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für Sozialrecht und Sozialpolitik

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Teodora Petrova

Social Protection in Bulgaria

Functional Systematization and Influence of Constitutional, International, and European Union Law

Nomos

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Zusammenfassung

Die Sozialschutzsysteme befinden sich in einem ständigen Wandel, und Bulgarien stellt keine Ausnahme dar. Die rasche Alterung der Bevölkerung, der demografische Wandel und eine insgesamt instabile Wirtschaftslage sind nur einige der Herausforderungen für das Sozialschutzsystem des Landes. Als Antwort auf die drängende Dynamik werden zahlreiche Reformen durchgeführt, die mitunter so weit gehen, dass diese strukturelle Änderungen in Schlüsselbereichen des Sozialschutzes wie der Altersrentenregelung einführen. Aufgrund der Schwierigkeiten bei der Finanzierung des Systems werden im Zuge solcher Reformen häufig wirtschaftliche Belange debattiert, während die damit verbundenen rechtlichen Fragen entweder völlig vernachlässigt oder zu wenig diskutiert werden. Da die Gesetze jedoch das Rückgrat des gesamten Sozialschutzsystems bilden, müssen die rechtlichen Belange im Zuge der Reformmaßnahmen dringend Berücksichtigung finden.

Die vorliegende Dissertation verfolgt daher ein doppeltes Ziel – einerseits eine funktionale Systematisierung des bulgarischen Sozialschutzes vorzunehmen und die verfassungs-, völker- und europarechtlichen Einflüsse auf das System zu bewerten. Hierzu ist ein grundlegendes Verständnis des rechtlichen Rahmens, der den Sozialschutz umfasst, erforderlich. Die Gliederung des bulgarischen Sozialschutzes nach den Funktionen seiner unterschiedlichen Maßnahmen ermöglicht nicht nur eine gründliche Untersuchung des Systems, sondern auch seine Systematisierung auf Grundlage der institutionellen Merkmale der verschiedenen Maßnahmen.

Andererseits werden neben dem Verständnis des aktuellen Zustands des Systems auch die rechtlichen Einflüsse auf den Sozialschutz aufgezeigt. Insbesondere verfassungs- und völkerrechtliche Einflüsse können aufgrund ihres Charakters als höherrangige Normen ihre Bedeutung entfalten, indem sie versuchen, staatliche Eingriffe einzudämmen und soziale Rechte zu gewähren bzw. den Umfang bereits bestehender Sozialleistungen zu erweitern. Auch wenn das EU-Recht den Sozialschutz koordiniert und nicht notwendigerweise harmonisiert, müssen sich die verschiedenen nationalen Systeme dennoch an den EU-Rechtsrahmen halten, was unbestreitbar zu einer gewissen Beeinflussung und Anpassung von nationaler Seite führt. Die Frage nach der Bedeutung von Verfassungs-, Völker- und EU-Recht

für den Sozialschutz in Bulgarien ist ein zentrales Thema, insbesondere angesichts der Tendenz zu zahlreichen Reformen in diesem Bereich. Die Herausforderungen, vor denen der Sozialschutz steht, können nur durch einen umfassenden Forschungsansatz angegangen werden, der auch den rechtlichen Rahmen und den Einfluss des Verfassungs- und Völkerrechts berücksichtigt.

Die Untersuchung besteht aus zwei Hauptteilen, die ihre eigenen methodischen Ansätze in Bezug auf die jeweiligen Ziele haben. Wie bereits erwähnt, zielt der eine Teil der Untersuchung auf eine umfassende Prüfung des Systems ab, indem die Funktionalitäten der verschiedenen Sozialschutzbereiche herausgearbeitet werden. Die in diesem Teil verfolgte Methodik geht von dem sozialen Problem aus, das eine rechtliche Lösung erfordert, und nicht von der rechtlichen Lösung, die das Sozialschutzrecht selbst bietet. Dieser exogene Ansatz trägt dazu bei, die Beweggründe für die verschiedenen Bausteine des Sozialschutzsystems zu verstehen.

Der zweite Hauptteil der Untersuchung befasst sich mit den rechtlichen Einflüssen auf die Sozialversicherungszweige, die auf der Grundlage der im ersten Teil der Untersuchung durchgeführten funktionalen Systematisierung ermittelt wurden. In diesem Zusammenhang sind übergeordnete Normen zu berücksichtigen, die potentiell die Ausgestaltung des einfachen Rechts beeinflussen können. Bislang wurde der Frage, wie Verfassungs-, Völker- und EU-Recht den bulgarischen Sozialschutz beeinflussen, keine Aufmerksamkeit geschenkt. Dennoch sind Verfassungen wichtig für den Erlass und die Gestaltung von Gesetzen im Allgemeinen und potenziell auch für Maßnahmen des Sozialschutzes, da ihre Funktion und ihr Inhalt die Grenzen des Handelns der Legislative festlegen und darauf abzielen, die Rechte der Bürger zu garantieren. Das Verfassungs- und das Völkerrecht können den Gesetzgeber nicht daran hindern, verschiedene Reformen einzuleiten, sondern fordern vielmehr, dass diese durch eine Verhältnismäßigkeitsprüfung und die Beachtung bestimmter Einschränkungen umgesetzt werden.

Darüber hinaus wird untersucht, wie das EU-Recht den nationalen Sozialschutz beeinflusst hat. Dabei wird den Besonderheiten dieser Rechtsordnung in Bezug auf ihre Stellung in der nationalen Normenhierarchie sowie den Zuständigkeiten der EU in diesem Bereich besondere Aufmerksamkeit gewidmet. Die Methodik dieses Teils stützt sich auf die Phasen, in denen der Einfluss von Verfassungs-, Völker- und EU-Recht von den jeweiligen institutionellen Akteuren ausgeübt werden kann. Die Forschung konzentriert sich nämlich auf die Phasen der Normsetzung und der Normenkontrolle,

in denen der Gesetzgeber bzw. das Verfassungsgericht Einfluss auf das Sozialschutzsystem genommen hat.

Generell könnte sich die Untersuchung des Einflusses von Verfassungs- und Völkerrecht auf den Sozialschutz nicht nur in Bezug auf den konkreten nationalen Kontext Bulgariens als wertvoll erweisen, sondern auch zu umfassenderen Debatten über die Umstrukturierung des Umfangs bzw. der Ausgaben von Sozialschutzmaßnahmen beitragen. Viele Länder führen Sozialschutzreformen durch, um den Druck auf die öffentlichen Haushalte zu verringern und Investitionen anzuziehen. Je mehr der Sozialschutz zu einem Argument in der Sparpolitik und im internationalen Wettbewerb wird, desto wichtiger wird es sein, die Rolle aufzudecken, die der rechtliche Rahmen im Allgemeinen und das Verfassungs- und das Völkerrecht im Besonderen bei der Entwicklung des Sozialschutzes spielen. Schließlich könnten auch der Faktor der EU-Mitgliedschaft und die damit verbundenen Reformen vor und nach dem Beitritt Bulgariens im Hinblick auf die Entwicklung des nationalen Sozialschutzes historisch untersucht werden. Diese Forschungsarbeit zeigt die Synergien zwischen der allgemeinen verfassungsrechtlichen Entwicklung des Landes und seiner Öffnung gegenüber internationalem und EU-Recht auf und legt dar wie dies das Sozialschutzsystem beeinflusst hat. Darüber hinaus kann die Untersuchungsarbeit der Einflussmöglichkeiten des EU-Rechts zu einer differenzierteren Diskussion über die Rolle des EU-Rechts gegenüber den nationalen Sozialschutzsystemen in einer vergleichenden Perspektive beitragen.

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APD	Agency for the People with Disabilities
BDentU	Bulgarian Dentists' Union
BDoctU	Bulgarian Doctors' Union
CJEU	Court of Justice of the European Union
CRB	Constitution of the Republic of Bulgaria
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESCR	European Social Charter [Revised]
EUCFR	Charter of Fundamental Rights of the European Union
FSC	Financial Supervision Commission
IC	Insurance Code
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LC	Labor Code
LCC	Law on the Constitutional Court
LFBC	Law on the Family Benefits for Children
LH	Law on Health
LHI	Law on Health Insurance
LMPHU	Law on the Medicinal Products for Human Use
LNA	Law on the Normative Acts
LPA	Law on the Personal Assistance
LPD	Law on People with Disabilities
LPODD	Law on the Professional Organizations of Doctors and Dentists
LSA	Law on Social Assistance
LSS	Law on Social Services
LTINP	Law on the Taxes of Incomes of Natural Persons
NEMC	National Expert Medical Commission

NFA	National Framework Agreement
NHIF	National Health Insurance Fund
NCPRM	National Council on the Prices and Reimbursement of Medicine Products
NRA	National Revenue Agency
NSII	National Social Insurance Institute
PPF	Professional Pension Fund
RALSA	Regulation on the Application of Law on Social Assistance
RHI	Regional Health Inspections
RHIF	Regional Health Insurance Funds
RMOS	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
RPQP	Regulation on the Pensions and the Qualification Periods
RSAD	Regional Social Assistance Directorates
ROSAA	Rules of Organization of the Social Assistance Agency
SIC	Social Insurance Code
SAA	Social Assistance Agency
SAD	Social Assistance Directorates
SG	State Gazette
TFEU	Treaty on the Functioning of the European Union
TIPC	Tax and Insurance Procedure Code
UN CRC	UN Convention on the Rights of the Child
UPF	Universal Pension Fund

Part 1: Introduction

A. Starting Points

"Poverty has developed into the wound in our society that distances us from the real social state. (…) For years we have been living in a severe shortage of public and health insurance funds. Such indicators demonstrate the wide-ranging problems and difficulties that the Bulgarian social state faces and cannot overcome".[1] Indeed, this grim description suggests the magnitude of the problems standing in the way of social rights in the country. Ever since the beginning of the country's transition to democracy in the 1990s, social protection in Bulgaria had to simultaneously be almost entirely reformed, face considerable fiscal shortages, and address the ever-evolving challenges that the new socio-economic system brought along.

Nowadays, the challenges to social protection have not disappeared. On the contrary, the obstacles have manifolded and are subject to divided and conflicting views on the function and content of social protection measures. Some people who grew up during socialism[2] take the social protection system for granted and expect to be recipients of almost unconditional benefits. Others are not willing to support the system's solidarity character and tend to mistrust both its promises and the authorities in general.[3] As

1 Quote by Vassil Mrachkov, professor of social and labor law (translation from Bulgarian by author). *See* Tangancheva, 'Prof. Dr. Vassil Mrachkov Awarded with the Honorary Title of Doctor Honoris Causa of the Sofia University "St. Clement Ohridski"/ Проф. дюн Васил Мръчков бе удостоен с почетното звание „Доктор хонорис кауза" на Софийския университет „Св. Климент Охридски"' (2015) <https://www.uni-sofia.bg/index.php/bul/novini/arhiv/arhiv_na_goreschi_novini/prof_dyun_vasil_mr_chkov_be_udostoen_s_pochetnoto_zvanie_doktor_honoris_kauza_na_sofijskiya_universitet_sv_kliment_ohridski> accessed 18 February 2019.

2 By using to the term of "socialism", the present work refers to the state organization in the period of People's Republic of Bulgaria (1946-1990). The applicable constitutional provisions at the time paved the way to the establishing of socialist order and then, in 1971, proclaimed the country as a "socialist" republic. *See* Drumeva, *Constitutional Law/Конституционно право* (2018) 174 ff.

3 Kouznetsova and others, 'Health-Uninsured Individuals and Health Insurance in Bulgaria' (2009) <http://osi.bg/cyeds/downloads/Report_Health_Uninsured_2009_ENG.pdf> accessed 18 February 2019, 5. On the general high level of mistrust towards the state authorities, which is also observed in other Eastern European state, and its

a result, social protection remains a problematic and sensitive issue for the country,[4] whose development has been challenged by an ever-worsening demographic crisis, rapid aging, and an overall astute economic situation.[5]

Unsurprisingly, due to such turbulences, there are constant debates on reforms aiming to maintain social protection's proper functioning. Given the problematic system financing, questions related to economic reasoning are often brought to the fore. Moreover, the political turbulences frequently stir inconsequential reforms due to the unstable political agenda.[6] The institutional structure of the social protection branches is at times called into question. For instance, the extent of involvement of private insurance in mandatory pension insurance continues to be a "hot" topic of tension and contradictory views.[7] In addition to these overall discussions, the financing side is also scrutinized. Attempts for reforms aiming to increase certain benefits are at times halted under the pretext that higher social insurance contributions might obstruct economic development.[8] In addition, the high cost of social assistance measures that weigh down the frazzled social protection budget is frequently used as an argument for curbing some related benefits.[9]

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meaning for social protection, *see* Petrova, in Belov, *Peace, Discontent and Constitutional Law* (2021) 225 ff.

4 European Commission, 'Country Report Bulgaria 2018' (2018) 2–3 <https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-bulgaria-en.pdf> accessed 18 February 2019; European Commission, 'Pension Adequacy' (2018) 17–23 <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8085&furtherPubs=yes > accessed 20 March 2020.

5 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 51.

6 ibid 352–353.

7 Petrova, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 367 ff.

8 Some argue that higher social insurance contributions might push investors away from the country.
Bulgarian Industrial Association, 'Will Higher Contributions Guarantee Better Future Pension?/По-висока осигуровка сега ще гарантира ли по-добра пенсия в бъдеще?' (2018) <https://www.bia-bg.com/news/view/24702/> accessed 24 February 2020; Stoilkova, 'The Higher Social Insurance Contributions Are a Division Point between the Business and the Trade Unions/По-високите осигурителни вноски скараха бизнеса и синдикатите' (2019) <https://btvnovinite.bg/bulgaria/po-visokite-osiguritelni-vnoski-skaraha-biznesa-i-sindikatite.html> accessed 24 February 2020.

9 For instance, there were many heated debates in the Parliament on the monthly social assistance benefits for unemployed persons who are of working age. Some considered that the benefit should be considerably restricted since it otherwise incentivizes the

In these debates, social, macroeconomic, and demographic issues are widely disputed in the political realm and academia.[10] At the same time, legal considerations are often left in the background. Hence, these debates cannot present a comprehensive picture of the evolution and functioning of the social protection system. A more inclusive approach would entail uncovering the relevant legal questions and their influences. After all, legal systems are the mainstays of the welfare state[11] and, thus, should be minded in all related economic and social concerns. While undoubtedly influential and crucial, economic and social aspects alone cannot appropriately address the legal problems in place.

A look at the past demonstrates that the creators of the current Bulgarian Constitution were conscious of the legal influence that the constitutional provisions could play for the post-socialist social protection system. As a matter of fact, the constitutional drafting efforts were aimed at reconciling the constitutional foundations of the fundamental social rights framework with the new state order, given the turbulent historical post-1990 reality.[12] The current Constitution of the Republic of Bulgaria ("CRB"), enacted in 1991, is perceived as a symbol of the end of socialism. The Constitution

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beneficiaries to turn the receiving of social assistance into a "professional occupation". *See* 'Transcript of Parliamentary Plenary Session No 60, 20.01.2010' <https://parliament.bg/bg/plenaryst/ns/7/ID/659> accessed 18 February 2019.

10 When it comes to debates on the pension reforms, the discussions are predominantly, if not almost exclusively, focused on the economic sides of a reform. For instance, *see* Asenova and Mckinnon, 'The Bulgarian Pension Reform' (2007) 17 J. Eur. Soc. Policy 389; Nozharov and Koralova, 'Failures of the National Policy for Sustainable Development of Bulgaria' (2017) 11 SSRN Electronic Journal 193; Baldacci, Marano and Mattina, 'Bulgaria' (2010) <http://www.minfin.bg/upload/8608/DMSDR1S+-+4341269+-+v1+-+Bulgaria+TA+Report--Reforming+the+Pension+System.PDF> accessed 18 February 2019. For studies on the impact of the demographic challenges on the public systems, *see* Salchev and others, 'Mitigating the Economic Impact of An Ageing Population' (2013) <http://documents.worldbank.org/curated/en/795781468235152407/Mitigating-the-economic-impact-of-an-aging-population-options-for-Bulgaria> accessed 18 February 2019.

11 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 1.

12 "We need to especially draw our attention to the questions of (..) [social rights], these are issues requiring specific constitutional solution given the new system, new economic foundations, and market economy" (translation from Bulgarian by author). Quote by one of the members of the Commission that was endowed with the task of preparing the project for the new 1991 Constitution. *See* 'Protocol of the Meeting on 13.02.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' (1991) 2.

bears numerous unique features in terms of the history of the Bulgarian constitutional development. It is the first Constitution in the country that is not the result of the legal transplantation of foreign constitutional models.[13] In addition, the discussions during the creation of the new Constitution pointed out that human rights were placed at the constitutional forefront for the first time.

Further novelties related to the enforcement and enrichment of constitutional rights included establishing the Constitutional Court and granting precedence of ratified international conventions over the conflicting norms of national law.[14] The claim that the new Constitution places the protection of human rights at its center begs the following questions: Which rights does this protection entail? Also, what is the actual meaning and realization of these rights in the legal system, and what are the mechanisms for their protection? And last but not least, what is the meaning of constitutional law for the challenged social protection?

Over the years, the new constitutional order was faced with different questions pertaining to social rights and their implications for national social protection. These concerned the general issues of the extent to which fundamental rights result in subjective positions and the constitutional obligations of the legislature in terms of designing the new social protection system that needed to be "separated" from the labor law framework.[15] The questions had to be reflected on against the background of the democracy's first steps and the related challenges over the subsequent years. Furthermore, social protection measures had to unfold to meet the chaotic challenges of the period and accommodate the rapid growth of those affected by certain risks, such as unemployment.[16] These processes, however, did not occur in a vacuum but instead progressed alongside the evolution of national constitutional law and the integration of more and more international and EU law influences in the domestic legal framework.

13 The three previous constitutions in the country were all heavily influenced by foreign constitutional models. *See* Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017) 156.

14 'Transcript of Parliamentary Plenary Session No 133, 14.05.1991, Grand National Assembly, Archives of the National Assembly' (1991).

15 Social protection has been established as a distinct field of law in Bulgaria during the 1990s when it became separated from labor law. *See* Mrachkov, *Social Security Law/Осигурително право* (2014) 19.

16 ibid 208–209; Vladimirova, in Lefresne, *Unemployment Benefit Systems in Europe and North America* (2010) 294–295.

Unfortunately, these legal trends tend to be neglected in the national debates. Yet, the lack of attention paid to such issues does not diminish the presence of such influences. Instead, it can only lead to a skewed understanding of the Bulgarian system, which is ignorant of the impacts of legal questions. The result may not only be a misinterpretation of the system but could also ground a flawed approach toward addressing the present social protection challenges.

B. Purpose of the Research and Research Question

It is high time for the debates on reforms in social protection to not solely focus on economic and social concerns but also uncover the respective legal questions and their influences. In order to do so, a fundamental understanding of the legal framework encompassing social protection is required. A systematization of the social protection that interprets the given system in functional terms could facilitate a comprehensive understanding, thereby forming the foundation for the subsequent studying of legal influences. In addition, a functional systematization approach would reveal the "institutional backbone"[17] behind the different social protection measures, which on its own will shed light on crucial issues such as the source of social benefits financing, the relation to the economic situation of the individual, and the purpose of a given benefit.[18]

After the systematization of the social protection system has been provided and the various measures are understood based on their function, the different influences on the social protection branches can be unveiled. In this relation, the higher-ranking norms that potentially can influence ordinary law need to be considered. However, as it will be more extensively discussed in the subsection below, so far, no in-depth attention has been brought to the question of the influences of constitutional law on Bulgarian social protection.

Constitutions have a general importance for the enactment and design of law and potentially have for social protection measures since the constitutional function and content set the limits of authorities' actions and guar-

17 Becker, 'Security from a Legal Perspective' (2015) 3 Rivista del Diritto della Sicurezza Sociale 515.

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

antee citizens' rights.[19] Accordingly, in studying the relevant constitutional influence, one aspect of the research will reveal whether such influence was instrumental in halting curbing reforms on social protection.[20] This limiting side of influence concerns the submission of the legislature to control based on constitutional requirements,[21] such as, for instance, the maintenance of a certain level of predictability in the governance and the withholding from interference with already acquired legal positions.[22] In addition to the limiting aspect, which constrains legislative power negatively, constitutional influence may also lead to the creation or expansion of social benefits.[23] The influence on the creation of social benefits can be examined in the light of whether systems and institutions were developed to realize constitutional norms relevant to social protection. The expansion of social benefits through constitutional influence involves enlarging the scope of social rights to accommodate constitutional requirements.

Nonetheless, apart from the potential factor of constitutional law, further higher-ranking norms in the national legal order could be influential in shaping ordinary laws. An examination of the hierarchy of norms established by the Bulgarian Constitution indicates that the international law instruments such as conventions and treaties that have been ratified, promulgated, and have entered into force with respect to the Republic of Bulgaria form part of the domestic legal order.[24] Moreover, these international law instruments gain precedence over national norms contradicting them. Thus, based on the Constitution, international instruments are either incorporated into the Bulgarian legal system or directly applied when there is no need to create a specific legal mechanism.[25] Therefore, it could be presumed that these international sources may exude a certain influence on social protection.

19 Grimm, *Constitutionalism* (2016) 50; Bindi and Perini, 'Legal Effect of Constitutions' (2017) <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e24> accessed 24 February 2020.

20 Becker, in Becker and others, *Alterssicherung in Deutschland* (2007) 605–610.

21 Walker, 'Taking Constitutionalism Beyond the State' (2008) 56 Political Studies 528.

22 On the constitutional requirements for predictability in relation to acquired legal positions, *see* Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 605.

23 Becker, in Becker and others, *Alterssicherung in Deutschland* (2007) 605–608; Schütze, in Masterman and Schütze, *The Cambridge Companion to Comparative Constitutional Law* (2019) 65.

24 Article 5(4), CRB.

25 Sredkova, *Social Security Law/Осигурително право* (2016) 81.

The inclusion of international law in the scope of the research leaves some questions open. Most importantly, one may wonder whether European Union law ("EU law") should be included as a non-national legal order. After all, EU law has been incorporated into the domestic legal system and has a higher position in the hierarchy of norms than ordinary national law. Another connected conundrum is whether the influence of EU law upon the national law could be simply studied alongside the international law influence.

Generally, the EU legislature has developed mechanisms for coordinating national social protection systems to enable and facilitate the freedoms of movement and residence.[26] Given "the absence of harmonisation"[27] in the field, the eventual influence of EU law could be from the outset more limited in scope due to the, for instance, exclusion of social assistance[28] from the scope of the coordination rules.[29] However, despite the presumably more limited scope of influence, EU law can still be expected to leave an imprint on social protection. Even though the Court of Justice of the European Union ("CJEU") has claimed for years that EU law "does not detract from the powers of the Member States to organize their social security systems",[30] the different national systems nevertheless need to operate within the EU legal framework, which undeniably triggers some influence and adaptation from the national sides.[31]

Questions on the potential of EU law in influencing national social protection need to be considered against the general background of the specific and idiosyncratic character of EU law that has replaced the general

26 Verschueren, 'Free Movement or Benefit Tourism' (2016) 16 Eur. J. Migr. Law 147.

27 Case C-619/11 *Patricia Dumont de Chassart v Office national d'allocations familiales pour travailleurs salariés* [2013] ECLI:EU:C:2013:92 para 41.

28 In this regard, there are debates on how "social assistance" is defined in EU law and how it differs from the so-called "special non-contributory cash benefits", which are subject to coordination rules. For more on this problem, *see* Verschueren, 'Free Movement or Benefit Tourism' (2016) 16 Eur. J. Migr. Law 165 ff; Vonk, 'The EU (Non) Co-Ordination of Minimum Subsistence Benefits: What Went Wrong and What Ways Forward?' (2020) 22 EJSS 144. The issue is discussed further in the research section defining the term social protection in the realm of EU law.

29 Article 3(5), Regulation No 883/2004 on the coordination of social security systems, OJ L 166, 30.4.2004, 1–123.

30 Case C-70/95 *Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia* [1997] ECLI:EU:C:1997:301 para 27. Also, see Case 238/82 *Duphar BV and others v The Netherlands State* [1984] ECLI:EU:C:1984:45 para 16.

31 Paju, *The European Union and Social Security Law* (2017) 79.

principles of international law with its own principles and has formed a unique body of supranational law.[32] Hence, the study of EU law's influence on national law cannot be simply carried out as an appendix to the study of international law influence. At the same time, the possible EU law influence on social protection cannot be neglected since this could allow for an uncomprehensive representation of how national social protection was shaped by norms that are positioned higher in the legal order. Such considerations lead the present study to consider that since EU law embodies a special legal regime, it deserves an analysis that is to be carried out separately to the examinations of the constitutional and international law influences. Moreover, an examination of the influence of EU law needs to be mindful of its specific legal character and the respective mechanisms that may trigger changes in the national system.

To summarize, the primary goal of the research is twofold. On the one hand, social protection in Bulgaria will be studied according to the function of the different social protection measures. On the other hand, the influences of constitutional and international law on social protection will be examined. Such aims lay the foundations of this study's main research question: How can social protection be systematized based on its functionalities, and what is the influence of constitutional and international law on social protection in Bulgaria? In addition, as outlined above, EU law can also represent an idiosyncratic factor that may exude a certain influence on the social protection system. Accordingly, a sub-research question will delve into the influence of EU law on the national system.

C. State of the Art and Research Relevance

Concerning the choice of the investigation subject, it needs to be stated that up to date, there is no comprehensive research on the constitutional law influences on the Bulgarian social protection system neither in the Bulgarian scholarship nor in the English-speaking one. Analogically, there has

32 In particular, authors have underlined the highly complicated withdrawal rules from the EU when compared to other international organizations, as well as the elimination of the principle of "*Clausula rebus sic stantibus*". *See* Bleckmann, *Europarecht* (1997) 232; Bleckmann, *Völkerrecht* (2001) 6. Other scholars focus on the nature of the EU competences, the existence of a common currency and a common Union citizenship, and others. *See* De Witte, in Barnard and Peers, *European Union Law* (2017) 186.

been no in-depth examination of the influence of international law on the national system. Neither have studies reflected on the potential influence of EU law upon the national legal framework. Moreover, there have been no attempts at a thorough functional systematization of the social protection system up to this date. Simultaneously, some social protection branches, such as the tax-financed systems, tend to be systematically ignored in scholarly investigations. Bulgarian legal scholars have even recognized this lack by stating that tax-funded fields such as social assistance and social services lack a thorough scholarly investigation.[33]

In terms of the existing legal scholarship, several works have described the country's social and health insurance systems.[34] These works did not provide a functional systematization but rather followed the outline of the different laws building the system. Further, there have been studies on constitutional law in general[35] and the constitutional protection of fundamental rights.[36] Scholarly work also traced the development of constitutional law

33 Sredkova, in *Actual Problems of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 24.

34 Mrachkov, *Social Security Law in Bulgaria* (2011); Mrachkov, *Social Security Law/Осигурително право* (2014); Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020); Koicheva, *Survivor Pensions/Наследствени пенсии* (2009); Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012); Sredkova, *Social Security Law/Осигурително право* (2016). For journal articles, *see* 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 66.

35 Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997); Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002); Stoichev, *Constitutional Law/Конституционно право* (2002); Drumeva, *Constitutional Law/Конституционно право* (2018); Tanchev and Belov, *Comparative Constitutional Law/Сравнително конституционно право* (2009); Tanchev and Belov, in Albi and Bardutzky, *National Constitutions in European and Global Governance* (2019); Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017); Belov, *Constitutional Law in Bulgaria* (2019). For journal articles and book contributions, *see* Paskalev, 'Bulgarian Constitutionalism' (2016) 22 European Public Law 203; Ganev, 'The Bulgarian Constitutional Court, 1991-1997' (2003) 55 Europe-Asia Studies 597; Dimitrov, 'The Bulgarian Constitutional Court and Its Interpretive Jurisdiction' (1999) 37 CJTL 459.

36 Drumeva, 'Legal Protection of the Individual and Constitutional Review/Индивидуална правна закрила и конституционно правосъдие' (2006) 7 Juridical World/Юридически свят 11; Penev, 'The Bulgarian Constitutional Justice and

in the country throughout history.[37] Regarding the interactions between Bulgarian law and the international legal orders, some studies examined the relationship between the Constitution and European and international law.[38] Moreover, general studies reflected upon the implications of EU law[39] and international law[40] for the overall human rights protection in the country.

The concise state-of-the-art overview demonstrates that, so far, there has been no comprehensive research on the constitutional and international law influences on social protection. Nevertheless, unveiling the influences on social protection could be crucial, especially given the constant ongoing reforms in the field. Moreover, generally speaking, the research on the possible influence of constitutional and international law could prove valuable beyond Bulgaria's national context. Such a study contributes to the large-scale debates on the restructuring of social protection worldwide.[41] Different economic disturbances coupled with societal changes give rise to proposals for various reforms that limit the scope and expenditure of social protection measures.[42] The more social protection becomes an argument in austerity practices and international competition, the more important it is

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the Protection of Human Rights/Българското конституционно правосъдие и защитата на основните права' (2013) 12 Lawyers' Review/Адвокатски преглед 18.

37 Nacheva, *The Constitutional Civilization and the Bulgarian Constitutionalism/Конституционната цивилизация и българският конституционализъм* (2004); Nacheva, 'The Evolving Constitutionalism/Еволюиращият конституционализъм' (2020) 1 Constitutional Research/Конституционни изследвания 38; Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017).

38 Tanchev and Belov, *Comparative Constitutional Law/Сравнително конституционно право* (2009); Tanchev and Belov, in Albi and Bardutzky, *National Constitutions in European and Global Governance* (2019); Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017).

39 Sredkova, 'The Application of the European Social Charter in the Domestic Legal Systems/Прилагане на Европейската социална харта във вътрешните правни системи' (2006) 6 Contemporary Law/Съвременно право 7.

40 Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002); Drumeva, 'Legal Protection of the Individual and Constitutional Review/Индивидуална правна закрила и конституционно правосъдие' (2006) 7 Juridical World/Юридически свят 11.

41 ILO, 'World Social Protection Report 2017–19' (2017) 40 <https://www.ilo.org/global/publications/books/WCMS_604882/lang--en/index.htm> accessed 24 February 2020.

42 ibid; Wujczyk, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 1 ff.

to uncover the role that the legal framework in general and constitutional and international law in particular play in the development of social protection. In addition, the study includes the further objective of assessing the influence of EU law on the national social protection system. On the one hand, this aim can bring awareness of how the national level has adapted to EU law norms. On the other hand, this supplementary research goal can enrich the EU-wide discussions on the extent of the impact of EU law.

Next, the preconditions for carrying out the intended research are present in Bulgaria. Generally, authorities need to adhere to constitutions in shaping social protection in case of constitutional requirements for the provision of social protection rights.[43] In this regard, the Bulgarian Constitution entails a range of social rights, including the right to social security and social assistance.[44] Furthermore, the constitutional law establishes constitutional control on the state's actions through institutional mechanisms, the main one being the Constitutional Court.[45] Hence, the existence of constitutional social rights and the related constitutional case law comprise a promising ground for investigating possible influences. Furthermore, Bulgaria has ratified various international law instruments relevant to social protection, including the European Convention on Human Rights, the revised European Social Charter, the International Covenant on Economic, Social and Cultural Rights, and numerous relevant international labor standards.[46] Since these instruments are considered part of the national law and have a higher stance in the order of norms, they might have influenced the creation of the post-1990 social protection system or could have contributed to relevant reforms in the researched field.

Moreover, since the end of socialism, the country's development has been more or less stable, without the presence of abrupt alterations. Consequently, this can present a fruitful legal platform for research that has not been skewed by extreme political influences such as the impact of socialism present before 1989. The development of the democratic constitutional

43 Becker, 'Security from a Legal Perspective' (2015) 3 Rivista del Diritto della Sicurezza Sociale 517.

44 The rights are listed in Chapter Two of the Constitution, titled "Fundamental Rights and Duties of Citizens", and include, *inter alia,* the right to social security, social assistance, maternity leave, and unemployment benefits.

45 Drumeva, *Constitutional Law/Конституционно право* (2018) 569.

46 For a list of all ratifications, see ILO, 'Ratifications for Bulgaria' <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102576> accessed 24 February 2020.

order and the opening up of the national legal system to international law[47] coincided with creating the new social protection system. The factor of the EU membership and the related pre- and post-accession reforms could also be historically examined vis-à-vis the national social protection development. The research will then also demonstrate the synergies between the general constitutional evolution of the country and its opening towards international and EU law and how this influenced the social protection system.

D. Methodology

The twofold goal of the research necessitates two main parts, which bear their own equally important methodological approaches related to the respective aims. As stated above, one part aims to comprehensively examine the system by carving out the functionalities behind the different social protection branches. The other side of the research deals with the influences on social protection by building upon the functional systematization of the first part.

The understanding of the system in functional terms could be achieved by relying on the methodological postulates of comparative law.[48] Comparative law, in general, deals with the approximation and systematic juxtaposition of comparable elements.[49] A main aspect of the comparative methodology is *tertium comparationis*[50] or a pre-legal, exogenous questioning to begin the research.[51] Namely, the starting point is the phenomenon

47 The parliamentary debates alongside the development of the 1991 Constitution understood the constitutional openness to international law as one of its main features symbolizing the new democratic legal order in the country. *See* 'Transcript of Parliamentary Plenary Session No 133, 14.05.1991, Grand National Assembly, Archives of the National Assembly' (1991).

48 For similar approaches, *see* Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 30–31; Fichtner-Fülöp, *Einfluss des Verfassungsrechts und des internationalen Rechts auf die Ausgestaltung der sozialen Sicherheit in Ungarn* (2012) 33.

49 Constantinesco, *Rechtsvergleichung* (1972) 69.

50 Pieters, in von Maydell, Papier and Ruland, *Verfassung, Theorie und Praxis des Sozialstaats* (1998) 726.

51 Zacher, in Zacher, *Methodische Probleme des Sozialrechtsvergleichs* (1977) 41 ff.

demanding a legal solution rather than the legal solution itself.[52] This approach is necessary to set a common ground, an invariant,[53] for the comparison of the solutions expressed in the different legal orders. The exogenous approach is hence capable of contributing to one of the goals of this study of systematizing the national social protection system based on its different functionalities. Functionality seeks to establish the "way a certain social, political and/or economic problem" is dealt with by the law.[54] Therefore, even if the present work represents a study of a single jurisdiction, a comparative law methodology following the functionality approach will allow for the "freeing" of the underlying problems from their positive legal solutions by raising them "to a more abstract level".[55]

Apart from helping to comprehend the social deficits that the law is addressing, clarifying the functional background of a given law contributes to the foreign reader's easier understanding of the national system. Namely, the inherent categories of the Bulgarian legal system could be unknown to the foreign audience. Therefore, the proper and systematized description of the system requires the reliance on an exogenous approach.[56] In this way, the structure-forming features of the system can be conclusively understood and organized via their functional context, and, based on this, the respective solutions could be evaluated.

The exogenous approach could also address the linguistic considerations of translating the relevant legal materials. The description of the Bulgarian system would not be automatically forced into existing terminology, as this could result in a skewed representation.[57] Instead, the goal will be to uncover the specific problem that the usage of the terms in the law is addressing. Special attention will be applied to the translation of the Bulgarian legal materials so that the chosen terms are used consistently and are not translated dubiously. All in all, the present work and its detailed

52 Pieters, in von Maydell, Papier and Ruland, *Verfassung, Theorie und Praxis des Sozialstaats* (1998) 725.

53 Michaels, in Reimann and Zimmermann, *The Oxford Handbook of Comparative Law* (2006) 367.

54 Pieters, in Greve and Pieters, *Social Security in an Interdisciplinary Perspective* (1999) 86. In this regard, also *see* Zweigert and Kötz, *An Introduction to Comparative Law* (2011) 34.

