% of the monthly gross earnings (Art. 6(1)2, SIC).[383]

Some occupational groups are mandatorily insured with supplementary old-age contributions due to the specific nature of their work. First, individuals belonging to the 1st and 2nd labor categories are further insured for a fixed-term early pension based on their hazardous working conditions. The employer covers these additional contributions of 12% for the 1st labor category and 7% for the 2nd labor category. By default, the insurance is carried out in the capital-funded PPFs that provide an option for a fixed-term early pension. However, insured individuals can also opt out of the capital-funded schemes and decide to insure themselves for early pension in the public "Pensions" Fund with the same contributions.

Second, the teachers also represent an occupational group for which supplementary old-age pension contributions are mandatorily provided in addition to the general 14.80% (or 19.80% in case of opting out from the UPFs). Their employers have to contribute a further 4.3% of the monthly gross salary to the so-called "Teachers' Pensions Fund" (Art. 6(7), SIC). Depending on when the teacher retires, the Fund can either pay out a fixed-term early pension or supplement the standard old-age pension.

The "General Sickness and Maternity" Fund covers the insurance against general sickens and maternity risks. The contribution to the Fund equals 3.50% of the monthly gross earnings for all insured individuals (Art. 6(1)5, SIC) and is shared between the employer (2.10%) and the employee (1.40%). The contributions against the risk of unemployment in the "Unemployment" Fund is 1% of the monthly gross earnings (Art. 6(1)6, SIC). The amount is again divided between the employer (0.60%) and the employee (0.40%). Finally, the contributions to the "Accidents at Work and Occupational Diseases" Fund (Art. 6(1)7, SIC) can range from 0.4% to 1.1%. The specific contribution of the different occupational groups is determined annually in the Law on the Budget of the Public Social Insurance.

383 The highest contributions are paid for the civil servants working in the State Intelligence Agency, the Military Intelligence Service of the Ministry of Defense and the State Agency for National Security.

(2) Private Social Insurance

Private institutions operate schemes that are part of the mandatory and voluntary old-age insurance and voluntary unemployment insurance. All of these companies function based on a capital-funded mode of financing.[384] The insured persons are allocated an individual account where the contributions are recorded (Art. 129(1), SIC). Some specific and restricting rules regulate the investment activities of the private companies involved in social insurance. The distinctions in the financing of these private institutions entail both the varying sizes of the owed contributions and the different tax-incentivizing regulations applicable to the mandatory and voluntary schemes.

Turning to the issue of the contributions, as mentioned above, the contribution to the UPFs is fixed at 5% of the monthly gross earnings (Art. 157(1), SIC) and is shared between the employer (2.80%) and the employee (2.20%). The further contributions owed to the PPFs for employees working in the 1st or 2nd labor categories are also fixed at 12% or 7% of the monthly gross earnings; these contributions are entirely paid for by the employer (Art. 157(1)2, SIC). In contrast, the contributions to the voluntary private and occupational pension schemes vary according to the personal choice of the insured individual (Art. 157(4), SIC) or the concrete conditions laid out on the company or collective level.[385] Similarly, the contributions to the voluntary unemployment insurance may be provided by the individual or can also be shared with the employer (Art. 281(1), SIC). Moreover, the contributions can vary in terms of their amount and frequency (Art. 281, SIC) and may also be subject to collective negotiations (Art. 284, SIC).

Different tax-incentivizing regulations concern the individual and the employer's contributions to both the mandatory and voluntary private social insurance. Regarding mandatory social insurance, the personal contributions to the UPFs are deductible from the tax base (Art. 161, SIC) following the order specified by Article 25(1) of the Law on the Taxes of

384 Sredkova, *Social Security Law/Осигурително право* (2016) 284.

385 The concrete contribution conditions, as well as their sharing between the employer and the employee are usually provided in collective agreements or collective labor contracts.

Incomes of Natural Persons ("LTINP").[386] In addition, the employer's contributions to both the UPFs and the PPFs are recognized as an expense and are thus not subjected to taxation (Art. 162, SIC). Concerning voluntary social insurance, personal contributions up to 10% of the monthly income are tax-deductible (Art. 19(1), LTINP). The employer's monthly contributions for a separate employee of up to 60 BGN are tax-exempted[387] and above this amount are subject to a 10% tax.[388] In terms of the taxation of all private companies, regardless of whether they are part of the mandatory or voluntary social insurance, the investment returns of the managed funds that are allocated in the different individual accounts are also not subject to tax (Art. 160(2) and Art. 253(2), SIC).

Finally, specific rules regulate the financing activities of the companies' managing schemes that are part of the social insurance. Such rules, in general, intend to soften the greater risks associated with private capital-funded pension insurance.[389] These restrictions apply to the companies' possibility to issue stocks and their allowed range of investment activities (Art. 121c(1), SIC). Further limitations include the prohibitions for the companies from providing loans or serving as guarantors for the debts of third persons (Art. 121d(1), SIC).

bb. Health Insurance

(1) Mandatory Health Insurance

As demonstrated, the financing of public social insurance includes the budgets of the different funds and the separate budget of the NSII. In contrast, the financing of public health insurance is concentrated in the budget of one Fund – the NHIF. The budget of the NHIF as a managing institution of public health insurance is part of the common NHIF budget. The public health insurance budget is determined for each year with the annual law on the NHIF budget.

386 Law on the Taxes of Incomes of Natural Persons, SG 95/24.11.2006 (with later amendments).

387 Article 208, Law on Corporate Income Tax, SG 105/22.12.2006 (with later amendments).

388 Article 20, ibid.

389 Becker, 'Private und betriebliche Altersvorsorge: zwischen Sicherheit und Selbstverantwortung' (2004) 59 JZ 854.

Similar to the financing of public social insurance, the incomes of public health insurance are primarily dependent upon contributions (Art. 23(1)1, LHI). The payment of the health insurance contributions for certain social groups is covered by transfers from the state budget (Art. 49(3)7, LHI). These social groups include pensioners (Art. 40(1)4, LHI), children,[390] students,[391] recipients of unemployment (Art. 40(1)8, LHI) or social assistance benefits (Art. 40(3)5, LHI), as well asylum seekers in the course of the asylum assessment procedure[392]. The budget for the NHIF additionally sets a reserve intended to cover unforeseen essential costs (Art. 25, LHI). A further source of income for health insurance can be formed by additional fees set by the Council of Ministers (Art. 23(1)7 and Art. 37(1), LHI). Such fees are paid for every visit to the doctor or dentist (Art. 37(1), LHI). They are also owed for each day of hospital treatment up to ten days per year. A lower fee is set for pensioners (Art. 37(2), LHI), and certain social groups are exempted from fee payment.[393] Additional possible sources of income include subsidies and interest-free loans from the state budget (Art. 23(1)11, LHI), and others.

The annual laws for the NHIF budget also determine the amount of the mandatory health insurance contribution for the given year (Art. 29(1), LHI). The contributions are not subject to taxes (Art. 42(2), LHI). For 2021, the amount of the health insurance contribution is 8% of the monthly gross earnings,[394] and it is shared (Art. 40(1)1, LHI) between the employer (4.80%) and the employee (3.20%). The self-employed (Art. 40(1)2, LHI) have to pay the whole contribution themselves (8%). The minimum and maximum amounts of the insurable earnings used for public health insurance are the same as for the ones for public social insurance (Art. 40(1)1,

390 Children up to the age of 18 (but no later than the age of 22) who are in regular forms of education, up until the finishing of their secondary education (Art. 40(3)1, LHI).

391 Includes students up to the age of 26 who are enrolled in regular forms of education (Art. 40(3)2, LHI).

392 Article 29(1)5, Law on the Asylum and Refugees, SG 54/31.05.2002.

393 Such social groups include children, recipients of social assistance benefits, pregnant women and women who have given birth (up until 45 days after birth), people with 71% or more of work disability, some recipients of social compensation benefits (military veterans), people who suffer from some specific diseases determined in the Annex of the National Framework Agreement, and others (Art. 37(4), LHI). For the precise and currently applicable list of all groups, *see* Annex 11, National Framework Agreement on the Medical Services (2020-2022).

394 Article 2, Law on the Budget for the National Health Insurance Fund for 2021, SG 103/04.12.2020.

LHI). The minimum insurable earnings are different and lower for persons whose health insurance contributions are paid based on self-employment activity. The same minimum amount applies to the recipients of unemployment benefits and to the individuals belonging to the groups whose health insurance is covered by the state budget. The amount of the minimum insurable earnings equals half of the minimum insurable earnings for the self-employed in social insurance (Art. 40(5)1, LHI).

Employers and self-employed who fail to provide the required health insurance contributions are subjected to pecuniary sanctions (Art. 104, LHI). Self-employed who have not paid their health insurance for more than three months are liable to a fine of up to BGN 1,000. In the case of repeated violation of the deadline - the penalty can reach up to BGN 3,000 (Art. 104(3), LHI). In addition to the fine, the reinstating of health insurance requires the full payment of all due health insurance contributions for the last 60 months (Art. 109(2), LHI).

(2) Voluntary Health Insurance

Voluntary health insurance is carried out through individually concluded health insurance agreements (Art. 427, IC). The managing companies carry out their investment activities based on the regulations in the Law of Commerce. The financial obligations of the insured individuals are determined in the agreements for health insurance. The tax reliefs incentivizing individual participation in voluntary health insurance plans amount to the possibility for tax-deductible personal contributions of up to 10% of the monthly income (Art. 19(1), LTINP). In addition, the employers' contributions for an employee of up to 60 BGN per month are tax-exempted (Art. 24(2)12, LTINP).

b. Tax-financed Systems

The rest of the identified branches in the Bulgarian social protection are tax-financed. Despite the common source of income in these systems, however, the concrete financing organization follows different paths reviewed below.

aa. Social Compensation

According to the social protection systematization, the Social Compensation branch contains two pensions, the military disability pension and the civil disability pension. A special fund provides the financing of these pensions, i.e., the Fund on "Pensions not Connected to Occupational Activity" (Art. 22d(1), SIC). The same Fund finances all of the non-contributory pensions in the country and covers their indexations and supplements. The Fund is first and foremost subsidized by transfers from the state budget (Art. 22c, SIC). Other sources of income can be obtained from donations, interest rates, and others.

bb. Minimum Protection

The social pensions that form part of the Minimum Protection branch of social protection, namely the social old-age pension and the personal pensions, are also financed via the Fund on "Pensions not Connected to Occupational Activity" (Art. 22d(1), SIC). The same applies to the supplements and the indexation of these non-contributory pensions.

The rest of the Minimum Protection consisting of social assistance benefits is regulated by the social assistance regulation. Those benefits are financed by a separate fund, namely the "Social Protection" Fund ("Социална закрила"),[395] which is attached to the Minister of Labor and Social Policy (Art. 25(1), LSA). The incomes to the Fund are mainly constituted by a targeted transfer from the state budget (Art. 26.1, LSA). The yearly transfer amount is determined by the annual laws on the state budget (Art. 25(1), LSA). In addition, the incomes to the Fund can be spent only for the purposes specified in the law (Art. 27(1), LSA) and are mainly used to finance the different social assistance benefits and related policy measures.

395 As it was already explained in the part on the systematization of the Bulgarian system, the literal Bulgarian translation of the term "social protection" ("социална закрила") in the Bulgarian law is predominantly used in the fields of social assistance and social services.

cc. Support and Social Inclusion Benefits

The financing of the Support and Social Inclusion Benefits includes financing of family benefits, benefits for social inclusion of people with disabilities, and social services. The family benefits for children are financed solely by subsidies from the state budget (Art. 5, LFBC) provided through the SAA. In contrast, the benefits and measures concerning people with disabilities are financed by both the state and municipal budgets (Art. 93, LPD). The state budget finances the monthly benefits and some of the targeted integration benefits through the SAA. The municipalities finance a range of activities concerning the local integration of people with disabilities, such as the building of a more accessible local environment and other educational services, as well as the provision of municipal dwellings to people with disabilities.[396] The financing of the medical and other aiding equipment for people with disabilities that falls outside the mandatory health insurance scope is covered by the NHIF. The spent amount is then reimbursed by transfers from the budget of the Ministry of Healthcare (Art. 73(2), LPD). Finally, the representative organizations for people with disabilities receive subsidies from the state budget (Art. 95(1), LPD).

The financing of the social services aiming at social integration represents a more complicated configuration. The financing is carried out on three levels and may involve some financial participation of the beneficiaries of social services. First, some of the social services are determined for the nationwide level and receive financing from the state budget. Next, services defined on a local level are paid by subsidies from the municipal budgets. Finally, social services can also be offered by private providers who provide social services to the beneficiaries against fees that the providers determine (Art. 43(3), LSS). Alternatively, the private providers can be delegated with certain social services by the municipal or state levels. Then, the state or municipal budget can partially or entirely cover the commissioned services' cost (Art. 41(1), LSS).[397] Last but not least, social services may be financed through different national or international programs (Art. 41(2), LSS).

396 For instance, Article 63 and Article 78, LPD.

397 Some social groups, such as children up until the age of 18, do not pay fees for the usage of social services. Further, certain social services that address general aims for the society and are covered by the state budget are also not paid for by the recipients (Art. 103 and Art. 104, LSS).

The state budget can only finance services featured in the National Map for Social Services (Art. 43(1), LSS) that was already mentioned in the review on the institutional organization. The research already revealed that the municipalities are responsible for allocating subsidies from the state budget to realize social services (Art. 44(1), LSS). These transfers from the state budget may be used only for their intended purpose (Art. 44(3), LSS).

The part on the institutional structure has also demonstrated that the municipal councils determine the volume of the services financed by the municipal budgets. The municipal budget may partly or entirely finance services that are not already covered by the state budget (Art. 47(1)1, LSS) or are only partially covered by the state budget (Art. 47(1)2, LSS). Services that are entirely covered by the state budget can be co-financed by the municipal budgets only in certain cases, such as a greater number of individuals willing to benefit from these services (Art. 49(3), LSS). The law defines such scenarios with two or more financing sources as "mixed-financing" (Art. 49(1), LSS). The mixed sources of financing can also occur in social services that are offered by private providers and are partly covered by the state budget (Art. 49(4), LSS).

dd. Risk-specific, Non-contributory Benefits

The medical care belonging to the Free Medical Care's scope is financed by both the state and the municipal budgets (Art. 82(5), LH). The budget of the Ministry of Healthcare directly covers related medical services concerning infectious diseases (including such that may represent epidemiological risk) and non-specific pulmonary diseases.[398] The Ministry obtains the needed finances from the state budget and then directly subsidizes the hospitals that qualify with the conditions for such treatments.[399] In addition, the municipal budgets cover related services offered by certain medical

398 Article 1(2), Regulation No 3 of 5 April 2019 on the Medical Services Outside the Scope of the Mandatory Health Insurance, for which the Ministry of Healthcare Subsidizes Medical Establishments, and on the Criteria and the Order for Subsidizing Medical Establishments, SG 29/8.4.2019 (with later amendments).

399 Article 1(3), ibid.

establishments located in their respective municipal territories, such as specialized establishments for psychiatric treatment.[400]

Some of the services belonging to the system of Free Medical Care are provided to people without health insurance rights (such as medical care for pregnancy and birth).[401] These medical services are designated as a separate budgetary income item for the given year in the annual budget of the NHIF.[402] The NHIF manages the payment for the use of these services to the different medical establishments. Then, the NHIF reports monthly to the Ministry of Healthcare of the related expenses. The Ministry must reimburse the incurred costs by transferring the amounts to the NHIF by the end of the month following the month when the expenditures were made.[403]

II. Coverage and Benefits

1. Contribution-based Systems

a. Social Insurance System

After the institutional organization and financial background of the different social protection branches have been examined, the research turns to the various systems' coverages, conditions, and benefit amounts. The examination begins by reviewing the coverage of the whole Social Insurance System by looking at the coverage of the different social insurance risks to avoid subsequent repetitiveness of information. Next, the respective benefits are studied in terms of their qualifying conditions and amounts. The presentation of the different social insurance benefits is structured based on the entitlement duration due to the similarities in the regulation between the short-term and long-term benefits.

400 Ministry of Finance, 'Healthcare Financing and Management/Финансиране и управление на здравеопазването' (2004) 198 <https://www.minfin.bg/document/2891:1> accessed 12 March 2022.

401 These medical care rights stem from the Law on Health which contains a list of healthcare benefits that are to be provided to all Bulgarian citizens, regardless of the health insurance status (Art. 82(1), LH).

402 Article 1(1), Law on the Budget for the National Health Insurance Fund for 2021, SG 103/04.12.2020.

403 § 2, Transitional and Final Provisions, ibid.

aa. Coverage in View of Addressed Social Risks

(1) Public Mandatory and Voluntary Social Insurance

The national law establishes different participation requirements for various social groups in view of the social risks identified by the Bulgarian legislation. In the national social law, disability is not a separate risk but represents a possible consequence of realizing three other risks: general sickness, occupational accident, and occupational disease. Accordingly, the risks identified in the law include: general sickness (leading to short-term and long-term consequences), maternity, unemployment, occupational accident and occupational disease (leading to short-term and long-term consequences), old age, and death.[404] The following examination assesses the requirements for social insurance coverage in terms of the covered parts of the population. The overview starts with the population groups insured against all risks and then works its way through the rest of the groups who are mandatorily insured against fewer risks.

To begin, the majority of the working population is mandatorily insured against all of the social insurance risks listed above; the covered groups include the employed population,[405] civil servants, prosecutors, judges, militaries, members of cooperatives who receive remuneration from these cooperatives, persons holding electoral mandates, and others.[406] Next, three social groups are insured for all risks, except for unemployment. The first group includes sailors who, however, may decide to insure themselves voluntarily for unemployment in the public system (Art. 4a(1), SIC). In contrast, the other two groups do not have the possibility of voluntary public insurance against unemployment. Namely, members of cooperatives whose work is not based on labor contracts are not insured for the risk of unemployment and cannot do so voluntarily.[407] The second group comprises persons working for different state-run programs for unemployed individuals (Art. 4(1)1, SIC). These people are registered with the Agency for Employment and have commenced employment in state-run programs.[408]

404 Sredkova, *Social Security Law/Осигурително право* (2016) 126–128.
405 The term "employed population" entails the population working on the basis of employment contract.
406 The list of the groups that are subject to mandatory insurance for all risks is featured in Article 4(1), SIC.
407 As it can be inferred on the basis of Article 4(1)5, SIC.
408 Mrachkov, *Social Security Law/Осигурително право* (2014) 124–125.

The fact that these individuals are employed on labor contracts leads some scholars to claim that the regulation on their social insurance coverage is unconstitutional. According to this view, the law arbitrarily limits the constitutional right to unemployment insurance.[409]

The mandatory insurance is even more limited for persons who pay their own social contributions. Such persons include the individuals exercising liberal professions, sole proprietors, self-employed farmers, and individuals working on a civil contract. These population groups are mandatorily insured only against the risks of disability due to general sickness, old age, and death (Art. 4(3), SIC). Nevertheless, almost all of these groups can voluntarily insure themselves against short-term work incapacity due to general sickness and maternity to receive short-term benefits in the case of realization of these social risks (Art. 4(4), SIC). The only exception is the persons that are socially insured based on civil contracts. These persons are not provided with the voluntary option for insurance for short-term work incapacity in the cases of general sickness and maternity. In contrast, before the enactment of the Social Insurance Code, those working on civil contracts were mandatorily insured for maternity and general sickness.[410] The legal scholarship has criticized the regulatory decision to deny this social group social insurance for short-term work incapacity. Such authors argue that the law groundlessly restricts the options for social insurance for the said individuals.[411]

The law foresees certain further options for voluntary public insurance against some or all of the social risks for a few social groups. Namely, pensioners who continue working as self-employed or sole proprietors after retirement can voluntarily insure themselves against any social insurance risk (Art. 4(6), SIC).[412] Moreover, certain groups, such as the spouses of

409 ibid.

410 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 84–85.

411 ibid.

412 The insurance coverage was subjected to a constitutional review. Initially, pensioners were mandatorily covered by the insurances against disability due to general sickness, old age and death; however, this mandatory coverage was declared as unconstitutional by the Constitutional Court. The case is reviewed in the research section on the concrete influences. *See* Constitutional Decision No 5/2000 on case 4/2000.

long-term diplomatic staff members, have the possibility of voluntary insurance for the risks of old age, death, and disability due to general sickness.[413]

(2) Private Mandatory and Voluntary Social Insurance

Individuals born after 1959, who are part of the public insurance against the risk of old age, are automatically enrolled in the private pension scheme of UPFs, where part of their mandatory old age contributions is allocated (Art. 127(1), SIC). The only exception to this rule concerns the civil servants working for the State Intelligence Agency, the Military Intelligence Service of the Ministry of Defense, and the State Agency for National Security. These individuals are excluded from participating in the capital-funded scheme (Art. 127(5), SIC).

The insured individuals in the UPFs can opt out of the capital-funded scheme and relocate their entire insurance to the public pension insurance. They also have the subsequent right to opt-in back in the UPFs (Art. 124a(1), SIC). The only limitations to these transfers include the need for at least a year before the previous relocation (Art. 4b(2), SIC). In addition, a transfer between private and public insurance can be carried out no later than five years before reaching the standard retirement age (Art. 4b(1), SIC).

Apart from being insured in the UPFs, persons in the 1st and 2nd labor categories are further enrolled by default in the PPFs. Employees are mandatorily insured in the PPFs by their employers for fixed-term early pension (Art. 127(2), SIC), given the hazardous professions comprising the two labor categories. These individuals also can opt out and relocate their early pension insurance from the capital-funded scheme to the public pension insurance (Art. 4c(1), SIC). However, in contrast to the flexible and multiple rights to UPFs relocation, the right to opt-out from the PPFs is limited to just one time.[414]

Turning to voluntary insurance, the old-age insurance in the private pension schemes is open to everyone who has reached 16 years of age (Art. 210(1), SIC). The voluntary supplementary pension insurance that the employer provides can be subject to collective bargaining and organized

413 Other similar groups include individuals commissioned to work abroad by a Bulgarian intermediary (Art. 4(5) ff, SIC).

414 In contrast to the regulation on the UPF transfers, there are no time restrictions for the exercise of the opt-out right from the PPF.

in occupational pension schemes (Art. 232(1), SIC). In this case, collective agreement conditions might influence the concrete enrolment possibilities.

The coverage of private voluntary unemployment insurance is broader than public insurance coverage against unemployment. Persons mandatorily insured against social risks in the public social insurance also have the right to this supplementary form of unemployment insurance (Art. 262(1)1 ff, SIC). In addition, the sailors who can voluntarily insure themselves against unemployment in the public system can also enroll voluntarily in private unemployment insurance (Art. 262(1)10, SIC). Finally, voluntary insurance can represent an option of insurance against unemployment for persons working on civil contracts who are otherwise not provided with a similar opportunity in the public social insurance (Art. 262(1)6 ff, SIC).

bb. Short-term Benefits

After examining the social insurance coverage, the work proceeds with analyzing the benefits provided by the various systems and the respective qualifying conditions. The examination below groups the benefits based on their similarities. Accordingly, the study examines some benefits together to prevent repetitiveness and portray regulatory similarities. Consequently, the short-term benefits for general sickness and occupational accident and disease will be examined together. Finally, the research looks into the short-term benefits for the risks of maternity and unemployment.

(1) General Sickness & Occupational Accident and Disease

i. Qualifying Conditions

The precondition for qualifying for general sickness and occupational accident and disease benefits is the incapacity for work.[415] Short-term work incapacity is defined as a temporal one due to the relevant medical criteria.[416] Benefits can be denied for certain periods in particular cases, such as when the insured individuals have deliberately harmed their health or

415 Mrachkov, *Social Security Law/Осигурително право* (2014) 260; Sredkova, *Social Security Law/Осигурително право* (2016) 338.

416 Sredkova, *Social Security Law/Осигурително право* (2016) 338.

have harmed their heath under the influence of alcohol or drug abuse (Art. 46(1), SIC).

Apart from these unifying aspects, the qualifying conditions between general sickness and occupational accident and disease vary in two main regards. Namely, the differences constitute the cause of the temporal work incapacity and the concrete qualifying criteria. First, in contrast to the incapacity due to general sickness, the incapacity in the cases of occupational accident and disease is caused by factors of occupational activity.[417] The varying cause results in different pathways for establishing the realized social risks.

In terms of general sickness, a medical certificate issued by the treating physician (Art. 103(2), LH) suffices to attest both the temporal work incapacity and the expected recovery duration. However, the medical certificate is not enough to enable entitlement to a benefit when the work incapacity is caused by occupational disease or accident. In such cases, an attestation must determine the given accident as occupational. The assessment of the given case and the determination of the accident as an occupational one is carried out by an official belonging to the respective territorial unit of the NSII (Art. 60(1), SIC). The assessment is carried out based on data gathered by the NSII. Concerning occupational disease cases, the recognition of the disease's occupational character is carried out by the respective Territorial Expert Medical Commission. The territorial committee issues an expert decision on whether the disease can be classified as occupational (Art. 62(3), SIC).[418]

Second, there are no minimum insurance periods for work incapacity or labor adjustment benefits concerning occupational accident and disease (Art. 40(2), SIC). In contrast, in the cases of work incapacity and labor adjustment due to general sickness, the minimum insurance period for benefit entitlement is six months (Art. 40(1), SIC). Nonetheless, this is a one-time requirement[419] that does not apply to insured individuals below the age of 18 (Art. 40(1), SIC).

417 These factors can be divided in two groups, one related to the influences of the work environment and the other based on the nature of the given working process. *See* Mrachkov, *Social Security Law/Осигурително право* (2014) 234.

418 The requirements on this classification are elaborated in Article 57 to Article 60, Regulation on the Medical Expertise, SG/51/27.06.2017 2017 (with later amendments).

419 Sredkova, *Social Security Law/Осигурително право* (2016) 339.

ii. Benefits

The daily benefit amounts for complete work incapacity due to general sickness and occupational accident and disease are determined on the calculation basis of the gross average daily remuneration. Alternatively, the average daily social insurance income (Art. 41(1), SIC) can be used as a basis.[420] The period for determining the average amount includes the 18 months before the month when the work incapacity occurred (Art. 41(1), SIC). The amount of the benefit per day equals a percentage of the calculation basis. In the case of general sickness, the benefits are 80% of the calculation basis; in terms of occupational accident and disease, the benefit is 90% of the calculation basis. The maximum calculation basis is the amount of the ceiling for the insurable earnings (Art. 41(4), SIC) that is determined annually with the law on a budget of the social insurance. The maximum amount of the benefits cannot exceed the average daily net remuneration in the period used for benefit calculation (Art. 41(1), SIC).

The benefit is paid for a period equaling the duration of the temporary work incapacity. The beginning of payment of the benefits starts on the day of establishing the work incapacity by the respective institutional bodies (Art. 42(1), SIC). The benefit payment ends on the day of the recovery, as stated in the respective medical certificate. If the expectations for recovery are not met, the temporary work incapacity might turn into a permanent one. Establishing permanent work incapacity requires a decision of the National or Territorial Expert Medical Commissions,[421] which would then imply the provision of a disability pension.

iii. Labor Adjustment

There is an inherent relationship between social insurance and labor law,[422] which leads to the regulation of certain social insurance matters by labor law. Namely, some provisions of the Labor Code ("LC") shape the further options for benefits provided in the cases of general sickness and occupa-

420 As a general rule in the social insurance, not the payment of contributions but the completion of the required insurance periods is prerequisite for the right to a certain benefit. For more on this, *see* Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 75–76; Sredkova, *Social Security Law/Осигурително право* (2016) 303–304.