55 Becker, in Becker and Reinhard, *Long-Term Care in Europe* (2018) 16.

56 Constantinesco, *Rechtsvergleichung* (1972) 140.

57 Pieters, in von Maydell, Papier and Ruland, *Verfassung, Theorie und Praxis des Sozialstaats* (1998) 729 ff.

character concerning the functional systematization of social protection can form the preliminary stage of future comparative research.[58]

Aside from the exogenous aspect, further features of the comparative methodology can be of service to the study. Namely, without a proper social and historical context, some legal developments could remain ungraspable. Moreover, since the study is conducted in English and is intended for an international audience, it could not be taken for granted that the non-legal factors accompanying a given legal measure are familiar to the readers. Therefore, even a brief sketch of the economic, demographic, and historically relevant aspects, or the so-called "extra-legal" factors,[59] can facilitate the legal analysis.

As mentioned above, the second side of the research deals with the influences on social protection. The methodology adopted for studying the concrete constitutional, international, and EU law influence is based on the different phases through which the respective institutions can exude influence upon the given law. The development of this methodological approach is tightly related to the concrete concept of influence used in the present study. Therefore, the concrete methodology for the study of influence is introduced after the concept's definition is provided in the third part of the research.

E. Research Structure

The structure of the study follows the purpose of the research and the methodological points presented above. The research focuses on two main goals, and hence the respective order of the presentation needs to be deliberated. The study initially delves into the social protection that is systematized through its functionalities. First, the concept of social protection is defined, and the systematization approach toward national social protection is presented. On this basis, the examination of the Bulgarian system follows with the awareness that the depth and length of the analysis are conditional upon the broad character of the research. This part also

58 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 30–31; Fichtner-Fülöp, *Einfluss des Verfassungsrechts und des internationalen Rechts auf die Ausgestaltung der sozialen Sicherheit in Ungarn* (2012) 33.

59 Pieters, in von Maydell, Papier and Ruland, *Verfassung, Theorie und Praxis des Sozialstaats* (1998) 717.

includes an examination of the development of social protection that is further enriched by significant socio-economic and historical background aspects needed for understanding the system.

Next, the research examines constitutional, international, and EU law as potential influencing factors on social protection. The part begins with a concise examination of Bulgaria's constitutional past and present by discussing the history of the constitutional development in the country and focusing on social rights. Subsequently, the research looks into contemporary Bulgarian constitutional law. Some general conceptual considerations on the constitutional content and functions are initially succinctly examined to support the understanding of the factor of constitutional law. The term "Bulgarian constitutional law" is then defined for the purposes of the research, and the structure of the 1991 Constitution is elaborated, given the research goal.

The section proceeds to present the relevant constitutional content for the research by shedding light on the relevant national constitutional law dogmatics. The examination assesses the different types of fundamental rights in the Bulgarian Constitution. The section further provides a definition of fundamental social rights for the purposes of the research and identifies the potentially relevant fundamental rights for the study. In addition to the aspect of fundamental rights, the part succinctly examines the Constitution's potentially relevant principles and state objectives.

The following two separate sub-sections on international and EU law are both organized as follows. First, the ranks of these two legal orders are studied vis-à-vis the national legal hierarchy, and their relationship with the Bulgarian Constitution is examined. Then, international and EU law concepts are defined in line with the research goals. These sections clarify the different ways through which international and EU law factors can each exude influence upon the national system. Further, concise overviews of the potential influencing factors of these legal orders are presented.

Finally, the concrete influences of constitutional and international law on social protection are studied. The part begins with a definition of the concept of influence and then clarifies the related methodological concerns. This is followed by an analysis of the concrete influences of constitutional and international law, structured per the methodology concerns and the main identified legal problems. This section also provides a separate examination of the relevant EU law influence.

In the conclusion, the research results on influence are evaluated in a cross-sectional manner by focusing on the different dimensions of influ-

ence leading to the creation, expansion, or prevention of curtailment of social rights. The conclusion further provides some final critical remarks on social protection based on the functional examination. The conclusion proceeds to examine the differences in how constitutional, international, and EU laws have each influenced the system to provide greater reflection upon the overall study findings. Finally, the research results are mapped from a comparative European perspective.

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.

I. 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

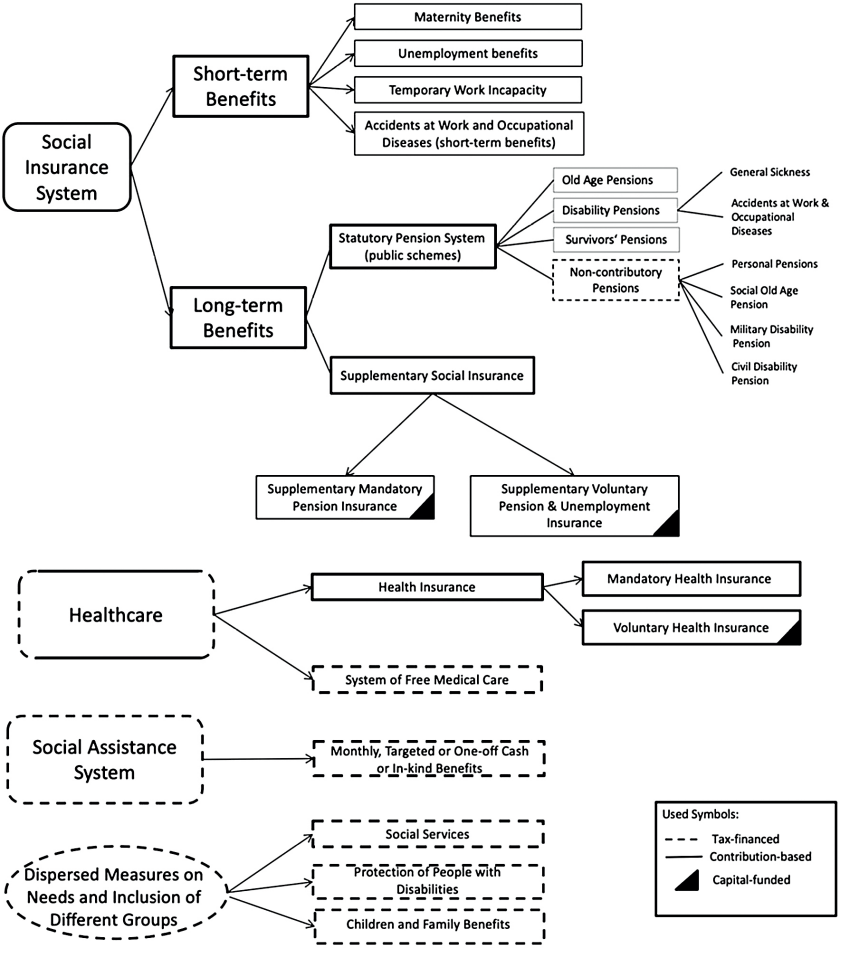
In conclusion, the Social Insurance System is one of the main building blocks of Bulgarian social protection that provides short-term and long benefits related to the classical social insurance risks. The system incorporates both public and private aspects but remains predominantly public in its nature. 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.

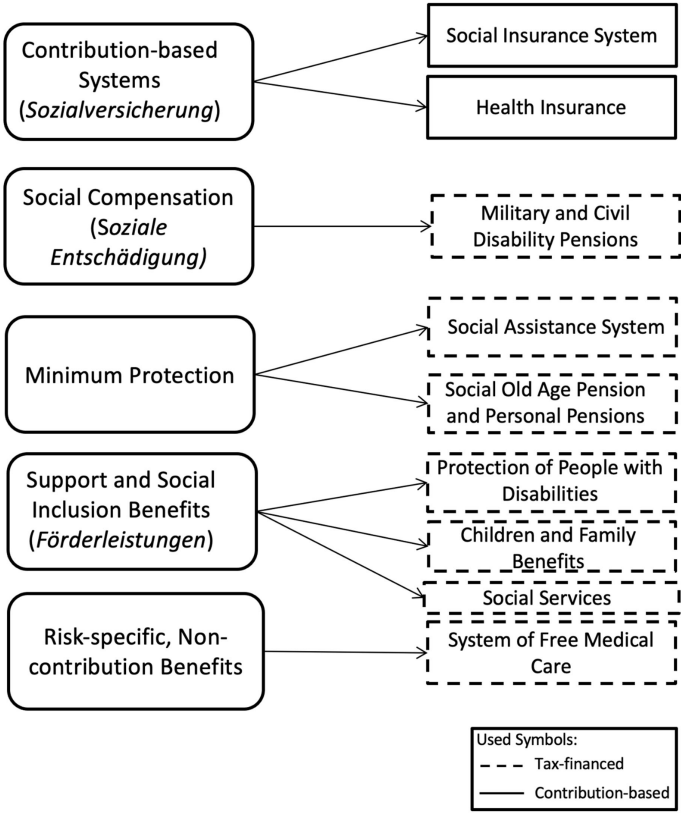
cerning dependency provide support with the activities of daily life.[201] All in all, the system covering the family benefits for children, the social inclusion services for people with disabilities, and the so-called social services will be referred to as the "*Support and Social-inclusion Benefits*"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

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

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.

Part 3: Constitutional, International, and European Union Law Influence on the Social Protection System in Bulgaria

A. Preliminary Considerations on the Potential Influencing Factors

I. Constitutional Law

The following part will analyze the potential of Bulgarian constitutional law as an influencing factor upon social protection. For this purpose, first, constitutional law in the country is succinctly examined through its historical dimensions. Then, the study defines the concept of Bulgarian constitutional law for the present research purposes. Once the term is specified, the current Bulgarian Constitution's structure is assessed to inform the subsequent evaluation of the relevant constitutional content for the study's goal.

The sub-section on the relevant constitutional law is structured as follows. First, the examination focuses on fundamental rights as a potentially highly relevant factor for constitutional influence. In doing so, the different types of rights in the Bulgarian Constitution are explored, and the concept of fundamental social rights is defined in line with the study's purposes. Subsequently, the concrete relevant fundamental rights are presented. Then, the further potentially important constitutional content is reviewed in two sections: constitutional principles and state objectives.

1. Bulgarian Constitutional Law: Past and Present

a. The Constitutional Genesis

The constitutional genesis can indicate why the constitutional norms were formed in a given manner, thereby contributing to the overall better understanding of the national constitutional development. Further, the historical background can hint at why some aspects were considered necessary for the Constitution while others were omitted. The historical analysis can also reveal the concerns in the drafting process of the present Constitution on the featured social rights list. Accordingly, the following will succinctly examine the main features of the three constitutions preceding the Constitution from 1991. Next, the research will turn to the drafting process of the

present Constitution to portray the most pressing concerns and aspirations at the time, especially in view of fundamental social rights.

aa. Overview of Constitutional Developments from 1879 to 1991

After it gained freedom from the Ottoman Empire, Bulgaria took on the way to its first Constitution. The Treaty of San Stefano from 3 March 1878 envisioned that an assembly overseen by the Russian commissioners was to create an "organic statute"[567] ("Органически устав") for the Principality[568] of Bulgaria. The following Treaty of Berlin from 13 July 1878 reformed the San Stefano Treaty and reduced the duration of the temporary Russian ruling in the country from two years to nine months. These changes entailed that the process of creating the organic statute needed to be speeded up. The project for the statute was to be prepared in Bulgaria but then required approval that was to be provided in Saint Petersburg. Ultimately, the organic statute was presented to the Bulgarian Constituent Assembly composed of an assembly of notables.[569]

After the draft's preparation, numerous discussions and proposals for its amendments followed, including a proposal for a creation of a two-chamber parliament. The Russian draft of the document relied on the term "organic statute" and avoided the definition of the document as "constitution". Still, a member of the assembly brought forward the proposal for the use of the term "constitution", which was subsequently accepted. Accordingly, the so-called Tarnovo Constitution[570] was adopted on 16 April 1879 by declaring the government form of constitutional monarchy and establishing unicameralism.[571]

567 The term "organic statute" was used at the time for newly formed states after the collapse of the Ottoman Empire.

568 The concept of "principality" suggests that the country did not have full sovereignty but was rather ultimately influenced by some of the powerful states during the given period.

569 The concept refers to the French term "assemblée de notables" that indicates an assembly composed of members who were not elected but were rather appointed for the purpose. *See* Drumeva, *Constitutional Law/Конституционно право* (2018) 169.

570 This constitution was named after the town of Veliko Tarnovo where the Constituent Assembly was held.

571 Drumeva, in *Constitution of the Republic of Bulgaria/Конституция на Република България* (2009) 11.

The ideas of liberalism proved to be an inspiration for the adopted Constitution.[572] Accordingly, a comparison between the draft prepared by the Russian jurists and the final adopted version of the document demonstrates certain essential differences. First, the adopted document shared the legislative initiative between the elected members of Parliament and the "Knyaz", while the draft concentrated this power only in the "Knyaz". The adopted Constitution provided for constitutional freedoms and voting rights for all men[573] without requirements for acquired educational levels, as it was initially proposed. Further, it contained provisions on free mandatory initial education, freedom of the press, freedom of association, the old-age pension rights of civil servants, and others. Last but not least, the Tarnovo Constitution "played the role of a bourgeoisie revolution"[574] in the country due to its antifeudal character, which paved the way for free capital and a market economy. The Tarnovo Constitution was amended twice and was suspended due to military coups in 1923 and 1934. In practice, the Constitution remained suspended in the following years until it was replaced by the Constitution of the People's Republic of Bulgaria in 1947.

After the coup d'état on 9 September 1944, and given the background of the complicated international environment, the country became entangled in establishing governance framed in the likes of the Soviet Union. Based on a referendum in 1946, Bulgaria was proclaimed as a "people's republic", and the preparation of a new constitution was initiated. The initial project included a balanced scheme of the separation of powers,[575] a catalog of the citizens' rights and obligations, and, in contrast to the Tarnovo Constitution, a catalog of social and economic rights, such as the right to occupation-related and pension benefits.

572 Stoichev, *Constitutional Law/Конституционно право* (2002) 88.

573 The fact that only men (once they have reached 21 years) had voting right was not explicitly recorded in the text since for the given time period this was understood by default. Married, divorced, or widowed women were granted voting rights in 1938; women acquired full voting rights in 1944. *See* Drumeva, in *Constitution of the Republic of Bulgaria/Конституция на Република България* (2009) 11.

574 ibid.

575 Namely, the project envisioned that the National Assembly bore the legislative power and elected the government; the government was accountable to the parliament and retained legislative initiative, as did the members of parliament in the case of at least 1/5 of them engaging in it; the judicial power maintained its three instances and the High Administrative Court was preserved; and finally, the Chairman of the Republic was bestowed with functions similar to the ones of a president.

However, with the signing of the Paris Peace Treaties, it became apparent that Bulgaria, alongside the rest of the countries from Eastern Europe, would belong to the Soviet sphere of influence. Therefore, the Bulgarian Grand National Assembly formed a new commission that proposed a new project for a constitution that largely resembled the Constitution of the Soviet Union. The new project resulted in considerable alterations to the previous project because the new constitution needed to enable the country's transition to socialism.[576] The new Constitution entered into force on 6 December 1947. It established the governance form of "people's democracy" expressed in the lack of separation of powers and democratic centralism. In addition, the institutional bodies on the lower levels were subordinated to the higher ones in a strict hierarchical order. Further, the state representative was replaced by a collective body, the so-called Presidium of the National Assembly. In line with the system of soviets and their main role in the Soviet Union, the local authorities gained broad competences. Moreover, the judicial instances were reduced to two, the High Administrative Court was dissolved, and the prosecution was endowed with extensive powers.

In terms of the featured social rights, the 1947 Constitution provided in Article 75 for accessible medical care financed by joint contributions. In addition, the Constitution proclaimed the right to pensions and benefits in the cases of sickness, accident, disability, unemployment, and old age. The 1947 Constitution further introduced the idea of the special protection of mothers, which became intertwined in the country's constitutional development ever since. Namely, Article 72 provided that the (expecting) mothers were granted special protection, such as paid pre- and post-natal maternity leaves and access to free obstetric and medical care.

As stated above, the 1947 Constitution symbolized the transition to socialism. Hence, in 1971 it was decided that a new constitution was needed to reflect the completed transition and to establish socialism as the victorious socioeconomic order. This new Constitution was adopted via a national referendum on 16 May 1971. Its hallmark was the strong ideological spirit it contained, including proclaiming the Bulgarian Communist Party as the country's driving force. This proclamation represented the constitutional basis for merging state and party, which enabled the dominating role of the political party structures over the rest of the state institutions. The State Council replaced the Presidium of the National Assembly and occupied

576 Drumeva, *Constitutional Law/Конституционно право* (2018) 174 ff.

the main place among the highest bodies of the state by exercising merged legislative and executive powers.

The 1971 Constitution again contained a list of social rights such as social insurance for the classical social risks stated in Article 43(1) and the new constitutional aspect of the right to social assistance proclaimed in Article 22(5).[577] Furthermore, the research section on the history of social protection revealed that the 1971 Constitution provided the right to free medical care in Article 47(3). This constitutional proclamation symbolized the transition from health insurance to a tax-financed medical care system. Lastly, the new constitutional text also incorporated in Article 37 the special protection for mothers and the related maternity social rights from the 1947 Constitution.

bb. The Creation of the 1991 Constitution and its Social Rights

After the 1989 changes, a National Round Table of the different political parties was formed to debate the steps for the transition to democracy.[578] During the debates, it was decided that even if the 1971 Constitution were to be heavily amended, it would still not be able to meet the significant socioeconomic changes and resulting challenges. Hence, a Grand National Assembly was convened to adopt the new Constitution. Furthermore, a group of habilitated legal scholars from the Law Faculty of Sofia University "St. Clement of Ohrid" was set to support the constitution-making process and draft a constitutional project.[579] The examination of the various protocols and transcripts accompanying the Constitution's creation demonstrates considerable engagement with international law instruments, which informed the constitution-making process. In addition, examining the creation of the 1991 Constitution unveils the motivations behind the formulation and inclusion of various social rights in the constitutional text.

577 Drumeva, in *Constitution of the Republic of Bulgaria/Конституция на Република България* (2009) 12–13.

578 Ananieva, in Kaneva, Mizov and Kandilarov, *Studies on the History of Socialism in Bulgaria/Изследвания по история на социализма в България* (2011) 63.

579 To be precise, there have been several proposed projects for a new constitution. However, the one prepared by the habilitated scholars became the foundation for the new Constitution. *See* Milanov, 'On the Authorship of the New Constitution and Some Aspects of Its History/За авторството на новата ни Конституция и някои моменти от нейната история' (2015) <https://duma.bg/koy-bashta-koy-dalechen-rodnina-nl14434> accessed 18 February 2019.

First, "the guiding principles in the preparation of the new Constitution was the adherence to the achievements of the European constitutional theory and practice, as well as the former Bulgarian traditions".[580] The leading motivation behind the development of the new constitutional text was that it should enable the country's integration into the European and international legal spaces.[581] For instance, the goal of joining the Council of Europe entailed that the future constitution needed to meet the standards of the European Convention on Human Rights (ECHR) and its eight accompanying protocols.[582] Moreover, arguments based on the sixth protocol to the ECHR and the second protocol to the International Covenant on Civil and Political Rights (ICCPR)[583] contributed to the promulgation of the state obligation to guarantee human life that ultimately led to the prohibition of the death penalty.[584]

Last but not least, the constitutional project proposed an approach regarding the relationship between national law and international law that was novel for the Bulgarian constitutional development.[585] Namely, the project envisioned that an international legal instrument that has been ratified would become an inseparable part of the domestic legal order. Further, such international law instruments would take precedence over contradicting national norms. This approach intended to enable the country's plan for future accession to the European Community.[586]

International law instruments, such as the ICESC, were also of fundamental significance in the debates accompanying the inclusion of social

580 Quote by the Head of the working group of habilitated scholars for the preparation of the 1991 Constitution, prof. Zhivko Milanov (translation from Bulgarian by author). *See* ibid.

581 'Protocol of the Meeting on 13.02.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 25. Initial draft versions of the Constitution contained the aspiration of the country to join the democratic world of the European community in the preamble. *See* 'Transcript of Parliamentary Plenary Session No 134, 16.05.1991' (1991) 83 <https://parliament.bg/bg/plenaryst/ns/55/ID/3357> accessed 18 February 2019.

582 'Protocol of the Meeting on 13.02.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 25.

583 ibid 26.

584 Stoichev, *Constitutional Law/Конституционно право* (2002) 233.

585 'Transcript of Parliamentary Plenary Session No 133, 14.05.1991, Grand National Assembly, Archives of the National Assembly'.

586 ibid.

rights in the constitutional text.[587] The constitutional project attempted to reflect the catalog of rights included in the Covenant.[588] At the same time, however, some ICESC rights were ultimately not featured in the constitutional draft despite the initial plans. A good example in this regard is the right postulated in Article 11 of the Covenant that guarantees an adequate standard of living, adequate food, clothing, and housing.[589] The prevailing argument against the inclusion of this right maintained that the constitutional promulgation could face the danger of the lack of possibilities for the right's realization.[590] Such an inability in practice would devalue a constitutional provision to a mere unattainable political aim and, in turn, would devalue the Constitution despite it being the supreme law in the country.[591] To avoid such dangers, the right to social assistance was included in the Constitution without a definition and enumeration of the specifics featured in Article 11 of the ICESC. The abstract drafting approach aimed at ensuring that the legislature could then specify the right in a manner that would allow for its actual realization in terms of the available possibilities.[592]

There were lengthy related debates stretched out through different sessions on the exact list of fundamental rights that were to be featured in the constitutional text. Some commission members advocated for elaborating a detailed fundamental rights framework in the constitutional text. The argument favoring this approach maintained that only a detailed approach could preserve the rights' framework in case of subsequent legislative changes.[593] Other experts, however, did not support the development of a detailed list of rights and rather advocated for a more restrained approach, similar to the one undertaken by the German Basic Law. According to

587 'Protocol of the Meeting on 17.06.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' (1991) 14; 'Transcript of Parliamentary Plenary Session No 134, 16.05.1991' 84.

588 'Protocol of the Meeting on 13.02.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 3.

589 'Protocol of the Meeting on 17.06.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 14.

590 ibid.

591 ibid.

592 ibid 14 ff.

593 'Protocol of the Meeting on 13.02.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 50.

this perspective, the focus had to be placed on the different constitutional guarantees for rights' protection and the limits of the protection.[594]

Furthermore, the debates on the exact social rights took into account that the new constitution would need to be able to lay the foundations of the new social protection system in the country. A particular concern in this regard was the tax-financed healthcare system inherited from socialism.[595] For instance, the debates on the right to health insurance were carried against the background of the wide-scale plans for reforming the healthcare system.[596] Therefore, it was considered crucial for the constitutional text to "promulgate" the right to public health insurance by laying the foundations for such an insurance system.[597]

In addition to the right to health insurance, the project for the constitution included the right to free medical care. Long debates accompanied the inclusion of this right.[598] According to some, the right to free medical care contradicted the right to health insurance. Such views held that healthcare should be subjected to total restructuring resulting in a contribution-based system. Hence, some saw the right to free medical care as a continuation of the tax-financed socialistic healthcare system. However, the proponents of the right to free medical care considered it an expression of the social state goal. Namely, the rights to health insurance and free medical care were not mutually exclusive but were instead complementary. While the health insurance addressed the healthcare of those paying contributions, the right to free medical care provided coverage to the more vulnerable social groups, such as those suffering from material deprivations.[599] In this sense, free medical care contributed to the social state character of the country's social protection development. Proponents of the right to free medical pointed out the solution portrayed in the Portuguese Constitution

594 ibid 12.
595 For an examination of the historical evolution of the social protection system in the country, refer to the research section on the historical development of the Bulgarian social protection.
596 'Protocol of the Meeting on 28.06.1991 of the Comission on the Preparation of the Project of New Constitution, Afternoon Session, Archives of the National Assembly' (1991) 2 ff.
597 ibid 4.
598 ibid 1 ff.
599 ibid 6.

of 1975, which explicitly and simultaneously included the rights to health insurance and free medical care.[600]

In terms of the social state principle, the draft constitutional project considered that the long list of social rights in the constitutional project reflected the goal of the social state.[601] Therefore, the social state goal included in the Preamble was intended to guide the policy in the following turbulent transition years and the rapid growth of some social risks such as unemployment.[602] Moreover, the goal of the social state was seen as fundamental for the development of the solidarity character of the future social protection system, where redistributive mechanism would provide for those in great material need.[603]

The creation of the new constitution involved the promulgation of the supplementary protection provided to groups with special needs.[604] The debates in this regard revealed that the constitution-makers considered that vulnerable societal groups like mothers, disabled people, and orphaned children should not only be solely addressed by the general social protection mechanisms. Instead, it was deliberated that the legislature should have the constitutional obligation to organize further supplementary forms of "special protection" concerning such groups.

Additionally, the constitutional project went a step further and concretized the content of special protection provided to (expecting) mothers. The debates around the elaboration on the mothers' social rights were based on the concern that the sole declaration of the right to "special protection" could still leave too much room for interpretation. This vagueness might

600 ibid 2.

601 'Transcript of Parliamentary Plenary Session No 133, 14.05.1991, Grand National Assembly, Archives of the National Assembly'. However, the proposal for the inclusion of the social state was initially met with mistrust by the debates on the constitutional project in the parliament. The political debates initially engaged with a "superficial and a very ideological discussion" that aimed at building parallels between the social state goal and the socialistic political order. *See* Belov, *Constitutional Law in Bulgaria* (2019) 32. Ultimately, the meaning of the "social state" has been clarified as being a guiding principle in the development of the state mechanisms targeting those affected by various social risks. *See* 'Transcript of Parliamentary Plenary Session No 134, 16.05.1991' 66–67.

602 ibid 72.

603 ibid 94–95.

604 'Protocol of the Meeting on 17.06.1991 of the Commission on the Preparation of the Project of New Constitution, Archives of the National Assembly' 8.

result in insufficient protection in some crucial aspects.[605] Therefore, the right of special protection for mothers was concretized as involving both pre-natal and post-natal leave.[606] The protection further included free obstetric care, alleviated working conditions, and other social protection measures. Some of the adopted constitutional solutions for defining the special protection of mothers have already been part of the Bulgarian legal tradition, such as the provision of free obstetric care.[607] Despite the planned introduction of a health insurance system, a decision was reached that the state-financed free obstetric care present in the older constitutional law should be preserved in the new constitutional project. It was considered that the free obstetric care could still target women who, for some reason, would have interrupted health insurance rights.

cc. Amendments of the Current Constitution since 1991

Since it entered into force, the Constitution has been amended five times. Some of these amendments are relevant to the present research objective as they paved the way for the European Union membership[608] and concern the relationship between its supranational body of law and national constitutional law.[609] Apart from discussing these changes, the section will also succinctly deal with the rest of the constitutional amendments that either concerned the separation of powers or the expansion of the possibilities for requesting a constitutional review.

The changes concerning the European Union membership were provided with the Constitution's second amendment of 2005.[610] In general, since its very creation, the Constitution envisioned the direct application in the domestic law of the norms of international treaties, which are ratified,

605 'Protocol of the Meeting on 28.06.1991 of the Comission on the Preparation of the Project of New Constitution, Morning Session, Archives of the National Assembly' 1.

606 ibid.

607 ibid 1ff.

608 Drumeva, *Constitutional Law/Конституционно право* (2018) 179.

609 The legal debates concerning the relationship between EU law and Bulgarian constitutional law is discussed in detail in the respective section on the potential of EU law as an influencing factor upon the social protection system.

610 Law Amending and Supplementing the Constitution of the Republic of Bulgaria, SG 18/25.02.2005.

promulgated in the State Gazette, and have entered into force with respect to the Republic of Bulgaria. Therefore, considering these international law requirements in the Constitution, the 2005 amendment introduced EU law as a new type of specific supranational legal order.[611]

The constitutional distinction between the international law instruments and EU law is visible in two main regards. First, the amendment explicitly introduced the European Union as a supranational organization, while the rest of the international organizations are left unnamed in the constitutional text. Authors consider that this approach highlights the special relationship between the national and EU law and indicates the latter as an idiosyncratic legal order that could not be equated to international law.[612] The amendments provided that the National Assembly can confer powers to the European Union that follow from the Constitution (Art. 85(1), CRB). Therefore, the constitutional changes do not contain material provisions on the EU law and its status but rather authorize the transferring of constitutional powers to the given organization in certain areas. Some scholars view that this thrift wording of the amendment enables the primacy of EU law.[613] According to this view, the constitutional provisions entail the direct applicability of EU law that renders inapplicable all contradicting national norms.[614]

Second, the 2005 constitutional amendment provided more stringent conditions for ratifying the primary sources of EU law compared to the requirements of international law ratification. For example, the ratification of international law instruments requires a majority of more than half of the present members of Parliament (Art. 81(2), CRB). In contrast, the ratification of the primary EU law instruments requires a qualified majority of two-thirds of all members of Parliament (Art. 85(2), CRB).

Moreover, the EU membership amendment introduced another significant change in the constitutional text. The change stipulated that Bulgaria is to participate in the building and development of the EU (Art. 4(3), CRB).[615] The amendment was incorporated in Article 4, which contains

611 Drumeva, 'The Primacy of EU Law over National Law/Примат на правото на Европейския съюз пред националното право' (2009) 10 Juridical World/Юридически свят 11.

612 ibid.

613 ibid 12.

614 ibid.

615 Initially it was planned that a similar text is instead to be included in the constitutional Preamble. *See* ibid.

the foundational principle of the rule of law. Some scholars interpret this approach as entailing the supranational engagement of the country in its capacity as a state governed by the rule of law.[616] The participation in the building and development of the EU further represents an obligation for the legislature to ensure harmony between the national and the supranational legal order, including securing EU law primacy.[617]

The 2005 EU-related amendment introduced some further alterations. These included the possibility of acquiring land by foreigners following the conditions ensuing from Bulgaria's accession to the European Union or by virtue of the conclusion of an international treaty (Art. 22(1), CRB). Finally, the amendment dealt with enabling the participation of European citizens in the local elections and the elections for the European Parliament carried out on Bulgarian territory (Art. 42(3), CRB).

Prior to the amendment, the Constitutional Court was requested to provide an interpretive decision on whether the intended constitutional changes related to the planned EU Membership could be introduced by the ordinary National Assembly or instead required a Great National Assembly.[618] The former can amend and supplement the constitutional norms (Art. 153, CRB) except for the cases concerning constitutional changes in state organization and governance, which would require Great National Assembly (Art. 158.3, CRB). The Court concluded that the EU Membership would not interfere with the constitutional democratic model of state organization and the form of governance.[619] Hence, the amendments of the Constitution could be carried out by the ordinary National Assembly.[620] Furthermore, the Court considered that the already present constitutional provisions paved the way for the country's accession to the EU. Namely, Article 24(2) stipulated that the country is engaged in promoting just international order. Apart from indicating general openness towards the interna-

616 Drumeva, *Constitutional Law/Конституционно право* (2018) 182.

617 Drumeva, 'The Primacy of EU Law over National Law/Примат на правото на Европейския съюз пред националното право' (2009) 10 Juridical World/ Юридически свят 13.

618 Constitutional Decision No 3/2004 on case 3/2004.

619 The reasoning of the constitutional decision also delved into the issue of the relationship between EU law and national constitutional law. The argumentation of the Constitutional Court in this regard is examined in detail in the part on the potential of EU law as an influencing factor upon social protection.

620 Constitutional Decision No 3/2004 on case 3/2004 para VI.

tional legal order, the provision was interpreted to imply a constitutional mandate for actions and measures towards building a united Europe.[621]

Apart from the EU-related amendments, a couple of further constitutional changes and reversed attempts for amendments deserve mentioning due to their general constitutional implications, mainly about the separation of powers. A 2006 constitutional amendment concerned the curtailing of the immunity of the members of parliament and the Constitutional Court judges.[622] Before the amendment, detention and criminal prosecution for these two categories of individuals could be carried out in cases of serious criminal offenses. The amendment provided a possibility of detention and criminal prosecution even in cases of general crimes.[623]

In 2006, another constitutional amendment reinforced the authority and control of the legislative power over the judicial branch.[624] The amendment introduced the constitutional requirement that the presidents of the Supreme Court of Cassation[625] and the Supreme Administrative Court, and the Prosecutor General have to all report annually to the National Assembly that has to hear and accept their reports (Article 84.16, CRB). The annual reports have to provide information on the application of the law, the activities of the courts, the prosecution office, and the investigating bodies.[626]

However, one part of the 2006 amendment was declared unconstitutional by the Constitutional Court. Namely, the amendment stated that in cases of serious infringements or systematic neglect of official duties, as well as actions undermining the judiciary's prestige, the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, as well as the General Prosecutor, could be removed from their positions. The

621 ibid para V.1.

622 Article 147(6) of the Constitution states that the judges of the Constitutional Court enjoy the same immunity as the members of the parliament.

623 § 1, Law Amending and Supplementing the Constitution of the Republic of Bulgaria, SG 27/31.03.2006 2006.

624 § 2, ibid.

625 Supreme Court of Cassation ("Върховен касационен съд") is the court exercising supreme judicial supervision in Bulgaria over civil and criminal law cases. *See* Article 108, Law on the Judicial Power, SG 64/07.08.2007 (with later amendments). The English translation of the court's name in the present research work is taken from the official English translation of the Bulgaria Constitution (available at the National Assembly's webpage at https://www.parliament.bg/en/const).

626 § 2, Law Amending and Supplementing the Constitution of the Republic of Bulgaria, SG 27/31.03.2006 2006.

state President could remove the magistrates based on a proposal of ¼ of the members of Parliament that needed to be adopted by ⅔ of the members of Parliament. The amendment envisioned that the state President could not deny the dismissal upon a second proposal for removing the given magistrates.[627] The amendment was referred to the Constitutional Court by the Plenum of the Supreme Court of Cassation for a constitutionality review. The Constitutional Court decided that the amendment was indeed unconstitutional since it interfered with the independence of the judicial system and the principle of the separation of powers.[628] Moreover, the reform attempted to grant the National Assembly powers that the Constitution had already granted to the High Judicial Council.[629]

Finally, the constitutional amendments related to fundamental rights also deserve a brief mention due to the latter's relevance to the research purpose. The changes in this regard included the extension of the possible actors that can request a constitutional review due to alleged violation of the fundamental rights and freedoms. The possibilities for requesting constitutional review initially used to include an initiative from no less than ⅕ of all members of Parliament, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the General Prosecutor (Art. 150, CRB).[630] In 2006, this list was enlarged with the Ombudsperson, who is allowed to request a constitutional review on legislation that violates citizens' fundamental rights (Art. 150(3), CRB).[631] In addition, in 2015, the Supreme Bar Council was also provided with the prerogative to request a review of legislation that allegedly violates fundamental rights and freedoms (Art. 150(4), CRB).[632]

627 § 6, ibid.
628 Constitutional Decision No 7/2006 on case 6/2006.
629 The High Judicial Council has the authority to appoint, promote, demote, transfer and remove from office judges, prosecutors, and investigating magistrates (Art. 129(1), CRB).
630 In terms of issues pertaining to the allocation of competences, the municipal councils can also request a constitutional review.
631 § 8, Law Amending and Supplementing the Constitution of the Republic of Bulgaria, SG 27/31.03.2006.
632 ibid.

b. Constitutional Law in Bulgaria

aa. General Considerations

A concise examination of the conceptual constitutional characteristics is required to support the subsequent process of defining Bulgarian constitutional law in a manner that enables it to serve as a potential influencing factor. Therefore, the following analysis is going to briefly examine the elements of the constitutional content and function. Next, the section will concisely analyze the main abstract considerations on the constitutional concept essential for the constitutional ability to influence social protection.