421 In such a scenario, the insured individual could qualify for a disability pension.

422 Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 65.

tional accidents and diseases. In case of partial temporary work incapacity, when the insured individuals can continue to work under lighter and adapted conditions, the respective medical authorities can recommend labor adjustment (Art. 317(1), LC). In such a case, both the employer and the employee must follow the health authorities' recommendations (Art. 317(2), LC). The labor adjustment benefits are paid when the labor adjustment leads to a smaller remuneration (Art. 47(1), SIC).

The benefit is calculated as the difference between the average daily gross wage[423] received during the 18 months preceding the month of labor adjustment and the average daily gross wage after the labor adjustment (Art. 47(2), SIC). If the individual has not worked for 18 months prior to labor re-adjustment, the respective minimum wage is used to calculate the missing periods (Art. 41, SIC). The benefit is paid during the prescribed period for labor adjustment but cannot be paid for more than six months (Art. 47(3), SIC).

(2) Maternity

i. Qualifying Conditions

Currently, the Bulgarian social insurance understands the risk of maternity as including the periods of pregnancy, birth, and child-raising up to the age of two.[424] However, in the history of Bulgarian social insurance, maternity used to be defined more broadly by including the general raising of children.[425] Nevertheless, the aim of limiting social insurance expenses led to considerable reform in this social protection field.[426] With the development of the legislation in 2002, the benefits addressing general child raising were removed from the social insurance legislation. Instead, these benefits were defined as tax-financed children and family benefits. As a

423 The wage per day, which is taken into consideration, cannot be greater that the daily amount of the insurable earnings (Art. 47(2), SIC).

424 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 20.

425 ibid 19–20.

426 One of the practical reasons for removal of family and children benefits from the Social Insurance System was the considerable expenses for the payment of these benefits. The expenses for the benefits used to rate second to the greatest expense of the system allocated for pension payment. *See* ibid 20–22; Mrachkov, *Social Security Law/Осигурително право* (2014) 134–135.

result, the regulation of the social insurance risk of maternity acquired a narrower time scope. Scholars highly criticized this legislative decision.[427] Namely, the reform narrowed the scope of individuals who could qualify for tax-financed monthly children and family benefits due to the involved means-testing component for some benefits. Instead, legal scholars argue that such benefits have to be part of the Social Insurance System and should be provided to all insured parents regardless of their incomes.[428]

Until 2004, the right to benefit in the case of maternity used to be subject to very lenient conditions. The only qualifying requirement included the realization of the risk of maternity.[429] However, the qualifying conditions were subsequently gradually tightened through the introduction of greater and greater minimum insurance periods.[430] Nowadays, the same qualifying condition addresses the general benefits provided during the two time periods of maternity leaves. The first benefit is provided during the initial period of maternity leave which amounts to 410 days (Art. 163(1), LC). The next benefit is provided in the leave period after the initial 410 days and until the child becomes two years old (Art. 164(1), LC).[431] Both benefits are subject to 12 months of minimum insurance periods (Art. 48a and Art. 52a, SIC) for the risk of general sickness and maternity.[432] This requirement implies that certain groups, such as the self-employed, who are not mandatorily insured for the risk, need to insure themselves voluntarily to qualify for the given benefits.[433] Concerning labor adjustment benefits (Art. 309(1), LC), the condition on minimum insurance periods is six months (Art. 40(1), SIC). The requirement does not apply if the individual has not acquired 18 years of age.

427 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 20–22.

428 ibid 20–22; Mrachkov, *Social Security Law/Осигурително право* (2014) 134–135.

429 Sredkova, *Social Security Law/Осигурително право* (2016) 354.

430 ibid.

431 The qualifying for the second type benefit also entails some further conditions, such as that the child is alive and not given up for adoption (Art. 53(4), SIC).

432 As clarified in the research section on the financing of the different social protection branches, there is one common contribution for the risks of general sickness and maternity.

433 The research section on the coverage of the social insurance has revealed that there are groups who cannot insure themselves voluntarily against the risk of general sickness and maternity. Those are the individuals insuring themselves solely on the basis of civil contracts. For more on this issue, *see* Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 83–84.

ii. General Benefits

The law envisions the mother as the main beneficiary of the maternity leave rights and the attached maternity benefits. However, there are both independent paternal leave rights of the father (Art. 163(8), LC) and options for transferring the mother's leave rights to the father or other family members in cases of the mother's sickness or death (Art. 167(1), LC).[434]

It was already mentioned that two main types of maternity benefits need to be distinguished due to the different leave periods they address. The two benefits also have different logic behind their amounts. The first benefit for the initial period of maternity covering 410 days of leave is determined as a percentage of the lost income due to pregnancy, birth, and maternity. The calculation basis is the gross average daily remuneration for the 24 months preceding the month when the maternity leave starts (Art. 49(1), SIC). When the insured individual has not received remuneration for some of the last 24 months, then the calculation basis utilizes the respective minimum wage established for the country (Art. 41(2), SIC). Previously, the benefit calculation used to consider only the wage paid in the last six months.[435] However, through a series of reforms, the time span was gradually extended to 12 months, then to 18 months,[436] up to the nowadays applicable 24 months. This reform process leads to lower benefits since it increases the possibility of reliance on the minimum wage to calculate the missing working months.[437]

The concrete amount of the benefit is 90% of the calculation basis (Art. 49(1), SIC). Similar to the short-term benefits for general sickness and occupational accident and disease, the maximum maternity benefit cannot exceed the average daily net remuneration paid in the period used for benefit calculation (Art. 49(1), SIC). In the case of the maternity benefit, there is also a minimum amount of the benefit, which is the respective minimum wage determined for the country (Art. 49(1), SIC). As already mentioned above, the benefit is paid for 410 days (Art. 50(1), SIC). The beginning of the benefit payment is 45 days before the forecasted date

434 In such a scenario, in order to qualify for maternity benefits, the other family members would need to also have 12 months of minimum insurance periods for the risks of general sickness and maternity.

435 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 110–111.

436 ibid.

437 ibid.

of birth (Art. 50(1), SIC).[438] Different conditions regulate the duration of benefit payment in cases of stillbirth, death of the child in the period of 365 after the birth, or when the child is given for adoption (Art. 50(2) and (3), SIC).

The law further establishes the options for the payment of benefits for the father if he has 12 months of minimum insurance periods for the risks of general sickness and maternity (Art. 50(6) and (7), SIC). The Labor Code provides the father with the right to 15 days of paid leave starting with the child's hospital discharge (Art. 163(8), LC). During the period, the father receives a benefit that follows the calculation rules for the maternity benefit outlined above (Art. 50(6), SIC). Further, if the mother agrees, after the child's first six months, the rest of the 410 days of maternity leave can be taken over by the father (Art. 163(10), LC). He is to receive paternal benefit calculated in the same way as the maternal benefit (Art. 50(7), SIC).

In contrast to the benefit paid in the initial maternity period, which depends on previous earnings, the benefit paid after the 410 days and until the child's second year has a fixed rate. Initially, upon the creation of this maternity leave period back in 1986, it was envisioned that it would provide a benefit at the level of the minimum wage in the country.[439] However, the SIC departed from this vision and instead specified that the benefit is determined yearly with the annual law on the social insurance budget (Art. 53(1), SIC). This legislative decision has led to a greater and greater difference between the benefit amount and the minimum wage. In 2021, the amount of the monthly benefit was 380 BGN[440] in comparison to a minimum wage of 650 BGN. If the mother does not want to utilize this additional maternity leave option, she will still receive 50% of the benefit that would otherwise be paid (Art. 54(1), SIC).

A special type of benefit can also be provided to parents who adopt children up to the age of 5. Such parents who have also fulfilled the general qualifying conditions for the maternity benefits have a right to a parental

438 In case of premature birth, the remaining days of the initial 45 pe-birth leave days are added to the rest of the 365 leave days in the post-birth period (Art. 50(2), SIC).

439 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 294.

440 Article 12, Law on the Budget for the Public Social Insurance for 2021, SG 103/04.12.2020.

leave and a benefit payment for 365 days (Art. 53c(1), SIC).[441] The benefit amount is calculated following the rules concerning benefits in the initial period of maternity (Art. 53c(1), SIC).

iii. Labor Adjustment

Similar to the regulation of partial work incapacity due to general sickness or occupational accidents and disease, labor adjustment can also be provided for maternity. The respective medical authorities can require the labor adjustment concerning the adaptation of labor conditions to the pregnancy, breastfeeding, or the late stages of in vitro fertilization (Art. 309(1), LC). The labor adjustment benefits are paid when the newly adjusted working position leads to a smaller remuneration.

The benefit equals the difference between the received average daily gross wage[442] during the 24 months preceding the month of labor adjustment and the average daily gross wage after the labor adjustment (Art. 48(2), SIC). If the person does not have 24 months of work, the missing periods are calculated based on the respective minimum wage (Art. 48(2) and Art. 41, SIC). The benefit is paid for the duration of the period of labor adjustment. In contrast to the fixed maximum payment periods of labor adjustment benefits in the cases of general sickness and occupational accident and disease, the law does not set a time limit concerning maternity labor adjustment benefits.[443]

(3) Unemployment

i. Qualifying Conditions

The realization of the risk of unemployment leads to rights in social insurance and labor law.[444] In labor law, unemployment results in certain

441 In case the adopting parent does not take advantage of the leave, she or he will receive 50% of the benefit that would have been paid in case of parental leave (Art. 53d, SIC).

442 The wage per day taken into consideration cannot be greater that the daily amount of the insurable earnings ceiling (Art. 48(2), SIC).

443 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 116.

444 Mrachkov, *Social Security Law/Осигурително право* (2014) 274.

rights assisting the unemployed in returning to the labor market. In social insurance, the first main qualifying condition for the entitlement to unemployment benefits is 12 minimum insurance periods in the last 18 months (Art. 54a(1), SIC). In addition, insurance-relevant periods include paid and unpaid leaves for child-raising and paid and unpaid leaves for temporary work incapacity, pregnancy, and birth (Art. 54a(2), SIC).

In addition to the minimum insurance periods, there are several further preconditions. First, the individual needs to register as unemployed with the Agency of Employment (Art. 54a(1), SIC) within seven days of the insurance's end (Art. 54a(4), SIC). Next, the person should not be entitled to old age or (fixed-term) early pension (Art. 54a(1), SIC).[445] Finally, the insured individual should not exercise a labor activity subject to mandatory social insurance (Art. 54a(1), SIC). The academic literature has criticized the broad character of the last condition. Namely, scholars have argued that the law excludes even labor activities exercised for a few days per month that would result in a very limited income.[446]

ii. Benefits

The daily benefit is 60% of the calculation basis of the gross average daily remuneration or the average daily insurance income for the last 24 months based on which insurance contributions were made or were owed for the risk of unemployment (Art. 54b(1), SIC). In some of these 24 months, when no contributions were owed or when the individual has not been insured against the risk of unemployment, the benefit calculation often uses as a reference the average daily minimum wage for the respective period (Art. 54b(7)4, SIC). The amount of the benefit per day cannot be below or above the minimum and minimum daily benefit amounts as determined by the annual law on the social insurance budget (Art. 54b(2), SIC).

The benefit is owed from the day when the insurance was ceased (Art. 54a(4), SIC). In the 1990s, when unemployment rates rose considerably, unemployment benefits were paid in equal duration periods to all beneficiaries.[447] However, this approach was reformed since it was considered

445 By (fixed-term) early pension is implied both the general early pension and the fixed-term early pension provided to people working hazardous jobs.

446 Sredkova, *Social Security Law/Осигурително право* (2016) 366.

447 Vladimirova, in Lefresne, *Unemployment Benefit Systems in Europe and North America* (2010) 296.

that it did not incentivize the reintegration into the labor market.[448] Currently, the duration of the benefit payment depends on the length of the insurance periods for unemployment, with a minimum and maximum length of the benefit payment being, respectively, four months and 12 months.[449] The benefit payment is terminated when the individuals become employed, cease their registration with the Agency for Employment,[450] or become entitled to the statutory old-age pension or a (fixed-term) early pension (Art. 54e(1), SIC).

Furthermore, the law foresees further conditions that affect the amount and the length of the benefit payment. First, the employment relationship could have ended due to the insured individual's wish, or the employment could have been terminated based on the individual's wrongful conduct. In such cases, the benefit is granted in its minimum amount and is paid for the shortest possible duration of time of four months (Art. 54b(3), SIC). Second, if the previous exercise of the right to unemployment benefits was less than three years ago, the benefit is again paid in its minimum possible amount and for the shortest duration (Art. 54b(4), SIC).

iii. Voluntary Private Unemployment Insurance

The right to unemployment benefits occurs upon the realization of the risk of unemployment (Art. 288, SIC). There are two types of possible benefits that may be paid, namely monthly annuities that cannot last longer than

448 ibid.

449 The relationship between the insurance periods and the length of benefit payment periods is the following (Art. 54c, SIC):

Length of insurance periods for the risk of unemployment after 2001 (in years):	Duration of benefit payment (in months):
Up to 3 years	4
From 3 years and 1 day up to 7 years	6
From 7 years and 1 day up to 11 years	8
From 11 years and 1 day up to 15 years	10
More than 15 years	12

450 The ceasing of the registration with the Agency can be caused by various reasons, such as failure of compliance with the meeting schedules of the Agency and the related job centers, and others. *See* Article 20(4), Law on the Incentivizing of Employment, SG 112/29.12.2001.

12 months (Art. 287(1) and (2), SIC) or lump sum payments (Art. 287(3), SIC). The general unemployment benefit equals the accumulated capital in the individual account (including the potentially made additional contributions by the employer and the investment yields) lowered by the respective administrative fees (Art. 287(1), SIC).

The other benefit is provided if the individual has ended the labor relationship or when the working relationship was ceased due to the individual's conduct. In this scenario, the benefit is in the amount of the personal contributions accumulated in the individual account. In addition, only 10% of the contributions made by the employer and the investment yields are included in the amount. The resulting sum is then lowered by the amount of the owed administrative fees (Art. 287(2), SIC).

cc. Long-term Benefits

(1) Old-Age Pensions

i. Statutory Old-Age Pension

The organization of the qualifying conditions of the statutory old-age pension is tightly connected to the three labor categories, the different occupations, and the gender of the insured individuals. These diversifications affect both the minimum insurance periods as well as the different retirement ages. Concerning the most numerous 3rd labor category (non-hazardous professions), the minimum insurance periods for the standard old-age pension in 2021 are 36 years for women and 39 years for men. The minimum insurance periods gradually increase by two months each year until they reach 37 years for women and 40 years for men.[451] In addition, some periods when no contributions are due are regarded as pension-relevant periods (Art. 9(2), SIC). These include, among others, paid and unpaid leaves for maternity and child-raising, periods of paid and unpaid leave due to general sickness, as well as periods of entitlement to unemployment benefits. In terms of the retirement age, in 2021, it amounts to 61 years and eight months for women and 64 years and four months for men. The retirement age also is progressively increasing until 2037, when

451 The increase will be completed in 2027 for both genders (Art. 68(2), SIC).

it will equalize for both men and women at 65 years.[452] Moreover, after 2037, the retirement age will increase following the average life expectancy (Art. 68(5), SIC).

If the persons do not have the required minimum insurance periods, they can still qualify for the old-age pension for incomplete insurance periods, albeit this will be at higher retirement age than the standard retirement one. The minimum insurance periods for this pension are 15 years of actual contributory insurance periods for both men and women, and the retirement age in 2021 is 66 years and eight months again for both genders. Additionally, the retirement age increases by two months per year until it reaches 67 in 2023 (Art. 68(3), SIC).

The retirement of the 1st and 2nd labor categories (hazardous jobs) is regulated differently. Before examining the concrete conditions, it needs to be mentioned that in the assessment of whether the qualifying conditions for old-age pension are met, the insurance periods are turned into insurance periods according to the 3rd labor category.[453] However, the insurance periods in the 1st and 2nd labor categories have different "weights" when they are converted into insurance periods according to the 3rd labor category. Namely, three years of insurance periods in the 1st labor category or four years of insurance periods in the 2nd labor category are regarded as five years of insurance periods in the 3rd labor category (Art. 104(2), SIC).

Furthermore, the individuals in the 1st and 2nd labor categories can qualify for early retirement from the public pension system. Yet, they can do so only if they have previously opted out from the capital-funded PPF scheme providing insurance for fixed-term early pensions.[454] In case individuals have transferred to the public scheme, in 2021, those working in the 1st labor category have an early retirement age of 49 years and eight months for women and 53 years and eight months for men. The retirement age increases annually with four months for women and two months for men until it reaches 55 years (Art. 69b(1), SIC).[455] The minimum insurance

452 For women the increase will be completed in 2037 and for men it will be completed in 2029. The increase for women is carried out by two months per year until 2030 and is afterwards increased to three months per year. For men, the increase is one month per year (Art. 68(1), SIC).

453 Sredkova, *Social Security Law/Осигурително право* (2016) 418.

454 As it was already mentioned in the section on coverage, persons working in the 1st and 2nd labor categories are automatically enrolled in Professional Pension Funds.

455 For women the increase will be completed in 2037 and for men it will be completed in 2029.

periods contain two requirements. First, the person must have at least ten years of insurance periods in the 1st labor category. Second, the sum of the total insurance periods and the retirement age has to equal 94 for women and 100 for women (Art. 69b(1)1, SIC).

Individuals in the 2nd labor category have a retirement age in 2021 of 54 years and eight months for women and 58 years and eight months for men. The retirement age increases annually with four months for women and two months for men until it reaches 60 years for both genders (Art. 69b(2)2, SIC).[456] Similar to the 1st labor category, the minimum insurance periods have two conditions. On the one hand, the insured individual needs at least 15 years of work in the 2nd labor category (Art. 69b(2)2, SIC). On the other hand, the sum of the total insurance periods and the retirement age has to equal 94 for women and 100 for women (Art. 69b(2)1, SIC).

Further occupational groups also have lower retirement ages based on the specifics of their profession. Such groups include the different occupations belonging to the defense and security sector (Art. 69, SIC), ballet dancers and dancers in general (Art. 69a, SIC), and teachers (Art. 69c, SIC). All of these groups have retirement ages that are currently in the process of gradual increase.[457] Moreover, these groups' qualifying conditions include a requirement for minimum insurance periods while exercising the given profession.[458] However, in contrast to the general tendency in the

456 For women the increase will be completed in 2037 and for men it will be completed in 2029.

457 For dancers, the retirement age for women and men in 2021 is 43 years and eight months. The retirement age increases with two months per year until it reaches 45 in 2025. The retirement ages of those working in the defense and security sector are increasing by two months until 2029 and are regulated by different rules that consider the specifics of their particular occupation. For teachers, the retirement age in 2021 is 58 years and eight months for women and 61 years and four months for men. The retirement age increases for women with two months per year until 2030, and after 2030 the increase continues with three months per year until it reaches 62 years in 2037. The retirement age increases for men with one month per year until it becomes 62 years in 2029. *See*, respectively for dancers, defense and security sectors and teachers: Article 69a(1), Article 69, Article 69c(1), SIC.

458 For instance, for ballet dancers, the requirement is for 25 years of minimum insurance periods. For the military, the qualifying conditions require that at least 18 years of the total 27 years of total insurance periods are exercised in the respective military profession. For teachers, the minimum insurance periods are 25 years and eight months for women and 30 years and eight months for men. *See*, respectively for dancers, military and teachers: Article 69a(1), Article 69, Article 69c(1), SIC.

pension system, the minimum insurance periods for these professions are not subject to increase.

The pension benefit amount mainly depends upon the insurance earnings and the insurance periods.[459] Accordingly, several important factors are used in the calculation, namely the *reference income* (based on which the benefit is calculated), the *individual coefficient* of the person, and the *total number of insurance periods*. The first main factor is the *reference income* for the pension calculation. This factor is obtained by multiplying the so-called individual coefficient with the population's average monthly insured earnings[460] for the 12 calendar months preceding the month of retirement (Art. 70(3), SIC). Next, the *individual coefficient* is determined as the ratio of the person's average monthly insured earnings to the national average monthly insured earnings, which is then adjusted by the individual's number of working days per month (Art. 70(5) and (6), SIC). The personal average monthly insured earnings included in the calculation of the individual coefficient are determined on the grounds of the reference period. The reference period consists of the insured earnings after 1999 until the date of claiming an old-age pension.

Moreover, the individual coefficient is lowered for people who insure themselves also in the UPFs. The lowering of the coefficient has been subject to heated debates and critiques given the reform history and that people are automatically enrolled in the UPFs.[461] Initially, it was envisaged that the lowering of the coefficient would be by more than 20%. The percentage resulted from the ratio of the insurance contributions for the capital-funded scheme and the total rate of the mandatory pension insurance. As of 01/09/2021,[462] the amount of the reduction was lowered by introducing different further criteria for calculating the individual coefficient. The criteria included considering the number of months during which the person has been insured in a UPF in relation to the total duration of the person's insurance period (Art. 70(1), SIC; Art. 21a, RPQP). The changes in

459 Sredkova, *Social Security Law/Осигурително право* (2016) 419; Mrachkov, *Social Security Law/Осигурително право* (2014) 269.

460 The population monthly average of insured earnings is determined and approved by the director of the NSII (Art. 37(5)8, SIC).

461 Tzvetanov, 'The Pensions Are Lost between Two Funds/Пенсиите - изгубени между два... фонда' (2019) <https://bnr.bg/vidin/post/101193611/pensiite-mejdu-dva-fonda> accessed 12 March 2022.

462 The changes were introduced in the SIC through the Law on the Budget for the Public Social Insurance for 2021. *See* § 8, Law on the Budget for the Public Social Insurance for 2021, SG 103/04.12.2020.

the law concern not only future pension recipients but also allow for the recalculation of already granted pensions if this would result in a greater benefit.

The final variable in the pension benefit calculation is the *total number of insurance periods*. The value is obtained when each year of pension insurance is multiplied by 1.2% (Art. 70(1), SIC). If persons have reached the standard retirement age and deferred their retirement, this percentage increases to 4% (Art. 70(2), SIC).[463] The amount of the received benefit cannot be smaller than the minimum pension and greater than the maximum pension determined annually with the law on the social insurance budget (Art. 70(12), SIC). Besides, the maximum benefit amount is set at 40% of the insurable earning ceiling.[464] The pension benefits are indexed annually on the 1st of July with a decision of the Supervisory Board of the NSII with a percentage equaling 50% of the increase of the insurance income and 50% of the consumer price index (Art. 100(1), SIC).

The options for general early retirement are very limited and lead to a lower benefit. If people have acquired the required minimum insurance periods for the standard old-age pension, they can retire one year before reaching the standard retirement age. Such an early retirement, however, results in a permanent lowering of the old-age benefit (Art. 68a(1), SIC) with 0.4% multiplied by each month the person is missing until reaching the standard retirement age (Art. 70(14), SIC).

As already mentioned, certain professional groups such as individuals working in the defense and security sector, dancers, and teachers have lower retirement ages. Generally, these groups' right to earlier retirement does not negatively affect their subsequent benefits, except for the teachers. Namely, teachers have the right to an early pension based on the additional contribution paid by their employers. This supplementary insurance provides them with the right to either a fixed-term early pension or an old-age pension supplement. In case the teacher takes advantage of the fixed-term early pension option, then the amount of this benefit is lowered by 0.1% multiplied by the number of months remaining until the reaching of the standard retirement age (Art. 69c(2), SIC). However, if the teacher retires by the standard retirement age, an old age supplement is granted. The supplement equals 0.33% of the standard old-age pension multiplied

463 Based on all of the factors, the pension benefit amount equals the following formula: (*reference income* for benefit calculation x *total number of insurance periods*)/100.

464 As evident from §6(1), Additional Provisions, SIC.

by the number of insurance periods acquired after reaching the fixed-term early retirement age (Art. 69c(3), SIC).

ii. Old-age Pension from Universal Pension Funds

One qualifies for the pension from the UPFs when reaching the standard retirement age (Art. 167(1), SIC). The pension from the UPFs can be claimed five years before the standard retirement age if the accumulated capital allows for a benefit amount that is not lower than the minimum pension of the statutory old-age pension (Art. 167(2), SIC).

The pension amount mainly relies on the accumulated capital from contributions in the individual account and the investment yields. The benefit is reduced by the administrative fees of the private pension provider (Art. 131(1), SIC). The monthly benefit of the life-long pension amount further depends upon the biometrical tables (Art. 131(1), SIC) and the technical interest rate[465] that has both been approved by the Financial Supervision Commission (Art. 169(1), SIC). If the pension amount is too low, the accumulated capital is paid out as a lump sum or fixed-term payment (Art. 131(2), SIC). Gender cannot be used as an actuarial factor in calculating the life-long pension annuity (Art. 169(4), SIC).

The sizes of the administrative fees charged by the private companies have long been a point of contention in the country. Namely, the companies managing the private schemes, which are part of the mandatory pension insurance, have the right to charge a fee for each monthly contribution payment. The size of the fee used to be able to reach 5%. Reforms in 2015 introduced a progressive limiting on the maximum size of these fees.[466] As of 2019, the fees can reach up to 3.75% (Art. 201(1), SIC). Still, the debates on the fees continue. Some researchers argue that the regulation and supervision of private pension funds do not effectively protect the interest of the

465 The technical interest rate is derived from actuarial mathematics and is used to discount future benefits in order to determine their present value. For more on this, *see* Eling and Holder, 'Maximum Technical Interest Rates in Life Insurance in Europe and the United States' (2013) 38 Geneva Papers on Risk and Insurance - Issues and Practice 354.

466 § 42, Law Amending and Supplementing the Social Insurance Code, SG 61/11.08.2015.

insured individuals.[467] Such views point out that the regulatory framework serves the interest of shareholders managing and representing pension companies by guaranteeing them fee income at the expense of insurance contributions.

iii. Fixed-term Early Pension from Professional Pension Funds

The qualifying conditions for the 1st labor category include at least ten years of insurance periods under this labor category that were acquired after 31/12/1999 (Art. 168(1)1, SIC). In addition, the retirement age is ten years lower than the standard retirement age. Regarding the 2nd labor category, the retirement age is five years lower than the standard retirement age (Art. 168(1)2, SIC). Furthermore, the conditions include a requirement of at least 15 years of insurance periods under the 2nd labor category (or under both the 1st and 2nd labor categories) acquired after 31/12/1999 (Art. 168(1)2, SIC). In contrast to the different "weight" of the insurance periods for 1st and 2nd labor categories in the public pension insurance, in the case of the insurance for fixed-term early pension in PPFs, the weight of the insurance periods in the two categories is the same.

It was already mentioned that the PPFs payout fixed-term early pensions until reaching the standard retirement age of the statutory old-age pension (Art. 168(3), SIC). The amount of the pension benefits paid out from the PPFs relies mainly on the accumulated capital in the individual account and the duration of benefit payment (Art. 169(3), SIC). Similar to the UPFs' benefits, a further factor of influence is the technical interest rate.

iv. Voluntary Private Pension Insurance

The entitlement to a voluntary private pension is conditional upon acquiring the right to the statutory old-age pension (Art. 243(1), SIC). In addition, based on the personal decision of the insured individual,[468] the pension entitlement can also occur five years before reaching the standard retirement age (Art. 243(2), SIC).

467 Christoff, 'Pension (In)Adequacy in Bulgaria/Неадекватност на пенсиите в България' (2020); Christoff, 'Pension Funds in Bulgaria/Пенсионните фондове в България' (2020).

468 Sredkova, *Social Security Law/Осигурително право* (2016) 436.

The voluntary private pension might be paid either as a life-long or fixed-term annuity (Art. 243(3), SIC). The amount of the life-long payment depends mainly on the accumulated capital, the approved biometrical tables, and the technical interest rate (Art. 246(1), SIC). The gender of the insured individual cannot be utilized as an actuarial factor in determining the amount of the life-long annuity (Art. 246(4), SIC). The amount of the fixed-term pension depends on the accumulated capital, the approved technical rate, and the agreed duration of the annuity payment (Art. 246(3), SIC).

v. Voluntary Occupational Pension Insurance

The right to voluntary occupational pension occurs for both men and women when they reach the retirement age of 60 (Art. 243(4), SIC). However, if the concrete occupational pension plan conditions established in the collective agreement or collective labor contract foresee it, the pension may be granted five years before the age of 60 (Art. 243(6), SIC). The benefit amount depends on the accumulated capital in the individual account. The size of the annuity is further influenced by the duration of payment and the technical interest rate (Art. 246, SIC).