(1) Constitutional Content and Functions

In terms of constitutional content, the division between formal and material constitutional law content has been long established in the academic literature. The formal aspect understands the constitution as "a solemn document, a set of legal norms that may be changed only under the observation of special prescriptions, the purpose of which is to render the change of these norms more difficult".[633] Therefore, the first formal element is the recording of the constitutional norms in a written codified form by the competent authority in this regard. The written form of the constitutional text could be carried out in a single or several related documents. There could be no stringent requirements on the exact character of the constitutional codification. It is generally accepted that the main aspects of constitutional law should be incorporated in codification. Still, there are examples of countries with "uncodified constitutions" that have acquired their constitutional arrangements over time based on various codified statutes and conventions.[634]

The second formal aspect concerns the increased legal force of the constitution[635] reflected in the aggravated requirements for its amendment. Some consider the requirement of the special amendment as an indispens-

633 Kelsen, *General Theory of Law and the State* (1949) 124.

634 For instance, *see* Grote, 'The United Kingdom' (2017) <https://oxcon.ouplaw.com/view/10.1093/ocw/law-ocw-cm981.016.1/law-ocw-cm981#law-ocw-cm981-note-1> accessed 18 February 2019.

635 Jellinek, *Allgemeine Staatslehre* (1914) 520.

able constitutional characteristic.[636] There are ranging nuances on the issue of the difficulty of the amendment.[637] The idea of constitutional rigidity indicates the severity of the amendment procedure and the presence of entrenched clauses, as well as the rareness and difficulty of a change.[638] In this sense, some constitutions are regarded as "rigid"[639] since they contain high amendments thresholds, including a parliamentary supermajority or higher quorum requirements. In contrast, other constitutions are seen as "flexible" as their amendment processes are relatively relaxed and, for instance, involve ordinary legislative majorities. Some constitutions might contain divergent procedures for the amendment of their different principles, provisions, or parts.[640]

Third, the increased legal force of the constitution is mirrored not only in its aggravated amendment but also in its precedence over ordinary law. The increased legal force of the constitution is a conceptual element that stands between the "formal" and "material" meaning.[641] The constitution represents the highest level within the hierarchical structure of the state's legal order.[642] Since the constitution restricts the legislative power,[643] the laws which result from it also need to be subordinate to the basic norm. All other "purported" legislation that contradicts the norms of the constitution becomes legally void.[644]

636 ibid 534; Kelsen, *General Theory of Law and the State* (1949) 124; Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 78.

637 Drumeva, *Constitutional Law/Конституционно право* (2018) 148.

638 Contiades and Fotiadou, in Contiades, *Engineering Constitutional Change* (2013) 459.

639 Previously, the distinction between "rigid" and "flexible" constitutions was based on whether the constitution could be enacted or amended similarly to the ordinary laws. For instance, *see* Kelsen, *General Theory of Law and the State* (1949) 259. However, with time and the occurrence of constitutions that possessed dissimilar procedures for amendment of different parts this straightforward distinction became obsolete. *See* Roznai, 'Rigid (Entrenched)/Flexible Constitutions' (2018) <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e18> accessed 18 February 2019.

640 ibid. These varying amendment requirements within one constitution are referred to by some as "selective rigidity" and obstruct a straightforward comparison between the constitutions on the mere basis of its "flexibility" or "rigidity".

641 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 214.

642 Kelsen, *General Theory of Law and the State* (1949) 124; Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 105.

643 Hart, *The Concept of Law* (1961) 68.

644 ibid.

The second material conceptual aspect understands the constitution as encompassing the norms that regulate the legislation process.[645] According to some, a broader understanding of the concept would belong to the realm of political theory.[646] This broader understanding would materially define constitutions as including all of the norms regulating the establishment and the competences of the highest executive and judicial organs. In contrast, opposing views argue that focusing a definition on legal validity is ultimately unable to give insight into the role of the law in the establishing and maintaining of the state.[647] Therefore, a broader conceptual view considers the material sense as being composed of two main elements. On the one hand, the material aspects concern the fundamental regulating of a state's "organization, form, and structure".[648] On the other hand, the material sense covers the norms regulating the legal position of the individuals.[649] The extent to which the material constitution spreads, however, is unclear.[650] It is generally accepted that there could be material constitutional norms that do not form part of the formal understanding of the concept.[651]

Apart from a quick look into the constitutional contents and their characteristics, one needs to also concisely consider the constitutional functions in order to enable subsequent concept definition. There are various functions present in the literature. Still, due to the context of the present work,

645 The material understanding of the constitution "consists of those rules which regulate the creation of the general legal norms, in particular legal statutes". *See* Kelsen, *General Theory of Law and the State* (1949) 124.

646 ibid 259.

647 A main issue is that narrowing down the material understanding of the constitution to the regulation of the legislation process is unable to account for the concept of sovereignty since it "leads only to a circularity in which the state, which on the one hand exists prior to law, also presents itself as a presupposition of law". *See* Loughlin, *The Idea of Public Law* (2004) 91.

648 Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 78; Stoichev, *Constitutional Law/Конституционно право* (2002) 67.

649 For instance, Jellinek states that constitutions contain norms concerning both the supreme organs of the state and the fundamental position of the individual in relation to the authority of the state. *See* Jellinek, *Allgemeine Staatslehre* (1914) 505.

650 The blurriness stems from the problem of the degree of significance that the dynamics of the domestic distribution of power have for the understanding of the concept of constitution. *See* Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 108.

651 Kelsen, *General Theory of Law and the State* (1949) 260; Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 78.

the following will only briefly focus on the most relevant and all-encompassing aspects. Generally, the constitution bears the functions of fundamentally organizing, stabilizing, and unifying the state. In this sense, the constitution regulates the state's order in a foreseeable manner.[652] To do so, it needs to achieve stability by establishing the right balance between continuity and openness to the challenges of the present. Since there are no universal formulas for resolving the conundrum of maintaining constitutional traditions by simultaneously responding to new social challenges, each constitution needs to find the appropriate approach. However, the issue is crucial as it illustrates whether a given constitution can maintain a state's unity.[653]

Further, another main task of the constitution is related to the legitimation of public authority.[654] The state authorities' power is not pre-set but requires legitimation in terms of its acquiring and subsequent exercise. Namely, the exercise of state power is not just subject to initial legitimation but is to remain within the lines defined by the constitution. Therefore, the legitimation of power is composed of both granting power and constraining it within certain limits.[655] Furthermore, the function of legitimation is based on the principle of popular sovereignty, which roots the constitutional power back in the people. [656] For the latter principle to apply and the constitution to fulfill its legitimizing function, the exercise of public authority must be based on democratic legitimation.[657]

Last but not least, the constitution bears the function of safeguarding the rights and freedoms of the individual.[658] The constitutional rights are traditionally[659] broadly divided into the so-called "negative rights", which protect against state intervention, and "positive rights", which necessitate state participation for their realization.[660] Different scholars have increasingly

652 Drumeva, *Constitutional Law/Конституционно право* (2018) 120–121.
653 ibid 121.
654 ibid.
655 Lindsay, 'Constitutional Limitations on Government Powers' (1915) 5 Proceedings of the Academy of Political Science in the City of New York 94.
656 Wheatley, *Democracy, Minorities and International Law* (2005) 128.
657 Beetham, in Jones and Weale, *The Legitimation of Power* (1991) 117 ff.
658 Drumeva, *Constitutional Law/Конституционно право* (2018) 120.
659 Dahlberg, 'Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?' (2014) 16 EJSS 255.
660 In relation to the assumption that civil and political rights require state's restrain from action, scholars point out that civil and political rights often demand concrete legislative and administrative protection actions. *See* Eichenhofer, in Hohmann-

challenged this traditional division in the last years.[661] Still, the safeguarding of "negative rights" is considered the main motivation for creating some of the first constitutions.[662] Some scholars claim that constitutions serve first and foremost the protection of freedoms and rights of the citizens from the abuse of state power.[663] The inclusion of rights and freedoms in the constitution ensures that the constitution will be able to serve as a foundation for the state's governance.[664]

(2) Conceptual Considerations

After the constitutional content and functions have been concisely presented, the next step towards the definition of the term "Bulgarian constitutional law" concerns examining the conceptual characteristics of the concept in general. The aim is to present conceptual characteristics tightly intertwined with the study's goal. Given the purpose of the research, the term "constitution" needs to designate the constitutional norms' "ought to" purpose.[665] The concept should be able to reflect upon the aim of examining the relationship between the constitution and social protection. Then, the constitutional term needs to be understood normatively, which implies the underlining of the validity of its norms regardless of the actual situation regarding the adherence to these norms.[666] The normative understanding of the term enables the constitution to contain specifications for the different areas of the law, including social protection.

Dennhardt and others, *Grundrechte und Solidarität* (2011) 30–31. Alternatively, authors point out that social and economic right at times do require state's restrain from action. *See* Dahlberg, 'Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?' (2014) 16 EJSS 256.

661 Some scholars reject the "positive" and "negative" taxonomy since they consider it to be "overtly simplistic" and "artificial". *See* Clements and Simmons, in Langford, *Social Rights Jurisprudence* (2012) 409 ff.

662 Drumeva, *Constitutional Law/Конституционно право* (2018) 665.

663 Grimm, *Constitutionalism* (2016) 4–23.

664 Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 94.

665 Kelsen states that "the norm is the expression of the idea that something ought to occur, especially that an individual ought to behave in a certain way". However, this reveals nothing in relation to whether the individual really behaves in accordance to the "ought to". *See* Kelsen, *General Theory of Law and the State* (1949) 36.

666 "That is to say, the legal rule is valid even in those cases where it lacks efficacy". *See* ibid 30. More on the transition from the actual status quo to the "ought to", *see* Nenovski, *Law and Values/Право и Ценности* (1983) 46.

Further, the normative meaning of the constitutional concept also leads to the aspect of the constitutional precedence over ordinary laws.[667] The precedence is crucial for the present study since the goal of determining constitutional influence requires that the constitution and the social protection system are not positioned on the same level. The legal order's unity is founded upon the requirement that the creation of one norm is determined by another, higher norm, whose creation, in turn, is determined by an even higher norm. In this sequence, the ultimate source of dominance is the basic norm, which bears the highest rank in the legal order.[668] Hence, if the constitution did not possess the power of precedence and domination, a higher norm should have the ultimate precedence in the given legal order.[669]

When it comes to the discussed formal elements of the constitutional content, the aggravated amendment of the constitution is related to its supremacy.[670] If the constitution could be procedurally amended as the ordinary legislation, then the supposed higher ranking of the constitution compared to social protection laws would, in reality, be quite feeble. As mentioned above, the formal codification element does not amount to an indispensable feature of the constitutional concept. Still, the presence of a codified constitutional document can serve as a starting point for the research and the determination of substantive constitutional law. In the case of uncodified constitutional norms, these must also respond to the requirement for precedence over ordinary legislation.

The material content of the concept of the constitution could be composed of norms concerning the organization of the state and norms regulating an individual's legal position. Both types of norms are important for concrete research since they can have relevance for social protection. Further, the constitutional term incorporates the main functions outlined in the previous sub-section since the study's goal does not impose any restrictions on the given purposes that the constitution needs to fulfill.

In Bulgarian legal science, there is a general concord on the content of the abstract concept of constitution. Namely, it is widely accepted that the term embraces the systematized amalgamation of public law norms that determine the main features of the legal organization and governance of the

667 Grimm, *Constitutionalism* (2016) 321.
668 Adamovich and others, *Österreichisches Staatsrecht* (2011) 3.
669 Kelsen, *General Theory of Law and the State* (1949) 124.
670 Belov, *Constitutional Law in Bulgaria* (2019) 56.

state.[671] These norms are ultimately determined based on the constituent power.[672] Thus, in understanding the constitutional concept and the power of the constitutional norms, the national definitions rely on the concept of constituent power ("*pouvoir constituent*"), which indicates "the ultimate source of authority in the state".[673] Therefore, the predominant definition embraces the formal elements discussed above that rely on a codified solemn document and the material aspects of the fundamental definition of the state's order, in combination with the function of state organization.

bb. Bulgarian Constitutional Law in the Framework of the Research

For the research to examine the specific constitutional requirement for social protection, it must first be assessed which Bulgarian norms correspond to the considerations of the constitutional content, functions, and general conceptual features, as discussed in the preceding parts. To begin, there are several aspects concerning the requirement for the precedence of the constitution over ordinary legislation. First, Article 5(1) of the CRB states that the Constitution is the "supreme law"[674] and, as such, no other law can be contrary to the constitutional norms. The reliance on the adjective "supreme" implies gradation and conveys the meaning that the Constitution has the greatest legal force in comparison with the rest of the legislation.[675] The legal force is expressed in the subordination of legal acts between each other and entails that the legal act with lesser legal force should conform with the higher legal act. Given that the Constitution has the greatest legal force, then ordinary laws have to conform to it.

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671 Vladikin, *General Theory of the State/Общо Учение За Държавата* (2000) 87; Drumeva, *Constitutional Law/Конституционно право* (2018) 27.

672 Vladikin, *General Theory of the State/Общо Учение За Държавата* (2000) 87; Drumeva, *Constitutional Law/Конституционно право* (2018) 27; Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997) 27.

673 Loughlin, *The Idea of Public Law* (2004) 2. For a comprehensive review of the concept, please, *see* ibid 99–113.

674 The usually utilized descriptive adjective for the constitutions as a "highest" ("висш") norm, which indicates its precedence, has been replaced by the even stronger adjective in terms of the degree of precedence by the reliance of the word "supreme" ("върховен"). For overview on the difference in the usage of these adjectives in the Bulgarian Constitution, *see* Nenovski, 'The Individual Rights in the 1991 Constitution of the Republic of Bulgaria/Правата на личността в Конституцията на Република България от 1991 г.' (1995) 36 Legal Thought/Правна мисъл 7–8.

675 Stoichev, *Constitutional Law/Конституционно право* (2002) 65.

What's more, the constitutional precedence also stems from Article 4(1), which provides that the state is governed by the rule of law, thereby implying the state's commitment to the Constitution as a law with the greatest legal force. The principle of the rule of law is strongly pronounced since it is part of the highest values in the Preamble[676] and is further featured in Article 4 as one of the fundamentals of the constitutional order. The requirement for adherence to the Constitution is mentioned several times throughout the text in definitions of the highest state organs' organization and functions that are tied to the requirement for conformity with the constitutional provisions.[677]

Last but not least, the precedence of the CRB is also reflected in Article 5(2), providing that the constitutional provisions "shall apply directly".[678] According to the Constitutional Court, the "shall apply directly" provision entails that all citizens and legal entities can rely directly on the constitutional norms in defense of their rights and legal interests.[679] The direct application of the Constitution is also expressed in the annulment of pre-existing legislation that contradicts the basic law.[680]

676 Drumeva, *Constitutional Law/Конституционно право* (2018) 134.

677 For instance, Article 67(2) on the National Assembly or Article 103(1) on the President or Vice-President, CRB.

678 In the national scholarship, there are conflicting views on which constitutional provisions could be considered as directly applicable. Some believe that all constitutional provisions fall under this category, as there is no exception to the provision on direct applicability. *See* Stoichev, *Constitutional Law/Конституционно право* (2002) 69. Other scholars argue that only some of the provisions are capable to be directly applicable as the CRB itself provides that legislation needs to be enacted for the realization of some of its provisions. *See* Spasov, *Study on the Constitution/Учение за Конституцията* (1997) 35. Finally, scholars point that there could be contradictory interpretations of Article 5(2) of the CRB when it is examined together with Chapter VIII of the Constitution that establishes the concentrated constitutional control in the country through the Constitutional Court. Namely, the direct effect of the CRB could be interpreted in a way allowing all courts to directly apply the constitutional provisions in case of doubt of unconstitutionality. However, the Constitutional Court is the only institution allowed to declare unconstitutionality. Regular courts are instead only allowed to disregard "pre-existing laws" on grounds of unconstitutionality. *See* Belov, *Constitutional Law in Bulgaria* (2019) 56.

679 Constitutional Decision No 10/1994 on case 4/1994.

680 If the pre-existing legislation which was contradictory to the Constitution was not annulled by the new highest law but remained in force until it was annulled by a law enacted on the basis of the new Constitution, the pre-existing law would weaken the new Constitution by obstructing its direct applicability. Thus, the old legislation that contradicts the constitutional provisions should be considered as annulled on the day of the entry into force of the new Constitution. *See* Constitutional Decision

In addition to being the supreme law in the country, the Constitution provides the fundaments of the state organization. The Constitution defines the foundations of the form of government and the economic organization, legitimatizes and limits state power, and organizes the highest state organs.[681] The constitutional text also establishes the basics regarding the individual's position, including through a wide-ranging list of fundamental rights and safeguarding mechanisms for rights' protection such as the Constitutional Court, the administrative justice, and the Ombudsperson.[682]

When it comes to the formal feature of the aggravated amendment of the constitution, it could be observed that changes to the CRB are more difficult than reforms of ordinary laws. Namely, there are two-track procedures[683] built upon material criteria, which entail different formal and material amendment aspects. While the ordinary National Assembly can carry out the first type of amendment, the second amendment procedure concerns issues of such crucial importance for the state and society that only a Grand National Assembly can execute it. According to Article 154(1) of the Constitution, the first type of amendment procedure initiative should be introduced by either ¼ of the members of parliament or the President. Then, the proposal is approved if it is supported by ¾ of all members after undergoing three-stage voting on different days.

If the proposal received less than ¾ but not less than ⅔ from the votes of all members, it could be reintroduced for voting after at least two months but not more than five months. The new voting requires the support of ⅔ of the votes of the members of parliament (Art. 155(2), CRB). The other amendment procedure requires the Grand National Assembly and concerns areas that have been exhaustively listed in Article 158. Some issues that belong to this amendment procedure deal with the changes in the state's territory and changes in the forms of state structure and state government. The main purpose of the Grand National Assembly is the enactment of a new constitution. The Grand National Assembly is composed of 400 members who have been elected following the election law in force (Art. 157, CRB).

No 10/1994 on case 4/1994 para I. For more on this issue, *see* Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002) 13–14.

681 Stoichev, *Constitutional Law/Конституционно право* (2002) 95; Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997) 95.

682 Belov, *Constitutional Law in Bulgaria* (2019) 31.

683 ibid 42.

Apart from the formal aspect of codification, constitutional norms stemming from customary constitutional law can also be found outside the body of the codified document. To clarify, through the case law of the Constitutional Court, the principle of proportionality is now firmly established as a constitutional requirement for the legislature.[684] Apart from the proportionality principle, further unwritten constitutional principle stemming from the rule of law includes the aspect of legitimate expectations.[685] Additionally, international conventions that have been ratified according to Article 5(4) of the Constitution and have thus become part of the national law can be viewed as sources of constitutional law.[686] Moreover, further legal sources and even regulations on the organization of supreme state organs, like the Regulation on the Organization and Activity of the National Assembly, are also regarded as sources of constitutional law.[687] Last but not least, the judgments of the Constitutional Court on constitutional interpretation or norm control represent sources of law and are attributed to a constitutional law rank.[688]

To wrap it up, the concept of Bulgarian constitutional law in the research framework includes norms that hold precedence over ordinary law and concern fundamental state organization and the rights and freedoms of the individual. Hence, it can be expected that, in a normative sense, the constitutional law can represent an influencing factor in the social protection system. The set of constitutional norms serves the functions of organizing and stabilizing the state and aim at maintaining its integrated unity. A further component of the definition is the constitutional law's ability to legitimize state power and the limitation of its exercise predominantly expressed in the function of protecting individual rights. The Bulgarian constitutional law contains both codified and unwritten norms in terms of

684 For instance, *see* Constitutional Decision No 7/2012 on case 2/2012; Constitutional Decision No 2/2015 on case 8/2014.

685 Constitutional Decision No 10/2012 on case 15/2011.

686 Stoichev, *Constitutional Law/Конституционно право* (2002) 47.

687 Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997) 84–85. In this regard, even some decisions of the National Assembly, which generally have no normative character, could be considered sources of constitutional law if they, for instance, deal with procedural rules for the election of the prime minister or Constitutional Court judges. *See* Stoichev, *Constitutional Law/Конституционно право* (2002) 47.

688 The decisions on the institutional conflicts on the separation of powers may have normative character since they can contain important interpretations on the respective constitutional provisions. See Belov, *Constitutional Law in Bulgaria* (2019) 290.

formal characteristics. Compared to ordinary law, the codified constitutional document is characterized by a more aggravated amendment procedure. Still, the constitutional law concept embraces both uncodified norms and further sources, such as principles of customary constitutional law, ratified international treaties, and decisions of the Constitutional Court.

c. Structure of the Current Bulgarian Constitution

Generally, the structure of constitutions tends to be divided into two main parts.[689] On the one hand, a considerable part often deals with the state organization that includes the state's economic, social, and political foundations, as well as the separation of powers and the work and interactions of the supreme state organs. On the other hand, the other part addresses the regulation of the legal position of the individual. Further, the material order of the Constitution contains other norms, such as constitutional principles and state objectives, which have significance for the shaping of the state tasks but cannot be simply assigned to one of the groups of constitutional parts mentioned above.[690]

The Bulgarian Constitution is divided into 10 Chapters, preceded by a Preamble and followed by "Transitional and Concluding Provisions". The latter provisions represent an organic part of the constitutional text, even if they are not incorporated in the Constitution's main body.[691] The Preamble poses greater difficulties in determining its exact relation to the constitutional norms, especially when it comes to its legal status. The question of whether the provisions of the Preamble can result in legal rights and duties has been debated by different authors.[692] In the Bulgarian legal scholarship, the views on the matter are polarized.[693] Still, the greater part of the scholars concludes that the Preamble of the CRB is not just a political declaration but represents an abstract synthesis of the main constitutional principles, which are foundational for the whole constitution.[694] Even if

689 Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 121.
690 ibid 122.
691 Drumeva, *Constitutional Law/Конституционно право* (2018) 155.
692 Orgad, 'The Preamble in Constitutional Interpretation' (2010) 8 Int. J. Const. Law 714; Drumeva, *Constitutional Law/Конституционно право* (2018) 157.
693 Drumeva, *Constitutional Law/Конституционно право* (2018) 157.
694 Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 79–80; Drumeva, *Constitutional Law/Конституционно право* (2018) 157–158; Mrachkov, in *Top-*

the provisions of the Preamble do not have the legal character of the legal norm, they have a key role in interpreting the logic and content of the constitutional norms.[695] In assessing the legal status of the Preamble, the research will predominantly rely on the Constitutional Court's interpretation of the legal force of the Preamble's provisions.

Returning to the main body of the CRB, the Constitution begins with a chapter on the fundamental principles of state order, containing the main principles for the state's governance, including the economic foundations of the state. The CRB does not contain a separate chapter on the economic basis but rather intertwines the economic organization with the rest of the basic principles of state organization. This approach toward the constitutional structure can be explained by the historical moment in which the document was created. The CRB was destined to serve as one of the main tools for transitioning from socialism to democracy and building a market economy. Accordingly, the new free-market economy became intertwined with the fundamental organization of the state in the constitutional text.[696]

The chapter also contains some state objectives, characterized as general policy objectives documented in the Constitution. Some of these state objectives include protecting families, motherhood, and children (Art. 14, CRB). The state objectives impose an obligation to the extent that the state needs to pursue the declared objectives.[697] However, state objectives could not be seen as a requirement for creating subjective rights.[698] In fact, the creators of the Constitution found it necessary to formulate some of the mentioned state objectives also as rights[699] in the next chapter of the CRB, rather than considering that it would be enough to leave them just as state objectives.

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ical Issues of the Labour and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право (2016) 39; Mrachkov, in *Topical Issues of the Labour and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2017) 43; Tanchev, *Introduction to Constitutional Law/Въведение в Конституционното Право* (2003) 333–334; Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997) 42–43.

695 Mrachkov, in *Topical Issues of the Labour and Social Insurance Law/Актуални проблеми на трудовото и осигурителното право* (2016) 39.

696 Drumeva, *Constitutional Law/Конституционно право* (2018) 155.

697 Sommermann, *Staatsziele und Staatszielbestimmungen* (1997) 377.

698 ibid 418–419.

699 For instance, the state objective for the protection of the family, motherhood and children has been concretized in different subjective rights in the provisions of Article 47 of the CRB.

The chapter on the fundamental state order principles is followed by the chapter on citizens' fundamental rights and duties. The chapter contains all rights without grouping them by some criteria. The CRB includes the most extensive catalog of fundamental rights in the history of Bulgarian constitutional law.[700] In addition to the fundamental rights chapter, the CRB further contains certain fundamental principles that can shape the common obligations of the state, including in view of fundamental rights. Some of these principles include the principle of human dignity part of Article 4(2) and Article 6(1), the principle of equality stated in Article 6(1), and the rule of law proclaimed in Article 4(1). Generally, constitutional practices have demonstrated that principles can result in a multitude of material consequences, thereby enabling them to reach out far into the substantive law.[701]

The following chapters of the CRB deal with the issues of the organization of the state power and set the norms for the work of the National Assembly, the President of the Republic, the Council of Ministers, and the judicial power. The next chapter on the local self-government and administration introduces the constitutional decentralization aspects of the vertical separation of powers in the state.[702] The norms establishing the work of the Constitutional Court have been placed in a separate chapter.[703] Then, in ten articles, chapter nine deals with constitutional amendment issues and the adoption of a new constitution.[704]

700 Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 52.

701 Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (1984) 122.

702 Drumeva, *Constitutional Law/Конституционно право* (2018) 631.

703 The structure of the constitutional text and more precisely the separate chapter on the Constitutional Court became an important aspect in an interpretative decision of the Constitutional Court discussing whether the Court is part of the judicial system (*see* Constitutional Decision No 18/1993 on case 19/1993). The Court concluded that it itself is not a component of the judicial system as it falls outside of the three powers enlisted in Article 8 of the CRB. The Constitutional Court rather considered that it exercises its prerogatives independently and alongside the supreme organs of the three powers. The reasoning of the judgment was sharply criticized by some scholars who argued that the Court positions itself as a "fourth power" which is against the provisions of the CRB which in Article 8 divides the power of the state into legislative, executive and judicial branches. *See* Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002) 69–89.

704 The Constitution continues with a short chapter on the national state symbols and finishes with the transitional and concluding provisions.

To conclude, the main content of the Bulgarian Constitution resonates with the general constitutional structure by encompassing two main constitutional contents concerning the state organization and the legal position of the individual. The chapters regulating the work of the supreme state organs and the articles dealing with the bases of the economic organization from the "Fundamental Principles" chapter tend to belong to the constitutional content on state organization. The chapter on the fundamental rights and duties of the citizens belongs to the content concerning an individual's legal position. Finally, the first chapter's constitutional principles and state objectives represent material constitutional content that cannot be assigned to the previously differentiated sections on fundamental rights or state organization.

2. The Constitutional Norms Relevant to Social Protection

In line with the purpose of the research, the need arises to examine the constitutional norms relevant to social protection more closely. Therefore, the relevant fundamental rights are examined below by first analyzing Bulgaria's different types of constitutional rights. Next, based on the uncovered differences between the various fundamental rights, the concept of fundamental social rights is succinctly clarified due to its pertinence in examining the concrete influences on social protection. However, fundamental rights are not the only aspect that could be relevant in examining constitutional law's role.[705] Often, when immediate legislative action is required due to a given critical situation, additional constitutional provisions that protect the principle of democracy and the rule of law could also be violated.[706] Accordingly, the further related constitutional content is assessed by delving into the relevant principles and state goals.

Naturally, a question arises on determining the constitutional content that could be considered relevant to social protection.[707] A delimitation of the relevant norms needs to consider the provided definition of social

705 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 8.

706 ibid.

707 Fichtner-Fülöp, *Einfluss des Verfassungsrechts und des Internationalen Rechts auf die Ausgestaltung der sozialen Sicherheit in Ungarn* (2012) 250; Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 224.

protection.[708] However, the reliance on the apparent connection to the definition cannot comprehensively embrace all of the constitutional norms that may influence social protection. First of all, further written and unwritten norms may be relevant, despite their prima facie unrelatedness. Second, social protection is, after all, governed by the state bodies, and hence in principle, the whole constitutional body of law may be relevant. Therefore, there can be no abstract definition of which norms will be considered relevant. Instead, the analysis of the relevant constitutional norms below closely follows the constitutional interpretation of their relevance for social protection. Fundamental rights that, at first glance, are not explicitly connected are going to be considered germane to the extent that they can have relevance for social protection issues.[709]

a. Fundamental Rights

aa. Types of Fundamental Rights in the Bulgarian Constitution

In general, there are different ways in which legal scholarship has divided fundamental rights.[710] Still, no single approach comprehensively covers fundamental rights since the different classifying methods have varying guiding criteria.[711] Rights are frequently reflected upon and examined concerning their negative and positive aspects.[712] On the one hand, rights can protect against the state's intrusion in the individual's private life and enable free participation in social life and political processes. On the other hand, subjective rights deducted from state obligations that on their own have been concretized in positive state actions, contribute to making this

708 For more on this, refer to the provided social protection definition in the part on the functional systematization.

709 For instance, the right to property can be relevant to social protection to the extent that it protects certain private law entitlements.

710 Stern and Sachs, *Das Staatsrecht der Bundesrepublik Deutschland* (1988) 451; Stoichev, *Constitutional Law/Конституционно право* (2002) 231.

711 For instance, some authors divide the rights on the basis of the group to whom they are granted, others rely on the function that the rights are supposed to fulfil. *See* Stern and Sachs, *Das Staatsrecht der Bundesrepublik Deutschland* (1988) 451; Stoichev, *Constitutional Law/Конституционно право* (2002) 231.

712 Klatt, 'Positive Rights: Who Decides?' (2015) 13 Int. J. Const. Law 354.

participation in social and political life possible.[713] It was generally assumed that all classical liberal rights represent negative rights, while the social and socioeconomic rights belong to the group of positive rights. However, such a simplified division could be misleading since classical liberal rights can possess positive dimensions. Analogically, social rights can have negative dimensions.[714] The authors further underline the objective and subjective dimensions of rights due to the related differences in the respective legal effects.[715] Such distinction is relevant to the present research due to its ability to focus on constitutional provisions' different influences.

The examination of the structure of the 1991 Constitution revealed that the CRB does not formally distinguish between different types of rights. Instead, the Constitution covers all of the rights in a chapter on the fundamental rights of citizens. Some scholars consider this lack of grouping as an expression of overcoming the anachronistic rights' separation into positive and negative.[716] However, this is not to say that no difference is drawn between the various constitutional rights. On the contrary: since its very beginning, the Bulgarian constitutional theory has adopted the classification of rights that is ultimately based on Jellinek's status theory and thus distinguishes between "negative", "positive", and "active" rights' statuses.[717] This separation is so entrenched in the legal discourse that it has informed the writing of the fundamental rights sections of the 1947, 1971, and 1991 constitutions.[718] The Constitutional Court has also taken on

713 It is generally accepted that "positive rights" require state action in contrast to "negative rights" that entail the refraining from unjustified interference. *See* ibid. This differentiation is rooted in Jellinek's initial classification of statuses. *See* Bumke and Voßkuhle, *German Constitutional Law* (2019) 44–45.

714 Klatt, 'Positive Rights: Who Decides?' (2015) 13 Int. J. Const. Law 355.

715 Subjective rights stem from norms with objective dimension. At the same time, however, not all normative obligations of the state correspond to an individual subjective right. Hence, norms with objective content could "possibly but not necessarily entail subjective rights". *See* Ehlers, in Ehlers, *European Fundamental Rights and Freedoms* (2007) 193.

716 Drumeva, *Constitutional Law/Конституционно право* (2018) 676.

717 Balamezov, *Constitutional Law/Конституционно Право* (1993) 69–71; Stoichev, *Constitutional Law/Конституционно право* (2002) 231; Drumeva, *Constitutional Law/Конституционно право* (2018) 677–678; Gabrovski, 'Axiology of the Philosophy of Law/Аксиологически проблеми на философията на правото' (2010) 18 'Diogenes' Library/Библиотека "Диоген" 232–234.

718 Namely, despite that the rights are grouped together, their order of presentation in the last three constitutions always begins with the civil rights then continues with

this systematization approach. The Court tends to juxtapose[719] the so-called "defense" or "negative" rights against "participatory" or "positive" rights when assessing the differences of the latter in terms of resulting state obligations.[720] Further, the Bulgarian constitutional jurisprudence distinguishes the rights based on their historical occurrence following the theory of Karel Vasak[721] and considers them as distinctive "generations" of rights.[722]

The constitutional fundamental rights provisions can also be divided based on their different addressees.[723] However, there is no explicit demarcation of the addressed groups in the CRB. Classical civil rights are provided to all individuals regardless of their nationality.[724] The political rights could

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the political rights and ultimately ends up with the social, economic and cultural rights. *See* Belov, *Constitutional Law in Bulgaria* (2019) 325 ff.

719 On the problems of contrasting participatory rights with the classical rights and the balancing of the ranks of the two categories, *see* Zacher, in Kurzrock, *Menschenrechte* (1982) 121.

720 The Constitutional Court has stated that "[i]t is generally accepted that the fundamental constitutional rights have a defensive character against the state on the basis of which they are also called negative, since their exercise requires the state to refrain from action…" (translation from Bulgarian by author). *See* Constitutional Decision No 7/1996 on case 1/1996 para II.8. In another decision the Court stated that "… unlike personal fundamental rights, which are called "defensive" and "negative", the essence of [positive] rights is not a defense against the encroachment of public power into the reserved private sphere, but a demand for positive action in the social sphere by the State and for participation in its achievements; these rights are therefore called "participatory" and "positive". They can only be realised if the state takes the necessary and expected measures and creates the conditions and guarantees" (translation from Bulgarian by author). *See* Constitutional Decision No 2/2006 on case 9/2005 para II.11. The distinction between the participatory and defensive rights has also been adopted by the Bulgarian scholarship. In this regard, *see* Mrachkov, *Social Security Law/Осигурително право* (2014) 54–55; Balamezov, *Constitutional Law/Конституционно Право* (1993) 71–75.

721 Belov, *Constitutional Law in Bulgaria* (2019) 863.

722 "On the basis of their genesis and legal nature… the first generation of fundamental rights are directed towards the protection of the physical and spiritual integrity of the person and especially the autonomy and the private sphere of the individual" (translation from Bulgarian by author). *See* Constitutional Decision No 4/2006 on case 11/2005 para I. For more, *see* Kolev, 'On the Fundamental Human and Citizen Rights/Още веднъж за основните права на човека и гражданина' (2016) 12 International Politics/Международна политика 68.

723 Drumeva, *Constitutional Law/Конституционно право* (2018) 680–681; Nenovski, 'The Individual Rights in the 1991 Constitution of the Republic of Bulgaria/Правата на личността в Конституцията на Република България от 1991 г.' (1995) 36 Legal Thought/Правна мисъл 5 ff.

724 Belov, *Constitutional Law in Bulgaria* (2019) 331.

concern different nationality holders depending on the type of political right and whether it concerns matters related to the country's EU membership.[725] Social rights are provided only to Bulgarian citizens. The restricted scope in this regard is justified since these rights give access to benefits based on national solidarity and, as such, concern "national security in the wider sense".[726]

In terms of possible limitations of human rights, the Constitution establishes one general restriction in Article 57(2) prohibiting misuse of a fundamental right that results in an infringement upon the rights and legal interests of others. The provision establishes the horizontal application of constitutional rights in the country.[727] The constitutional possibilities for further restriction on fundamental constitutional rights could be examined by separating the rights into three main groups.[728] The first group of rights contains the so-called "absolute rights" that do not allow any restrictions.[729] Then, there are those rights whose realization could be temporarily curtailed in the exceptional cases of the proclamation of war and the introduction of martial law or state of emergency (Art. 57(3) CRB). The last third group of fundamental rights contains rights that could be restricted based on the previously mentioned extreme occasions and could also be curtailed on other grounds. There are two distinguishable branches in this regard. The first incorporates rights whose grounds for restrictions are expressly referred to by the Constitution.[730] The other encompasses rights that can be limited according to reasons and order left to the discrepancy of the legislature.[731]

The fundamental social rights fall in the group of rights that could be restricted temporarily on the grounds enlisted in Article 57(3) and could be subject to certain limitations imposed by the legislature. To prevent unnecessary curtailment, however, restrictions upon social rights must be

725 ibid.

726 ibid. However, as the research section on the functional systematization of social protection has demonstrated, the legislature has extended social rights also to European citizens and third-country nationals with long-term or permanent residence in the country.

727 ibid 333.

728 Constitutional Decision No 10/2018 on case 4/2017 para 3.

729 Those are enlisted in Article 57(3) and include rights such as the right to life, the prohibition of torture, and others.

730 For instance, Article 34(2), Article 40(2), and Article 42(1), CRB.

731 For instance, Article 25(6), Article 27(1) and (3), Article 30(2), and Article 31(5), CRB.

established or examined in view of the principles of proportionality[732] and equality, especially regarding the social grounds of inadmissibility of restrictions of rights or privileges outlined in Article 6(2).[733] Moreover, social rights limitations must be imposed only through parliamentary law.[734] Last but not least, the imposed restriction could not drain the social right of its core and revoke them in their entirety.[735]

bb. The Concept of Fundamental Social Rights

The term "fundamental social rights" has been utilized to convey a plethora of meanings[736] and has even been accused of general vagueness.[737] Indeed, the term does require some clarification, given its importance for this research. In the Bulgarian legal scholarship, fundamental social rights are still primarily characterized as "positive" rights,[738] although some authors tend to abstain from such clear-cut separation and instead stress the positive and negative dimensions of a right.[739] Still, there is a consensus that these rights are not automatically realizable based on their inclusion in the Constitution but require explicit development through a law regulating the conditions for the rights' exercise.[740] The establishment of the fundamental conditions and procedures for realizing these rights needs to be carried out by laws rather than by a normative instrument of lower rank.[741]

732 Constitutional Decision No 7/2019 on case 7/2019.
733 Constitutional Decision No 3/2013 on case 7/2013.
734 Mrachkov, *Social Security Law/Осигурително право* (2014) 54.
735 Drumeva, *Constitutional Law/Конституционно право* (2018) 786; Petrova, in Belov, *Peace, Discontent and Constitutional Law* (2021) 227.
736 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 25–29.
737 For instance, academics argue that the term "social rights" in general needs refinement due to the different legal senses in which it is used. For instance, it could be used to indicate international social rights, social rights in ordinary law, or constitutional social rights. *See* King, *Judging Social Rights* (2012) 17–19.
738 Mrachkov, *Social Security Law/Осигурително право* (2014) 55.
739 Drumeva, *Constitutional Law/Конституционно право* (2018) 676.
740 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 26–27; Drumeva, *Constitutional Law/Конституционно право* (2018) 675; Mrachkov, *Social Security Law/Осигурително право* (2014) 54; Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 83.
741 Mrachkov, *Social Security Law/Осигурително право* (2014) 54.

Even after the procedures and conditions for the realization of the fundamental social rights have been established in legislation, these rights continue to serve as a benchmark for state action and cannot be simply annulled. A characteristic of the fundamental social rights, stemming from their fundamental and constitutional character, is that they are irrevocable.[742] Their existence follows directly from the supremacy of the CRB in the hierarchy of laws and the direct applicability of its provisions promulgated in Article 5(1). Fundamental social rights entail constitutional mandates for their implementation by the enactment of a respective normative framework.[743] The implementation of this mandate is carried out with due respect to the available resources and possibilities of the state.[744] Nevertheless, it is largely recognized that the available resources of the state could not be the grounds for the restriction of acquired legal positions.[745] This latter requirement discloses the simultaneous "defensive" or "negative" dimension of fundamental social rights.

Accordingly, the present research requires a definition that can reflect upon the related objective and subjective aspects of social rights. The definition needs to address the state's role in social rights realization[746] and depict the relationship between social rights and the constitutional mandates for their implementation through institutions. Some understand social rights as "claims to benefits, which include establishing state institutions, and therefore a right to legislative action".[747] Such a definitional approach is compatible with the present research goal. Namely, this understanding entails the objective obligations for the state stemming from social rights that can enable subjective right claims through the enactment of statutes. As it will be examined in more detail in the methodology for the studying of influence, the examination of influences on social protection is inevitably

742 Article 57(1), CRB. The "irrevocability" of the human rights has become an integral part of the Bulgarian legal doctrine. *See* Drumeva, *Constitutional Law/Конституционно право* (2018) 673; Kirov, *The Rights of the Bulgarian Citizens/Правата на българските граждани* (1942) 3–7.

743 Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 83; Mrachkov, *Social Security Law/Осигурително право* (2014) 56–57.

744 Drumeva, *Constitutional Law/Конституционно право* (2018) 675; Tanchev and Belov, *Comparative Constitutional Law/Сравнително конституционно право* (2009) 290.

745 Mrachkov, *Social Security Law/Осигурително право* (2014) 55.

746 Wipfelder, 'Die verfassungsrechtliche Kodifizierung sozialer Grundrechte' (1986) 6 ZRP 140.

747 Becker and Hardenberg, in Becker and others, *Security* (2010) 100.

intertwined with the actions of state institutions and the respective prerogatives through which influence can be bestowed upon subjective rights to social protection.

Furthermore, only rights stemming from the constitutional level can be considered as forming part of the concept required for the present research. Social rights that result from ordinary law[748] cannot be considered part of the term. Finally, certain rights can be regarded as "fundamental social rights" on the international level, but this would not immediately imply that they form part of the concept. Rather, they would be considered if they have become part of the domestic law through the ratification of the international instruments bearing them.[749]

cc. Fundamental Rights relevant to Social Protection

Before delving into the concrete relevant rights, it needs to be mentioned that already the constitutional Preamble defines the fundamental rights of the individual as the essence and goal of the constitutional framework. Further, this general goal is reiterated and concretized as a state obligation in Article 4(2).[750] The constitutional provision establishes that the state guarantees the life, dignity, and rights of the individual and has to create conditions conducive to the free development of the individual and civil society. The coupling of this provision with the direct applicability of the Constitution expressed in Article 5(2) leads to the conclusion that fundamental rights cannot be treated simply as state goals. Rather, the fundamental rights in the Constitution entail objective dimensions that directly bind the legislature.[751]

Rights and obligations worded to target social protection are naturally of particular importance for the present research. In this relation, Articles 51 and 52 of the Constitution take a central position in forming state obligations. Article 51(1) introduces the rights to social insurance and social assistance together in a single provision. This approach is not based on

748 Certain social goals may be carried out on the basis of ordinary law rather than based on constitutional rights. *See* Thamm, *Probleme der verfassungsrechtlichen Positivierung sozialer Grundrechte* (1990) 25–26.

749 For more information on this issue, please refer to the research section on the relationship between international law and Bulgarian constitutional law.

750 Drumeva, *Constitutional Law/Конституционно право* (2018) 682.

751 ibid.

the sameness of the rights or on the assumption that one of these rights results in the other. Rather their grouping stems from the rights' closeness as fundamental social rights and the idea that when an individual has no claim to one of the rights, the other could be a potential option.[752] The Constitution recognizes these two rights but does not determine their content. Furthermore, the CRB does not explicitly provide the objective duty of the state to establish the realization of this right through the enactment of appropriate legislation. The state's duty is rather implied indirectly. A related obligation for rights' realization further stems from Article 4(2) of the Constitution postulating that the state shall, among others, guarantee individual rights.[753]

Concerning the right to social insurance, the constitutional provision confers the state with an objective obligation to establish a public social insurance system.[754] The existence of private social insurance options is not prohibited;[755] however, the constitutional requirement solely concerns enacting a public system. The objective state requirement is a precondition for the subjective realization of the right to social insurance.[756] However, the constitutional right does not impose any financial obligations upon the state apart from overseeing and guaranteeing the work of the social insurance funds.[757] Namely, public social insurance represents a system of mutual help and solidarity to protect the common interest.[758] The constitutional jurisprudence has confirmed that the right to social insurance covers in its different forms the protection provided in the cases of the realization of the classic social risks.[759] The second provision of Article 51(2) stipulates the concrete right to social insurance against unemployment. In this regard,

752 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 56; Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 47. There are also other constitutional rights which have also been positioned together in the constitutional text; for instance, Article 17(1) introduces both the right to property and the right to inheritance.

753 Machkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 58.

754 Constitutional Decision No 5/2000 on case 4/2000.

755 Constitutional Decision No 7/2011 on case 21/2010.

756 Constitutional Decision No 12/1997 on case 6/1997.

757 Drumeva, *Constitutional Law/Конституционно право* (2018) 784.

758 Constitutional Decision No 5/2000 on case 4/2000 para I.A.1.

759 ibid.

the constitutional text is explicit that the conditions and provisions for the right to unemployment benefits must be set in law.

Similar to the right to social insurance, the right to social assistance results in the objective obligation for the enactment of a system that can realize this right in a case of need.[760] The holder of the subjective right to social assistance is the person of material distress, regardless of the reason that has brought him or her into such a dire situation.[761] Article 51(3) then introduces several specific social groups placed under the special care of the state and the society. Special care can comprise social assistance and support benefits and measures.[762] The groups include elderly people who have no relatives and cannot support themselves and the physically and mentally disabled.

Article 52 is dedicated to the right to health[763] and its main aspects, although the constitutional text does not formulate this right directly as the "right to health".[764] The right is composed of two main aspects: the right to health insurance and the right to free medical care.[765] To clarify, on the one hand, Article 52(1) introduces the right to health insurance that includes the need for the state to guarantee and provide citizens with affordable medical care. On the other, the constitutional provision also stipulates free medical care under the conditions and order prescribed by law. The obligations for the state stemming from this provision imply the requirement for legislative action and the establishment of state institutions through which the rights can be realized.[766] Regarding the right to health insurance, the state is obliged to create a targeted and compatible with the Constitution financing

760 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 58.

761 Constitutional Decision No 2/2006 on case 9/2005.

762 Drumeva, *Constitutional Law/Конституционно право* (2018) 786–787.

763 The Constitutional Court has stated that Article 52 of the CRB formulates the fundamental right to health despite the lack of explicit reference in the constitutional text. *See* Constitutional Decision No 7/2011 on case 21/2010 para IV.

764 Some authors consider that the lack of explicit reference to the right to health is an omission of the Constitution. This omission is attributed to the Bulgarian legal history and the lack of tradition in the usage of the terminology "right to health" ("право на здраве"). *See* Mrachkov, *Social Security Law/Осигурително право* (2014) 56.

765 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 350.

766 Drumeva, *Constitutional Law/Конституционно право* (2018) 787–788.

model based on public health insurance.[767] However, the situation is different when it comes to the right to free medical care. In this regard, the state is obliged to not only establish the relevant institutional setting but to further secure the financing of the system.[768]

In addition, Article 52(2) provides the sources of financing for "healthcare". The term "healthcare" stands for the state policy, as well as the state's governing and organizing role in the realization of the right to health.[769] Financing for the purpose could be obtained from the state budget, from employers, from personal and collective insurance contributions, and based on other sources, which are to be defined and organized through law. The Article continues with the objective that the state must protect the health of all citizens, including by the development of sports and tourism. In addition, no one is to be subjected to forcible medical treatment or sanitary measures except in the circumstances established by law. The right to health also includes the state's objective to exercise control over all medical facilities and the production and trade of pharmaceuticals, biologically active substances, and medical equipment.

Apart from rights with a direct link to social protection, further provisions can still be of potential importance to studying influence. To begin, Article 47 deals with the general protection of children and mothers. Article 47(1) postulates that the upbringing of children until reaching the age of majority is a right and duty of the children's parents and is assisted by the state. This issue is further featured in the Constitution as a state goal that declares mothers, children, and the family to be under the protection of the state and the society (Art. 14, CRB).

Then, Article 47(2) reiterates but also reinforces the state's objective from Article 14 to provide "special protection" to mothers. The provision goes a step beyond the declaration of a state goal and establishes the fundamental right of mothers to special protection.[770] To ensure that the special protection will not remain just as a program goal, the Constitution explicitly lists the forms of protection. This protection includes the guaranteeing of pre-natal and post-natal leave, the provision of free obstetric care, alleviated working conditions, and other social assistance. The different forms of

767 ibid.
768 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 350.
769 ibid.
770 Drumeva, *Constitutional Law/Конституционно право* (2018) 767.

special protection involve measures from the realms of labor law, social insurance law, social assistance, and medical care support. The enlisting of the different forms of "special protection" suggests that the goal of the provision can only be achieved in the complex application and the complementary of the different laws.[771]

Moreover, additional family and children-related constitutional provisions can bear relevance to different branches of social protection. For example, Article 47(4) provides the provision of special protection by the state and society to the children left without the care of their parents and relatives.[772] Further family and children rights that can contribute to various social protection rights include the right to matrimony (Art. 46, CRB) and the equality of spouses (Art. 46(1), CRB), the already mentioned support of the family provided by the state and society (Art. 47(1), CRB) and the equal position of children born out of marriage (Art. 47(3), CRB). These rights reflect the state's duties for setting up schemes that support family life and the financial aspects, such as different family and children's benefits.[773]

A number of different further rights can also be considered in view of social protection. First, the foundational right to life (Art. 28, CRB) needs to be mentioned, particularly in terms of the preservation of human dignity and the right to social assistance.[774] In addition, judging by the comparative constitutional experience,[775] the right to property provided for in Article 17 could potentially confer state obligations when it comes to certain social protection rights. Interestingly enough, Article 17 is featured in the constitutional section on the fundamental principles of state order rather than in the section on the fundamental rights of citizens. Still, the Constitutional Court has confirmed that the right to property is a fundamental right that safeguards positions in both the public and private law realms.[776] Last but

771 Koicheva, *Social Insurance of Maternity/Социално осигуряване на майчинството* (2012) 46.

772 The requirement for the provision of special protection to such children could be seen as a constitutional foundation on children's rights to survivor pensions. *See* Koicheva, *Survivor Pensions/Наследствени пенсии* (2009) 85.

773 Drumeva, *Constitutional Law/Конституционно право* (2018) 765.

774 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 53.

775 Pieters, *Navigating Social Security Options* (2019) 18.

776 Constitutional Decision No 15/2010 on case 9/2010. Also *see*, Drumeva, *Constitutional Law/Конституционно право* (2018) 771.

not least, the right to respect for private and family life (Article 32 (1), CRB) can also prove influential upon certain social protection benefits.

b. Constitutional Principles

In addition to the fundamental rights, the further constitutional content of potential relevance to the researched matter needs to be quickly examined. The overview has to begin with the "rule of law" principle due to its strong presence in the national constitutional jurisprudence.[777] It needs to be clarified that the present study relies on the official English translation of the CRB that refers to the term in Article 4(1) as the "rule of law".[778] However, the Bulgarian version of the used term rather belongs to the dominating continental concept of "Rechstaat" ("правова държава").[779] Although the two terms bear certain conceptual differences, they do tend to yield similar requirements.[780] Accordingly, the present research will adhere to the official English translation of the term as the "rule of law".

The "rule of law" is mentioned two times in the constitutional text, namely in the framework of the Preamble, where it forms part of the foundational values of the State, and then in Article 4(1), where it is proclaimed that the State is to be governed in accordance to the Constitution and the laws (Art. 4(1), CRB). That being said, the constitutional jurisprudence has provided a plethora of the rule of law understandings that have evolved through time.[781] At the beginning of the Constitutional Court's existence, the rule of law was understood in the sense of the constitutional supremacy and impossibility of the basic law to be contradicted by ordinary law.[782] In this sense, the direct application of the constitutional provisions forms the

777 The Constitutional Court has referred to the principle in almost half of its decisions. *See* Shumanov, 'Fundamental Aspects of the Principle of the Rule of Law/ Основни аспекти на принципа на правовата държава' (2019) <http://gramada.org/основни-аспекти-на-принципа-на-правов/#_ftnref1> accessed 18 February 2022.

778 Official English translation of the CRB can be found at the National Assembly's webpage at https://www.parliament.bg/en/const.

779 On the same issue, *see* Belov, *Constitutional Law in Bulgaria* (2019) 31.

780 Tanchev and Belov, *Comparative Constitutional Law/Сравнително конституционно право* (2009) 263.

781 Sheljaskow, *Das Rechtsstaatsprinzip im bulgarischen Verfassungsrecht am Maßstab der deutschen Verfassungsrechtslehre und -Praxis* (2012) 142–143.

782 Constitutional Decision No 14/1992 on case 14/1992 para I.

foundation of the principle of the rule of law.[783] What is required based on this principle is thus not a mere declaration of the constitutional rights but rather the establishment of the possibilities for the protection of these rights through judicial means.[784]

Throughout the years, the rule of law has grown to be understood as a term that is a collection of a multitude of elements that concern issues such as the democratic order, the separation of powers, political pluralism, and many others.[785] The rule of law translated into the requirement to build a unitary, consistent and unambiguous legal system[786] based on the principle of the hierarchy of the normative acts. Further, the rule of law implied that the legal rules must apply equally to the legislative, executive, and judicial powers and all subjects of law.[787] According to the Constitutional Court, the principle of the rule of law, as a dynamic concept, is not responsive to a precise definition; instead, its development shows that it has grown historically and represents a term that is multifaceted and bound by values.[788] Nevertheless, the term must not be overburdened by qualifying every violation as a violation of the principle of the rule of law. Otherwise, the content and applicability of the term would be defied.[789] In any case, the principle contains both the material element of justice and the formal elements of legal certainty and legitimate expectations.[790] The latter generally implies that the State is to act in a consecutive and foreseeable manner.[791] Although the principle of legitimate expectations does not result in absolute requirements, the legislative power has to respect it when it

783 Constitutional Decision No 12/1995 on case 15/1995.
784 ibid.
785 Constitutional Decision No 8/2010 on case 2/2010; Constitutional Decision No 3/2012 on case 12/2011; Constitutional Decision No 1/2018 on case on 3/2017. Further examples include the implications of the rule of law for the clarity and consistency of the legal framework, the prohibition of retroactive laws that lead to curbing of rights and many others. For a more detailed examination, *see* Sheljaskow, *Das Rechtsstaatsprinzip im bulgarischen Verfassungsrecht am Maßstab der deutschen Verfassungsrechtslehre und -Praxis* (2012) 143.
786 Constitutional Decision No 1/2018 on case on 3/2017.
787 Tasseva, 'Die Rechtsprechung des Bulgarischen Verfassungsgerichts zum Rechtsstaat und zu den Grundprinzipien der Verfassung' (2005) 46 Jahrbuch für Ostrecht 79.
788 Constitutional Decision No 5/2014 on case 2/2014.
789 Constitutional Decision No 2/2013 on case 1/2013; Constitutional Decision No 7/2004 on case 6/2004.
790 Constitutional Decision No 1/2007 on case 9/2006.
791 Constitutional Decision No 8/2013 on case 6/2013; Constitutional Decision No 1/2005 on case 8/2004; Constitutional Decision No 3/2008 on case 3/2008; Consti-

comes to recognizing the legally acquired rights and abstaining from altering them to the detriment of the citizens and the legal entities.[792]

Next, similarly to the "rule of law", "equality" is also mentioned both in the Preamble and in the main constitutional body. In the Preamble, "equality" is proclaimed as one of the universal values of the constitutional order alongside liberty, peace, humanism, justice, and tolerance. Then, in Article 6(2), the equality of citizens before the law is formulated both as a principle and as a fundamental right. In terms of the former, equality as a constitutional principle is foundational for the interpretation and application of the CRB and the legislative activity.[793] Equality as a fundamental right entails equality before the law and results in the objective obligation for equal treatment by the state power. The right to equality is further concretized in a range of constitutional provisions, such as in the establishing of the equal rights of spouses (Art. 46(2), CRB) or the equal rights of children who are born out of marriage with the rights of children born in marriage (Art. 47(3), CRB). The constitutional text provides characteristics that cannot be grounds for unequal treatment to guarantee the equality principle.[794] Those include the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status, or property status.[795]

The principle of proportionality is part of the CRB in the material sense but is not present in its formal dimension. Nevertheless, even if it is not explicitly expressed in the text,[796] the Constitutional Court has established it as one of the foundational constitutional principles to be abided by the authorities.[797] In the interpretation of the proportionality principle, the

tutional Decision No 3/2017 on case 11/2016; Constitutional Decision No 10/2012 on case 15/2011.

792 Constitutional Decision No 8/2013 on case 6/2013; Constitutional Decision No 1/2007 on case 9/2006.

793 Constitutional Decision No 14/1992 on case 14/1992 para I.

794 ibid II.

795 The first five of the listed grounds stem from Article 1 of the Human Rights Declaration whereas the rest are subject to the social realization of the given individual. *See* ibid.

796 Despite not being explicitly expressed in a separate constitutional norm, the principle of proportionality is still observable in different constitutional articles. For instance, *see* Article 31(4) and (5), CRB.

797 Constitutional Decision No 1/2002 on case 17/2001; Constitutional Decision No 5/2003 on case 5/2003. Also *see* Drumeva, *Constitutional Law/Конституционно право* (2018) 687.

Constitutional Court relied on the constitutional traditions of the European states,[798] such as the German Federal Constitutional Court[799] and the jurisprudence of the European Court of Human Rights.[800]

The Constitutional Court has also relied on EU law proportionality-assessment approaches in elaborating the proportionality principle.[801] In general, when it comes to examining the proportionality of measures curtailing fundamental rights, the Constitutional Court understands the proportionality principle as the assessment of whether the undertaken measures are admissible, justifiable, suitable, and optimal for the intended purpose.[802] Accordingly, the general constitutional practice has established that the fundamental rights of citizens that may be restricted can be limited in the following cases: when there is a legitimate aim, when the ground for restriction is established by law and falls within limits provided for in the Constitution, and when the restriction ground complies with the principle of proportionality in view of the pursued aim.[803]

c. State Objectives

Apart from the relevant fundamental rights and principles, certain state goals provided for in the Constitution could also have some reflection on social protection. As already mentioned, state goals do not secure subjective rights. State objectives only provide that the legislature and the overall policy development should pursue a certain goal.[804]

798 Constitutional Decision No 5/2005 on case 10/2004.

799 For instance, in examining the margin of appreciation and the proportionality of legislation on the allowing of temporary storage of telecommunication data, the Constitutional Court referred to how the German Federal Constitutional Court assessed through proportionality test whether analogical provisions of the German legislation corresponded to the pursued goal. *See* Constitutional Decision No 2/2015 on case 8/2014 para 6.

800 Constitutional Decision No 13/2012 on case 6/2012 para III.

801 Constitutional Decision No 5/2017 on case 12/2016.

802 Constitutional Decision No 5/2005 on case 10/2004; Constitutional Decision No 3/2014 on case 10/ 2013.

803 Constitutional Decision No 20/1998 on case 16/1998; Constitutional Decision No 15/2010 on case 9/2010; Constitutional Decision No 2/2011 on case 2/2011; Constitutional Decision No 7/2016 on case 8/2015; Constitutional Decision No 8/2016 on case 9/2015; Constitutional Decision No 3/2019 on case 16/2018.

804 Sommermann, *Staatsziele und Staatszielbestimmungen* (1997) 377.

To begin, the characteristic of the Bulgarian country as a "social state" in the Preamble, which is placed right next to its characteristic of being "democratic", could be relevant to the design of the social protection system. Namely, constitutional jurisprudence has defined the social state as a state objective that should drive policy development.[805] In assessing the potential influencing role of the "social state", it needs to be kept in mind that it is not part of the main body of the Constitution and thus does not possess the legal character of the legal norm. However, as mentioned in the discussion of the constitutional structure, the content of the Preamble embodies the synthesized constitutional foundations and potentially could serve in the interpretation of the constitutional norms.[806] Authors argue that the social state has been implicitly given actual legal force through the fundamental social rights of the Constitution, such as the rights to social and health insurance.[807]

The Bulgarian scholarship underlines the absence of the social state from the constitutional body in contrast to the rule of law principle.[808] Namely, the latter is part of the Preamble but is further elaborated in the constitutional body, thereby resulting in obligations for the state. Conversely, during the drafting of the CRB, a decision was taken for the social state's sole proclamation in the Preamble due to the social state's vague nature.[809] This approach was based on the belief in the varying legal force of the Preamble and the constitutional body.[810]

Still, despite being just a state objective mentioned in the Preamble, the understanding of the legal force of the "social state" characteristic marked a visible expansion in the case law of the Constitutional Court. In the first 20 years of the Court's existence, the "social state" was almost not present

805 Constitutional Decision No 8/2012 on case 16/2011 para V.

806 Drumeva, *Constitutional Law/Конституционно право* (2018) 158; Nenovski, 'The Individual Rights in the 1991 Constitution of the Republic of Bulgaria/Правата на личността в Конституцията на Република България от 1991 г.' (1995) 36 Legal Thought/Правна мисъл 8–9.

807 Tanchev and Belov, *Comparative Constitutional Law/Сравнително конституционно право* (2009) 289.

808 ibid 287–288.

809 ibid. On the one side, it was argued that the term's vagueness can only serve as base for various speculations. On the other side, the social state was seen by some to represent a bridge to the socialist past. For more on this issue, please refer to the research section on the historical overview of the constitutional law development in Bulgaria.

810 ibid.

in the judgments' reasonings in line with the unofficial assumption that it lacked legal force.[811] However, since 2012 authors have noticed a turn in the reliance on the "social state" in the case law of the Constitutional Court. The social state became a topic of elaboration for the Court and turned into a supplementing or accompanying criterion in assessing the constitutionality of the laws.[812] The constitutional jurisprudence has established that the pursuit of a social state should be a goal and a principle for policy and legal development in the country, especially in terms of social protection.[813]

Apart from the social state, Article 14 of the Constitution introduces the state objective of protecting the family, motherhood, and children by the state and the society. The state objective has also been translated into fundamental rights, such as the discussed above right of mothers to special protection provided in Article 47(2). Still, this is not to say that the state objective could not be considered a potential influencing factor. Similar to the social state objective, the Constitutional Court has used the family life objective as a supplementary tool to reflect on the constitutional obligations stemming from the related fundamental rights.[814] In general, the constitutional jurisprudence has provided that the family life needs to be minded in social policy development.[815]

II. International Law

The presentation of international law as a potential influencing factor begins with examining the relationship between international law and Bulgarian constitutional law. In doing so, the examination aims at informing the subsequent definition of the term "international law" in the context of the research purpose. Finally, the concrete potential international law influencing factors are briefly presented after the concept is defined.

811 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2016) 38–39.
812 For instance, *see* Constitutional Decision No 9/2017 on case 9/2016.
813 Constitutional Decision No 8/2012 on case 16/2011 para V.
814 For instance, *see* Constitutional Decision No 32/1998 on case 29/1998.
815 Constitutional Decision No 3/2013 on case 7/2013; Constitutional Decision No 13/2003 on case 11/2003.

1. International Law and Bulgarian Constitutional Law

In the last century, legal scholarship has been heavily involved in the debate on the relationship between international law and domestic law. On the one side, the proponents of the dualistic theories view the international and the national law as separate legal orders.[816] For international norms to apply in the national sphere, they must be transposed into the domestic legal order. On the other side, the supporters of the monism theories consider that the international and domestic laws are parts of the same legal order.[817] These traditional theories are based on the assumption of hierarchy between the national and international legal orders. In the case of monism, international law tends to take supremacy over national law,[818] while in the case of dualism, the domestic legal framework is to regulate international law's rank at the national level.[819]

Some contemporary authors tend to see these traditional theories as capable of reflecting only upon static legal orders.[820] However, when it comes to the current dynamics of interaction between national and international law, such traditional views fall short of explaining factors such as the dispersing of authority beyond the nation-state[821] or the influence of international courts and institutions on the legal systems.[822] Hence, the reality of state practice can demonstrate a plethora of competing perspectives that transcend the question of the divide between national and international law and cannot be accommodated by the traditional views on monism and dualism.

816 Starke, in Paulson and Litschewski-Paulson, *Normativity and Norms* (1999) 541; Nijman and Nollkaemper, in Nijman and Nollkaemper, *New Perspectives on the Divide Between National and International Law* (2007) 341.

817 Most notably in this regard, *see* Kelsen, *General Theory of Law and the State* (1949) 366 ff.

818 Starke, in Paulson and Litschewski-Paulson, *Normativity and Norms* (1999) 546. Being one of the main traditional proponents of monism, Kelsen tends to be inclined towards the view of the primacy of international law. In Kelsen's view, the idea that domestic law has supremacy can lead to state solipsism and the assumption that the state is the center of the world, which fails to recognize the existence of other sovereign states. *See* Kelsen, *General Theory of Law and the State* (1949) 386–387.

819 Petersen, 'Determining the Domestic Effect of International Law through the Prism of Legitimacy' (2012) 72 ZaöRV 225.

820 ibid.

821 Nijman and Nollkaemper, in Nijman and Nollkaemper, *New Perspectives on the Divide Between National and International Law* (2007) 348.

822 Petersen, 'Determining the Domestic Effect of International Law through the Prism of Legitimacy' (2012) 72 ZaöRV 225.

The Bulgarian 1991 Constitution states that international law instruments that have been ratified, promulgated, and have come into force in the country are considered part of the domestic legislation. Such international law takes precedence over any domestic legislation that may be contrary to the international instrument (Art. 5(4), CRB). Therefore, the nationally adopted constitutional approach toward international law could be identified as leaning towards the monistic view.[823] An interpretative constitutional decision has extended the validity of the constitutional provision on the precedence of international law to treaties signed before the enactment of the 1991 Constitution that comply with the requirements set in Article 5(4) of the CRB.[824]

It needs to be clarified that the Constitution differentiates between two types of treaties. Treaties that are of particular significance require ratification or denouncing by an act of Parliament. These types of treaties are enlisted in Article 85(1) of the Constitution. The rest of the treaties not concerning the scope of Article 85(1) are subject to approval or denouncement by a governmental decree issued by the Council of Ministers. The constitutional provision on the precedence of international law applies only to the international treaties subject to Article 85(1) of the Constitution.[825]

International treaties, which have been ratified, promulgated, and have entered into force with respect to the Republic of Bulgaria, bear an immediate sub-constitutional ranking and take precedence over ordinary law based on Article 85(4) and Article 149(1)4 of the CRB when taken in connection with Article 5(4).[826] The general principles of international law are also part of the domestic legal order and occupy the same hierarchical rank as the international treaties.[827] Therefore, general principles of international law have a hierarchical standing below the Constitution and above the rest of the legislation. According to the Constitutional Court, different

823 Tanchev, 'Competing Hierarchies' (2015) 3–4 <https://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2015)020-e> accessed 18 February 2019.

824 Constitutional Decision No 7/1992 on case 6/1992.

825 Stalev, 'The Constituton and the International Human Rights and Freedoms Treaties/Конституцията и Международните съглашения за човешки права и свободи' (1999) 1 Juridical World/Юридически свят 14; Belov, *Constitutional Law in Bulgaria* (2019) 65 ff.

826 Tanchev, 'Competing Hierarchies' (2015) 4. On the same issue *see* Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017) 208.

827 Belov, *Constitutional Law in Bulgaria* (2019) 88.

constitutional provisions indicate the "openness"[828] of the Bulgarian legal framework toward international law[829] and the integration of international law into the domestic law, such as the goal of promoting a just international order (Art. 24(2), CRB). In terms of incorporating the international law norms in domestic law, the *jus cogens* principles of international law are directly implementable.[830] The direct implementation also applies to international treaties for which there is no need to establish certain implementing national mechanisms.

Following Article 149(1)4 of the Constitution, the acts of the National Assembly need to comply with ratified international treaties, as well as the general principles of international law. Accordingly, the Constitutional Court can declare parliamentary legislation void if it contravenes the aforementioned international law sources. Apart from the Constitutional Court, the Supreme Court of Cassation and the Supreme Administrative Court can also play a crucial role in securing the precedence of international law over contradicting administrative acts or judgments.[831] The courts can apply the international law norm instead of the contradicting national norm based on Article 5(4) of the Constitution.[832] Still, such adjudication will concern just the concrete case at hand. Therefore, the judgments of the Constitutional Court are essential for the ending of inconsistent national administrative and judicial practice in terms of eventual international law contradiction. In this relation, the authors underline that the decision of the Constitutional Court would just be declarative since the precedence of the international law already stems from Article 5(4) of the Constitution.[833]

828 On the issue of the openness of constitutions in a broader sense, *see* Carrozza, in Loughlin and Walker, *The Paradox of Constitutionalism* (2008) 171.

829 Constitutional Decision No 3/2004 on case 3/2004. For further discussion on the relation between the national law and international law, *see* Konstantinov, in Marinova and others, *Implications of International and EU Law on the Bulgarian Legal Framework/ Въздействие на международното право и правото на ЕС върху българската правна система* (2019) 30–31.

830 Borissov, in Marinova and others, *Implications of International and EU Law on the Bulgarian Legal Framework/Въздействие на международното право и правото на ЕС върху българската правна система* (2019) 97.

831 Stalev, 'The Constituton and the International Human Rights and Freedoms Treaties/Конституцията и Международните съглашения за човешки права и свободи' (1999) 1 Juridical World/Юридически свят 16–17.

832 ibid.

833 ibid; Penev, 'The Bulgarian Constitutional Justice and the Protection of Human Rights/Българското конституционно правосъдие и защитата на основните права' (2013) 12 Lawyers' Review/Адвокатски преглед 20–21.

2. International Law in the Framework of the Research

There are varying definitions of the international law concept. The International Court of Justice declared that international law "governs relations between independent States…in order to regulate the relations between these co-existent communities or with a view to the achievement of common aims".[834] A wider definition of international law stipulates that it represents the legal order which organizes "the interaction between entities participating in and shaping international relations".[835] This general wording could be understood in the light of the numerous debates on which actors can be considered subjects of international law.[836]

However, the diverging and broad views on the general definition of the term cannot immediately contribute to the particular goal of the present research. Similar to the previously discussed concepts in this study, the concept of international law needs to be defined in line with the goal of studying the constitutional and international law's influence on social protection. Establishing the research-relevant concept requires that the sources of international law that are relevant for the research need to be identified. Nevertheless, the question of the range of international law sources is not an easy one since there are as many theories on this issue as there are on the definition of the concept of "international law".[837]

The tackling of this issue can begin by examining which sources of law[838] belong to the understanding of the term which will be relevant to the research. The previous part has revealed that, according to Article 5(4) of the CRB, international treaties become part of the domestic law through their ratification, promulgation, and coming into force. Article 5(4) also applies to the generally recognized principles of international law. Therefore, the term used in the research should encompass generally recognized principles of international law and international treaties that have normative

834 SS 'Lotus' (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) para 44.

835 Besson, in Besson and Tasioulas, *The Philosophy of International Law* (2010) 163.

836 On this specific problem, *see* Alston, in Alston, *Non-State Actors and Human Rights* (2005); Weissbrodt, 'Business and Human Rights' (2005) 74 University of Cincinnati Law Review 55.

837 Besson and D'Aspremont, in Besson and D'Aspremont, *The Oxford Handbook of the Sources of International Law* (2018) 4.

838 On definition of the term "sources of law", *see* Kelsen, *General Theory of Law and the State* (1949) 365; Wuerth, in Besson and d'Aspremont (eds), *The Oxford Handbook of the Sources of International Law* (2018) 1121.

character, implying that they are capable of creating, changing, or annulling given norms of the national law.[839] Treaties with normative character also address the individuals falling under the respective state's jurisdiction.[840] As elaborated above, these international instruments have precedence over ordinary national law in Bulgaria and hence have the potential capacity to influence the social protection system.

In addition, a concise assessment is required of what will not be covered by the concept. A relevant question in this regard is whether the European Union law can be regarded as a source of international law. Already back in 1963, the European Court of Justice has declared that the law of the back then European Economic Community constitutes "a new legal order of international law", for the sake of which the Member States have limited their sovereignty rights in certain respects.[841] The unique nature of EU law, based on the transferring of sovereign powers to the EU and its institutions,[842] has resulted in an order that has replaced general principles of international law with its own rules.[843] Hence, the interaction processes between, on the one hand, international law and the domestic legal orders, and on the other EU law and the law of the Member States, differ significantly.[844] Therefore, EU law represents a special body of law, which is examined below as a separate potential influencing factor upon social protection.