(2) Disability Pensions

i. Common Qualifying Conditions

The examination of the different disability pensions will begin with presenting the common qualifying conditions for all relevant pensions. Namely, the disability presence is the shared and general precondition for the entitlement to a disability pension, regardless of the risk that has caused the disability occurrence.[469] The common disability threshold that the law has established is a minimum of 50% permanently reduced work capacity (Art. 72, SIC). Furthermore, this disability needs to be certified by the respective National or Territorial Expert Medical Commissions.[470]

469 Mrachkov, *Social Security Law/Осигурително право* (2014) 300; Sredkova, *Social Security Law/Осигурително право* (2016) 440.

470 Article 2, Regulation on the Medical Expertise, SG/51/27.06.2017 (with later amendments).

The medical expertise determines several factors that impact the qualifying conditions and the amount of the subsequent benefit. Most importantly, the expertise assesses and certifies the following: the presence of disability, level of the lost work capacity, date of work incapacity, need for long-term or temporary care, and whether the disability is connected to the occupation of the given individual.[471]

The regulation on the medical assessments issued by the National or Territorial Expert Medical Commissions has been subject to serious criticism for years.[472] The critique often focuses on the case of multiple disabilities dealt with in Article 69(1) of the Regulation of the Medical Expertise. When some of the disabilities in case of multiple disabilities are not considered permanent, the term of overall disability is determined for a period of one to three years which requires re-certification after the given period. Critics argue that in the vast majority of cases, the concomitant disabilities, which necessitate the periodic re-certification, are not decisive in determining the overall percentage of permanently reduced work capacity or the type and degree of disability.[473] The re-certification requires visitations to different experts and medical tests, which involves a number of hardships for people with disabilities (especially for those with serious movement impairment). Regarding re-certification, persons are required to submit documents proving the disability. In addition, the frequent re-certification of these individuals places an extra burden on the already administratively overstrained medical examination bodies.[474]

471 Article 61(1), ibid.

472 The respective legal framework has been criticized throughout the years by the different Ombudspersons in the country. For instance, *see* Ombudsman of the Republic of Bulgaria, 'Report on the Activities of the Ombudsman in the Republic of Bulgaria in 2013/Доклад за дейността на Омбудсмана на Република България през 2013 г.' (2013) 31ff <https://www.ombudsman.bg/pictures/annual report for 2013.pdf> accessed 12 March 2022; Ombudsman of the Republic of Bulgaria, 'Report on the Activities of the Ombudsman in the Republic of Bulgaria in 2020/Доклад за дейността на Омбудсмана на Република България през 2020 г.' (2021) 161 <https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020_RESUME.pdf> accessed 12 March 2022.

473 Ombudsman of the Republic of Bulgaria, 'Report on the Activities of the Ombudsman/Доклад за дейността на Омбудсмана' (2021) 161 ff.

474 The bureaucratic heaviness leads to significant delays in the disability certification. *See* ibid.

ii. General Sickness Disability Pension

The main precondition to a general sickness disability pension is a general disability that needs attesting by the respective medical body. Accordingly, there is no need to establish a link between permanent work incapacity and concrete occupational activity. The specific conditions for the general sickness disability pension depend on the age of the insured individual, the type of sickness that has led to disability, and the moment of the disability occurrence. Concerning the individual's age, for persons up to the age of 20, there is no requirement for minimum insurance periods. For persons up to the age of 25, the minimum insurance period is one year. The minimum insurance period for people up to the age of 30 is three years, and above this age – five years (Art. 74(1), SIC).[475] Regarding the type of sickness that has led to disability, the law establishes that people who have congenital blindness or have gone blind before starting an occupation are exempted from any insurance period requirements (Art. 74(1)1, SIC). For persons who are born disabled or have become disabled before beginning an occupational activity, the minimum insurance periods are one year of actual contributory periods (Art. 74(3), SIC).

The benefit for the general sickness disability pension depends on the following main factors: the *reference income* for pension calculation, the *individual coefficient*, the *total insurance periods,* and the *coefficient of general disability*. The *reference income* equals the multiplication of the individual coefficient with the *population's average monthly insured earnings* for the 12 calendar months preceding the month of retirement (Art. 76, SIC). The calculation of the *individual coefficient* follows the same calculation rules as for the individual coefficient of the statutory old-age pension (Art. 77, SIC) described above.

The determination of the *total insurance periods* regards as pension-relevant periods the time between the date of the disability and the standard

475 The requirement for five years of minimum insurance periods for those above the age of 30 was introduced as a result of a constitutional decision that assessed the compatibility of the Bulgarian legislation with the ILO's Conventions No 37 and No 38. Initially, the national law established minimum insurance periods reaching from seven to ten years that were declared by the Constitutional Court to be in violation of the international law requirements. The case is discussed in detail in the research section on the concrete constitutional and international influence. *See* Constitutional Decision No 5/2000 on case 4/2000 para II.

retirement age (Art. 75(2), SIC).[476] These additionally recognized pension-relevant periods are added to the total amount of insurance periods after being multiplied by a specific *coefficient of general disability* that reflects the different degrees of work incapacity.[477] Next, the coefficient is multiplied by each year of these further recognized pension relevant periods to obtain the whole amount of additional recognized insurance periods. Then, the *total insurance periods* equal the multiplication of all insurance periods by 1.2% (Art. 75(1), SIC).[478] The benefit amount[479] is limited by the maximum amount of the statutory old-age pension explained above. The law also sets a range of minimum pensions that depend on the concrete level of disability and are measured against the minimum pension of the statutory old-age pension (Art. 75(4), SIC).[480]

Finally, it needs to be pointed out that the disability pension due to general sickness cannot be received together with the statutory old-age pension (Art. 74(4), SIC). Therefore, if the individual is a recipient of the disability pension but also qualifies for the statutory old-age pension, the payment of one of these pensions is ceased (Art. 101(1)2, SIC). The general practice of the NSII is to leave in payment the greater pension benefit, which usually is the old-age pension.[481]

iii. Occupational Accident or Disease Disability Pension

The specific conditions for entitlement to the disability pension due to occupational accident or disease require the attestation by the respective medical body that the disability has indeed occurred due to given working

476 The minimum age that is considered in the determination of these pension relevant periods is 16 years.

477 The value of the disability coefficient (Art. 75(2), SIC) is the following: 0.9 in the case of 90% incapacity; 0.7 in the case of work incapacity between 71% to 90%; 0.5 in the case of disability between 50% and 70%.

478 The calculation formula for the *total insurance periods* equals: (actual insurance periods + recognized insurance periods x disability coefficient) x 1.2% for each year of insurance.

479 Based on all of the factors, the pension benefit amount equals the following formula: (the *reference income* for benefit calculation x the *total insurance periods*)/100.

480 For persons with more than 90% of disability, the minimum pension is 115% of the statutory minimum pension; for persons with disability between 71% and 90%, the minimum pension is 105% of the statutory minimum pension; for those with disability between 70.99% and 50%, the minimum pension is 85% of the statutory minimum pension.

481 Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 223.

conditions or the nature of the occupation. Apart from that, in contrast to the general sickness disability pension, this disability pension does not require the acquisition of minimum insurance periods (Art. 78, SIC).

The benefit equals the multiplication of the *population's average monthly insured earnings* for the 12 calendar months preceding the month of retirement with the *individual coefficient* of the person and the specific *coefficient of disability due to occupational accident and disease*. The *individual coefficient* is calculated following the rules of the individual coefficient used for the statutory old-age pension. The calculation of the *individual coefficient* takes into account the insurance periods and insurance earnings acquired before the date of the disability.[482] The *specific coefficient due to occupational accident and disease* depends on the level of disability (Art. 79(1), SIC). For disability of more than 90% - the coefficient is 0.4494; for disability between 71% and 90% - the coefficient is 0.3932; and for disability between 50% and 70.99% - the coefficient is 0.3371.

The amount of the benefit is also limited by minimum and maximum thresholds. The maximum amount is the same as the one for the statutory old-age pension. As to the minimum amount, similarly to the general disability pension, the law foresees minimum pension levels that depend on the concrete level of disability and are measured against the minimum pension of the statutory old-age pension. However, in contrast to the minimum general disability pension, in the case of disability due to occupational accident and disease, the minimum pensions are set at a higher percentage basis (Art. 79(3), SIC), resulting in greater benefits.[483]

As mentioned above, the general sickness disability pension cannot be received together with the statutory old-age pension. In contrast, this prohibition of cumulative entitlement does not apply to the occupational accidents and disease disability pension. Namely, the latter can be received together with the statutory old-age pension to pay the complete amount of the higher benefit of the two and to additionally pay the second pension in 50% of its amount (Art. 101(3a), SIC).

482 Sredkova, *Social Security Law/Осигурително право* (2016) 449.

483 For persons with more than 90% of disability, the minimum pension is 125% of the statutory minimum pension; for persons with disability between 71% and 90%, the minimum pension is 115% of the statutory minimum pension; for those with disability between 70.99% and 50%, the minimum pension equals the amount of the statutory minimum pension.

(3) Survivor Pensions

i. Qualifying Conditions

The qualifying conditions for the survivor pension can be divided into general and specific requirements.[484] The general ones need to be met in all cases; the specific requirements concern the different possible scenarios concerning the pension rights of the individual who had passed away and the related survivor pension rights of the successors. In terms of the general conditions, the survivor pensions are based on the pension that the individual who has passed away had been entitled to or could have been entitled to if the person had not passed away. However, not all pensions can result in a right to a survivor pension in case of the realization of the risk of death. Namely, the non-contributory pensions cannot be turned into survivor pensions, except for the military disability pension, which is inheritable (Art. 80(1), SIC).[485] Before 2012, social pensions addressing the function of Minimum Protection, i.e., the social old-age pension and the personal pensions, were inheritable.[486] However, this option was removed from the law due to fiscal reasons. The reform led to criticisms by legal scholars as it went against the very purpose of the survival pension of providing income support to the successors who had relied on the income of the given individual.[487]

Concerning the specific conditions of the survivor pensions, the law is not explicit concerning the minimum insurance periods for an individual who was not yet a pension recipient. However, based on the rest of the legal provisions, it can be inferred that a survivor pension entitlement is based on the pension that the individuals would have received had they not passed away.[488] For instance, accidents of general nature are treated by

484 Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 132.

485 The reason for the inheritability of the non-contributory military disability pension lies in the exceptional character of this pension. This social compensation benefit takes into account the sacrifice or exceptional deeds of the concrete individual and this appreciation is reflected into the pension inheritance rights of the successors. For more on the special character of such benefits, *see* Becker, *Soziales Entschädigungsrecht* (2018) 23 ff.

486 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 344–345.

487 ibid.

488 Sredkova, *Social Security Law/Осигурително право* (2016) 469.

Bulgarian law as general sickness. Therefore, even when the deceased individual had not been a recipient of a pension if the person had the minimum insurance periods needed for a general sickness disability pension, then the successors could claim a survivor pension on this basis.[489] Furthermore, a suspicion that the person has passed away due to occupational disease can be proven through an autopsy.[490] If the influence of the occupational factor is proven, the successors can qualify for a survivor pension based on the occupational accident and disease disability pension, regardless of whether the individual had any insurance periods.[491] In assessing whether there is a right to survivor pension based on a statutory old-age pension, it is automatically assumed that the person has reached the standard retirement age (Art. 32(2), RPQP).

Additional specific conditions exist concerning the specific potential successors and their pension rights. The children who are still in education can be entitled to a survivor pension if they are below the age of 18 or up to the age of 26 (Art. 82(1), SIC). The successor spouses have the right to a survivor pension when they reach an age that is five years lower than the statutory retirement age (Art. 82(2), SIC).[492] The survivor pension can be provided before that age in case the surviving spouse has work incapacity. Nevertheless, the survivor pension cannot be paid together with the statutory old-age pension (Art. 101(1)1, SIC),[493] which in most cases leads to the ceasing of the survivor pension.[494] The parents of the insured

489 Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 140–141.

490 Article 4(7), Regulation on the Order for Communicating, Registering, Confirming, Appealing and Reporting Occupational Diseases, SG 65/22.07.2008 (with later amendments).

491 The overview of the occupational accidents and disease disability pension has demonstrated that there is no requirement for minimum insurance periods for this pension.

492 Alternatively, the surviving spouse has a right to a supplement based on the pension of the person who has passed away. The amount of the supplement is 26.5% of the pension of the deceased spouse. The supplement, however, cannot be received together with survivor pension based on the pension of the same deceased person (Art. 84(3), SIC).

493 Some scholars have argued than in an emancipated society it is expected that an individual, regardless of the gender, needs to provide for him- or herself. Accordingly, it is often the case in different countries that nowadays survivor pension will be just for a limited period of time. *See* Pieters, *Navigating Social Security Options* (2019) 21.