There are different general arguments on what constitutes the sources of international law, with some options, such as soft law, falling outside the list in Article 38 of the Statute of the International Court of Justice.[845] In general, there are diverse debates in relation to the binding nature of the so-called "hard" and "soft" international law instruments. "Hard law" encompasses sources generally recognized as possessing binding character. In

839 Hence, international law instruments with no normative character that are not part of the scope of Article 5(4) of the Constitution cannot be considered as belonging to the concept of international law in framework in this research.

840 Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002) 52–55.

841 Case 26-62 NV *Algemene Transport -en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECLI:EU:C:1963:1 para II B.

842 More on this and the specific implications for Bulgarian constitutional law, *see* Tanchev and Belov, in Albi and Bardutzky, *National Constitutions in European and Global Governance* (2019) 1101.

843 Bleckmann, *Europarecht* (1997) 232; Tanchev, 'Competing Hierarchies' (2015) 4.

844 Tanchev, 'Competing Hierarchies' (2015) 4.

845 Besson and D'Aspremont, in Besson and D'Aspremont, *The Oxford Handbook of the Sources of International Law* (2018) 6.

contrast, "soft law" is described as a range of "quasi-legal instruments" that do not have a binding character or at least have a weaker binding capacity in comparison to "hard" international law.[846] Soft law sources could not be addressed as higher-ranking norms belonging to the *jus cogens* principles of international law that are recognized by the Bulgarian Constitution and hence cannot result in binding obligations for the state. Analogically, soft law cannot be expected to result in a clearly traceable influence[847] upon social protection. Therefore, soft law is excluded from the potential sources of international law.

To wrap it up, it can be concluded that the research understands the term "international law" as consisting of the generally recognized principles of international law and the international treaties and conventions with normative character. In addition, the term includes the international law instruments that have become part of the national legal framework. Finally, the relevance of the sources of international law to the research goal will be assessed based on their relation to the researched field of social protection.

3. Potential Influencing International Law Factors

The sources of international law that are of particular significance as potential influencing factors would target fundamental rights. The list of potential influencing factors is long due to the already mentioned openness of the country towards international law instruments. The development of the social protection system after the fall of socialism coincided with the overall opening of the Bulgarian legal framework to relevant international and EU law in the context of the country's aspirations of becoming an EU member state.[848] It could be argued that the process of building new social protection was predisposed to seek some international law influences and answers

846 Sekalala, *Soft Law and Global Health Problems* (2017) 50.

847 Soft law might be taken into account in the interpretation of international law norms. *See* Olivier, 'The Relevance of "Soft Law" as a Source of International Human Rights' (2002) 35 The Comparative and International Law Journal of Southern Africa 306–307. However, the role of soft law in international law is still too vague and fluctuating in order for it to serve as potential influencing factor upon social protection in the present research.

848 On the importance of the goal of EU membership for the formation of the post-socialist Bulgarian constitutional development that also includes the general openness towards international law, *see* Belov, *The Bulgarian Constitutional Identity/ Българска конституционна идентичност* (2017) 121 ff.

since the system had to quickly detach itself from the past solutions. Hence, the system was exposed to social insurance models already developed in western countries. However, this is not to say that during socialism, the country was sealed against any relevant international law factors. On the contrary, even during this period, the country continued incorporating ILO conventions in the domestic legal order.[849] The historical examination of the development of social protection demonstrated that the ILO membership and the ratification of the international labor standards have served as a bridge connecting the country internationally through various historical stages.[850]

Nowadays, Bulgaria is in the top ten countries regarding the number of ratified ILO conventions.[851] Of all of the ratified conventions, 64 are currently in force.[852] Among them are the ratifications of the complete eight conventions considered fundamental and three of the four priority governance conventions.[853] In terms of the conventions that are of particular relevance to the present research, the country has ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102).[854] In addition,

849 For an extensive overview on this issue, *see* Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 43 ff.

850 Mincheva, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 88.

851 In this regard, however, scholars underline that the number of ratifications cannot be in any way indicative in relation to the state of social and labor rights protection. The indication on social rights protection is evident in the implementation of the relevant international and national law that faces numerous hurdles in Bulgaria. *See* Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 24.

852 The rest of the ratified conventions that are not currently in force include three conventions that were denounced during socialism (since the domestic law did not meet the conventions' standards), 24 conventions that were automatically denounced since the country has ratified other conventions with greater level of protection, and ten old conventions that ILO itself has declared to have lost their force. *See* Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 48–49.

853 These include the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Bulgaria has still not ratified Convention 129.

854 The 102 Convention has been ratified in two waves: Parts II, III, V, VI, VII, VIII and X were ratified in 2008, and Part IV was ratified on 12 July 2016. *See* Mrachkov, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 48–49.

the relevant conventions that have been ratified and are still in force are No. 2 and No. 44 on unemployment, No. 17 on compensation for industrial accidents, No. 18 on compensation for occupational diseases, No.19 on equality treatment in terms of occupational accidents, sickness insurance for employees in trade and commerce, sickness insurance for domestic servants (No. 24) and agricultural workers (No. 25), old-age insurance regarding the employed in industrial and commercial (No. 35) and the agricultural undertakings and households (No. 36), invalidity insurance regarding industry employees (No. 37) and in the agriculture sector (No. 38), survivor insurance in the industry (No. 39) and the agricultural sector (No. 40), No. 42 on compensation for occupational diseases (revised), No. 71 on seafarers' pension, No. 161 on occupational medical services, and No. 183 on maternity protection.[855]

Apart from the ILO conventions, there are a number of further regional and international treaties that Bulgaria is a part of and that may have an influence on the social protection system. Bulgaria has ratified the two human rights conventions of the Council of Europe, namely the ECHR,[856] with additional protocols[857] and the revised version of the European Social Charter.[858] Concerning the ECHR and its inclusion in the list of potential influencing factors, it needs to be clarified that the Convention's catalog does not include any substantial right to social security. Still, already back in the days, the case law of the ECtHR has demonstrated that civil and political rights bear inherent social and economic aspects that are to be

855 ILO, 'Ratifications for Bulgaria' <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102576 > accessed 24 February 2020.

856 Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Supplementary Protocol from 20.03.1952, SG 66/14.08.1992.

857 For an overview of the ratified protocols, *see* Council of Europe, 'Treaty List for a Specific State: Bulgaria. Status as of 04/05/2021.' (2012) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/BUL?p_auth=XvYEvzNw> accessed 24 February 2020.

858 Bulgaria has accepted to be bound by the following provisions of Part II of the Charter: Article 1, Article 2(2) and (4) to (7), Article 3, Article 4(2) to (5), Article 5, Article. 6, Article 7, Article 8, Article 11, Article 12(1) and (3), Article 13(1) to (3), Article 14, Article 16, Article 17(2), Article 18(4), Article 20, Article 21, Article 22, Article 24, Article 25, Article 26, Article 27(2) and (3), Article 28, and Article 29. *See* Law on the Ratification of the European Social Charter (revised), SG 30/11.04.2000.

taken into consideration.[859] Hence, the ECHR needs to also be included as a factor that might exude some influence upon national social protection. Finally, Bulgaria has ratified the main human rights covenants from the treaties of the United Nations. In this regard, the instruments that will be considered as potential influencing factors include the ICCPR[860] and the ICESCR,[861] as well as the Convention on the Rights of the Child (UN CRC)[862] and the Convention on the Rights of Persons with Disabilities (CRPD).[863]

III. European Union Law

Similar to the above examination of international law, the following will deal with the potential of EU law as an influencing factor on the national social protection system. For this purpose, the relationship between European Union law and Bulgarian constitutional law will be initially examined. Next, the term European Union law will be clarified for the research framework. Finally, the research will provide an overview of the concrete EU law instruments considered as potential influencing factors.

859 Already back in 1979, the ECtHR stated in a judgement that "[w]hilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. [...] [T]here is no water-tight division separating that sphere from the field covered by the Convention." *See Airey v Ireland,* App. No. 6289/73, 9 March 1977 para 26. In the recent years the Court tends to take more restrained positions in relation to the human rights' social and economic nuances. Still, the latter have become part of the Convention through three main pathways undertaken by the ECtHR: first, through the prism of the right to fair trail (Art. 6); next, with the help of the non-discrimination provision (Art. 14); and third, on the basis of broad interpretation of civil and political rights, such as interpretating certain social benefits as "property". *See* Dahlberg, 'Should Social Rights Be Included in Interpretations of the Convention by the European Court of Human Rights?' (2014) 16 EJSS 256 ff.

860 Decree No 1199 of the National Assembly Presidium for the Ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, SG 60/31.07.1970.

861 ibid.

862 Decision of the Grand National Assembly on the Ratification of the Convention on the Rights of the Child, SG 32/23.4.1991.

863 Law on the Ratification of the Convention on the Rights of Persons with Disabilities, SG 12/10.02.2012.

1. European Union Law and Bulgarian Constitutional Law

The overview of the amendments of the 1991 Constitution already revealed how the constitutional text was adapted to the requirements of the EU membership. Both in the light of the constitutional amendments and on later occasions, the Constitutional Court has provided some elaboration on the status of European Union law in the national hierarchy of norms. In general, the relationship between European Union law and the national constitutional law systems has been feverously debated for decades in international scholarship.[864] The Bulgarian scholarship is no exception to this observation. Some authors consider that the question of the relationship between European Union law and the national Constitution has been settled by the constitutional amendments and the Constitutional Court.[865] Others, however, consider that there is still a range of significant issues that have not been addressed.[866]

As stated in the discussion on the constitutional amendments, the Constitutional Court did not consider that the EU membership would entail alterations to the model for the state organization and the form of governance.[867] Therefore, the Court reasoned that the amendments did not violate the country's sovereignty. Namely, Article 1(2) of the Constitution provides that the entire power of the State is derived from the people and is then exercised directly and through the bodies established by the Constitution. Accordingly, the people may decide through its elected National Assembly to delegate part of its sovereign rights to the EU following a given international treaty. Thus, the ratification of the accession treaty to the EU represents an expression of the people's will. Consequently, the primary sources of EU law require ratification to become part of the Bulgarian law. However, the secondary sources of EU law do not require ratification since

864 For a summary on some of these debates, *see* Komárek, 'The Place of Constitutional Courts in the EU' (2013) 9 EuConst 420. And on the importance of the conflicting views for the state of constitutional dialogues in the EU, *see* Martinico, 'The "Polemical" Spirit of European Constitutional Law' (2015) 16 GLJ 1343.

865 Drumeva, 'The Primacy of EU Law over National Law/Примат на правото на Европейския Съюз пред националното право' (2009) 10 Juridical World/Юридически свят 18–24.

866 Belov, *Constitutional Law in Bulgaria* (2019) 62 ff.

867 Constitutional Decision No 3/2004 on case 3/2004 para V.1.

they are the results of the acts of the EU institutions functioning within the parameters of the already granted competences within the treaties.[868]

The status of EU law vis-à-vis the national constitutional law has been feverously debated in the Bulgarian scholarship. Namely, on a couple of occasions, the Constitutional Court has built parallels between the ratification requirements of EU primary sources and Article 5(4) of the Constitution that concerns the ratification of international treaties.[869] The parallels were built despite the presence of the special EU law ratification requirements in Article 85(2) of the CRB.[870] This approach seemed to equate EU law primary sources to international law treaties. The ambiguity has led scholars to argue that the Constitutional Court has left unanswered the question of the relationship between European Union law and the 1991 Constitution.[871] The lack of an answer leaves the question of the exact EU law status in the national hierarchy of norms open.

On the one hand, the EU law implies the "relative primacy" over the national law, including the Constitution, except for the national constitutional identity.[872] On the other, however, the Constitutional Court implicitly equates the statuses of EU and international law in the national legal order, which positions the EU law below the Constitution. In addition, apart from building parallels between EU primary law and international treaties, the Constitutional Court has explicitly stated that secondary EU law sources do not bear the characteristics of international treaties.[873] Some scholars consider that such statements create even more confusion since the Court does not go on to assert what is the status of these secondary sources within the national legal order.[874] Nevertheless, other scholars do not share the outlined critical readings of the constitutional decisions. Instead, such views consider that the combined analysis of the constitutional EU integration provision (Art. 4(3), CRB) and the EU-related provisions featured in Article

868 ibid.
869 Constitutional Decision No 1/2014 on case 22/2013; Constitutional Decision No 3/2012 on case 12/2011 para II.
870 The special procedure of Article 85(2) was already discussed in the course of the historical examination on the constitutional law development in the country in view of the EU constitutional amendments.
871 Belov, *Constitutional Law in Bulgaria* (2019) 62 ff.
872 ibid.
873 Constitutional Decision No 3/2004 on case 3/2004 para V.1.
874 Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017) 187.

85 conclude the primacy of EU law, including in relation to the Constitution.[875]

In contrast to the unresolved issues on the status of EU law concerning the Constitution, the relationship between European Union law and ordinary national law has been firmly settled in the national legal doctrine. The jurisprudence of the Constitutional Court has recognized the "supranational, direct, immediate, and horizontal effect of EU law"[876] upon the national legal system. The Court further considered that this special character of the European legal order necessitated the introduction of the discussed above amendments of the Constitution. The supranational, direct, immediate, and horizontal effect of EU law relates to the primary sources of EU law. The precedence[877] of EU law over national law is "unconditional".[878] Moreover, the Constitutional Court has clarified that secondary EU law sources, such as regulations, also have a direct effect, while others, such as directives, possess a direct vertical effect.[879]

2. European Union Law in the Framework of the Research

Similar to the constitutional and international law factors, the utilization of the term "European Union law" in the research framework requires some clarification. General definitional approaches in the scholarship continue to collide on the issue of the legal nature of the EU. Some consider European Union law to still be confined to the legal nature of international law

875 Drumeva, *Constitutional Law/Конституционно право* (2018) 139 ff; Belov, *The Bulgarian Constitutional Identity/Българска конституционна идентичност* (2017) 205.

876 Translation from Bulgarian by author. *See* Constitutional Decision No 5/2005 on case 10/2004 para 6.

877 In defining EU law's status in the national hierarchy of norms, the Constitutional Court utilizes different terms that seem to be used as synonyms, such as "primacy" ("примат") and "precedence" ("предимство"). Authors argue that the term "primacy" suggest indeed the ability of precedence, while "supremacy" is the adjective to describe the highest stance in the hierarchy of norms. The "supremacy" adjective has been used to define the power of the 1991 Constitution in Article 5(1) of the constitutional text. *See* Drumeva, 'The Primacy of EU Law over National Law/Примат на правото на Европейския Съюз пред националното право' (2009) 10 Juridical World/Юридически свят 16–17.

878 Constitutional Decision No 3/2012 on case 12/2011 para II.

879 Constitutional Decision No 5/2005 on case 10/2004 para 6; Constitutional Decision No 7/2018 on case 7/2017 para IV.

despite being an advanced bearer of peculiar legal characteristics.[880] Others vehemently oppose the equating of European Union law to international law. According to this view, European Union law has evolved in such an idiosyncratic way that it has ultimately formed a *sui generis*[881] legal system.[882] Debates also spill into the related topic of the constitutional standing of European Union law and its relation to the national constitutional orders.[883]

Such broad debates could hardly contribute to the concrete goal of studying the influence of European Union law on Bulgarian social protection. Henceforth, as with the clarification of the term "international law", the following will frame the concept of European Union law for the specific present research purposes. To begin, the European Union law explicitly related to social protection needs to naturally form part of the understanding of the term. In this regard, it needs to be clarified that the foundation of both the EU law and policy entails the prerogative of Member States to organize their social protection systems freely.[884] The explicit legislative competence of the Union in the field of social protection stems from Article 48 TFEU. On this basis, legislation can be introduced that pertains to the inter-state coordination of social security in the framework of the free movement of persons. Accordingly, the Treaty provision has been implemented through regulations aiming to coordinate the different national social security systems.[885] These primary and secondary EU law sources need to form the core of the term of EU law in the present research.

880 De Witte, in Barnard and Peers, *European Union Law* (2017) 197.

881 ibid 185.

882 On the topic of the idiosyncratic EU law nature that does not fit the international law definition, *see* Pescatore, 'International Law and Community Law' (1970) 7 CML Rev 177 ff; Mancini, 'Europe: The Case of Statehood' (1998) 4 Eur. Law J. 33; Schütze, *European Constitutional Law* (2012) 66.

883 In this regard, some scholars focus on the lack of "genuine constitutionalism" at EU law level. *See* Lindseth, 'Equilibrium, Demoi-Cracy, and Delegation in the Crisis of European Integration' (2014) 15 German Law Journal 563–567; Lindseth, 'The Perils of "As If" European Constitutionalism' (2016) 22 Eur. Law J. 701–702. Others rather adopt constitutional perspective on the EU and its law and tend to see the CJEU's rulings as being the "end-points" in debates with constitutional importance. *See* Tuori, *European Constitutionalism* (2015) 116.

884 Article 153(2), TFEU. For more on the topic of the competences of the EU in the field, *see* Verschueren, 'The Role and Limits of European Social Security Coordination in Guaranteeing Migrants Social Benefits' (2020) 22 EJSS 359.

885 Authors state that the strong focus on coordination of social security systems meant to reconcile the goals of promotion of the free movement of workers (as intended by

Social security entitlements, the right to social security in freedom of movement situations, and social assistance are also featured in Article 34 of the EUCFR. According to Article 51(1) of the Charter, its provisions only apply when the implementation of European Union law is concerned.[886] In general, case law development on socio-economic rights has demonstrated that the CJEU pays special attention to the legal consequences of the Charter's distinction between rights and principles.[887] Based on the distinction between rights and principles,[888] it cannot be claimed that the right to social security entitlements in Article 34(1) constitutes a right under the EUCFR.[889] While principles are not automatically judicially cognizable, rights are justiciable and can benefit from the effective remedy provided by Article 47 of the EUCFR.[890] Article 34(2) reflects an already existing right in EU law to social security in the exercise of the freedom of movement. Scholars point out that Article 34(2) does not represent a right on its own but instead is conditional upon existing Union law.[891] The provision has a rather declaratory role and could thus be considered a principle that could not lead to the expansion of the EU's competences.[892]

Similarly, Article 34(3) could not be deemed to embody a right but rather entails a principle for the EU (and the Member States when implementing EU law) concerning combating social exclusion and poverty.[893] The CJEU's case law in the field also suggests that the evolution of an emancipated

Art. 48, TFEU) and the Member States' strive for preservation of the independence of the national social security. *See* Paju, *The European Union and Social Security Law* (2017) 71.

886 Still, the case-law practice has demonstrated that the Charter could be applicable even when Member States are not *per se* implementing EU law. *See* Case C-617/10 *Åklagaren v Hans Åkerberg Fransson* [2013] ECLI:EU:C:2013:105 para 34.

887 Razzolini, 'Constitutionalization of Socio-Economic Rights at the EU Level' (2015) 98 KritV 301–302.

888 Article 52, EUCFR.

889 Paju, *The European Union and Social Security Law* (2017) 167.

890 For an elaborate discussion on the difference between rights and principles in the Charter, *see* Lock, 'Rights and Principles in the EU Charter of Fundamental Rights' (2019) 56 CML Rev. 1201.

891 Paju, *The European Union and Social Security Law* (2017) 168–169.

892 ibid.

893 Case C-571/10 *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and others* [2012] ECLI:EU:C:2012:233 para 80. For more on why the provisions of Article 34 could hardly be considered as rights, *see* White, in Peers and others, *The EU Charter of Fundamental Rights* (2014) 970 ff.

right to social security based on the Charter is improbable.[894] One of the most exemplary cases on whether Article 34 could be viewed as a right or principle,[895] namely case C-571/10 *Kamberaj*,[896] demonstrated how the inclusion of the Charter in the CJEU's line of reasoning was "dependent on the existence of a Directive".[897] Namely, instead of having an autonomous stance, the reference to Article 34 was rather secondary and mentioned only in view of the preamble of Directive 2003/109.[898]

Apart from the rights vs. principles discussion, the further restricting aspect for the potential influence of the Charter pertains to the development of the CJEU case law that excluded the EUCFR's relevance to special non-contributory benefits for non-economically active Union citizens.[899] Namely, the case law has demonstrated that Union citizens can only rely on equal treatment for social benefits with nationals of the host Member State if the residence on the host territory is in line with the requirements of Directive 2004/38.[900] The coordination Regulation 883/2004 does not provide the right to special non-contributory benefits; [901] instead, it is up to the Member States to define the conditions of these benefits, and the Charter is not applicable in this regard.[902]

Given the standpoint of Article 34(1) and Article 34(3) as principles and the division of competences between the Member States and the EU in the social protection realm, it is evident that the respective provisions could

894 Paju, *The European Union and Social Security Law* (2017) 190; Kornezov, in Vandenbroucke, Barnard and De Baere, *A European Social Union after the Crisis* (2017) 408.

895 Paju, *The European Union and Social Security Law* (2017) 163.

896 Case C-571/10 *Kamberaj* para 80.

897 Paju, *The European Union and Social Security Law* (2017) 164.

898 Case C-571/10 *Kamberaj* paras 89-92.

899 Case C-333/13 *Dano* paras 85-92.

900 ibid para 69; Case C-67/14 *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others* [2015] ECLI:EU:C:2015:597 para 63.

901 *Case C-333/13 Dano* paras 90-91.

902 Scholars have criticized the reasoning of the Court by arguing that despite the Member States' prerogative to determine the qualifying conditions, the question on under what conditions would Union citizens be entitled to the given benefit could not be deemed to fall outside of the application of EU law. For such criticism, *see* Vonk, 'EU-Freedom of Movement' (2014) <https://europeanlawblog.eu/2014/11/25/eu-freedom-of-movement-no-protection-for-the-stranded-poor/> accessed 24 February 2020; O'Brien, 'Civis Capitalist Sum' (2016) 53 CML Rev. 937.

not result in enforceable rights for the Union citizens.[903] In addition, the case law development has also restricted the relevance of the EUCFR for the coordination rules. Scholars have heavily criticized the narrow scope of application of the EUCFR[904] and have argued that the latter cannot escape its role of being a shadow to the internal market developments.[905] All of this has led some to argue that the EUCFR could not be expected to considerably influence national social security systems.[906]

At the same time, however, the CJEU case law has also demonstrated that Charter provisions concerning social protection could still be used in interpreting Union law[907] and can also entail subjective rights.[908] Thus, even if the EUCFR provisions do not form a supranational layer of social rights, they could nevertheless contribute to protecting national social rights against certain austerity trends.[909] Consequently, the Charter can serve as a basis for national and secondary legislation interpretation.[910] In that sense, the Charter is relevant for studying potential European Union law influence on national social protection systems. Besides Article 34(1), a number of further provisions of the EUCFR may also be pertinent to the research purpose, such as the rights of the child (Art. 24) and the elderly (Art. 25), prohibition of discrimination (Art. 21), fair working conditions (Art. 31), social protection of families (Art. 33), as well as healthcare (Art. 35).

Apart from the legal provisions outlined above, the understanding of European Union law cannot be confined solely to the legal instruments directly targeting social security. The development of the CJEU jurisprudence

903 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 10.

904 Kalaitzaki, in Cambien, Kochenov and Muir, *European Citizenship under Stress* (2020) 44.

905 Paju, *The European Union and Social Security Law* (2017) 174.

906 ibid 167.

907 For instance, in relation to the paid annual leave as provided in Article 31(2) of the Charter. *See* Joined Cases C-569/16 and C-570/16 *Stadt Wuppertal v Bauer and Willmeroth* [2018] ECLI:EU:C:2018:871.

908 ibid para 88.

909 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 11.

910 Lenaerts, 'The Court of Justice of the European Union and the Protection of Fundamental Rights' (2011) 31 Polish Yearbook of International Law 81. For an opposite view that concentrates on the limited powers of the Charter, *see* Weatherill, in Vries, Bernitz and Weatherill, *The EU Charter of Fundamental Rights as a Binding Instrument* (2015) 213 ff.

has demonstrated that EU internal market law may also have implications for the national social security systems.[911] The latter is especially evident in the area of healthcare service that has been consistently brought under the scope of internal market regulation by the relevant case law.[912] Therefore, the study of potential influence needs to be mindful of EU law's ability to influence national social protection systems through a combination of its provisions, such as a simultaneous and synergetic impact of requirements stemming from both freedom of movement and internal market law. Furthermore, the EU prerogatives in terms of internal market regulation should also be minded in relation to the general tendency for the integration of more private providers in the social protection systems. It could be expected that the abundant EU rules on the free movement of capital are to shape the financing and investment national laws concerning certain private law social protection providers.[913] In this regard, it needs to be clarified that EU law regulations related to internal market goals do not apply to institutions that manage social security schemes falling under the coordination regulations and operate on a PAYG basis.[914]

Apart from the internal market, the understanding of European Union law within the present research framework should also be aware of the implications of the Union citizenship and its freedoms[915] as well as the related secondary EU law sources. The freedom of movement and residence of migrant workers had proved to be levers for altering the national systems when the latter contained measures that could otherwise dissuade Union citizens from exercising their right to freedom of movement.[916] A related aspect includes the principle of equal treatment, which is a foundational

911 Paju, *The European Union and Social Security Law* (2017) 98.

912 Dawson and de Witte, in Chalmers and Arnull, *The Oxford Handbook of European Union Law* (2015) 972–973.

913 For instance, *see* Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, OJ L 235, 23.9.2003, 10–21.

914 For more, *see* Article 2, Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23.12.2016, 37–85.

915 For a detailed examination on the impact of Union citizenship in the CJEU's interpretation of the social security legislation, *see* Paju, *The European Union and Social Security Law* (2017) 116 ff.

916 Case C-3/08 *Ketty Leyman v Institut national d'assurance maladie-invalidité* [2009] ECLI:EU:C:2009:595 para 50.

base for EU citizenship.[917] Equal treatment in the European Union law can impact the national level through the principle of non-discrimination on the grounds of nationality[918] and is also of relevance due to the EU law on gender equality in occupational and social security matters.[919] Naturally, the related case law of the CJEU also forms an important part of the concept of EU law in this regard.

This concise examination suggests the need for an understanding of the term European Union law that is aware of the various channels by which this supranational legal order can influence the national social protection system. The previous section revealed that the Bulgarian Constitutional Court had recognized the "indisputable" precedence of EU law over the national law. Hence, certain influences on the national system are expected, especially given the outlined broad range of pathways through which EU law can impact social protection. The examination of the influence on Bulgarian social protection requires recognizing the various limitations of these different pathways to better understand the specific case of detected EU influence.

3. Potential Influencing European Union Law Factors

After the term European Union law has been clarified for the purposes of the research, the following will briefly sketch the concrete EU law sources that will be considered. In terms of the relevant primary sources, the TFEU is of considerable natural relevance, especially when it comes to Union citizenship (Art. 20), freedom of movement and the prohibition of discrimination on the grounds of nationality (Art. 45), the freedom of establishment (Art. 49), the freedom to provide services (Art. 56), and the free movement of capital (Art. 63). Apart from the TFEU, the other primary source that will be examined as an influencing factor is the Charter of Fundamental Rights.

917 Bruzelius, Reinprecht and Seeleib-Kaiser, 'Stratified Social Rights Limiting EU Citizenship' (2017) 55 JCMS 1240; White, 'Free Movement, Equal Treatment, and Citizenship of the Union' (2005) 54 ICLQ 885.

918 Paju, *The European Union and Social Security Law* (2017) 78 ff.

919 For instance, *see* Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, 24–25. The concrete EU influencing factors are reviewed in the following research section.

Next, there are a plethora of secondary law sources that could be considered as potential influencing aspects due to the explained above various channels of potential EU law influence. Hence, the following will not represent an exhaustive overview but will outline some of the most important secondary sources that will be contemplated as influence factors. To begin, nowadays, the coordination of social security and healthcare for mobile workers and citizens is carried by Regulation No 883/2004[920] and its implementing Regulation No 987/2009. In terms of the cross-border application of patients' rights, Directive 2011/24/EU needs to be taken into account, especially given the different consequences of this Directive for cross-border healthcare when compared to the coordination Regulation. Furthermore, concerning the Union citizenship and the rights stemming from it, the research also needs to consider Directive 2004/38/EC. The latter secondary source has also proven to be essential for social security coordination through its limiting effect upon Regulation No 883/2004.[921]

Since the EU rules on coordination do not apply to most occupational pension schemes, additional rules on these pension rights of mobile workers were created. Hence, the list of the potential influencing factors should include the different secondary sources dealing with supplementary and occupational pension schemes.[922] The EU law on gender equality in occupational matters should be mentioned in this regard[923] as it has proven to have an influence upon both public and private occupational schemes in the Member States.[924] In terms of the secondary legislation resulting from the free movement of capital, the research is to be mindful of instruments

920 The "predecessors" of the Coordination Regulation, such as Regulation No 1408/71, will be also taken into consideration for the older possible influences.

921 Paju, *The European Union and Social Security Law* (2017) 125.

922 Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, OJ L 128, 30.4.2014, 1–7; Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209, 25.7.1998, 46–49.

923 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, 26.7.2006, 23–36.

924 Furthermore, the definition of "occupational" scheme adopted by the CJEU was so broad that it managed to bring even schemes concerning public civil servants under its umbrella. *See* Case C-559/07 *Commission v Greece* [2009] ECLI:EU:C:2009:198 para 55.

that regulate investment activities in insurance businesses and institutions related to occupational retirement provision.[925]

Last but not least, as clarified in the previous section, the judgments of the CJEU have been at times instrumental in determining the scope of EU law application in social protection matters. Accordingly, the research will also naturally consider the judgments of the CJEU that have dealt with social protection and have resulted in some influence on the Bulgarian system.

B. The Influence of Constitutional, International, and EU Law on the Social Protection System

Before the concrete influence on the social protection system can be examined, some fundamental issues need to be settled. First and foremost, the aim of the present research necessitates a clarification of the concept of "influence". Further, the methodology for studying influence has to be elaborated. In doing so, the influence on social protection will also be systematized. Finally, the institutions responsible for applying influence in the national legal sphere need to be examined.

I. Abstract Definition of the Concept of Influence

The concept of "influence" is used in a variety of disciplines, but explanations or definitions are seldomly provided. Alternatively, in the case of attempts to clarify the term, varying opinions emerge on the specific conceptual content.[926] Various legal studies also utilize the concept of "in-

925 For instance, Directive 2016/2341.

926 In sociology, the term can be used to indicate "a way of having an effect on the attitudes and opinions of others through intentional (though not necessarily rational) action". *See* Parsons, 'On the Concept of Influence' (1963) 27 Public Opin. Q. 38 ff. In the realm of political philosophy, there are debates whether "influence" is a concept identical to the one of "power". Some consider that "power" propositions "are threats or promises". Conversely, "an influence proposition takes the form, 'If you do X, you or he will do (feel, experience, etc.) Y' where Y is the anticipation of a consequence that results from an action". Accordingly, authors conclude that influence "stems from adumbrating the consequences of an action". *See* Adelman, 'Authority, Influence and Power: A Discussion' (1976) 6 Philos. Soc. Sci. 338 ff.

fluence". However, legal definitions of the term again tend to be rarely provided.[927] Still, it appears that the term "influence" illustrates the ability of a legal factor to modify another one. This ability is frequently perceived as a continuous action or a process.[928] The concept can be further relied upon to describe how the enactment of new "ordinary" norms is carried out with reference to and in conformity with the respective higher norms.[929] All in all, in the legal scholarship, the concept of "influence" tends to indicate a relationship between two norms characterized by the ability of a higher norm to affect the enactment of an ordinary norm or to lead to the ordinary norm's reform based on the higher one.

Therefore, legal studies are often prone to engaging with the concept of influence concerning the idea of the hierarchy of norms. Yet, such an approach might overlook the different actors carrying the creation and application of the various interacting norms. Hence, a more comprehensive definition of the term should not solely focus on the norms and their capacity to alter each other based on their hierarchy but should additionally possess an understanding of the institutions that enact, reform, and/or interpret the law and control its conformity with constitutional standards.

927 Some of the few studies that actually define the term "influence" in relation to the influence of constitutional law on international law define the term as "the incorporation of constitutional principles into international instruments". *See* Bindi and Perini, 'Legal Effect of Constitutions' (2017). Furthermore, different legal studies often use the concepts of "influence", "impact", or "effect" as interchangeable synonyms. For instance, on the synonymous usage of "effect" and "influence", *see* Safjan, in Purnhagen and Rott, *Varieties of European Economic Law and Regulation* (2014) 123–151. There are others who seem to distinguish between "effect", "impact", and "influence", even if there are no definitions provided. Still, "effect" seems to indicate the direct binding effect of one norm on another, while "impact" hints toward indirect interaction between two norms leading to one of them impacting the other. "Influence" seems to rather be used as an overarching term that builds upon the previous two concepts and indicates that a legal order is not completely autonomous but is rather influenced by another legal order. In this regard, *see* Soussan, in Weiß and Thouvenin, *The Influence of Human Rights on International Law* (2015) 3 ff; Lamour, in Weiß and Thouvenin, *The Influence of Human Rights on International Law* (2015) 27 ff; Bergthaler, in Wessel and Blockmans, *Between Autonomy and Dependence* (2013) 195–196.

928 For example, some legal scholars utilize the term "influence" when describing the process of influence of international law on EU law in the process of increasing engagement of the latter with international treaties and organizations. *See* Wessel and Blockmans, in Eeckhout and Escudero, *The European Union's External Action in Times of Crisis* (2016) 223–248.

929 Comella, 'The European Model of Constitutional Review of Legislation' (2004) 2 Int. J. Const. Law 470.

Through their powers vis-à-vis the law, such institutions become the main driving forces behind influence realization.

Political science could provide useful insights for elaborating the institutional side of the concept of influence. First, the term "influence" is central to the political science realm.[930] In a general sense, "influence" tends to indicate the ability of actors to realize a certain outcome according to their intentions.[931] Such ability includes the potential to modify one actor's behavior in accordance with the will of another actor.[932] Power is a concrete variation of the idea of influence that is distinguished by the threat of sanction.[933]

Influence, then, could be seen as one of the key prisms through which political scientists, and especially the so-called institutionalist, study the process of law's creation and change.[934] Such an approach allows for analysis not only of the institutional cover and the normative matrix but also of the institutions' functioning and the institutionalization of the power dynamics.[935] As stated above, influence is always exercised by a particular actor. Therefore, from the political science perspective, understanding legal influence requires the study of the institutional actors which have the power to apply constitutional and international law influence to ordinary law.

The study of these institutional actors necessitates that they need to be identified. Moreover, the regulations binding these actors have to be elaborated to unveil the influence mechanisms in the process of law's creation and

930 Lasswell and Kaplan, *Power and Society* (2013).

931 Berg, 'A Note on Power and Influence' (1975) 3 Political Theory 216.

932 Rommetvedt , in Goverde and others, *Power in Contemporary Politics* (2000) 126.

933 Lasswell and Kaplan, *Power and Society* (2013) 76.

934 For instance, *see* Whittington, Kelemen and Caldeira, in Goodin, *The Oxford Handbook of Political Science* (2011) 242 ff; March and Olsen, in Goodin, *The Oxford Handbook of Political Science* (2011) 160 ff; Strøm, in Döring, *Parliaments and Majority Rule in Western Europe* (1995) 51 ff; Scharpf, *Games Real Actors Play* (1997) 1 ff.

935 For application of the institutionalist political theory that centers on the role of the actors in studying the power dynamics in constitutional law, see Belov, 'The Veto Actors in the History of the Bulgarian Constitutionalism/Вето Актьорите в Историята На Българския Конституционализъм' (2010) 21 Contemporary Law/Съвременно право 40. More on the political theory of institutionalism, which focuses on the role of the actors, see Scharpf, *Games Real Actors Play* (1997) 1 ff; Strøm, in Döring, *Parliaments and Majority Rule in Western Europe* (1995) 51 ff.

change.[936] Institutions are characterized in political science as "collections of structures, rules, and standard operating procedures"[937] which regulate legislative deliberation.[938] The political order is constituted by different institutions intended to organize the polity, mainly by regulating "how authority and power is constituted, exercised, legitimated, controlled, and redistributed".[939] Therefore, a crucial point in understanding the dynamics of law's creation and alteration, as well as how influence works and thereby impacts law's creation or alteration, is the clarification of the role of institutions. Further, a sole focus on the role of one institution does not suffice the understanding of influence's mechanics. Instead, there is a need to recognize the interaction between different institutional structures[940] behind the realization of influence.

Naturally, many institutional actors could potentially play some role in the influence mechanisms. The research will focus on the institutions that possess the decisive competence and legal power to apply influence to ordinary law to demarcate the actors which will be considered. These are the supreme organs of the state entrusted with legislative power[941] or institutions with the power to scrutinize the conformity of legislation with constitutional or international law. The concrete actors in this regard, part of the Bulgarian legal system, will be reviewed below in the "Institutional Actors" section.

In general, constitutional influence may lead to the creation, expansion, or halting of curtailment of social protection rights[942] and can be applied by the respective institutional actors in several ways. First, the concept of "influence" can signify constitutional, international, and EU law requirements taken into account by the respective institution in enacting a new law and developing the respective benefits it grants. Next, the term can indicate

936 Strøm, in Döring, *Parliaments and Majority Rule in Western Europe* (1995) 58; March and Olsen, in Goodin, *The Oxford Handbook of Political Science* (2011) 160–162.

937 March and Olsen, in Goodin, *The Oxford Handbook of Political Science* (2011) 160.

938 Strøm, in Döring, *Parliaments and Majority Rule in Western Europe* (1995) 59.

939 March and Olsen, in Goodin, *The Oxford Handbook of Political Science* (2011) 163.

940 ibid 168; Whittington, Kelemen and Caldeira, in Goodin, *The Oxford Handbook of Political Science* (2011) 247.

941 On the engagement of the legislative process with constitutional norms, *see* Appleby and Olijnyk, in Levy and others, *The Cambridge Handbook of Deliberative Constitutionalism* (2018) 88 ff; Williams and Reynolds, in Levy and others, *The Cambridge Handbook of Deliberative Constitutionalism* (2018) 72 ff.

942 Becker, in Becker and others, *Alterssicherung in Deutschland* (2007) 605–610.

that already existing rights were preserved from curtailment since the given institution indicated and considered related obligations stemming from certain higher norms. Finally, influence may indicate that constitutional, international, and EU law norms have been applied by the responsible actors leading to the enlargement of the scope of social protection rights.

One may wonder whether the concept of "influence" could signify a causal link between the constitutional and international law and the ordinary law of the social protection system. The answer must be negative since the study cannot prove that the constitutional, international, and EU laws represent a *conditio sine qua non* for the formation of social protection.[943] Moreover, it could hardly be argued that constitutional or international law requirements have directly caused certain social protection systems since social rights and social state objectives, in general, lack the required strength and precision to oblige the legislature to act in a specific way in terms of social protection design.[944]

In addition, some aspects of the influence on the social protection system could either be described as unintentional or "informal". Namely, a given change in the system might not be introduced as a direct result of requirements stemming from certain higher norms. Political science is increasingly engaging with the idea that formal institutional outcomes are not always (entirely) stirred by formal pathways.[945] Moreover, political pressures can also contribute to social protection reforms.[946] The situation becomes even more complicated and blurry when there is an interplay between different legal and political levels. EU policy research is a good example in this regard. Political scientists are reluctant to attribute certain policy changes in the national spheres as direct effects of EU public policy due to the difficulties of proving causality between the two.[947] For instance, concerning the field of healthcare, authors claim that it is "[v]irtually impossible to determine a clear 'cause and effect' relationship between the EU's public

943 For a similar approach, *see* Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 252–253.

944 Becker, in Becker and others, *Alterssicherung in Deutschland* (2007) 606.

945 Radnitz, 'Review: Informal Politics and the State' (2011) 43 Comparative Politics 355.

946 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 350.

947 Radaelli, 'The Domestic Impact of European Union Public Policy' (2002) 5 Politique européenne 131.

health policies and national health care policies".[948] Outside of the realm of the EU's legal competences in view of healthcare, it is conceivable that the EU was able to affect national healthcare systems through a myriad of "incentive measures" such as public health programs, including financial enticements.[949] However, causality could hardly be argued since such supposed influences did not occur based on EU law's "supremacy" or "direct effect".[950] Moreover, influence impulses can trigger "unintended effects"[951] and foster reform efforts in spheres that exceed above and beyond the scope of the initial formal influence. Such unintentional and informal influences can especially occur in a country like Bulgaria, which opened itself to international and then EU law and simultaneously had to develop and extensively reform its social protection system after the fall of socialism.

Hence, by looking at the institutional background, rather than striving to prove causality, the research will attempt to demonstrate separate events when there are "clear hints"[952] for the influence of constitutional, international, and EU law on social protection. These influence events on the social protection system do not represent isolated occurrences. On the contrary, social protection systems are generally in an unceasing state of adjustment.[953] Hence, the influence on social protection cannot be static, especially when seen in relation to the also evolving interpretation of constitutional and international law norms. Accordingly, the concept of "influence" is understood as a process driven by the respective institutions, which will continue after the research's time scope.

Therefore, in the framework of the present study, the concept of influence is defined as the concrete events when institutions apply constitutional, international, and EU law norms to ordinary law, thereby affecting the latter. Hence, constitutional, international, and EU law influences occur in these institutions' work processes. The application of influence needs to be evidenced by the related materials produced by the different institutional actors. The following section will deliberate the methodology of studying

948 Hervey and Vanhercke, in Mossialos and others, *Health Systems Governance in Europe* (2010) 90.
949 ibid.
950 ibid.
951 ibid 92.
952 For a similar approach on the studying the influence of the financial crisis on national social protection systems, *see* Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 6.
953 Becker, 'Private und betriebliche Altersvorsorge zwischen Sicherheit und Selbstverantwortung' (2004) 59 JZ 847.

the institutional processes on the application of influence and the scope of materials to be considered in the course of research.

II. Methodological Questions: The Phases of Influence

After the definition of influence was provided, the question arises of how constitutional, international, and EU law influence can be studied systematically. The definition of the concept of influence indicates that the latter is applied to ordinary law during the procedural phases of the work of the respective institutional actors. Thus, a possible systematization approach for the research on influence can distinguish three different procedural phases.[954] These three stages pose a resemblance to the model of separation of powers.[955] Nevertheless, they do not completely correspond to the three powers since they are connected to the actions linked to these powers rather than to the actors performing them.[956] The first stage encompasses the creation of norms that build the social protection system.[957] The second stage refers to the application of norms. Lastly, the third stage corresponds to the control of norms.

In the phase of norm creation, eventual constitutional and international law influence can be detected in the reports and motives accompanying the draft legislation, the reports of the respective parliamentary commissions, and the parliamentary discussions carried out prior to the adoption of the given law. The research in the legislative phase will seek to detect references to constitutional law, international law instruments, and judgments or decisions of international courts or bodies. The phase on norm creation will also examine the influence of European Union law on the domestic social protection system. Since the present research utilizes a national per-

954 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 253; Fichtner-Fülöp, *Einfluss des Verfassungsrechts und des internationalen Rechts auf die Ausgestaltung der sozialen Sicherheit in Ungarn* (2012) 207–209.

955 For an overview of the legal philosophy behind the separation of powers, refer to Kavanagh, in Dyzenhaus and Thorburn, *Philosophical Foundations of Constitutional Law* (2019) 221–239.

956 Vergho, *Soziale Sicherheit in Portugal und ihre verfassungsrechtlichen Grundlagen* (2010) 253.

957 Some scholarly works rather refer to the to "levels" of the studying of influence, namely "Einflussebenen". *See* ibid. However, the present research work relies on the phrase "phases of influence" as the concept of influence is related to different procedural phases that could affect legal norms, such as during laws' creation, amendment, constitutional review and eventual repealing.

spective and assesses potential influences on national social protection, the influence of European Union law will be considered in terms of how the national system has adapted to and incorporated relevant EU law requirements. Given the chosen methodological approach of phases of influences, examination of the EU law influence can be thus carried through the norm creation phase. This approach allows for the detection of relevant changes and influences in the national law that occurred due to compliance with primary and secondary EU law sources.

Naturally, the phase of norm creation contains a great number of reforms, especially given the tendency for constant alteration of social protection. Yet, the methodologically sound empirical research requires an examination of every legal act in order to detect references to influence.[958] As already discussed, these references will be considered as the presence of some influence but will not automatically entail causality between the given influence and the given change in the law. The time scope of the research spreads from 1991, being the year for the adoption of the present Constitution, and reaches 2021 in terms of the considered enacted legislation, legal reforms, and decisions of the Constitutional Court. Given the study's time frame, the examination of the legal acts requires that some of the research is to be carried out in the official archives of the National Assembly of the Republic of Bulgaria due to the lack of digitalized versions of the supporting materials to the older legal drafts.

While, in principle, all reforms are reviewed in search of influence, more significant reforms in the field are handled with special care due to their greater altering potential. For a reform to be considered a more "significant" one, an assessment is made on its altering prospective vis-à-vis the preceding state of social rights. Accordingly, special attention is paid to reforms that create new social benefits and measures, enlarge and enrich the scope of existing social protection benefits and measures, and introduce structural changes or changes in the benefit's function.

Further, it has to be considered that the legislative phase may include the enactment of subordinate laws or other legal instruments which occupy lower positions in the hierarchy of norms in comparison to ordinary laws. Consequently, only a direct reference to constitutional, international, or European Union law instruments can be examined concerning these subordinate laws. If the creation of the subordinate laws, however, only reiterates

958 For a similar methodological approach, *see* Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 6.

the considerations taken into account in the enactment of the related higher law, then no original influence could be detected.

If the first methodological phase comprises the creation of social protection system, then the second one deals with the individual application of these abstract norms. However, this phase generally does not contain considerations on influence. Hence, no comprehensive conclusions about the significance of constitutional, international, or EU law norms could be anticipated. Accordingly, the phase on the application of norms should be excluded from the scope of the study.

In relation to the norm control,[959] influence is manifested in the constitutional review decisions based on the assessment of the law's compatibility with the Constitution and international law norms. It can be assumed that a considerable part of the detected influence can be revealed at this stage since the process of norm control is exclusively concerned with legal considerations. In contrast, the phase of norm creation always entails the possibility of containing non-legal arguments. The intensiveness of the control of norms will naturally depend on the legal and constitutional traditions[960] and the given institutional setup[961] of the constitutional review in the concrete country.

Therefore, the study of the influence on the social protection system will focus on the phases of norm creation and control of norms. At the same time, the phase on the application of norms is excluded from the scope of research since no well-founded conclusions on influence could be made in this regard. It is expected that the greatest legal insights are to be obtained in the phase of control of norms. Simultaneously, in the phase of norm creation, the assessment of whether there is a presence of influence or not needs to consider that, in principle, not every reference to a higher norm automatically entails an influence of constitutional, international, or EU law. Vice versa, not every omission of explicit mentioning immediately implies a lack of influence. The analysis of references to the Constitution and international law in the debates before the enactment of law or subsequent reforms needs to be carried out with caution since such discussions are

959 The term norm control has been utilized by the Bulgarian constitutional law scholarship in relation to the constitutional review powers of the Constitutional Court. *See* Belov, *Constitutional Law in Bulgaria* (2019) 290.

960 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1492.

961 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 5 ff.

often ultimately motivated by non-legal arguments. Moreover, the research needs to be mindful of informal influence. Namely, formal influences can spill over and trigger reform processes that exceed the initial area of influence. Thus, the final decisions on whether indications for influence are present or not will be based on an overall consideration of the development in the legal area.

III. Institutional Actors

As explained above, the methodology for the study of influence will consider the phases of norm creation and control of norms. The provided definition of the concept of "influence" has underlined the importance of the institutions behind applying constitutional, international, and EU law influence on ordinary law. Therefore, the following will provide insight into the institutional background behind the phases of norm creation and norm control.

1. Norm Creation: The Legislature

The first phase, when constitutional or international influence can be applied, belongs to the stage of the norm's creation or the legislative process. According to Article 62 of the Constitution, the National Assembly has been vested with legislative authority. The Bulgarian Constitution does not provide for the option of delegated legislation.[962] Instead, Article 114 of CRB states that the Council of Ministers can only adopt decrees, ordinances, and resolutions pursuant to and in the implementation of the laws. However, this does not imply that the government cannot considerably affect the legislative process. On the contrary - some scholars claim that the main driving force behind the legislative process is the tandem of the government and its majority in the parliament.[963] In addition, apart from its general power to propose draft legislation, the Council of Ministers also has the exclusive authority to propose the draft law on the annual state budget (Article 87(2), CRB).

962 Belov, *Constitutional Law in Bulgaria* (2019) 143.
963 ibid.

The Constitution adopted in 1991 continued the Bulgarian tradition of structuring the Parliament as a unicameral one.[964] The Constitution further stipulates three compulsory main stages in the legislative process,[965] namely a pre–parliamentary, a parliamentary, and a post-parliamentary one. Regarding the pre–parliamentary stage, the legislative initiative belongs to the single MPs, the political groups, or the Council of Ministers (Article 87(1), CRB). The submission of a draft law needs to meet a list of formal criteria, and if it fails to do so, it cannot progress in the legislative process. In addition to the motives for the proposal, according to Article 28 of Law on the Normative Acts (LNA), the formal requirements include, among others, the preliminary evaluation of the effect of the draft law and the required resources for its implementation and an evaluation of the compliance of the proposal with the Constitution, as well as with international and European Union law.[966] During the parliamentary stage, the draft law which meets the abovementioned formal criteria is distributed by the Chairman of the National Assembly to the respective standing committee(s) depending on the proposal's subject matter. The committees then prepare an expert opinion on the proposal.

The legislative procedure is organized in two readings (Art. 88(1), CRB), both consisting of preparatory work of the assigned standing committees and subsequent plenary reading of the draft law. The first plenary reading concerns the draft's "general philosophy, principles and basic merits".[967] The second reading is very concrete since it concerns the details of the law and involves a discussion of the law article by article. The laws are adopted with an absolute majority, i.e., more than half of the present MPs, in the case of the presence of the necessary quorum of 50% of the MPs (Art. 81, CRB). In the post-parliamentary stage, the adopted law has to be promulgated by the President and published in the State Gazette (Art. 98, CRB). Then, the President may apply a suspensive veto to the adopted proposal and send it back to the National Assembly for reconsideration. If the proposal is successfully voted for again, the President must publish it in the State Gazette within seven days (Art. 101(3), CRB).

All in all, this brief overview of the legislative process clarifies a methodological point from the preceding subsection, namely which sources of law

964 ibid 147.
965 ibid; Drumeva, *Constitutional Law/Конституционно Право* (2018) 383.
966 In this regard, also *see* Article 76, Rules of Organization and Procedure of the National Assembly, SG 35/2.05.2017 (with later amendments).
967 Belov, *Constitutional Law in Bulgaria* (2019) 184.

are to be considered in the research on the constitutional, international, and EU law influence on social protection. Accordingly, the legislation to be examined in the norm creation phase will be predominantly parliamentary due to the originality of the influence in the legal source. The rest of the normative acts, which are also lower in the hierarchy of norms, are enacted with due regard to and in service of the parliamentary laws. Hence, even if there are cases when these lower normative acts contain references to constitutional, international, and EU law considerations, these references, instead of being original influence sources, represent a repetition of what was originally brought by the parliamentary law.

2. Norm Control: The Constitutional Court

The Constitutional Court is the sole institution in the Bulgarian legal system which has the competence to examine the constitutionality of legal norms. When in doubt over the constitutionality of a given norm, both the Supreme Court of Cassation and the Supreme Administrative Court suspend the proceedings and refer the matter to the Constitutional Court and cannot examine the constitutionality themselves (Art. 150(2), CRB). Analogically, when courts from the lower instances are in doubt over the constitutionality of a law, they must refer the question to the respective supreme courts, which on their own are to request a review by the Constitutional Court.[968] Therefore, the Constitutional Court is the only institution that could be considered in the phase of norm control.

a. Development, Structure, and Proceedings of the Constitutional Court

The 1991 Constitution established the institution of the Constitutional Court, which was previously unknown in the national legal sphere. In doing so, the Constitution created the centralized system for constitutional control in the country.[969] Furthermore, the VII Grand National Assembly intended for this institution to support the development of the constitutional model during the years of transition to democracy.[970] Some scholars

968 Article 15, Law on the Judicial Power, SG 64/07.08.2007 (with later amendments).
969 Drumeva, *Constitutional Law/Конституционно право* (2018) 569; Belov, *Constitutional Law in Bulgaria* (2019) 278.
970 Belov, *Constitutional Law in Bulgaria* (2019) 272.

argue that the Constitutional Court and its jurisprudence were crucial for the country's constitutional development on the way to democracy and accession to the European Union.[971]

There are different opinions on how the Constitutional Court developed throughout the years. In general, some argue that the Constitutional Court serves well the will of the constitution-maker by establishing itself as the authority in the country on constitutional interpretation.[972] However, others claim that the Court has also become an "activist jurisprudence".[973] According to these views, the Court has turned into a "quasi-constituent power", especially based on its interpretative decisions. The extensive interpreting can even lead to the ascribing of meaning to the constitutional text.[974]

Generally, the Constitutional Court has made it clear that it is not part of the judicial power[975] and that it exercises its competences independently of and alongside the legislative, executive, and judicial powers.[976] Indeed, this independence of the Court is also structurally reflected in the institution's organizational and budgetary autonomy.[977] In terms of structure, the Court represents a unicameral institution consisting of 12 judges, each elected for a period of nine years. The judges are appointed based on quotas, which aim at avoiding the concentration of power: 1/3 of the judges are elected by the National Assembly, 1/3 are appointed by the President, and 1/3 are chosen by the general assembly of the judges of the Supreme Court of Cassation and the Supreme Administrative Court.

The options for requesting a constitutional review or binding interpretation are enlisted in Article 150 of the Constitution. The Constitutional

971 Drumeva, *Constitutional Law/Конституционно право* (2018) 569.
972 Belov, *Constitutional Law in Bulgaria* (2019) 272.
973 ibid.
974 ibid.
975 Some legal scholars agree with this view by claiming that formally speaking the Constitutional Court is not part of Chapter VI 'Judicial Power' of the Constitution. In addition, substantially the Court is not in any administrative and hierarchical relations with the other courts in the country and does not represent a superior instance of the justice system. See ibid 269 ff. Other scholars criticize this position of the Constitutional Court by stating that the Court is indeed a special type of court that nevertheless belongs to the judicial system. See Stalev, *Problems of the Constitution and Constitutional Jurisprudence/Проблеми на Конституцията и конституционното правосъдие* (2002) 65–91.
976 Constitutional Decision No 18/1993 on case 19/1993 para II.
977 Drumeva, *Constitutional Law/Конституционно право* (2018) 573.

Court can act on an initiative from not less than one-fifth of all members of Parliament, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the General Prosecutor. The municipal councils can also request a constitutional review on an issue concerning the allocation of competences. As stated above, in case of doubt about the unconstitutionality of a given law, the Supreme Court of Cassation or the Supreme Administrative Court must suspend the proceedings on a case and refer the matter to the Constitutional Court. The Ombudsperson may also approach the Constitutional Court with a request to declare a law unconstitutional on the grounds that it infringes human rights and freedoms. Finally, the Supreme Bar Council may request a constitutional review of a law that allegedly violates the rights and freedoms of citizens. The option for individual constitutional complaint is not provided for in the Bulgarian legal system.[978] Therefore, the lack of a constitutional complaint option could be seen as a certain impediment to reviewing a greater range of laws, limiting the potential scope of the eventual constitutional influence.[979]

The proceedings' procedure of the Constitutional Court is defined by the Constitution, the Law on the Constitutional Court (LCC),[980] and the Rules for the organization of the Activity of the Constitutional Court. The last one is adopted by the Constitutional Court itself as a token of its organizational autonomy.[981] The two main phases of the procedure in front of the Court consist of the admissibility stage and a stage of discussing the

978 Different legal scholars criticize the lack of the constitutional complaint, as it deprives the citizens from an important remedy against human rights violations. See Belov, *Constitutional Law in Bulgaria* (2019) 283; Penev, 'The Bulgarian Constitutional Justice and the Protection of Human Rights/Българското конституционно правосъдие и защитата на основните права' (2013) 12 Lawyers' Review/Адвокатски преглед 24. The only possibility for citizens to indirectly request a constitutional review is for them to file a complaint to the Ombudsperson who acts as a filter and can decide which of the complaints are to be addressed to the Constitutional Court. Still, scholars are of the opinion that this possibility is still very limiting and incapable of substituting the constitutional complaint mechanism.

979 Over the years, different Bulgarian legal scholars have argued in favor of the introduction of the constitutional complaint. *See* Stoichev, *Constitutional Law/Конституционно право* (2002) 573; Penev and Zartov, *Constitutional Jurisprudence in the Republic of Bulgaria/Конституционно правосъдие на Република България* (2004) 54; Penev, 'The Bulgarian Constitutional Justice and the Protection of Human Rights/Българското конституционно правосъдие и защитата на основните права' (2013) 12 Lawyers' Review/Адвокатски преглед 24.

980 Law on the Constitutional Court, SG 67/16.08.1991 (with later amendments).

981 Belov, *Constitutional Law in Bulgaria* (2019) 282.

merits of the given case.[982] The admissibility phase contains an assessment of whether all formal and procedural requirements are kept, in addition to deliberation on whether the Constitutional Court is the right institution regarding the raised matter. The next phase in the proceedings begins with the appointment of a judge rapporteur[983] on the case by the Constitutional Court's Chairman. Usually, there is a single judge rapporteur. However, more rapporteurs could be appointed in some more complicated cases, including in relation to interpretive decisions.[984]

In very broad terms, the discussion of the merits phase consists of three steps. In the elaboration part, the Court constitutes the different interested parties to the case that can voluntarily present written statements that will serve as additional information for the Court. The following discussion of the merits part is usually executed behind closed doors without the presence of the institutions and other interested parties, which have submitted written statements.[985] In the discussion of the merits, the Constitutional Court must address only the made referral but is not limited to solely adhering to the referred argument for unconstitutionality.[986] In the last stage, the adoption of the decision is carried out through open voting. Decisions are adopted by an absolute majority (amounting to seven judges), meaning that parity of the votes leads to no adoption of the decision.

b. Types of Decisions

The Constitutional Court is endowed with competences that could be summarized into five groups.[987] First, it can provide an interpretation of the constitutional text in accordance with the current social and political realities. Next, the Court observes the order of the hierarchy of norms in Bulgarian law. Third, it contributes to the functioning of the institutional framework based on its competence to deal with questions on vertical and

982 ibid.

983 The judges rapporteurs have general freedom in laying out of the legal arguments of the given judgements. Whenever the judgments are structured through the use of paragraphs, the present research work reports the respective paragraph in the citing of the judgement. When no paragraphs are used, the present research work instead refers solely to the respective constitutional decision.

984 ibid 287.

985 ibid 285 ff.

986 As it becomes obvious from Article 22(1), LCC.

987 Belov, *Constitutional Law in Bulgaria* (2019) 272 ff.

horizontal separation of powers between institutions. Fourth, the Court also has the function of addressing threats to the integrity of the state by having the ability to impeach the President and ban political parties if these are found to be unconstitutional. Last but not least, the Court acts as one of the guardians of the system of representative democracy due to its competence to decide on elections' legality.

The Constitution does not explicitly provide for control on constitutionality concerning the acts of the government. Neither does it explicitly provide for the control of their compliance with international treaties and generally recognized principles of international law. The acts of government are ultimately subject to the control of the Supreme Court of Cassation and the Supreme Administrative Court.[988] Based on Article 15(3) of the LNA,[989] whenever a government act contradicts another legal instrument of higher rank, the judicial authorities apply the latter and disregard the former. Naturally, the acts adopted by the Council of Ministers or the separate Ministers must comply with the constitution and the applicable international law; when this is not the case, the government acts would automatically become void as they contradict the higher-ranking legal instrument.[990]

As per its competences, the Constitutional Court can adopt three types of decisions.[991] These are interpretative decisions, judgments regarding the hierarchical norm control, and decisions on concrete matters, which are part of the competences of the Constitutional Court listed in Article 149(1) of the Constitution.[992] The decisions of the Constitutional Court regarding interpretation or norm control produce judgments that represent sources of law and are attributed a constitutional rank.[993] This conclusion is not provided by some constitutional provision but rather follows from the logical interpretation that if the Constitutional Court's decisions are to be able to block the derogating provisions, then the judgment itself should

988 The constitutional legislature avoided to grant such explicit rights to Constitutional Court due to the fear of the latter's overburdening. *See* ibid 276 ff.

989 Law on the Normative Acts, SG 27/3.04.1973 (with later amendments).

990 Belov, *Constitutional Law in Bulgaria* (2019) 279 ff.

991 ibid.

992 The concrete matters include the already mentioned vertical and horizontal institutional disputes, impeachment of President, and constitutionality of political parties, as well as the legality of elections.

993 The decisions on the institutional conflicts on the separation of powers may have normative character since they may contain important interpretations on the respective constitutional provisions. See Belov, *Constitutional Law in Bulgaria* (2019) 290.

possess the rank of the superior constitutional norm.[994] The following discussion will provide some insight into the two most important types of decisions of the Constitutional Court, i.e., the interpretative decisions and the decisions on hierarchical norm control. The two types of decisions will be of great research interest for the present work due to their potential for applying constitutional and international law influence.

aa. Hierarchical Norm Control

The power of the Constitutional Court to safeguard the normative hierarchy of the sources of law undeniably represents its most essential competence.[995] Based on this prerogative provided for in Article 149(1) of the Constitution, the Court can control the constitutionality of the parliamentary legislation and the legal acts of the President. The Court can also examine *ex-ante* the compatibility of international treaties with the Constitution before their ratification. Further, it can control the compliance of legal acts of the Parliament and the President with international law treaties as well as with the generally recognized principles of international law.

The hierarchical norm control can be divided into concrete and abstract controls for constitutionality.[996] Both types of controls result in legally binding decisions for all subjects of the Bulgarian constitutional law. The difference lies in the procedure preceding the constitutional review, namely whether it was a result of a pending lawsuit (which was halted due to suspicion of unconstitutionality) or not.[997] The concrete and the abstract norm controls represent *ex-post* types of constitutional review. Hence, the only preliminary type of control the Constitutional Court may exercise is in terms of the constitutionality of international treaties. Such *ex-ante* review

994 ibid.

995 Belov, *Constitutional Law in Bulgaria* (2019) 272 ff; Drumeva, *Constitutional Law/ Конституционно право* (2018) 590; Drumeva, 'Das Bulgarische Verfassungsgericht. Rechtsgrundlagen und erste Entscheidungen' (1993) 53 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 121.

996 Belov, *Constitutional Law in Bulgaria* (2019) 272 ff; Drumeva, *Constitutional Law/ Конституционно право* (2018) 590.

997 Some legal scholars argue that there is no differentiation between abstract and concrete norm control: both reviews are abstract, with the difference that one of them is exercised due to a concrete reason. See Drumeva, *Constitutional Law/ Конституционно право* (2018) 590.

prior to ratification is exercised to evade subsequent violation of the principle of *pacta sunt servanda*.[998] In terms of international law, throughout the years, the Constitutional Court was approached with referrals claiming unconstitutionality and violation of international law concerning human rights issues, with the ECHR, the ICCPR, and the ICESCR being the most frequently referred sources.[999]

The consequences of the decisions of the Constitutional Court are based on the supremacy of the Constitution. Article 5(1) of the Constitution states that the Constitution is the supreme law, and no other laws can contradict it.[1000] Therefore, as the sole authority which has the competence to safeguard the supremacy of the Constitution in the hierarchy of norms in the country, the Constitutional Court needs to be able to issue decisions that have legal consequences ensuring the supremacy of the Constitution.[1001] Then, if a decision of the Constitutional Court has established the unconstitutionality of a law, the law in question loses its "legal force" and is no longer considered to belong to the legal sphere. Such law ceases to apply *ex nunc* on the day of the entering into force of the Court's decision (Article 151(2), CRB).[1002]

The legal consequences stemming from the law that was declared unconstitutional must be addressed by the institution responsible for the unconstitutional law's enactment (Art. 22(4), LCC). In the reasoning of one of its judgments, the Constitutional Court has addressed the situation when the contested law, which was declared unconstitutional, is subject to pending court proceedings.[1003] When the Constitutional Court's decision is still not in force or the responsible institution has not yet addressed the legal consequences of the decision adjudicating unconstitutionality, the courts are to continue their work by grounding themselves directly on the Constitution or the general principles of law.[1004]

998 Belov, *Constitutional Law in Bulgaria* (2019) 279.
999 ibid.
1000 Constitutional Decision No 3/2020 on case 5/2019.
1001 ibid.
1002 The decision enters into force three days after its promulgation in the State Gazette (Art. 151(2), CRB).
1003 Constitutional Decision No 3/2020 on case 5/2019 para II.2.
1004 ibid.

bb. Interpretative Decisions

The power of the Constitutional Court to provide interpretative decisions is detailed in Article 149(1) of the Constitution. The importance of such case law is considerable for the national legal system: interpretative decisions are not only binding but also, in practice, become part of the Constitution itself,[1005] as the latter can no longer be properly understood without recourse to the respective interpretative decisions.[1006] In terms of their number, the interpretative decisions of the Constitutional Court are the second-largest group of case law, right after the decisions on hierarchical norm control issues.

The founders of the 1991 Constitution considered that the interpretative power of the Constitutional Court would be an important one in two main regards. First, it was believed that after the end of socialism, there would be a need for a constitutional authority that would be able to unveil the meaning of the constitutional norms given the new political realm.[1007] Such interpretative power was to contribute to constitutional supremacy by the provision of uniform and authoritative constitutional interpretations. In addition, the interpretative power was seen as an important tool for clarifying the vagueness of the constitutional norms.[1008] It was considered that the interpretative function would provide a reading of the Constitution that evolved with time and took into account the changing social reality.[1009]

Some scholars consider the interpretative powers of the Constitutional Court as essential for the stable and unambiguous application of the Constitution.[1010] Others challenge this view.[1011] As mentioned above, the Constitutional Court's use of the interpretative power is at times criticized for judicial activism and provision of new meanings of the constitutional

1005 Drumeva, *Constitutional Law/Конституционно право* (2018) 603; Stoichev, *Constitutional Law/Конституционно право* (2002) 595.

1006 Belov, *Constitutional Law in Bulgaria* (2019) 275 ff; Penev and Zartov, *Constitutional Jurisprudence in the Republic of Bulgaria/Конституционно правосъдие на Република България* (2004) 94.

1007 Dimitrov, 'The Bulgarian Constitutional Court and Its Interpretive Jurisdiction' (1999) 37 CJTL 504.

1008 Drumeva, *Constitutional Law/Конституционно право* (2018) 604.

1009 Belov, *Constitutional Law in Bulgaria* (2019) 273 ff.

1010 Penev and Zartov, *Constitutional Jurisprudence in the Republic of Bulgaria/Конституционно правосъдие на Република България* (2004) 93.

1011 Belov, *Constitutional Law in Bulgaria* (2019) 274 ff.

text, the latter being an action that lacks democratic legitimacy.[1012] There are some potential limitations to the extensive use of interpretative power. The Constitutional Court cannot act *ex officio* and has to be requested for an interpretative decision by one of the competent institutions.[1013] Still, the wide range of institutional actors that may request an interpretation contributes to the greater possibility for the referral of a request for constitutional interpretation.[1014]

The Bulgarian legal scholarship has debated the principles observed in interpretative decision-making that can prevent ascribing of meanings to the constitutional text.[1015] Among them is the requirement for the uniform interpretation of the used terminology and the need for interpretation targeting the given context in which the request for interpretation was made. In addition, some scholars consider that the Constitution itself sets parameters and limits for its interpretation.[1016] For instance, the interpretative decisions need to abide by the fundamental principles included in Chapter 1 of the Constitution.[1017] Moreover, the decisions should, to some extent, be mindful of the Preamble as the latter possesses a synthesized representation of the main values and goals of the Constitution.[1018] Further, the Constitutional Court can provide an interpretation only of the concrete constitutional provision addressed by the referring institution and the specific question.[1019] However, some scholars point out that such principles could be circumvented due to the usual general way in which interpretation

1012 ibid. There are authors who do not support such criticism and argue that the interpretative decisions cannot lead to the inscribing of new meaning of the constitutional text. *See* Stoichev, *Constitutional Law/Конституционно право* (2002) 595.

1013 ibid 595.

1014 Namely, on the basis of Article 150 of the Constitution, referrals can be requested by 1/5 of the MPs, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General. The Ombudsman and the Supreme Bar Council can also approach the Constitutional Court but can only do so when in doubt about the unconstitutionality of a given law in relation to fundamental rights (Art. 150(3) and (4), CRB).

1015 Drumeva, *Constitutional Law/Конституционно право* (2018) 605; Spasov, *Study on the Constitutuion/Учение за Конституцията* (1997) 55.

1016 Drumeva, *Constitutional Law/Конституционно право* (2018) 605.

1017 ibid 605.

1018 ibid.

1019 ibid.

requests are framed.[1020] Namely, the general wording of the posed questions can allow the Court broad room for shaping its answer.[1021]

IV. Concrete Influences

1. Creation of Norms

a. Contribution-based Systems: Framework Laws

After examining the concept of influence and the methodology for its studying, the research proceeds to investigate the concrete influences detected in the phases of norm creation and norm control. In terms of the phase of norm creation, the research will progress to study the influence on the systematized social protection branches. As the systematization part has revealed, the framework laws in the Contribution-based Systems are the Social Insurance Code and the Law on Health Insurance. In unveiling influences, the research will consider the introductory and motivating considerations of the legislative drafts of the laws and their following reforms, as well as the related reports of the respective parliamentary committees and the corresponding debates in Parliament during the legislative process.

aa. Social Insurance Code

In general, the motives for the draft law and the subsequent reform of the Social Insurance Code did not comprehensively engage with constitutional considerations.[1022] This observation is already exemplified in the legal draft of the Social Insurance Code. The motives for the draft briefly implied the importance of setting public social insurance,[1023] thereby implying the relevance of the right to public social security provided for in Article 51(1) of the Constitution.[1024] Still, despite that the importance of the Constitution

1020 Belov, *Constitutional Law in Bulgaria* (2019) 723.
1021 ibid.
1022 'Draft of the Social Insurance Code, No 902-01-63, Archives of the National Assembly' (1999).
1023 'Motives in Draft of the Social Insurance Code, No 902-01-63, Archives of the National Assembly' (1999) 1.
1024 ibid.

was generally assumed, there was no explicit and detailed engagement with the relevance of the constitutional provisions in terms of the system's design. The report of the leading parliamentary Committee on this draft law, namely the Labor and Social Policy Committee, noted that the draft utilized the constitutional principle of solidarity as a legal basis for the proposed social insurance system.[1025] The report claimed that the draft's combination of the solidarity principle with the principle for mandatory participation in the system would contribute to the development of social insurance and its specialized funds.