494 The law is not explicit which pension is ceased in case that the individual is a recipient of a survivor pension and becomes entitled to an old-age pension. However, the practice of the social insurance institution, i.e., the NSII, indicates that the pension

individual have the right to a survivor pension if they have reached the statutory retirement age and are not recipients of another pension (Art. 82(3), SIC). Parents of individuals who have passed away in the exercise of their military duties have a right to a survivor pension based on the military disability pension regardless of their age (Art. 82(4), SIC).

ii. Benefits

As mentioned above, the survivor pensions are formed on the grounds of the previously acquired pension by the deceased individual. If the individual has not been a pension recipient, then the law considers the hypothetical pension that could be granted to the individual. Legal scholars have criticized this basis for calculating survivor pensions. According to the critique, the law does not conform to ILO Convention No. 102 and Convention No. 128, which rely on the individual's earnings as a basis for calculation.[495] The current legal solution considers a hypothetical pension amount that usually is much lower than the individuals' income, resulting in a lower survivor benefit pension.[496]

The pension benefit calculation initially depends on the type of pension taken into consideration as a calculation basis for the survivor pension. In case the person has not been a pension recipient, then depending on the specifics of the given case, the hypothetical pension for disability due to general sickness or occupational accident and disease is considered as a benefit entitlement for more than 90% of disability (Art. 83(1), SIC). If the person has acquired the right to the statutory old-age pension (but has not exercised it), the successors can choose either the statutory old-age pension or the general sickness disability pension as a basis for the calculation (Art. 83(2), SIC). When the individual had been entitled to a disability pension due to general sickness or occupational accident or disease, then the survivor pension assumes as a calculation basis 90% of disability (Art. 83(3), SIC). If the person has been a beneficiary of a statutory old-age pension, the benefit serving as a calculation basis is simply the granted pension amount (Art. 83(6), SIC).

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which remains in payment is the more beneficial pension for the individual. *See* Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 223.

495 ibid 178–179.

496 ibid.

Once the type of pension is clarified, the concrete amount of the survivor pension is determined as a common percentage from the calculation basis for all successors (Art. 81(1), SIC). The due amount is then separated into equal parts for the successors (Art. 81(2), SIC). In the case of one successor, the survivor pension amount is 50% of the pension of the deceased individual. When the successors are two, the survivor pension amounts to 75%, and in the case of three or more successors, the survivor pension is 100% of the pension amount. The minimum amount of the survivor pension is 75% of the minimum amount of the statutory old-age pension (Art. 81(2), SIC). If the successors are children who have lost both of their parents, the survivor pension is determined based on the sum of the two parents' pensions.[497]

b. Health Insurance

aa. Mandatory Health Insurance

Mandatory health insurance coverage is much broader than any of the social insurance systems' coverages.[498] The scope includes different groups of individuals. First, it covers all Bulgarian citizens who have solely Bulgarian nationality (Art. 33(1)1, LHI) and Bulgarian citizens with more citizenships who reside permanently in the country's territory (Art. 33(1)2, LHI). Further, the mandatory health insurance covers foreigners, stateless individuals who have the right to long-term or permanent residence in the country (Art. 33(1)3, LHI), and international students and Ph.D. students (Art. 33(1)5, LHI). In addition, refugees and beneficiaries of humanitarian protection are too mandatorily part of the scope of the system (Art. 33(1)4, LHI). Apart from these listed categories, in respect of the EU coordination rules on social security, the law foresees that the mandatory health insurance system also covers the rest of the citizens of the Member States with health insurance rights (Art. 33(2), LHI).

For most insured individuals, the right to health insurance benefits occurs from the date of the payment of the owed health insurance con-

497 Article 35, Regulation on the Pensions and the Qualification Periods, SG 21/17.03.2000 (with later amendments).

498 Sredkova, *Social Security Law/Осигурително право* (2016) 227; Mrachkov, *Social Security Law/Осигурително право* (2014) 449.

tributions (Art. 34(2)4, LHI).[499] For persons who have to pay for their health insurance themselves, such as the self-employed, the right to health insurance rights is interrupted when they have not paid three health insurance contributions in a period of 36 months before the month in which the need for medical assistance has arisen (Art. 109(1), LHI). As already mentioned in the section on the financing, the health insurance rights are reinstated as soon as all due health insurance contributions are paid in full for the last 60 months (Art. 109(2), LHI). The situation is different for employed persons. Insofar as the missing contribution payments are due to the employer's neglect, the employee's health insurance entitlement is not interrupted (Art. 109(4), LHI). However, all insured persons may lose their health insurance rights for a month if they fail to undergo the prophylactic examinations established in the National Framework Agreements (Art. 110, LHI). Certain exceptions for contribution payment are allowed if a person lives abroad for more than 183 days in a year (Art. 40a(1), LHI). Such individuals may acquire coverage upon returning by paying contributions over a period of 6 months (Art. 40a(2), LHI) or by paying an annual contribution at one time (Art. 40a(3), LHI).

In contrast to the social insurance legislation, the law is not explicit concerning the social risks addressed by mandatory health insurance. However, those may be identified interpretably and concern the risks of disease, pregnancy, and birth.[500] The risk of disease is defined broader than the risks of "general disease" or "occupational disease and accident" discussed in relation to social insurance. The health insurance risk of disease does not differentiate between the disease's origins. Furthermore, the realization of the risk of disease does not require the occurrence of work incapacity; it suffices that the individual's health is affected in some way.[501]

499 For specific groups whose contributions are paid by the state the beginning of the right to health insurance benefits might depend on administrative procedures, such as the beginning of the asylum assessment procedure (for asylum seekers) or the enrollment in a university (for students).

500 Mrachkov, *Social Security Law/Осигурително право* (2014) 455; Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 365; Sredkova, *Social Security Law/Осигурително право* (2016) 513–514.

501 Mrachkov, *Social Security Law/Осигурително право* (2014) 456.

The types of benefits provided for risks of disease are listed in Article 45(1) of the Law on Health Insurance.[502] These include medical and dental activities aiming at disease prevention, early detection of diseases, non-hospital and hospital medical care for diagnosis and treatment, long-term treatment and medical rehabilitation, and others. Most of the medical help covered by health insurance is determined as a package of services guaranteed by the NHIF. The specific kinds are specified by a regulation of the Minister of Healthcare (Art. 45(2), LHI).[503] Furthermore, mandatory health insurance includes the provision of certain medications and dietary foods (Art. 45(1)12, LHI).

The next types of benefits covered by the national health insurance are those concerning pregnancy and birth (Art. 45(1)6 ff, LHI). It needs to be clarified that the medical care provided in the cases of pregnancy and birth can be covered by two different systems depending on the health insurance status of the concrete individual. Namely, if the (expecting) mother has a right to health insurance benefits, the related medical care is financed by mandatory health insurance. However, when the individual has interrupted health insurance rights, the services will be tax-financed by the System of Free Medical Care.[504] In health insurance, benefits concern the cases of pregnancy and birth (Art. 45(1)6, LHI) and the cases of abortion due to medical reasons or rape (Art. 45(1)8, LHI). There is no fixed time coverage of the provision of the related benefits due to the fluidity of the duration of the related medical needs.[505]

Finally, mandatory health insurance also foresees options for covering some medical expenses that have occurred in the territories of other EU Member States (Art. 80e(2), LHI). Those options are based on the relevant EU law instruments, namely the coordination regulations and Directive

502 When persons have an interrupted health insurance status, they have the right to a number of tax-financed medical benefits. For more on this, refer to the section on the Risk-Specific, Non-contributive Benefits.

503 Regulation No 9 of 10.12.2019 on Dertermining the Package of Health Services Guaranteed by the National Health Insurance Fund, SG 98/13.12.2019 (with later amendments).

504 Some other medical services are also provided regardless of the health insurance status of the individual. For more on this, refer to the section on the Risk-Specific, Non-contributive Benefits.

505 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 368.

2011/24/EU.[506] First, such services need to be included in the national health insurance but simultaneously cannot be offered in the country's territory in a reasonable time (Art. 80g, LHI).[507] These services are subject to preliminary approval by the NHIF (Art. 80g(1), LHI). They are published on the internet page of the Bulgarian health insurance authority (Art. 80g(2), LHI) that is a point of contact for the coordination regulations and Directive 2011/24/EU (Art. 80h(1), LHI). Second, such services include medical care that was needed based on an objective medical need during the stay of the individual in another Member State.[508] In this case, the cost reimbursement application is submitted to the NHIF after the insured individual has returned to the country.[509] Depending on whether the covering of the costs is carried out following the coordination Regulation or the Directive, the financial coverage will include either, respectively, the medical treatment costs or will provide reimbursement equaling the tariff for the treatment in Bulgaria.[510]

bb. Voluntary Health Insurance

The law establishes no restrictions on the personal scope in terms of voluntary health insurance coverage. In any case, however, voluntary health insurance can only be supplementary to one's participation in mandatory health insurance. Voluntary health insurance is carried out based on an agreement for medical insurance (Art. 427(1), IC) that sets the qualifying conditions and the possible related benefits. The covered medical benefits can include both medical care featured in the mandatory health insurance or can just entail supplementary benefits.[511] The potential insured areas

506 Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011, 45–65.

507 For the relevant EU law provisions in this regard, *see* Article 20 of Regulation 883/2004/EC and Article 8(5) of Directive 2011/24/EU.

508 Article 25.3, Regulation No 987/2009.

509 Article 7(1), Regulation No 5 from 21.03.2014 on the Conditions and Order for the Exercise of the Rights of Patients in Transborder Healthcare, SG 28/28.03.2014 (with later amendments).

510 On the differences of the extent of reimbursements under EU law, *see* Bermejo, 'Cross-Border Healthcare in the EU: Interaction between Directive 2011/24/EU and the Regulations on Social Security Coordination' (2014) 15 ERA Forum 360.

511 Sredkova, *Social Security Law/Осигурително право* (2016) 524.

featured in the agreement include disease, accident, as well as prophylactic examinations, pregnancy and birth services, and others (Art. 427(1), IC).

2. Minimum Protection

a. Coverage

The Minimum Protection benefits include social assistance and non-contributory old-age pensions that target the impoverished part of the population. The coverage of the Social Assistance System includes Bulgarian citizens, foreign nationals with long-term or permanent residence in the country, refugees, and beneficiaries of humanitarian protection.[512] While the social protection legislation does not limit the potential coverage of the Minimum Protection benefits, there are migration law provisions that indirectly affect the potential beneficiaries. Such requirements include conditions for sufficient resources to qualify for long-term or permanent resident status for third-country nationals.[513]

The Social Assistance System provides a modest safety net through monetary and in-kind benefits and targets different age groups. In contrast, the non-contributory social old-age pension and personal pensions cover the elderly who cannot provide for their basic subsistence needs. In the case of the social old-age pension, those include people over the age of 70 (Art. 89a, SIC). As to the personal pensions, the coverage consists of elderly mothers of numerous children and old persons who have nursed a disabled family member over a period of time (Article 7(2), RPQP).

b. Social Assistance System

Before the entering into force of the Law on Social Assistance in 1999, the provision and organization of the social assistance benefits were carried out through various legal sources.[514] However, even though the Law on Social Assistance attempted to streamline relevant provisions in one legal docu-

512 Different provisions apply. For instance, see Article 2(1), LSA.

513 Vankova and Draganov, in Lafleur and Vintila, *Migration and Social Protection in Europe and Beyond* (2020) 78.

514 Sredkova, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 19.

ment, there is still quite an amount of fragmentation in the legislation.[515] The social assistance benefits include monthly minimum income, monthly benefits for accommodation for those living in municipal dwellings, one-off benefits concerning a range of incidental needs, and targeted heating benefits.

There are different conditions for the granting of social assistance benefits. The first condition is that persons should have exhausted the maintenance possibilities according to the Family Code prior to turning to social assistance (Art. 11(2), LSS). The maintenance possibilities concern a large group of family members, including parents, former spouses, children, and others. The list of possible family members from whom maintenance can be sought is so extensive (including even groups such as grandchildren and grandparents) that some scholars have characterized it as an attempt of the legislature to shrink the circle of social assistance benefits to the maximum possible level.[516]

The second condition is that the right to the different social assistance benefits is granted to people whose income is lower than the legally defined levels. The fundamental factor in the definition of these levels is the so-called "guaranteed minimum income" ("гарантиран минимален доход") that represents the normatively-defined basis for the determining of the minimum income benefits.[517] According to the Regulation on the Application of Law on Social Assistance ("RALSA"), [518] the monthly amount of the guaranteed minimum income is determined by the Council of Ministers (Art. 9(2), RALSA). For 2021, the guaranteed minimum income is 75 BGN. The guaranteed minimum income is then differentiated to detect a greater need for support (Art. 9(3), RALSA) based on the individuals' age, health conditions, and family situation ("differentiated minimum income", "диференциран минимален доход"). The amount of the differentiated minimum income is determined in different percentages of the guaranteed minimum income amount concerning the various monthly, one-time, or

515 ibid 22–23.

516 Moreover, the law was criticized for lack of sensitivity and for placing applicants for social assistance in humiliating positions. *See* Mrachkov, in *Topical Issues of the Labor and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2018) 63.

517 Supplementary Provisions, §1.10, LSA.

518 Regulation on the Application of Law on Social Assistance, SG 133/11.11.1998 (with later amendments).

targeted benefits.[519] Eligibility for social assistance benefits is means-tested based on the monthly net incomes and assets[520] of the person or the family (such as spouse and other cohabitating family members or individuals) measured against all of the monthly differentiated guaranteed incomes (Art. 9(1), RALSA). Usually, the assessed income is the one received in the month before the application for social assistance; however, the targeted benefits for heating assess the income received in the six months preceding the application.[521]

There is a last third group of additional requirements[522] concerning the monthly minimum income benefits (Art. 10, RALSA) and the targeted benefits for heating. These include, among others, the condition that the social assistance beneficiaries cannot be owners of more than one dwelling that they are occupying or must not have sold an immovable property in the last five years. In addition, individuals cannot be registered as sole traders and cannot be owners of a commercial company's capital, and cannot have savings of more than 500 BGN. Those who are of working age and are unemployed need to have been registered with the Agency of Employment for at least six months before applying for social assistance benefits.[523] General monthly benefits and monthly benefits for family accommodation are also conditional upon the children's regular presence in the school (Art. 2(4)2, LSA; Art. 14(3), RALSA). The assessment of whether

519 For instance, the differentiated minimum income for persons living with another person or family, and for each of the cohabiting spouses is 66% of the guaranteed minimum income. For people above the age of 65 who live alone, the differentiated minimum income is 140% of the guaranteed minimum income.

520 The law considers as income and assets income from occupational activity, agricultural activities, sell of movable and immovable property, and others. However, the assessment of the available means does not include other finances, such as targeted social assistance benefits for heating, benefits provided in accordance with the Law on People with Disabilities, and one-time benefits provided by the Law on Family Benefits for Children. *See* §1.9 and 10, RALSA.

521 Article 2(1), Regulation No (RD)-07-5 from 16.05.2008 on the Conditions and Order for the Granting of Targeted Benefits for Heating, SG 49/27.05.2008 (with later amendments).

522 Some of these requirements do not apply in certain exceptional cases. *See* Article 10(2), RALSA.

523 Such persons must not have refused employment offers or inclusion in programs for further educational qualifications Also, the unemployed persons may be required to carry out certain community work. However, there are exceptions to these requirements in case the unemployed individual is taking care of a child up to the age of three or a seriously ill family member, if the person has permanent working incapacity, and others. *See* Article 10(1)7 and Article 10(3), RALSA.

the granted social assistance benefit is used for its intended purpose is done through visits of SAA employees to the addresses of the beneficiaries. In case the individuals are continuously not found at the registered address, the social assistance can be denied (Art. 27, RALSA).

Turning to the calculation of the benefits, the amount of the general monthly benefit equals the difference between the differentiated minimum income of the individual (or the sum of the differentiated minimum incomes of the family members) and the preceding month's income (Art. 9(5), RALSA). Next, the monthly benefit for the rent of accommodation in municipal dwellings equals the amount of the given rent (Art. 14(1), RALSA). The amount of the one-time benefit for incidental needs depends on the concrete request and need and the decision of the SAA's responsible territorial unit. The director of the given territorial unit determines whether the benefit is to be granted as well as what the concrete amount should be. The current regulation lacks concrete provisions guiding the determining of the concrete amount, which at times leads to contradictory administrative decisions in the practice.[524] The maximum size of the one-time benefit is five times the guaranteed minimum income amount (Art. 16(2), RALSA). If it is established that the monetary benefits are not used for their purpose or that parents do not take care of their children (Art. 25(1), RALSA), monthly and one-time benefits may be provided in-kind as clothes, food, or in another necessary form.

c. Social Old-Age Pension and Personal Pensions

The qualifying conditions for the non-contributory minimum income pensions rely on some of the factors used to assess entitlement to social assistance benefits. Namely, concerning the social old-age pension and personal pensions, beneficiaries' income or the annual family income must be less than the sum of the monthly guaranteed minimum income for the preceding 12 months (Art. 89a(1), SIC). The assessment of the income for

524 For more on this issue, *see* Mehmed, in *Proceedings of the National Conference of Doctoral Students in Legal Sciences/Сборник с доклади от национална конференция на докторантите в областта на правните науки* (2018) 33 ff.

the social old-age pension and the personal pension does not include any granted social assistance benefits (Article 8(1), RPQP).[525]

Apart from the means-testing aspect, a common requirement for both pensions is that the beneficiary must have no right to any pension (Art. 89a, SIC).[526] This rule includes all potential pension entitlements that could arise under the Bulgarian or another country's legislation. The qualifying conditions also involve minimum age requirements. The minimum age for a social old-age pension is 70 years. The age conditions for the personal pensions rely on the retirement age used for the old-age pension for incomplete insurance periods (Art. 7(2), RPQP). Accordingly, in 2021, the personal pensions' minimum age is 66 years and eight months for both men and women (Art. 68(3), SIC). The age increases by two months per year until it reaches 67 years in 2023 for both genders.

Some further conditions apply to the two different types of personal pensions. Previously, entitlement to both pensions did not entail any necessary insurance periods.[527] Accordingly, these pensions were positioned in the section of *non-contributory* pensions in the Social Insurance Code (Art. 92, SIC). However, the legislature introduced a minimum of actual insurance periods of three years for both types of personal pensions (Art. 7(3), RPQP) to limit the possibilities for entitlement.[528]

The first personal pension benefit is provided to women who have given birth to five or more children they have raised until the children reach 18 years of age (Art. 7(2)2, RPQP). In addition, the mothers must not have been deprived of parental rights, or their parental rights must not have been restricted (Art. 7(4)6, RPQP). Moreover, their children must not have been placed in a public institution for more than a year.[529] The second type of personal pensions concerns individuals who have nursed a seriously disabled family member for more than ten years (Art. 7(2)3, RPQP). In this regard, the relevant family members are the spouses and the lineal ascendants and descendants.

525 Both the social old-age pension and the personal pensions are granted at an older age than the standard retirement age. People in need who would not have the right to the statutory old-age pension are likely to rely on the social assistance benefits until they reach the ages for the social old-age pension and personal pensions.

526 In this regard also *see* Article 7(2), RPQP.

527 Mrachkov, *Social Security Law/Осигурително право* (2014) 320.

528 ibid.

529 The exception to this rule is when there is a need for institutionalization due to medical reasons.

The amount of the social old-age pension is determined by the Council of Ministers based on a proposal by the Minister of Labor and Social Policy (Art. 89a, SIC). The amount of the social old-age pension in 2021 is 148,71 BGN. The benefits depend on the amount of the social old-age pension. Namely, the amount of the personal pension is 90% of the social old-age pension (Art. Art. 7(5), RPQP).

3. Social Compensation

The systematization of social protection demonstrated that two pensions could be characterized as social compensation benefits. Such benefits provide compensation for given situations of damage that usually involve some sacrifice from the individuals. These are the civil and military disability pensions that both represent non-contributory benefits.

The civil disability pension covers individuals that have acquired their work incapacity due to the performance of their civil duties (Art. 87, SIC). In addition, the pension can be provided to individuals who were harmed and disabled accidentally by the state authorities in the course of the performance of state duties. Next, the military disability pension is mainly provided to people who have acquired work incapacity during their military conscription (Art. 85(1), SIC). Furthermore, for the purpose of survival rights, the right to such a pension is also provided to individuals who have passed away during military operations inside or outside the country (Art. 85(2), SIC). Finally, the military disability pension can be granted to individuals who have been disabled while assisting the military forces (Art. 85(2), SIC).

Both pensions require a level of disability of above 50% of work incapacity. This requirement presupposes the need for prior attestation of the work incapacity by the National or Territorial Expert Medical Commissions. The pensions can be calculated in two ways, and the chosen calculation is the one that results in a greater benefit. First, both pensions can be calculated as a percentage of the social old-age pension. Alternatively, in case the individuals were insured for the risk of occupational disease and accidents, the pensions may be calculated following the rules of the disability benefit due to occupational disease and accidents (Art. 86(2) and Art. 88(2), SIC). In case the military disability pension is calculated as a percentage of the social old-age pension, then the military rank is taken

into account for the benefit's size.[530] When the pension is calculated as part of the social old-age pension, the civil disability pension amount is guided by the disability level.[531]

Even though the social compensation pensions are non-contributory, they can be received together with other pensions due to their special compensatory character. The military disability pension can be received in its full amount together with the full amount of the statutory old-age pension (Art. 101(4), SIC). The civil disability pension may also be received with the statutory old-age pension. In this case, however, the greater benefit of the two is paid in full, and the lower benefit is paid in 50% of its amount. Finally, as already pointed out in the section on survival pensions, the military disability pension is the only inheritable non-contributory pension (Art. 80(1), SIC).

4. Support and Social Inclusion

a. Benefits for People with Disabilities

The support and social inclusion benefits for people with disabilities seek to provide assistance in establishing more equal opportunities. The benefits are also some of the very few benefits which could be received together with the generally restrictive social assistance.[532] The benefits' coverage

530 Calculation of the military disability pension as a percentage of the social old-age pension (Art. 86(1), SIC):

Level of Permanent Disability	Privates and Sergeants	Officers
More than 90%	150%	160%
71% - 90%	140%	150%
50% - 70.99%	115%	120%

531 Calculation of the civil disability pension as a percentage of the social old-age pension (Art. 88(1), SIC):

Level of Permanent Disability	Benefit Amount:
More than 90%	150%
71% - 90%	140%
50% - 70.99%	115%

532 Supplementary Provisions, § 1(1)10, RALSA.

concerns individuals with disabilities who are Bulgarian citizens, foreigners with a permanent and long-term residence permit, refugees or beneficiaries of humanitarian protection, and other foreign nationals who shall enjoy the same rights as the Bulgarian citizens (Art. 6, LPD). However, the disability of all foreign nationals has to be attested under Bulgarian law. Further coverage conditions exist concerning the age of the beneficiaries of monthly benefits. Namely, individuals should be above the age of 18 since the monthly benefits for children with disabilities below the age of 18 are part of the family benefits for children (Art. 8e, LFBC).[533]

The attested level of disability is a general precondition for entitlement to the support and social inclusion disability benefits. The law defines people with disabilities as a group of individuals with some disabilities that prevent them from full participation in social life. Persons with permanent disabilities are those with more than 50% disability that has been attested by the National or Territorial Expert Medical Commission.[534]

The main factor in determining the benefits to which the individual is entitled is the so-called individual assessment. To clarify, the enactment of the current Law on People with Disabilities introduced an individual assessment of the needs of the disabled person. The assessment aims to establish the multifaceted needs of the individual and serves as a basis for determining the various forms of needed support (Art. 23, LPD). The different forms of support include monthly and one-off (targeted) benefits (Art. 69, LPD), different medical, psychological, social, and labor rehabilitation services (Art. 29(1), LPD), a range of further social integration support, including educational support for students with disabilities (Art. 30, LPD), as well as support on labor market inclusion (Art. 35, LPD).

It has already been mentioned that the support and social inclusion services also entail long-term care measures. In this regard, it can be established that a person needs the provision of assistance in dealing with the activities of daily life. The possibilities for the provision of personal assistance are regulated by another legislation, namely the Law on the Personal Assistance ("LPA").[535] Establishing the need for personal assistance is

533 The benefits are paid until the finishing of the secondary education but no later than the age of 20. In case individuals between the ages of 18 and 20 are not receiving benefits in accordance to the Law on the Family Benefits for Children, they can receive monthly support from the Law on People with Disabilities (Art. 71, LPD).

534 Supplementary Provisions, §1.1 and 2, LPD.

535 Law on the Personal Assistance, SG 105/18.12.2018 (with later amendments).

also based on the abovementioned individual assessment (Art. 12(1), LPA). Furthermore, the hours of covered personal assistance depend upon the degree of established dependency on care (Art. 12(2), LPA).[536]

The different levels of attested disability result in diverse benefit rights. In general, those with an attested disability of more than 50% can qualify for the non-means-tested monthly benefits.[537] Depending on the level of disability, the benefits are calculated as percentages from the at-risk-of-poverty threshold for the country (Art. 70, LPD),[538] which represents a monetary

536 The hours of covered personal assistance depend upon the degree of established dependency on care (Art. 12(2), LPA):

Degree of Established Dependency on Care	Hours of Covered Personal Assistance
First degree	Up to 15 hours per month
Second degree	Up to 42 hours per month
Third degree	Up to 84 hours per month
Fourth degree	Up to 168 hours per month

537 Prior to the entering into force of the Law on People with Disabilities, a so-called social disability pension was provided to all those above the age of 16 who had more than 71% of disability but were not eligible for any other pension. The pension was paid out from the NSII. However, with the Law on People with Disabilities, the social disability pension was transformed into the monthly support benefits regulated by the new law and the responsible institution for benefit payment became the Social Assistance Agency. The amount of the monthly benefits cannot be lower than the amount of the terminated social disability pension. The social disability pensions that were granted prior to 2015 and are the only pensions to the beneficiaries continue to be paid out to the entitled individuals. *See* Article 90a, SIC; Article 70, LPD.

538

Level of Disability	Size of the Monthly Benefit as Percentage of the At-risk-of-poverty Threshold for the Country
From 50% to 70.99%.	7%
From 71% to 90%.	15%
More than 90%.	25%
More than 90% when there is a need for personal assistant and when the individual is a recipient of a disability pension due to general sickness or occupational accident and disease.	30%

indicator determined by the Council of Ministers for identifying the poor members of the society.[539]

In addition to the monthly benefits, the law foresees a range of non-means-tested targeted monetary and in-kind benefits that include: buying specialized motor transpiration vehicles, adapting the dwelling to the living conditions of the person with a disability, rehabilitation services, and rent payment for municipal dwellings (Art. 72, LPD). In addition, persons with disabilities have the right to various other aiding types of equipment and means that fall outside the mandatory health insurance scope (Art. 73(1), LPD).

Moreover, the Law on the People with Disabilities includes a range of consultation services aiming at the greater social and labor integration of the covered people. The services include diverse activities, such as consultations and programs for vocational training, provided by the Agency for Employment, that concern labor market integration (Art. 37, LPD). In general, since the state is not the sole employer in a given country, the participation of private employers in the employment of people with disabilities is crucial for the realization of labor integration measures.[540] Namely, the law establishes a quota for the employment of people with disabilities in companies with more than 50 employees (Art. 38(1), LPD). The quota increases with the number of company employees. Furthermore, in supporting the labor integration, the Agency for the People with Disabilities can finance different equipment and measures to adapt the working place to the needs of employees with disabilities (Art. 44(1), LPD).

More than 90% when there is a need for personal assistant and when the individual was a recipient of a social disability pension.	57%

539 Supplementary Provisions, §1.17, LPD.

540 In a comparative perspective, the German Federal Constitutional Court has continuously upheld the argument that rules obliging the employers to employ severely handicapped people or to alternatively be obliged to pay a compensatory levy in the event of non-compliance with this obligation is constitutionally permissible. The goal of integration of disabled persons was legitimate and the legislative measures were proportionate. *See* Becker, in Becker, Wacker and Banafsche, *Homo faber disabilis? Teilhabe am Erwerbsleben* (2015) 22.

b. Children and Family Benefits

The examination of the social insurance for maternity revealed that, from a historical perspective, the children and family benefits used to be part of the social insurance regulations in Bulgaria since the 1940s.[541] Despite this long-standing tradition, the social law reforms after the fall of socialism restructured the logic of these benefits. Currently, the law does not connect the family and children's benefits with social insurance regulations.[542] Instead, the children and family benefits represent a hybrid and targeted support system. It contains different, non-means-tested one-off benefits aimed at the times of family life characterized by increased costs due to birth and child upbringing.[543] The system further contains monthly benefits mainly paid to families with incomes below a certain threshold.