In contrast, the political debates concerning the law's enactment and its following reforms demonstrated greater engagement with constitutional arguments. First, the political discussions on the legal draft during the first reading in the parliament referred to the constitutional principle of solidarity as being a guiding one for the legislative proposal.[1026] During the political debate, the Union of the Democratic Forces ("UDF") indicated the explicit mentioning of this constitutional principle in the legal draft as an argument in favor of adopting the proposal.[1027]

Second, the social state objective and the constitutional right to social insurance were debated in view of the envisioned structural changes in the pension system. Namely, the draft proposed the integration of private capital-funded schemes into mandatory pension insurance, which became a point of political tension. The legal draft provided that part of the mandatory pension contribution would be mandatorily directed to capital-funded private schemes based on individual accounts. The Bulgarian Socialist Party ("BSP") attacked this aspect since redirecting some of the mandatory pension contributions to the capital-funded schemes deprived the public pension insurance of an income. Therefore, the redirecting of finances could potentially destabilize the functioning of the PAYG public pensions fund.

Moreover, private insurance placed the insurance risk mainly upon the individual, which, according to the BSP, was incompatible with the so-

1025 'Report of the Committee on Labor and Social Policy for the First Reading of the Draft of the Social Insurance Code, No 902-01-63, Archives of the National Assembly' (1999) 1.

1026 'Transcript of Parliamentary Plenary Session No 310, 13.10.1999' (1999) <https://www.parliament.bg/bg/plenaryst/ns/6/ID/1318> accessed 24 February 2020.

1027 ibid.

cial state objective promulgated in the Constitution.[1028] Another argument against this structural reform was the high administrative costs it allowed, which would slow down the accumulation of capital in the schemes and would thus affect the future benefits' amounts. The high administrative costs, in turn, would lead to a violation of the constitutional right to social insurance and would be incompatible with system development in line with the social state objective. In response to these critiques, the UDF opted not to rely on constitutional arguments but instead chose fiscal reasoning. The political party claimed that the integration of capital-funded schemes in the mandatory pension insurance was a symbol of modernizing the pension system in the country.[1029] Also, the UDF maintained that a developed capital-funded pension system would contribute to the higher old-age income of the retirees, especially in a society with a tendency for aging demographics. Ultimately, the fiscal argumentation prevailed, and the integration of private schemes in the mandatory pension system was approved.

The following reforms on the already enacted Social Insurance Code did not profoundly engage with constitutional considerations. An exception to this observation was the reforming of the paid maternity leave duration. Namely, a reform aiming to extend the number of prenatal and postnatal paid leave days implied the significance of the provision of special protection for mothers,[1030] which is entailed in Article 47(2) of the Constitution. The legal proposal planned an increase from 135 days of paid maternal leave to 200 days.[1031] A competing reform proposal submitted at the same time envisioned an increase to 400 days.[1032] The plenary discussions, which

1028 'Transcript of Parliamentary Plenary Session No 329, 01.12.1999' <https://parliament.bg/bg/plenaryst/ns/55/ID/870> accessed 24 February 2020.

1029 The introduction of the private schemes in the country was strongly advocated by the World Bank. For more on this topic, *see* Petrova, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 369.

1030 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly' (2006); 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly' (2006).

1031 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'.

1032 'Transcript of Parliamentary Plenary Session No 151, 09.08.2006' <https://parliament.bg/bg/plenaryst/ns/2/ID/183> accessed 24 February 2020; 'Draft of the Law

accompanied the draft's reading, focused on the meaning of special protection for mothers in the social insurance system, given the demographic problems in the country.[1033]

According to the parliamentary debates, special protection, in general, was expressed in the state's obligation to guarantee targeted forms of protection by different systems, depending on whether the (expecting) mother was entitled to social insurance benefits or not. The debates led to the prevailing understanding that considering the demographic problems in the country, the state could further support child-raising through the social insurance system by increasing the time of the paid maternity leave. Accordingly, the initially proposed increase to 200 days was viewed as insufficient. A compromise on the increase and its related costs for the state was reached and led to the leave's increase to 315 days.[1034] Just two years later, yet another reform of the Social Insurance Code again addressed the provision of paid leave to mothers and proposed an increase of the 315 days of paid leave to 410 days.[1035] The debates on the draft once again quickly touched upon the constitutional obligation for the special protection of mothers.[1036]

bb. Law on Health Insurance

In contrast to the Social Insurance Code, constitutional considerations played a more prominent role in the enactment of the Law on Health Insurance. The constitutional aspects were of no particular importance in the subsequent reforms of the Law on Health Insurance over the years. However, when it comes to the law's enactment, constitutional arguments were present both in the draft law's motives and the subsequent reading

Amending and Supplementing the Social Insurance Code, No 653-08-42, Archives of the National Assembly' (2006).

1033 'Transcript of Parliamentary Plenary Session No 151, 09.08.2006'.

1034 ibid; 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 653-08-42, Archives of the National Assembly'.

1035 'Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84' (2008) <https://www.parliament.bg/bg/bills/ID/8493> accessed 24 February 2020; 'Motives in Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84' (2008) <https://www.parliament.bg/bg/bills/ID/8493> accessed 24 February 2020.

1036 'Transcript of Parliamentary Plenary Session No 433, 19.11.2008' <https://parliament.bg/bg/plenaryst/ns/2/ID/500> accessed 24 February 2020.

and debating of the draft. It was claimed that the constitutional principles of solidarity and equality were foundational for the draft and were indicative of the proposed health insurance model.[1037] Namely, the draft law introduced an insurance system based on solidarity between the participants, mandatory participation through contributions, and equality in terms of access to the covered medical services and goods. In contrast, the healthcare system at the time functioned through centralized financing covered by the state budget and involved no payment of contributions.[1038]

The debate in the National Assembly on the relevant constitutional provisions was held with corresponding passion. In the first reading of the legal proposal, the Healthcare Committee, which had a leading role in preparing a report on the legal draft, raised the question of the general meaning of the concept of "healthcare", including in constitutional terms.[1039] The debate originated in the fact that Article 52(1) of the Constitution indirectly provided that the right to healthcare in the country consisted of two main components. Namely, healthcare included health insurance, which should guarantee affordable medical aid based on insurance rights, and further entailed free medical care, which was to be provided either to all or to certain groups in some concrete cases.[1040] The UDF maintained that the right to healthcare should be understood based on the definition provided by the World Health Organization ("WHO"). The definition recognized "health" not only as being the absence of a given illness but also deemed it to be the condition of complete physical, psychological, and social wellbeing. It was pointed out that, according to the WHO, the state was responsible for the overall health condition of the population. This responsibility entailed the undertaking of social- and health-related measures. Therefore, the debates concluded that healthcare should not just involve developing a health insurance system. Instead, healthcare should be understood as a broader concept necessitating the leading of a broad state policy for the overall health wellbeing of the nation. Such an understanding was viewed as compatible with the constitutional objective of the state to protect the health

1037 'Motives in Draft of the Law on Health Insurance, No 02-01-49, Archives of the National Assembly' (1997) 1.

1038 For more on this, please refer to the research section on the history of the social protection system in the country.

1039 'Transcript of Extraordinary Parliamentary Plenary Session No 20, 16.12.1997' <https://www.parliament.bg/bg/plenaryst/ns/6/ID/1411> accessed 24 February 2020.

1040 ibid.

of citizens (Art. 53(2), CRB). In addition, health insurance should strive to realize the constitutional right to health insurance and accordingly could not be interpreted as a business model for providing services governed by microeconomic rules. On the contrary, the constitutional right to health insurance implied that healthcare must strive for state governance which minimized the need to rely on the health insurance system.

Moreover, the lengthy parliamentary debates concentrated on the concrete requirements for realizing the constitutional right to health insurance, particularly in terms of access to medical care.[1041] A particular point of political disagreement represented the proposal's inclusion of the requirement for payment of a small fee by the insured individuals for every visit to the general practitioner and every day spent in the hospital. According to the draft law, the fee to be covered by the insured individual represented a flat-rate amount determined by law that did not depend on the received medical service. Certain groups of citizens were excluded from paying this additional minimum fee, such as children, unemployed family members, and others.[1042]

Some members of parliament saw the introduction of this additional fee as a violation of the constitutional right to health insurance. According to this view, once the individuals had provided the required contributions and were insured, there could be no further impediments to their right to access the medical services covered by the public health insurance. Nevertheless, other parliamentarians claimed that the introduction of additional fees was in line with the constitutional requirements. These arguments maintained that, after all, according to Article 52(2) of the CRB, medical care "shall be financed from the state budget, by employers, through private and collective health insurance schemes, and from other sources in accordance with conditions and procedures established by law". Accordingly, the proponents claimed that the constitutional provision allowed the legislature the freedom to delineate these "other sources" of financing. Thus, the introduction of further small fees belonged to the enlisted category of "other sources" and was constitutionally permissible. The debates on the constitutionality of the introduced fee ended in the Constitutional Court.[1043]

1041 ibid.
1042 ibid.
1043 A group of 52 members of parliament referred the debated issue on the fees to the Constitutional Court. The Court decided that the introduction of the fees to

In addition, the parliamentary discussions during the enactment of the Law on Health Insurance engaged with further constitutional considerations. Some members of the parliament pointed out that the constitutional principles of solidarity and equality both represented some of the main foundations of the legal draft. These principles allowed insurees to contribute to the system based on their income. Individuals could then equally benefit from medical services in line with their medical needs and not according to the amount of the made contributions. The state was to take over the financing of some medical services, thereby allegedly adhering to the social state objective in the legal draft. These services were provided in line with the constitutional provision for free medical care. Additionally, the social state objective was to be adhered to by covering the health insurance's financing for certain social groups like pensioners and people in material need.

b. Social Compensation

The part on the systematization of social protection in Bulgaria showed that the branch of Social Compensation is constituted by the military and civil disability pensions. The expression of explicit constitutional considerations in the respective legislation's enactment was quite limited. The constitutional influence in the field could be boiled down to a reform of the Social Insurance Code, which introduced higher pensions to the survivors of disabled militaries.[1044]

In the parliamentary debates, some defended the reform as representing a group-specific interpretation of the requirement stemming from Article 51(3) of the Constitution. The constitutional provision entails the goal that the state and society should provide special protection to certain vulnerable social groups, including disabled persons.[1045] It was considered that the combined basis of the special protection for people with disabilities and the value of the military service should extend the right to a military pension to the survivors. Such an approach is a precedent in the country since,

be constitutional. The Constitutional Court's decision is reviewed in detail in the research section on control of norms.

1044 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 054-01-11 and No 053-08-12, Archives of the National Assembly' (2000).

1045 'Transcript of Parliamentary Plenary Session No 400, 16.06.2000' <https://parliament.bg/bg/plenaryst/ns/55/ID/1398> accessed 24 February 2020.

as discussed in the social protection system's analysis, non-contributory pensions do not result in survivor rights. Apart from establishing survivor pension rights based on the military pension, the reform also increased survivor benefit amounts.

c. Minimum Protection

The social protection's systematization demonstrated that a minimum level of protection in Bulgaria is provided through general social assistance benefits and social pensions for the destitute elderly. Examining the enactment and subsequent reforms of the social assistance legislation illustrates that its development was reportedly intertwined with constitutional and international law influences. In contrast, the non-contributory social pensions and their reforms were not explicitly associated with constitutional or international law influences.

The following overview will begin with the detected influences in the social assistance legislation that occurred before the enactment of the current Law on Social Assistance and shaped some of the aspects of the current legislation. Then, the examination will continue with assessing the influence of the creation of the Law on Social Assistance. Finally, the analysis will discuss the influences encountered in the law's reforms.

aa. Influences Prior to the Law on Social Assistance

The analysis of the social protection system revealed that social assistance in the country is currently mainly regulated by the Law on Social Assistance. The rules on social assistance used to be scattered in different regulations before the law entered into force in 1999.[1046] A case dating back to when there was no unified regulation concerned the limited appeal procedures regarding certain social assistance administrative decisions. The case ended up in the European Commission of Human Rights, [1047] an institution that used to represent a specialized body of the Council of

1046 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 371.

1047 *Sekul Kovachev against Bulgaria*, App. No. 29303/95, 10 April 1997.

Europe.[1048] The applicant was a recipient of a social pension for disability. The social disability pension used to provide minimum income to all those above the age of 16 who had more than 71% of disability but were not eligible for any other pension.[1049] The applicant was denied a request for entitlement to several additional social assistance allowances for medications and transportation to and from rehabilitation centers.

One of the relevant social assistance laws, which were in force during a period of time concerning the applicant's claims, provided that people with disabilities who were already recipients of minimum income benefits had a right to certain additional allowances. The decision to grant these further allowances could be taken by district social care centers, and appeals to those decisions could be addressed to a commission appointed by the district's mayor. The European Commission of Human Rights concluded that the provided options for an appeal in the law did not represent "impartial tribunals" in the sense of Article 6, para. 1 of the ECHR.[1050] As a result, it was unanimously agreed that there was a violation of Article 6, para. 1 of the Convention.[1051] The Bulgarian authorities have subsequently reported that the case had been taken into account in the national law's amendment. The reforming of the national law included the preparation of new social assistance legislation, i.e., the Law on Social Assistance.[1052] In particular, it was underlined that Article 29(2) of the Regulation for the application of the newly enacted Law on Social Assistance explicitly stated that the decisions of the district authorities could be appealed in courts in accordance with the Law on the Administrative Procedure.[1053] Accordingly, the ECHR's influence allegedly led to the extended possibility for judicial appeal in the field of social assistance.

1048 Prior to 1998, the European Commission on Human Rights assisted the European Court of Human Rights. After 1998 and the entry into force of Protocol 11 of the European Convention on Human Rights, the Commission was abolished. For more on the history of the Commission, see United Nations, 'International Norms and Standards Relating to Disability' (2003) < https://www.un.org/esa/socdev/enable/comp301.htm> accessed 24 February 2020.

1049 The entitlement to this pension was terminated with the entering into force of the Law on People with Disabilities. *See* Article 70, LPD.

1050 *Kovachev against Bulgaria* para 41.

1051 ibid paras 43–44.

1052 Council of Europe, 'Human Rights Information Bulletin No. 52, November 2000 – February 2001' (2001) 14 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680096f3f> accessed 24 February 2020.

1053 ibid.

bb. Enactment of the Law on Social Assistance

Both the motives and debates on the legal draft[1054] of the Law on Social Assistance were heavily painted in constitutional arguments. First, the motivating considerations accompanying the draft clearly stated that the proposal was based on the right to social assistance enshrined in Article 51(1) of the Constitution.[1055] The foundational importance of the constitutional provision was reiterated numerous times during the document's discussion in the course of the first and the second readings in the Parliament.[1056]

In addition, apart from focusing on the underlying role of the right to social assistance, the debates on the legal draft's content were further concerned with other constitutional principles and related objectives, namely solidarity, social state, and preservation of human dignity. Concerning the principle of solidarity, the debates united under the argument that the creation of the law was a necessity stemming from the social state objective declared in the Constitution's Preamble. According to the parliamentary discussion, the social state entailed the state's obligation not to abandon the persons who were unable to deal with some hardships, despite their best efforts.[1057] A lack of measures addressing such members of the society would just condemn them to severe poverty. Therefore, the social state was seen as the state's duty to interfere in life situations when, due to the materialization of certain social risks, the individuals would end in a precarious situation and would be unable to lead a life compatible with the idea of the human dignity. Accordingly, it was accepted that one of the main

1054 'Draft of the Law on Social Assistance, No 853-08-6, Archives of the National Assembly' (1998).

1055 'Motives in Draft of the Law on Social Assistance, No 853-08-6, Archives of the National Assembly' (1998).

1056 'Transcript of Parliamentary Plenary Session No 105, 04.03.1998' <https://www.parliament.bg/bg/plenaryst/ns/6/ID/984> accessed 24 February 2020; 'Transcript of Parliamentary Plenary Session No 127, 16.05.1998' <https://www.parliament.bg/bg/plenaryst/ns/6/ID/1038> accessed 24 February 2020.

1057 Some scholars argue that the definition of the social state is a political task ("Den Sozialstaat zu definieren, ist ein politisches Geschäft."). The aforementioned does not imply that the social state cannot be used in legal arguments since it can be used to guide political actions or to point out the directions in which given politics should be further developed. *See* Zacher, in Stödter and Thieme, *Festschrift für Hans Peter Ipsen zum siebzigsten Geburtstag* (1977) 266–267.

goals of the proposed law was to support "citizens who without someone else's help would not be able to satisfy their basic living necessities".[1058]

The discussion on the social state spilled over the linked topics on the principle of solidarity and the meaning of human dignity. The proponents for the legal draft believed that the principle of solidarity was a fundamental part of the law as it embodied the main driving force behind the realization of the law's aim. It was pointed out that solidarity stood for society's commitment to interfere and provide help once an individual could not continue to live with human dignity. Consequently, in the further definition of the legal draft's goals, the proposal declared that it aimed to "strengthen and reinforce social solidarity in difficult life situations".[1059] The inclusion of this goal in the law was ultimately approved.[1060]

The deliberations on the social state and solidarity touched upon "human dignity". While the members of parliament were predominantly univocal on what the terms "social state" and "solidarity" stood for, the reliance on the concept of "human dignity" in the legal draft caused disagreements. In particular, the initial proposal used to state that the purpose of the law was to secure the human dignity of citizens who, without the help of others, could not afford the basic necessities of life. However, in the second reading of the legal draft, concerns about the broad character of the "human dignity" concept were raised. Moreover, it was argued that "human dignity" rather represented a moral category, and as such, it was unable to bring clarity to the main goal of helping those who are not able to satisfy their basic living necessities.[1061] Nevertheless, counterarguments pointed out that guaranteeing human dignity was one of the state's constitutional obligations (Art. 4(2), CRB). Therefore, the term's inclusion in the text of the law became imperative to ensure that recipients of social assistance would be treated in a manner respecting their sense of dignity. Ultimately, a compromise was reached, and it was accepted that the inclusion of the term in the law entailed the "provision of social assistance […] in a way which preserves the human dignity".[1062]

1058 Nowadays, the main goal of the law is featured in Article 1(2)1, LSA.

1059 'Motives in Draft of the Law on Social Assistance, No 853-08-6, Archives of the National Assembly'.

1060 Nowadays, the goal of strengthening and reinforcing social solidarity is featured in Article 2(1)2, LSA.

1061 'Transcript of Parliamentary Plenary Session No 127, 16.05.1998'.

1062 Translation from Bulgarian by author. Nowadays, the goal related to human dignity is featured in Article 1(5), LSA.

In addition to the constitutional references, the debates on the draft of the Law on Social Assistance revealed certain international law influences. The plenary statements presented in the second reading demonstrated that the members of the leading commission on the draft, namely the Labor and Social Policy Committee, engaged in long discussions on the material scope of the solutions proposed by the law in addressing the needs of destitute individuals.[1063] The leading committee considered that the scope of the offered benefits should reflect the country's international law obligations in view of the ICESCR. More concretely, recourse was made to Article 11.1 of the Covenant, which postulates that state parties need to "recognize the right of everyone to an adequate standard of living", which included food, clothing, and housing. In addition, another Covenant obligation underlined by the Committee provided that states should strive for the continuous improvement of living standards.[1064] The Labor and Social Policy Committee proposed that the law should enlist as one of its goals the aim to "support citizens who themselves cannot afford the basic necessities of life". To translate the idea behind Article 11.1 of the ICESCR into the draft law, the phrase "basic needs of life" was defined in the spirit of the Covenant as standing for "enough food, clothing, and housing in accordance with the social and economic development of the country".[1065] This proposed wording was adopted on the second reading of the legal draft, albeit the critiques from the left that the used language is too vague and unclear and thus may not sufficiently address the needs it should target.[1066]

Some scholars also criticized tying up the law's aim of providing basic protection to the conditionality of the "social and economic development

1063 'Transcript of Parliamentary Plenary Session No 127, 16.05.1998'.

1064 Article 7 of the ICESCR provides that: "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent".

1065 Nowadays the definition of the "basic needs of life" is stated in §1.1, LSA.

1066 Legal scholars point out that according to the ICESR general social protection policies and strategies are up to the state's discretion. However, the international obligations are "far more intense" when it comes to the minimum level of protection and become more "diluted" when it comes to the provision of more entitlements. *See* Vonk and Katrougalos, in Vonk and Tollenaar, *Social Security as a Public Interest* (2010) 74.

of the country".[1067] In particular, the point of critique was that this onset restriction included in the definition limited the right to social assistance, thereby restricting the constitutional right to social assistance expressed in Article 51(1). Understandably, the conditions for the provision of the right to social assistance represented an expression of the limited public resources allocated for social assistance. Still, scholars argued that such a definitional limitation in the law condemns the social assistance benefits to remain at extremely low levels, thereby reinforcing the condition of poverty instead of aiming to eliminate it.[1068]

cc. Subsequent Reforms and Further International Law Influences

The enactment process of the Law on Social Assistance demonstrated multifaceted engagement with various constitutional and international law influences. An examination of the subsequent reforms of this law reveals that, at times, changes occurred under the impact of international law instruments. First, a reform in 2010[1069] was motivated by a decision of the European Committee of Social Rights which found that Bulgaria violated Article 13§1 (right to social assistance) of the ESCR.[1070] The decision was issued concerning complaint No 48/2008 of the European Roma Rights Centre. The complaint was submitted in accord with the system of collective complaints that is part of the control mechanism of the Charter. The collective complaint concerned reform of the Law on Social Assistance on the duration of the entitlement to monthly social assistance to unemployed persons of working age who lacked adequate resources. The reform limited the previously unlimited period for granting the monthly benefit to a maximum of 18 months. The complaint pointed out that the introduced limitation will have a "disparate impact on Roma who are substantially

1067 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2018) 61.

1068 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 402.

1069 'Motives in Draft of the Law Amending and Supplementing the Law on Social Assistance, No 902-01-57' (2010) 1 <https://parliament.bg/bg/bills/ID/9632> accessed 24 February 2020.

1070 'Decision of the Merits, European Roma Rights Centre v. Bulgaria, Complaint No. 48/2008' (2009) para 46.

overrepresented among the beneficiaries of monthly social assistance", thereby also violating Article E, Part V of the Charter.[1071]

In its decision, the European Committee of Social Rights established that a refusal for payment continuation of monthly social assistance to unemployed persons due to the above-mentioned legal restrictions might cause such individuals to lose their principal means of livelihood,[1072] thereby violating Article 13§1.[1073] The Committee considered it unnecessary to examine whether the adopted legal changes led to a violation of Article E, Part V (concerning non-discrimination) of the Revised Charter, given that established violation of the right to social assistance of all those persons affected by the amendments to the Law on Social Assistance.[1074] Still, the Committee pointed out that the reform would predominantly affect the most disadvantaged in the society, including the Roma population, especially given the difficult access to the labor market of this group and the statistical evidence of the dependence of Roma families on social assistance.[1075]

The decision of the European Committee of Social Rights and the expected related Resolution by the Committee of Ministers were the main motives for a subsequent reform of the Law on Social Assistance. In that sense, the main motivation behind the reform could be attributed to a mix of formal influence based on ESCR and related political aspects. In general, even though the ESCR articles (that the state has agreed to) have a legally binding character, when the European Committee of Social Rights establishes non-compliance, the final consequences of its finding are political and rest with the Committee of Ministers.[1076]

These political consequences were the main argument in the parliamentary debates on a proposed reform that aimed to address the non-compli-

1071 'Complaint No. 48/2008, European Roma Rights Centre v. Bulgaria' (2008) 5.

1072 'Decision of the Merits, European Roma Rights Centre v. Bulgaria, Complaint No. 48/2008' (2009) para 46.

1073 Article 13§1 of the ESCR provides that "[w]ith a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake […] to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance".

1074 'Decision of the Merits, European Roma Rights Centre v. Bulgaria, Complaint No. 48/2008' (2009) para 46.

1075 ibid.

1076 Schlachter, in Countouris and Freedland, *Resocialising Europe in a Time of Crisis* (2013) 108.

ance findings of the European Committee of Social Rights.[1077] Specifically, the debates focused on what reform efforts should be undertaken in order to mitigate the pending Resolution of the Committee of Ministers. Accordingly, the discussed legal draft aimed at targeting the ESCR non-compliance findings and proposed abolishing the introduced time restrictions for receiving social assistance by persons of working age.[1078] The opposition to the proposed reform attacked the draft on the grounds that the abolition would result in the creation of a category of people who utilize the receiving of social assistance as a "professional occupation".[1079] Despite such counterarguments, however, the majority opted to remove the time limit for receiving the minimum income benefits.

The reform in the national social protection was adopted in January 2010, and the Bulgarian side informed the Committee of Ministers of the initiated changes in the national system. As a result, soon after, in March 2010, the Resolution of the Committee welcomed the changes in the law and stated that it looked forward to seeing how the new legislation would be implemented.[1080] It could be concluded that while the decision on the non-compliance with the ESCR formed the foundation for the change in the national law, the political side related to the Committee of Ministers additionally greatly contributed to the reform in question. The latter is further evidenced in the speedy time frame in which the reform was adopted so as to be able to form part of the Committee of Ministers' decision on a Resolution.

d. Support and Social Inclusion

As established in the systematization of social protection, the Support and Social Inclusion Benefits represent measures targeting special needs situations. These needs are seen as important for leading life and the achievement of generally accepted public purposes. The systematization of the Bulgarian social protection demonstrated that this field includes family

1077 'Transcript of Parliamentary Plenary Session No 60, 20.01.2010'.
1078 'Draft of the Law Amending and Supplementing the Law on Social Assistance, No 902-01-57' (2010) <https://parliament.bg/bg/bills/ID/9632> accessed 24 February 2020.
1079 'Transcript of Parliamentary Plenary Session No 60, 20.01.2010'.
1080 Committee of Ministers, 'Resolution ResChS(2010)2 of the Committee of Ministers on 31 March 2010, Collective Complaint No. 48/2008 (European Roma Rights Centre against Bulgaria)' (2010).

benefits for children, benefits and services for people with disabilities, as well as a variety of social services aiming at social integration, prevention or overcoming of social exclusion, and overall improvement of the quality of life. The analysis of the influences will look below in each of these three support and social inclusion branches.

aa. Children Benefits

Starting with the children's benefits, the motives[1081] for the draft[1082] of the Law on the Family pointed out that the proposed legislation aimed at financially supporting the upbringing of children raised in a family environment. According to the motives, this objective represented a special public purpose which was also based on the constitutional principle for the protection of the family and the children. Namely, the draft aimed to develop the constitutional requirement expressed in Article 47(1), which stated that raising children is a right and duty of the children's parents and is supported by the state. The aim of the draft was reportedly further built upon the constitutional goal that the family is to be protected by both the State and the society (Art. 14, CRB) since, as the motives pointed out, the family represented the best environment for the raising of children.

In addition to the pointed constitutional foundations, the draft's motives considered that the legal draft was able to implement the obligations of the country stemming from the ratification of the UN CRC. The draft law envisioned integrating both the international law and constitutional requirements into the law by establishing different forms of support. This support included the universal provision of some benefits for all families, regardless of the family's financial situation. However, the logic behind other proposed benefits, which were mainly of regular monthly character, was that the state should focus its limited resources and provide support where it is needed the most. The targeted support was to be established by introducing a leveled mean-test on the family income.

Some views challenged the draft's assertion that it aims to synchronize the legal framework with constitutional and international law requirements.

1081 'Motives in Draft of the Law on the Family Benefits for Children, No 102-01-42, Archives of the National Assembly' (2002) 1.

1082 'Draft of the Law on the Family Benefits for Children, No 102-01-42, Archives of the National Assembly' (2002).

Namely, a report on the legal proposal[1083] issued by the parliamentary Advisory Council on Legislation[1084] questioned the statements that the draft law was indeed entirely congruent with the respective constitutional and international law requirements. On the one side, the Advisory Council believed that, generally, the legal proposal was an expression of the constitutional requirement for providing state support to parents and children, as declared in Article 47 of the Constitution. On the other side, however, the Council criticized that the draft relied on the unclear concept of "family" instead of sticking to the constitutional wording of supporting "parents" in raising children. The opinion clarified that the benefits provided by the law should not be connected to the "family", but should be directed towards the actual parents, including custodians, who are raising the child in reality. The Council pointed out that the related Law on the Protection of the Child also did not rely on the concept of "family", but instead referred to "parents, custodians or others who take care of a child". Finally, it was argued that the UN CRC adopted a similar approach that referred to the child's parents (or guardians). Therefore, the Council concluded that the provision of benefits should not follow the "family" but rather needs to be connected to the children themselves or to the parents who raise them. Still, despite these raised critiques, the majority in the Parliament chose to stick with the "family" terminology in the legal draft.

In addition, the constitutional requirement for the provision of special protection to mothers was instrumental for a reform that relocated traveling subsidies for mothers from the Law on Social Assistance to the Law on the Family Benefits for Children.[1085] The arguments expressed both in the motives of the legal draft and during the first parliamentary reading of the reform proposal considered that these subsidies were not a form of social assistance. Instead, the subsidies pertained to the obligation of the state to provide additional support to mothers in line with the related constitution-

1083 Advisory Council on Legislation, 'Opinion on the Draft Law on Family Benefits for Children, No 102-01-42' (2002) <https://parliament.bg/bg/parliamentarycommittees/members/88/standpoint/ID/7901> accessed 24 February 2020.

1084 The Advisory Council on Legislation used to represent a consultative parliamentary body that issued supplementary opinions on the legality of legal drafts. The Council could be requested to issue an opinion of recommendatory character by one of the parliamentary committees.

1085 'Motives in Draft of the Law Amending and Supplementing the Law on Social Assistance, No 902-01-57'.

al obligation for ensuring special protection and the state objective for the protection of children, mothers, and families (Art. 14, CRB).

bb. People with Disabilities

The motives for the draft of the Law on the People with Disabilities entailed a number of references to international law influences. Moreover, similar references can also be tracked throughout the text of the enacted law itself. The legal framework in the sphere was substantially reformed in 2018. Before the reform, the field was regulated by the Law on the Integration of the People with Disabilities. The UN Committee on the Rights of Persons with Disabilities criticized the old law for its failure to establish a regulatory framework in line with the Convention on the Rights of the People with Disabilities (CRPD).[1086] Among others, the law has been criticized for the lack of an individualized approach leading to omissions in providing adequate protection to those in need.[1087] The Committee on the Rights of People with Disabilities advocated for adopting a new legal act in the country, which was to ensure "compliance with the principles and provisions of the [CRPD]" by bringing the national legislation "into line with the human rights model of disability".[1088]

In 2018, the Law on People with Disabilities was enacted and established a range of non-contributory benefits and services for people with disabilities. The motives for the draft law made it clear that the proposal claimed to be created in congruence with the CRPD. Namely, the motives proclaimed the intent of the draft law to bring the Bulgarian legislation in line with the obligations stemming from this international law instrument.[1089] In its report, the parliamentary Committee on Labor, Social and Demographic

1086 For instance, *see* Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Bulgaria CRPD/C/BGR/CO/1' (2018) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsk80ZBJx%2BmVEa%2BXQpyKbrX6eiw%2FONDuhjOleQ0WS4ZCou%2F8e0LnMpan4%2FdVYURMuW4m5XiBzJIDxfa0hBsK%2FFlxXg2LE6I3Y%2FwmkUJ%2FZAlza> accessed 24 February 2020.

1087 ibid para 40.

1088 ibid paras 10–12.

1089 'Motives in Draft of the Law on People with Disabilities, No 802-01-41'.

Policy likewise underlined that according to its assessment, the draft law met the requirements of the CRPD.[1090]

First, the draft had literally incorporated some provisions of the CRPD, such as adopting word by word the Convention's definition of the purposes of the legislation.[1091] The CRPD also contributed to the revision of the benefit calculation method. Namely, Article 28 of the Convention stipulated the goal of continuous improvement of living conditions. The national benefits used to be calculated based on the "guaranteed minimum income" indicator determined by the Council of Ministers. The reliance on this indicator translated into low benefit amounts that were not indexed in accordance with the increasing costs of living. Accordingly, the motives of the draft law argued for calculating benefits by relying on the at-risk-of-poverty threshold for the country.[1092] This approach allowed for greater benefits that would be altered with the changes in the at-risk-of-poverty threshold.

Furthermore, in line with the CRPD's logic, the proposal introduced a new legal framework for protecting the rights of people with disabilities based on individual approaches and assessment of their respective needs.[1093] This individual assessment included a range of factors, including a self-assessment carried out by the individuals on the hardship they face throughout their daily lives at home and outside and an examination of their inclusion in social life. In contrast, the preceding Law on the Integration of the People with Disabilities[1094] used to define the benefit and service levels solely in relation to the level of disability established by the specialized medical commission.

The draft of the Law on People with Disabilities also introduced a quota for the employment of workers with disabilities which intended to guarantee and increase their employability both in the public and private sectors. The draft law underlined that it considered the quota to be in line with

1090 'Report of the Committee on Labor, Social and Demographic Policy for the First Reading of the Draft Law on People with Disabilities, No 802-01-41' (2018) <https://www.parliament.bg/bg/parliamentarycommittees/members/2585/reports/ID/9627> accessed 24 February 2020.

1091 Namely, Article 2 of the legal draft incorporated the purposes of the convention "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".

1092 'Motives in Draft of the Law on People with Disabilities, No 802-01-41'.

1093 ibid.

1094 Law on the Integration of People with Disabilities, SG 81/17.09.2004; repealed with the Law on People with Disabilities SG 105/18.12.2018.

the requirements for work and employment stemming from Article 27 of the CRPD. Finally, the draft introduced the national Committee on the Rights of Persons with Disabilities, which according to Article 11(1) was to promote, protect, and monitor the application of the CRPD in the country.

Nevertheless, during the first reading of the law, the parliamentary debates presented a more diversified picture concerning the ability of the legal draft to implement the CRPD goals in the Bulgarian legislation.[1095] A particular point of criticism from the leftist BSP political party was that the access to services was still based on the initial acquiring of an official medical assessment on the level of disability. The coverage of the proposed law was thus very similar to the coverage of the preceding legal act that also relied on the technical and lengthy process of disability recognition. Despite that the medical attestation approach used to be a subject of critique by the Committee on the Rights of Persons with Disabilities for not being in line with the CRPD,[1096] the legal draft did not foresee related remedies.

The opponents of the proposed law considered that the narrowed coverage created the possibility that people with no attested disability assessment would continue to be marginalized in society. According to this view, the international law instrument possessed a more inclusive character that targeted all kinds of people with disabilities and did not limit itself only to those with attested disabilities. As discussed during the analysis of the Bulgarian social protection system, the medical assessment procedures carried out by the respective National or Territorial Expert Medical Commissions have been criticized for years due to their slow bureaucratic pace and extensive (reassessment) requirements. Similar critiques were also raised during the debates on the proposed draft law. Despite these critiques, however, the attested level of disability remained the general precondition for entitlement to the support and social inclusion disability benefits.[1097]

1095 'Transcript of Parliamentary Plenary Session No 120, 26.10.2018' <https://www.parliament.bg/bg/plenaryst/ns/52/ID/6491> accessed 24 February 2020.

1096 Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Bulgaria CRPD/C/BGR/CO/1' (2018) para 9.

1097 Namely, as discussed in the research section on benefits and coverage, people with permanent disabilities who can claim benefits on the basis of the law are those with more than 50% disability that has been attested by the National or Territorial Expert Medical Commissions. *See* Supplementary Provisions, §1.1 and 2, LPD.

cc. Social Services

The last strand of measures belonging to the realm of the Support and Social Inclusion Benefits includes the social services provided for the purposes of "prevention and/or overcoming of social exclusion,[1098] the realization of rights and improvement of the quality of life".[1099] The services are provided regardless of the beneficiary's financial situation (Art. 7, LSS). The systematization of social protection revealed that the variety of these measures is extensive and includes services provided to individuals who need assistance in the performance of their daily activities.

Previously these social services used to form part of the Law on Social Assistance but, as of 2019, were transferred to a separate legal act that further developed their regulation. The logic for the reform was based on the different functions of the services. These were not grounded on the social assistance aim of safety net provision but rather intended to prevent or overcome social exclusion.[1100] The related constitutional and international influence will be examined under the sub-title of "social services" regardless of whether the influence occurred while the social services were still part of the Law on Social Assistance or were already established in separate legislation.