The reference to the family in the title of these benefits does not imply "collective benefit rights". Rather, the recipient of the benefits is always the parent directly involved with providing care for the children.[544] The coverage of the benefits is primarily focused on Bulgarian citizens, such as when both or one of the parents have Bulgarian citizenship and have a permanent address and residence on the territory of the country (Art. 3.1 ff 3, LFBC).[545] Nevertheless, the benefits can also be provided to foreign citizens who have the status of permanent residents in the country if entitlement to such benefits is foreseen by another law or an international agreement of which Bulgaria is part (Art. 3.5, LFBC). Authors have argued that provisions of the law on foreign nationals can be seen as potentially incompatible with the ESCR. In particular, the authors notice a discrepancy between the national law and ESCR's Article 12,[546] which foresees equal treatment and the extending of social security rights to foreign persons

541 Mrachkov, *Social Security Law/Осигурително право* (2014) 134–136.
542 ibid.
543 Guenova, 'Regulation and Legal Nature of the Family Allowances from the Law on Family Benefits for Children/Нормативна уредба и правна природа на помощите по закона за семейни помощи за деца' (2004) 45 Legal Thought/Правна мисъл 32.
544 ibid.
545 The law considers as permanent resident a person who is on the territory of the country for more than 183 during a period of 12 months. *See* Supplementary Provisions, §1.4, LFBC.
546 Article 12.4, European Social Charter (Revised).

who move through the different territories of the state parties.[547] Another unresolved issue remains whether such benefits may be granted to refugees or beneficiaries of humanitarian protection.[548]

As mentioned above, the Law on Family Benefits for Children establishes different monthly and one-off benefits (Art. 2, LFBC). The one-time benefits include benefits for pregnancy, birth, adoption, a benefit upon the commencement of school, and a traveling subsidy for mothers of many children (Art. 2(2), LFBC). All of the benefits are not-means-tested, except the benefit provided for pregnancy. The latter is provided to families and pregnant women who have an average net monthly income for the previous 12 months that is either equal to or lower than a threshold determined by the law on the state budget (Art. 4, LFBC).[549] In addition, the (pregnant) woman should not have the right to pregnancy benefits provided by the public social insurance. The annual state budget law determines the amounts of all of the one-off benefits.

The entitlement to monthly benefits is intertwined with more conditionalities. The monthly benefits for the raising of a child up to the age of one are provided to the mother[550] (or the adoptive parent) in case the average net monthly income of the parent or family is equal to or lower than the threshold referred to above (Art. 8(1), LFBC). In addition, the mother must not be insured and be entitled to the maternity benefits provided by the Social Insurance Code (Art. 8(1)1, LFBC). In case the child has a permanent disability, the benefit is provided regardless of the family income (Art. 8(3), LFBC).

547 Guenova, 'Regulation and Legal Nature of the Family Allowances from the Law on Family Benefits for Children/Нормативна уредба и правна природа на помощите по закона за семейни помощи за деца' (2004) 45 Legal Thought/Правна мисъл 32.

548 The High Administrative Court concluded that in view of the specific status of such people, it cannot be expected that they might be covered by a reciprocal treatment envisioned in some international agreement. Accordingly, the Court has stated that this provision in the law contains gaps and further contradicts Directive 2011/95/EU on the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection and for the content of the protection granted. *See* Decision No 13461/2015 of the High Administrative Court on case 6027/2015.

549 This threshold is higher than the guaranteed minimum income threshold used for the purposes of social assistance.

550 The law also foresees the possibility of the provision of the benefit to a single father.

Another type of monthly benefit, which is also conditional upon the mentioned mean-test, entails providing monthly benefits to children younger than the age of 18 (Art. 7(1)1, LFBC). Alternatively, the benefit could be provided until the children finish secondary education but no later than 20 years of age. The continuous payment of the benefits is contingent upon the children's regular presence in pre-school kindergartens and school (Art. 7(1)2, LFBC).[551] The amount of the benefit provided to one child is determined in the annual state budget law from the previous year.[552] In the case of more children, the benefit equals the total sum of all due benefits (Art. 7(4), LFBC). Similar monthly benefits are provided for children with permanent disabilities until the child reaches the age of 18 and finishes secondary school, but no later than 20 years of age (Art. 8e(1), LFBC). In contrast to the regular monthly benefits, benefits provided to children with disabilities are not subject to means-testing (Art. 8e(2), LFBC).

c. Social Services

In general, the social services target vulnerable social groups[553] and provide them with different support and inclusion services. Apart from the social integration purposes, social services also represent one of the two pillars of long-term care in the country.[554] The other pillar comprises mandatory health insurance that addresses some long-term care needs through the package of covered relevant hospital and rehabilitation treatment. Hence, the social services target needs that are defined in a very broad and abstract way; in any case, the addressed needs may go well beyond basic living

551 The information on the children and their enrollment and presence in the pre-school kindergartens and schools is transferred every month by the Ministry of Education to the respective territorial units of the Agency for Social Assistance that pays out the children's benefits. *See* Article 17.6, Regulation on the Application of the Law on the Family Benefits for Children, SG 67/12.07.2002 (with later amendments).

552 The annual state budget law also provides two different income thresholds that determine whether the benefit is to be paid in full or in 80% of its amount. *See* Article 4a(2), LFBC.

553 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 60.

554 Council of Ministers, 'National Strategy for Long-Term Care/Национална стратегия за дългосрочна грижа' (2014) 6 <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=882> accessed 12 March 2022.

necessities.[555] Therefore, while the social services may concern the biological and living necessities for different people in need of care in their daily lives (such as feeding, dressing, cleaning, and washing), they can also target community integration goals (such as goals related to community work programs). In addition, social services can aim to strengthen the individual's independence by providing education, consultations, and support for inclusion in different social activities. The Law on Social Services does not contain restrictions regarding the reasons for the need for social service usage.[556]

Moreover, the coverage of the law is defined in extensive terms. Namely, every individual who needs support for preventing and overcoming social exclusion has the right to social services.[557] The provision of services does not depend on the individual's income or financial situation (Art. 7(1), LSS). The usage of the social services is voluntary but may be mandatory in the case of an order of a court or following the provisions of another law (Art. 11(1), LSS).

The main groups of activities comprising the social services include: informing and consulting, mediation, community work, therapy and rehabilitation, educational and training services, daycare, resident care, providing shelter, and personal assistance (Art. 15, LSS). The services can be divided into two main groups, general and specialized (Art. 12(2), LSS). The general ones include information activities and consulting and education services, all provided for no more than two months. Preventative community work is also part of the general services but has no legally fixed duration. The specialized services are those delivered in the case of a risk affecting the individual's life, health, quality of life, or personal development (Art. 12(3), LSS). Moreover, specialized services also concern the specific need of a given group. The social services can be further separated into

555 Gevrenova, in *Topical Issues of the Labor and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2018) 95–96.

556 As mentioned on different occasions throughout this research work, the social services used to initially be part of the social assistance legislation but were subsequently moved in a law of their own due to their different functional character. The broad nature of the social services that aims at the abstract targets of social integration and greater individual independence has led scholars to conclude that social services did not belong to the realm of social assistance even while the regulation of the social services was still part of the Law on Social Assistance. *See* ibid 101.

557 The social exclusion implies the need of support for the realization of rights and the improvement of the quality of life (Art. 7(1), LSS).

two main age groups, i.e., those concerning children and those for adults (Art. 14(1), LSS).

There are different options on how and where social services can be provided, namely in a domestic environment, mobile environment, as well as in a specialized environment such as residential care services (Art. 17, LSS). In this relation, it needs to be mentioned that the process of deinstitutionalization[558] and the provision of social services in home- and communal-based conditions have all been identified as social policy priorities.[559] Accordingly, the law postulates that residential care services are allowed only when the other opportunities for support in the home or communal setting are exhausted (Art. 10(1), LSS). The provision of residential care services needs to be organized in a way that does not allow for the isolation of the individual from the community (Art. 10(2), LSS). Furthermore, there are different requirements for a limited duration of the given residential service (Art. 89 and Art. 90, LSS). When the resident care is provided to someone with limited or no legal capacity, the person's decisions are taken into account alongside the guardian's decisions (Art. 91(1), LSS).

The general social services are accessible without the need for an individual assessment (Art. 83(1), LSS). In contrast, the provision of specialized services is based on an initial individual assessment (Art. 80(1), LSS)[560] carried out by the provider of the social services that the individual has chosen (Art. 80(2), LSS). However, if an individual assessment according to the Law on People of Disabilities has already been carried out and concluded the need for social services, there is no need for an additional individual assessment (Art. 77(4), LSS). In case the maximum number of recipients of a given social service has been reached, the further individuals

558 Deinstitutionalization entails the replacement of specialized institutions with individual approach and provision of care in community and home environment. Scholars have pointed out that this is a slow process that, however, already bears some fruits. For instance, from 2010 to 2016 the number of the specialized institutions for children has decreased with 65.7%. The closed institutions were replaced with 339 social services for children that are based in the communities. *See* Popova, in *Topical Issues of the Labor and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2018) 153.

559 Council of Ministers, 'National Strategy for Long-Term Care/Национална стратегия за дългосрочна грижа' (2014) 6.

560 The order for the preparation of the individual assessment is provided in regulation on the law's application. *See* Section II, Regulation on the Application of the Law on Social Services, SG 98/17.11.2020 (with later amndments).

who want to partake in the services are included on waiting lists (Art. 79(1), LSS).[561]

The usage of social services is subject to the payment of fees (Art. 102(2), LSS). Nonetheless, certain groups are exempted from fee payment. Such groups include children up to the age of 18 and until the finishing of the secondary education, children between the ages of 18 and 21 (if they have been living in a residential facility up to the age of majority,) as well as persons who have no incomes and savings (Art. 103(1), LSS). Moreover, certain groups, like those with incomes below the poverty line, do not pay the total amount of the fees for the services financed by the state budget.[562] Finally, certain services funded by the state budget are also relieved from fees (Art. 104(1), LSS). These include, among others, support in the formation of parenting skills, consultancy on questions on early child development, the help provided in crises until the end of the emergency, securing of shelter for homeless people, and others.

5. Risk-Specific, Non-contributory Benefits

The systematization of the Bulgarian social protection system has revealed that the system of Free Medical Care provides tax-financed medical services which represent risk-specific and non-contributory benefits (Art. 82(5), LH). The coverage of these benefits includes the Bulgarian citizens (Art. 82(1), LH), as well as foreigners with the right to long-term or permanent residence (Art. 83(1), LH).

All of the benefits are provided in kind. Some of these benefits are provided when the individual's health insurance status is interrupted. These include pregnancy- and birth-related medical care, intensive care, psychiatric treatments, and contagious venereal and skin diseases (Art. 82(1), LH).[563] If the individual has regular health insurance rights, then those services are instead covered by public health insurance. The rest of the benefits are provided regardless of whether the individual has interrupted health insurance rights. These benefits include emergency medical help,

561 In case that the persons have an emergency need for support (such as, for instance, victims of trafficking), then they have precedence over the rest of the individuals in the waiting list.

562 Article 75, Regulation on the Application of the Law on Social Services.

563 Also *see* Law on the Budget for the National Health Insurance Fund for 2021, SG 103/04.12.2020.

transplantation of organs, skin, and cells, assisted reproduction, mandatory vaccinations, and others.

Apart from the listed benefits, the system of Free Medical Care can also address some exceptional cases when more complicated treatments are required in the country or abroad. A precondition is that these services are not already covered by other financing mechanisms (Art. 82(1a), LH). The services are provided in accordance with a specific Regulation[564] ("RMOS") and are financed by the Ministry of Healthcare through transfers from the state budget (Art. 53(1), RMOS). The services could be financed by the system of Free Medical Care only if they were subject to initial approval by the NHIF (Art.1(4), RMOS). In addition, the medical care services cannot also be featured in the scope of public health insurance (Art. 2(1), RMOS). Furthermore, they should not be covered by the coordination mechanisms of social security (Art. 6.4 and Art. 9.2, RMOS).

The possible beneficiaries for these exceptional services are separated into two age groups, i.e., below and above the age of 18. The patient's age results in different rights for the financing of various services. Those above the age of 18 can benefit from the funding of the transplantation of organs and stem cells in another country when the transplantation cannot be provided in the territory of Bulgaria (Art. 4, RMOS). The services can be provided in an EU Member State, country of the European Economic Area, Switzerland, or any other country with which Bulgaria has concluded agreements in this field. Another option for financing concerns the possibility of treatment by foreign specialists carried out in a hospital in Bulgaria. Such services are only financed when there are no specialists with the required experience for the given treatment in the country's territory (Art. 4, RMOS).

The range of possible services that can be financed for people below the age of 18 is considerably broader (Art. 7 ff, RMOS). First, they include all of the possibilities provided for individuals above the age of 18. Next, financing can cover different diagnostical and medical treatments that cannot be provided in Bulgaria and treatments of rare diseases, including through specialized medical foods that are outside of the scope of the mandatory public health insurance. Moreover, the services can include the financing

564 Regulation No 2 from 27.03.2019 on the Medical and Other Services according to Art. 82(1a) and Art. 82(3) from the Law on Health and the Order and Conditions for their Approvement, Usage and Financing, SG 26/29.03.2019 (with later amendments).

of highly specialized medical devices without which there can be no proper treatment of the person in the country and the exceptional funding for medications that are not legalized in Bulgaria (Art. 7(1), RMOS).

Finally, in contrast to public health insurance, the system of Free Medical Care contains limited possibilities for reimbursement of medical costs that have occurred abroad. In addition, the reimbursement possibilities do not contain a requirement for prior authorization for service usage.[565] These include reimbursement of examinations and other pregnancy-related examinations and services, examinations and medications pertaining to the post-transplantation period, and others.[566]

565 Article 25, Regulation No 5 from 21.03.2014 on the Conditions and Order for the Exercise of the Rights of Patients in Transborder Healthcare, SG 28/28.03.2014 (with later amendments).

566 ibid.