An examination of the social services' reforms portrays certain international law influences regarding the institutionalization of people with mental conditions. A reform in 2015 (when the social services were still a part of the Law on Social Assistance) was triggered by a decision of the European Court of Human Rights ("ECtHR"). The case of *Stanev v. Bulgaria*[1101] concerned the plaintiff, Mr. Stanev, who was diagnosed with schizophrenia. Following his diagnosis, Mr. Stanev was declared partially incapacitated by the Ruse Regional Court. He was appointed a municipal council officer as a legal guardian due to the lack of a family member willing to take the responsibility. The legal guardian decided that Mr. Stanev was to be placed for an indefinite time in a social care home for adults without the involvement

1098 In §1 of the "Additional Provisions" section of the Law on Social Services the term "social exclusion" is defined as a "state when the individual due to personal or objective reasons does not have the conditions or abilities for full participation in the different spheres of the social life" (translation from Bulgarian by author).

1099 The mentioned purposes are enlisted in Article 3, LSS (translation from Bulgarian by author).

1100 'Motives in Draft of the Law on Social Services, No 802-01-57'.

1101 *Stanev v Bulgaria*, App. No. 36760/06, 17 January 2012.

and consent of the plaintiff. The home where Mr. Stanev was placed had extremely poor living conditions. Mr. Stanev submitted numerous requests to seek release from partial guardianship and to reinstate his legal capacity, which were all denied.

Mr. Stanev's case at the ECtHR concerned numerous issues, some of which fall outside the work's scope. Hence, the whole decision of the Court will not be discussed in detail here. Instead, the focus would be on the decision aspects that are important for examining international law's influence on social services. In this relation, the ECtHR concluded that the placement of Mr. Stanev in the social care home amounted to a deprivation of liberty and, therefore, a violation of Article 5.1 of the ECHR.[1102] In particular, the Court considered that Mr. Stanev's legal guardian could not legally decide to undertake such a measure without the plaintiff's consent. However, the lack of legal capacity of the persons did not entail that the plaintiff could not comprehend the situation and express his opinion. Further, the Court found a violation of Article 5.4 since there was no direct access to a court that Mr. Stanev could use to challenge the lawfulness of his detention.[1103]

Apart from the Article 5 violations, the judgment established that the poor conditions in the care home amounted to degrading treatment, thereby violating Article 3.[1104] Moreover, since Mr. Stanev's institutionalization in the care facility was not understood as detention under national law, he was not provided an effective remedy in accordance with Article 13 of the ECHR. Hence, the violation of Article 3 could be taken alone or in conjunction with Article 13.[1105] The ECtHR also established a violation of Article 6.1 (right of access to courts) because of Mr. Stanev's *de facto* lack of access to court where he could seek restoration of his legal capacity.[1106]

In an attempt to address some of the violations established by the ECtHR's decision, a reform introduced different changes into the domestic law, including in the Law on Social Assistance concerning the provision of some social services.[1107] One of the changes introduced a multidisciplinary

1102 ibid paras 159-160.
1103 ibid para 258.
1104 ibid para 213.
1105 ibid para 221.
1106 ibid para 246.
1107 'Draft of the Law Amending and Supplementing the Law on Social Assisstance, No 502-01-65' (2015) <https://parliament.bg/bg/bills/ID/15515> accessed 24 February 2020; 'Motives in Draft of the Law Amending and Supplementing the Law on

team that had to prepare an assessment of the situation of the person in need. The team was also responsible for compiling a follow-up plan. Depending on the given case, this team was to be composed of different specialists.

Further, the options for indefinite placement of people with a lack of legal capacity in specialized facilities were limited by introducing a deadline of a maximum of three years stay in such institutions (with some exceptions). Another important change was the introduction of the clarification into the law that the individual's wish was to take precedence in the assessment of the placement decision in a residential care service or a specialized institution. Still, during the first reading of the draft in the Parliament, it was debated whether the proposed decisions were appropriate for accommodating the gaps in the legal framework exemplified by the *Stanev v. Bulgaria* case.[1108] In particular, the reform did not address the ECtHR's conclusion that the placement in a specialized facility without the person's consent amounted to a deprivation of liberty. Finally, it was further argued that the changes did not sufficiently address the conclusion of the ECtHR on the curbed possibilities for access to justice for people placed in a specialized facility.

Four years after this reform, the social services were placed in a legislation of their own that considerably developed the regulation of social services provision. For comparison, while the regulation of the social services in the Law on Social Assistance was provided in five articles, their current regulation in the separate Law on Social Services is carried out in 172 articles that establish the respective legal framework. The enactment of the law revealed generally assumed the relevance of the Constitution in the course of the parliamentary discussions. Namely, the draft law aimed at regulating social services for categories of the population that are constitutionally subjected to special protection on the part of the state, such as children (Art. 14 and Art. 47, CRB) or people with disabilities (Art. 51(3), CRB).

Social Assisstance, No 502-01-65' (2015) <https://parliament.bg/bg/bills/ID/15515> accessed 24 February 2020.

1108 'Transcript of Parliamentary Plenary Session No 126, 05.11.2015' <https://parliament.bg/bg/plenaryst/ns/51/ID/5449> accessed 24 February 2020.

The discussions in the Parliament[1109] focused on the nature of the social services and the difference between the functions of the Law on Social Assistance and the proposed draft law.[1110] It was underlined that, on the one side, the Law on Social Assistance addressed situations of poverty when beneficiaries were unable to provide for their basic necessitates. On the other side, the Law on Social Services, through a variety of social services,[1111] intended to provide individualized support for minimizing or eliminating social exclusion and aimed at motivating the beneficiary towards independence from family or public support. Accordingly, the social services aimed to empower the different beneficiaries they targeted. The empowerment aspect entailed that the state budget would only partly finance the services, and the given individual would pay the rest in the form of a fee. The services for some particular groups would be entirely covered by the state budget, which was seen as an expression of the social state objective.[1112] In addition, it was underlined that the social services aimed at an individualized approach towards the beneficiaries concerning the specific services they require.

The enactment of the Law on Social Services stirred numerous social debates on the law's content and proposed solutions.[1113] Some attributed the high public interest to the insufficiencies of the previous social services regulation. An additional point of public concern was the fact that the proposed Law on Social Services envisioned the involvement of private companies in the social services provision that could potentially presuppose the interference of such private providers in the private life of beneficiaries. In

1109 'Transcript of Parliamentary Plenary Session No 217, 18.01.2019' <https://parliament.bg/bg/plenaryst/ns/52/ID/6778/> accessed 24 February 2020.

1110 'Draft of the Law on Social Services, No 802-01-57' (2019) <https://parliament.bg/bg/bills/ID/156809> accessed 24 February 2020.

1111 In accordance to the main types of activities, the different groups of social services are enlisted in Article 15 of the LSS and involve: informing and consulting; advocacy and mediation; community work; therapy and rehabilitation; training for acquiring skills; support for acquiring work skills; day care; residential care; the provision of shelter; support by an assistant.

1112 Namely, services provided to children under the age of 18, people between the ages of 18 and 21 if they have lived in a residential institution until reaching of 18 years of age, and people who do not have incomes or savings (Art. 103, LSS).

1113 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 407–423.

reply, a group of members of parliament requested a constitutional review of a range of provisions of the Law on Social Services.[1114]

The proposed draft law was also criticized for lack of compliance with international law requirements. Namely, the report of one of the leading parliamentary committees (the Committee on Labor, Social and Demographic Policy) pointed out that the proposed draft still did not address the main weakness in the service provision to people with mental disabilities.[1115] Even though the draft considered the "prevention of institutionalization" as a guiding principle,[1116] it failed to tackle one of the main conclusions of the *Stanev v. Bulgaria* judgment concerning the deprivation of liberty. Additionally, the draft law did not provide a mechanism for assessing the individual's ability to provide consent in case of intended institutionalization. The critique, however, was not addressed further in the parliamentary discussions and did not result in relevant changes in the draft law.

A subsequent reform of the already enacted Law on Social Services demonstrated some constitutional influence. Namely, the motives of the draft law argued that the social services were an expression of different constitutional obligations for the provision of protection to families, mothers, and children, as well to the elderly and the people with physical or mental disabilities.[1117] Accordingly, it was proposed that the Law on Social Services should explicitly state that the social services are not commercial services in the sense of the regulated matter by the Law of Commerce. The proposal was accepted, and the explicit provision on the non-commercial character of the social services was incorporated in Article 3(3) of the Law on Social Services.

1114 The decision of the Constitutional Court is discussed in the research section on control of norms.

1115 'Report of the Committee on Labor, Social and Demographic Policy for the First Reading of the Draft of the Law on Social Services, No 802-01-57' (2018) <https://parliament.bg/bg/parliamentarycommittees/members/2585/reports/ID/9867> accessed 24 February 2020.

1116 Nowadays, the principle on prevention of institutionalization is featured in Article 2, LSS.

1117 'Draft of the Law Amending and Supplementing the Law on Social Services, No 054-01-55' (2020) <https://www.parliament.bg/bg/bills/ID/157483> accessed 24 February 2020.

e. Laws Concerning Risk-specific and Non-contribution Benefits

The Bulgarian healthcare provision consists of two main aspects: health insurance services belonging to the *Contribution-based Systems* and the free medical care system. The latter still addresses a classical social risk but at the same time is financed by taxes and does not refer to an individual's contributory record. The examination of the social protection system revealed that the Law on Health regulates the provision of free medical care in the country. In addition, the institutional organization of healthcare demonstrated that the Law on Health regulates the general management of the healthcare in the country and sets the policy objectives in certain healthcare fields, such as emergency medical aid, reproductive health, and treatment of people with mental health conditions and others.

In the process of the law's enactment, the Minister of Healthcare was invited to the Parliament to present the legal proposal during the first reading.[1118] The presentation stated that the draft implemented the constitutional state objective of protecting citizens' health (Art. 52(3), CRB). Next, the Minister explicitly highlighted that the legal draft[1119] is based on the constitutional right to free medical care as stated in Article 52(1) of the CRB.[1120] Accordingly, the draft law understood the right to free medical care as either addressing certain medical services provided for all citizens or as providing certain medical services to persons who were not covered by health insurance. The presentation highlighted that the right to free medical care provided to all citizens entailed services beyond mandatory health insurance. These services included emergency medical care, inpatient psychiatric care, services entailing blood and blood-derivative products, as well as organ, tissues, and cells transplantation, and compulsory treatment and expertise on the degree of disability.

Furthermore, the draft law translated the constitutional right to free medical care to imply financing of certain free medical services only for persons without health insurance rights. These services included intensive care and obstetric care. In this regard, the Minister stated that the draft envisioned the provision of special protection to mothers. Although this

1118 'Transcript of Parliamentary Plenary Session No 40, 02.12.2003' (2003) <https://www.parliament.bg/bg/plenaryst/ns/1/ID/823> accessed 24 February 2020.

1119 'Draft of the Law on Health, No 302-01-35' (2003) <https://www.parliament.bg/bg/bills/ID/10695> accessed 24 February 2020.

1120 'Transcript of Parliamentary Plenary Session No 40, 02.12.2003'.

statement did not explicitly refer to the relevant Article 47(2) of the CRB, the legal draft addressed the given constitutional requirement for ensuring access to obstetric care for all (expecting) mothers by targeting individuals who would not be covered by the health insurance system.[1121]

Further, the presentation stated that the legal draft aimed at guaranteeing the "special healthcare"[1122] for people with mental health conditions in line with the state objective for provision of "special protection" to such people, as stated in Article 51(3) of the Constitution. In addition, the draft's motives claimed that the legal draft had taken inspiration from the principles featured in two recommendations of the Council of Europe on persons with mental health conditions. Namely, reference was made to Recommendation R (83)2 concerning the legal protection of persons suffering from mental disorders placed as involuntary patients and Recommendation 818 (1977) on the situation of the mentally ill.[1123] However, the presentation of the Minister of Healthcare did not go into detail on how exactly the proposed Law on Health implemented the principles of the said recommendations. The Law on Health indeed stipulates a number of principles for the treatment of patients with mental health conditions in Article 148.[1124] At the same time, however, both the legal draft and the enacted law left open to further regulation different key questions raised by the recommendations on placement of individuals in specialized establishments.[1125] Moreover, some years later, the discussed above judgment of *Stanev v. Bulgaria* demonstrated how the related national legal framework was insufficient and violated several ECHR provisions.

1121 Nowadays, the provision on the right to free obstetric care to women without health insurance rights is featured in Article 82(1)2, LH.

1122 Nowadays, the requirement for provision of "special healthcare" for people with mental health conditions is stated in Article 146(1), LH.

1123 The motives of the legal draft also referred to the principles for the protection of persons with mental illness and the improvement of mental health care adopted by General Assembly in Resolution 46/119 of 17 December, 1991.

1124 These principles include, among others, minimum restriction of personal liberty and respect for patient's rights and reducing the institutional dependence of persons with mental disorders on prolonged hospital treatment, provided that this does not conflict with established medical standards.

1125 For instance, some of the principles of Recommendation R (83)2, which were not addressed by the national law at the time, pertained to ensuring of a right to access to court in line with Article 4 of Recommendation R (83)2.

f. Analysis of the European Union Law Influence

The examination of EU law as a potential influencing factor revealed the various ways through which it could impart influences upon national social protection systems. In addition, the methodology section for the study of influence determined that the EU law influences will be examined in the phase of norm creation through the detection of influences that managed to impact the norm creation process. The following section will thus focus below on how each of the identified channels of EU law influence contributed to certain alterations in the national system.

The general influence of European Union law on social protection in Bulgaria occurred through three broad EU law channels of influence. The first one pertains to freedom of movement and the related issues of exportability of rights and benefits as well as the coordination of social security systems. In this regard, EU law concerning the exportability of occupational and supplementary pension rights was instrumental for the more comprehensive development of the regulation of occupational pension insurance in the country. The EU influence further contributed to a reform that improved the conditions for exportability of short-term benefits and developed the needed national administrative mechanisms to realize social security coordination. Moreover, a judgment of the CJEU found certain aspects of the Bulgarian pension system to violate the freedom of movement and establishment. The judgment was instrumental in motivating the finalization of a long-standing reform process in the statutory pension insurance on the requirement for employment termination for the purpose of pension entitlement.

The second strand concerns the influence of EU law's equal treatment requirements regarding employment and occupation. This strand also spills over occupational and supplementary pension insurances. The equal treatment requirements greatly shaped the capital-funded pension insurance in the country. Namely, due to reforms motivated by EU law considerations, certain equal treatment elements were introduced in the traditionally unequal (in terms of qualifying conditions) Bulgarian pension system.

Next, the third channel of influence is related to the internal market rules. This influence concerns the free movement of capital and the changes accompanying the opening of the national system to the internal market. The EU law's influence resulted in a range of technical changes to social protection that fundamentally altered the financing practices in capital-funded pension insurance and voluntary health insurance.

Finally, apart from the three broad channels of EU law influence, there has been a fourth strand of intended influence, located in-between the identified influence channels of cross-border social security and internal market regulation. EU law intended to trigger changes in the national system that would extend the reimbursement options concerning the healthcare rights of Bulgarian patients seeking treatment in the other Member States. However, in comparison to the rest of the EU influences outlined above, this latter strand of EU law did not result in a direct observable influence on the national system. On the contrary, the EU requirements were transposed quite slowly in the related Bulgaria legislation. As a matter of fact, the national legislature abstained from reforms even when the CJEU established certain aspects of the national regulations to violate EU law.

aa. Freedom of Movement

(1) Coordination and Exportability of Benefits

As mentioned, European Union law does not entail the harmonization of social security systems but instead targets their coordination. Accordingly, aligning the Bulgarian law with the related EU law requirements naturally resulted in administrative changes. These changes included the establishment of mechanisms enabling the coordination and export of benefits in light of the right of freedom of movement. Apart from that, however, the implementation of some EU rules triggered wider reforms in the national system that led to the establishment of greater occupational pension rights in the country.

Regarding administrative alterations, the secondary EU legislation on benefits coordination and social security application motivated the setting of certain administrative mechanisms that enabled the implementation of relevant EU rules. First of all, EU law enthused changes in the national system that enabled the exportability of short-term benefits through the Union in accordance with the relevant secondary law requirements. Namely, in terms of the acquired rights, Regulation No 1408/71 provided for waving off the residence clauses for the payment of different pensions and benefits.[1126]

1126 *See* Article 10 and Articles 19 to 36, Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 5.7.1971, 2–50.

The Regulation requirements became part of a national reform of the Social Insurance Code back in 2004. The reform was part of a broader strategy for accelerating the negotiations for Bulgaria's accession to the EU.[1127] A particular pre-accession concern was the fact that the Bulgarian legal framework did not secure enough mechanisms for the cross-border payment of short-term social insurance payments in the case of sickness or maternity.

Prior to the discussed 2005 reform, such payments were processed through the employer. However, this payment mechanism could not satisfy the obligation for guaranteeing trans-border payment as required by Regulation No 1408/71. In particular, Article 10 of the Regulation entailed that the payment of cross-border benefits must be carried through an appointed responsible institution. Hence, the reform introduced the NSII as the institution responsible for paying short-term benefits for maternity and sickness, including by transferring payments abroad in case the individuals have exercised their freedom of movement.[1128]

Second, in 2013, further national institutions were officially involved[1129] with the coordination of benefit payments in light of Regulation No 883/2004 and its implementing Regulation No 987/2009. Namely, the NSII was assigned as the liaison body responsible for coordinating contribution-based pensions and short-term benefits. Due to the institutional organization specifics of the Bulgarian social protection system,[1130] the liaison body for the coordination of the family benefits in the sense of Article 1(z) of Regulation No 883/2004 was assigned to the SAA. The NHIF has been assigned as the liaising institution for the "benefits-in-kind" stipulated in Article 1(va) of the coordination Regulation.

Next, the EU rules on the possibility of export of occupational pension insurance motivated a considerable development of the respective national legal framework. A 2006 reform[1131] presented a range of changes in the sup-

1127 See 'Motives' in 'Draft of the Law Amending the Social Insurance Code, No 402-01-44' (2004) <https://parliament.bg/bg/bills/ID/11026> accessed 24 February 2020.

1128 This cross-border responsibility of the NSII is stated in Article 40(3), SIC.

1129 Regulation No 144 of 11 July 2013 on Determining the Functions of the Bulgarian Organs and Institutions in the Light of Regulation (EC) No 883/2004 of the European Parliament and the Council, SG 63/16.07.2013.

1130 For more, refer to the examination of the institutional organization in the research section on the analysis of the Bulgarian Social Protection System.

1131 Law Amending and Supplementing the Social Insurance Code, SG 56/11.7.2006.

plementary pension insurance in Bulgaria in an effort to synchronize the national law with the EU legislation on occupational pension schemes.[1132] The intention was for the reform to implement requirements stemming from the relevant Council Directive 98/49/EC. The requirements included ensuring the possibility for exportability of occupational pension rights in the case of exercising freedom of movement and ensuring the option of cross-border payments to supplementary occupational pension schemes located in the other Member States.

The endeavor on the translation of the EU law requirements faced the insufficient national regulation on voluntary occupational pension insurance. Prior to the discussed reform, voluntary pension insurance in Bulgaria had been limited to private pension schemes.[1133] Employers used to be able to contribute to the voluntary private insurance of employees, and the employers' contributions could have been subject to collective negotiations and agreements.[1134] Still, there was no separate legal regulation of voluntary occupational schemes per se. Therefore, the efforts to implement the EU legislation in the national law triggered the refinement of the national regulation of voluntary occupational pension insurance in the country. [1135]

1132 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly' (2006); 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly' (2006). The reform was not solely limited to introducing EU rules on the retention of occupational pension rights in case of freedom of movement. The rest of the reform goals concerned EU requirements on equal treatment in occupational matters as well as the supervision of activities of providers of occupational insurance. These further reform points are reviewed in a following research section below.

1133 Staykov, in *Bulgaria in the EU/България в ЕС* (2007) 391.

1134 § 101, Law Amending and Supplementing the Mandatory Social Insurance Code, SG 67/29.07.2003.

1135 The reports of two of the assigned parliamentary committees both underlined the fact that the effort on harmonizing the Bulgarian law with the EU law requirements in the field of voluntary occupational pension insurance prompted the development of this type of pension insurance option in the country. *See* 'Report of the Committee on European Integration for the First Reading of the Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly' (2006) 1 ff; 'Report of the Committee on Labor and Social Policy for the First Reading of the Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly' (2006) 1 ff.

(2) Pension Entitlement

From a comparative perspective, the interpretation of the fundamental freedoms by the CJEU, including the freedom of movement, was one of the most meaningful ways through which EU law was able to indirectly influence national social protection laws.[1136] The freedoms were an effective way of circumventing the retained competences of the Member States in the social protection field.[1137] Bulgaria was no exception to this observation. The rights to freedom of movement and the establishment of Union citizenship became the incentive for an essential change in the Bulgarian statutory pension insurance. Specifically, the EU law freedoms contributed to the completion of a long-simmering national reform concerning the relationship between employment and pension entitlement.

The public pension system used to follow the old-fashioned regulation that a person needed to terminate the occupational activity and the connected social insurance in order to become entitled to the statutory old-age pension.[1138] Although several smaller reform steps aimed at emancipating the pension insurance and making it compatible with the occupational activity,[1139] the termination of employment continued to be a precondition for pension entitlement. The reform process only led to the possibility that after individuals had ceased the occupational activity for the sake of pension entitlement, they could subsequently again engage in employment.

A judgment by the CJEU related to this subject matter was finally able to cut the link between pension entitlement and occupational activity.[1140] The case concerned the Bulgarian citizen Mrs. Somova who used to live and work in Bulgaria. Later in her life, she moved and commenced an occupational activity as a self-employed person in Austria, where she was insured according to Austrian legislation. However, when she applied for the Bulgarian statutory old-age pension, Mrs. Somova did not inform the Bulgarian authorities that she was currently insured in Austria based on her self-employment activity. Once this information was finally brought to the attention of the Bulgarian authorities, the pension payment was

1136 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1490.
1137 ibid.
1138 Mrachkov, *Social Security Law/Осигурително право* (2014) 345.
1139 ibid.
1140 Case C-103/13 *Snezhana Somova v Glaven direktor na Stolichno upravlenie 'Sotsialno osiguryavane'* [2014] ECLI:EU:C:2014:2334.

ceased on the grounds that Article 94(1) of the Social Insurance Code made the entitlement to an old-age pension subject to the discontinuance of the affiliation to social insurance. As Mrs. Somova had not terminated her self-employment upon pension entitlement, the Bulgarian authorities ceased the pension payment and informed her that she needed to pay back all received benefits.

The CJEU underlined in its judgment deliberations that Regulation No 1408/71 did not establish a common scheme for social security but rather aimed at coordinating the different national systems.[1141] Nevertheless, the TFEU precluded national measures which placed people in a disadvantaged position when they exercised their rights as Union citizens related to the freedom of movement.[1142] Therefore, the Bulgarian legislature was free to determine the rules of its pension system as long as these rules were not deterring persons from exercising their Union citizenship rights provided by the Treaty.[1143] The requirement of the Bulgarian legislation for a discontinuance of the payment of social insurance contributions might place someone who has exercised their freedom of movement, such as Mrs. Somova, in a precarious situation that might even lead to the loss of the given occupational activity.[1144] Accordingly, the CJEU concluded that the requirement of the Bulgarian pension legislation represented an impediment to freedom of movement and freedom of establishment.[1145]

The judgment of the CJEU gave the decisive impetus for the finalization of the long-standing reform process concerning the relationship between pension entitlement and social insurance due to occupational activity.[1146] The national law was reformed to comply with the judgment by abolishing Article 94(2) of the Social Insurance Code, which used to contain the requirement for termination of the insurance status for the purposes of pension entitlement.[1147] As a result, the discontinuation of occupational activity is no longer a precondition for pension entitlement, and one may

1141 ibid para 33.
1142 ibid para 36.
1143 ibid para 39.
1144 ibid paras 43-44.
1145 ibid para 45.
1146 §3.24, Law on the Budget for the Public Social Insurance for 2015, SG 107/24.12.2014.
1147 The changes in the national law concerning the compliance with EU law were introduced with the Law on the Budget of the Public Insurance for 2015. During the first reading of the proposed changes, the abolishment of Article 94(2) of the Social Insurance Code was argued for on the basis of the CJEU judgment.

continue to work and still acquire the old-age pension according to the national legislation (Art. 94, SIC).

bb. Equal Treatment and Pension Insurance

European Union law generally applies to occupational pension schemes when it comes to free movement and the acquisition and preservation of occupational pension rights.[1148] EU law is also applicable concerning the rules for the institutions for occupational retirement provision.[1149] Moreover, EU law further influences occupational pension regulation through primary[1150] and secondary law[1151] concerning the equal treatment and equal opportunities of men and women in employment and occupational matters. Equal treatment in pension insurance proved to be a highly influential EU law channel in Bulgaria in terms of the pension insurance operated by private providers in both the voluntary and mandatory social insurances.

A reform based on introducing relevant EU law requirements into national law[1152] established the equal treatment between men and women in voluntary capital-funded occupational pension schemes, including in terms of qualifying conditions. This development was novel for the national pension system where, from a historical point of view, the rights of men and women were always not equal in the public pension insurance.[1153] The unequal treatment in the statutory old-age pension scheme is based on two

See 'Transcript of Extraordinary Parliamentary Plenary Session No 3, 09.12.2014' <https://parliament.bg/bg/plenaryst/ns/55/ID/5324> accessed 24 February 2020.

1148 Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, OJ L 128, 30.4.2014, 1–7.

1149 For instance, *see* Directive (EU) 2016/2341.

1150 The European Court of Justice has developed a line of case law arguing that benefits of occupational pension schemes constitute pay, which brings them under the scope of Article 141 of the EC Treaty concerning equal pay requirements for male and female workers. *See*, for instance, Case C-351/00 *Niemi* [2002] ECLI:EU:C:2002:480 para 56; Case C-559/07 *Commission v Greece* para 55.

1151 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, 26.7.2006, 23–36.

1152 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'.

1153 Sredkova, *Social Security Law/Осигурително право* (2016) 629.

main factors: on the one side, the physiological differences between men and women, and on the other – the traditional obligations of women in households and the taking care of children.[1154] The unequal public pension conditions are expressed in women's lower retirement age and minimum insurance periods.[1155] Based on reforms in the 2010s, a progressive increase of the retirement age will eventually equalize it for both sexes.[1156] However, the minimum insurance periods, which are also progressively increasing, will remain unequal.[1157]

The introduction of the equal treatment in voluntary capital-funded occupational pension due to EU law was expressed in the equal qualifying conditions and the equalizing of the pension plan requirements for men and women. Moreover, equal treatment resulted in the prohibition of the usage of sex as an actuarial factor in calculating the amount of lifetime pension benefits. However, the equal treatment requirement was not immediately extended to also cover the voluntary individual pension insurance. On the contrary, the legislature attempted to avoid implementing EU law concerning private individual pension insurance. A reform in 2007 aimed at fulfilling the deadline for implementation of Directive 2004/113/EC on equal treatment between men and women in the access to and supply of goods and services. The reform opted for the exception provided by the Directive in Article 5(2)[1158] in relation to implementing the principle of equal treatment to private individual pension insurance.[1159]

However, a couple of years later, the CJEU's decision in Case-236/09 provided that the exception of the Directive is invalid since it allowed mem-

1154 ibid 414.

1155 ibid.

1156 The analysis on the social protection system demonstrated that the statutory retirement age increases to 65 until 2037 for women (born after 31/03/1972) and until 2029 for men (born after 31/01/1964).

1157 The analysis on the social protection system demonstrated that the minimum insurance periods increase until 2027 to 37 years for women and 40 years for men.

1158 Article 5(2) of the Directive provided that "Member States may decide [...] to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data".

1159 'Draft of the Law Supplementing the Law for the Protection against Discrimination, No 702-01-29' (2007) <https://parliament.bg/bills/44/702-01-9.pdf> accessed 24 February 2020; 'Motives in Draft of the Law Supplementing the Law for the Protection against Discrimination, No 702-01-29' (2007) <https://parliament.bg/bills/44/702-01-9.pdf> accessed 24 February 2020.

ber states to "maintain without temporal limitation an exemption from the rule of unisex premiums and benefits",[1160] which defeated the very original purpose of the Directive. Accordingly, the exception was incompatible with Articles 21 and 23 of the EUCFR, and Article 5(2) of Directive 2004/113/EC was declared invalid. A 2013 reform of the Bulgarian legislation[1161] on the Insurance Code was motivated by the discrepancies in the national law with EU law, given the decision in Case-236/09.[1162] Among others, the reform also introduced changes in the Social Insurance Code by declaring that sex cannot be used as an actuarial factor in calculating the amounts of the lifetime pension benefits in the voluntary private pension insurance.[1163]

Apart from influencing voluntary pension schemes, European Union law also affected the capital-funded scheme part of the mandatory private pension insurance, namely the UPFs, where 5% of the mandatory pension contributions could be directed.[1164] Entitlement to a pension from the UPFs occurs upon qualifying for the pension of the statutory old-age pension scheme. A reform in 2017 prohibited the utilization of sex as an actuarial factor in calculating the pension benefits from the UPFs.[1165] The motives[1166] for the draft law pointed out that the reform was based on Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.[1167]

The 2017 reform was further based on the CJEU's judgment in case C-318/13.[1168] The decision established that Article 4(1) of Directive 79/7/EEC precluded national legislation allowing the utilization of different life expectancies for men and women as an actuarial factor for calculating a

1160 Case C-236/09 *Association belge des Consommateurs Test-Achats ASBL, Yann van Vugt, Charles Basselier v Conseil des ministres* [2011] ECLI:EU:C:2011:100 para 32.
1161 Law Amending and Supplementing the Insurance Code, SG 20/28.02.2013.
1162 'Motives in Draft of the Law Amending and Supplementing the Insurance Code, No 202-01-70' (2013) <https://www.parliament.bg/bg/bills/ID/14176> accessed 24 February 2020.
1163 § 3, Law Amending and Supplementing the Insurance Code, SG 20/28.02.2013.
1164 For more on the UPFs, refer to the analysis of the social protection system.
1165 § 53, Law Amending and Supplementing the Social Insurance Code, SG 92/17.11.2017.
1166 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 702-01-9' (2017) <https://www.parliament.bg/bg/bills/ID/77721> accessed 24 February 2020.
1167 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 702-01-9' (2017) <https://parliament.bg/bills/44/702-01-9.pdf> accessed 24 February 2020.
1168 Case C-318/13 *X* [2014] ECLI:EU:C:2014:2133 para 40.

statutory social benefit payable due to an accident at work.[1169] Although the concrete case concerned accidents at work, the motives of the national legal draft stated that one of the main arguments of the CJEU was applicable to the actuarial nature of the capital-funded pension insurance. Namely, the different treatment of men and women in terms of sex-based generalizations on life expectancy could be discriminatory to one of the genders.

cc. From Cross-border Healthcare to Internal Market

After the accession to the EU, Bulgaria had to comply with the EU rules on cross-border healthcare, which included compliance with the freedom to provide services. In general, Member States' social security systems are mostly excluded from the EU law concerning the internal market and competition regulation.[1170] Nevertheless, the jurisdiction of the CJEU managed to bring health services within the scope of internal market law. The related case law demonstrated that national law must comply with EU law despite the general formula that the "community law does not detract from the powers of the Member State" in terms of social protection organization.[1171] The CJEU jurisprudence in the field of health services has been consistent in interpreting patients looking for medical help in another Member State as "receivers of services".[1172] One of these cases concerned the failure of Bulgaria to synchronize its legislation with European Union law concerning cross-border healthcare. Shortly after the EU accession, a judgment of the CJEU established that Bulgaria had to comply with the obligation of transposing relevant EU law into the national legal framework in a way that is compatible with the freedom of services.[1173]

The concrete case concerned the Bulgarian citizen Mr. Elchinov who required specialized medical care concerning an eye tumor. The offered

1169 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 702-01-9' 6.

1170 Dawson and de Witte, in Chalmers and Arnull, *The Oxford Handbook of European Union Law* (2015) 971–972.

1171 Case C-158/96 *Raymond Kohll v Union des caisses de maladie* [1998] ECLI:EU:C:1998:171 paras 17 ff.

1172 Dawson and de Witte, in Chalmers and Arnull, *The Oxford Handbook of European Union Law* (2015) 972–973.

1173 Case C-173/09 *Georgi Ivanov Elchinov v Natsionalna zdravnoosiguritelna kasa* [2010] ECLI:EU:C:2010:581.

treatment to Mr. Elchinov in Bulgaria consisted of removing the eye. Yet, Mr. Elchinov established that some treatment options would avoid eye removal.[1174] The concrete medical treatment, however, was available only in Berlin, Germany. According to the Administrative Court, Sofia City, the treatment available in Germany for the medical condition of Mr. Elchinov still fell under the services covered by the NHIF. Namely, the national health insurance law did not explicitly and precisely stipulate the covered treatment methods but rather indicated the generally related area of medical services. Consequently, the treatment of Mr. Elchinov did fall under the covered category of "high-tech radiotherapy of oncological and non-oncological diseases".[1175]

According to the procedure under the Bulgarian law at the time, Mr. Elchinov was supposed to apply to the NHIF for permission to undergo treatment in Germany. If the NHIF had granted the permission, the procedure would then be reimbursed by the NHIF. However, due to a sudden worsening of the patient's health condition, he had to undergo the given treatment in Germany before receiving the answer from the NHIF. Subsequently, the NHIF argued that it would not fund the treatment of Mr. Elchinov since he underwent treatment before receiving an official authorization. The case was referred to the CJEU by the Administrative Court, which sought to establish, among others, whether Article 22(2) of Regulation No 1408/71[1176] precluded national legislation which excluded, in all cases, reimbursement in respect of hospital treatment given in another Member State without prior authorization.

The opinion of the Advocate General argued that if the Bulgarian system "is so strict that it impedes or renders less attractive the freedom to

1174 The details of the case can be found in the deliberations of the Administrative Court - Sofia City, which referred the case to the CJEU. *See* Decision No 1707/2011 of Administrative Court, Sofia City.

1175 ibid.

1176 The text of the concrete provision back then used to state: "The authorization required under paragraph 1 (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment. The authorization required under paragraph 1 (c) may not be refused where the treatment in question is among the benefits provided for by the legislation of the Member State on whose territory the person concerned resided and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the Member State of residence taking account of his current state of health and the probable course of the disease". The Regulation has been subsequently amended.

provide services", this would necessarily lead to a conclusion that it is not compatible with EU law.[1177] In addition, the opinion stated that the case law of the CJEU has already shown that Article 22 of the Regulation is to be interpreted in the Treaties' light regarding the freedom to provide services.[1178] Moreover, the case law demonstrated that if a request was initially refused, but the refusal was later judged to be contrary to Article 22 of Regulation No 1408/71, then the concerned individual was able to claim the reimbursement provided for by Article 22.[1179]

The CJEU followed the logic of the opinion of the Advocate General and underlined that the discussed medical services fell within the scope of the freedom to provide services.[1180] The freedom for the provision of services entailed the possibility of the recipient of such services to go to another Member State to receive this service. Therefore, despite the fact that the case concerned Article 22 of Regulation No 1408/71, this did not imply the irrelevance of the freedom to provide services. Accordingly, even if the national legislation conformed with the relevant Regulation, the national law was not removed from the scope of the provisions on the freedom to provide services. Member States could organize their social security systems as they see fit. However, in doing so, they still had to comply with the freedom to provide services and abstain from introducing or maintaining restrictions to this freedom in the healthcare sector.[1181]

The Court mentioned that the requirement for prior authorization generally constituted an impediment to the freedom to provide services.[1182] Such obstacle, however, was justified if, without it, there would be a "possible risk of seriously undermining the financial balance of a social security system".[1183] Nevertheless, the CJEU considered that the reimbursement in the present case is not likely to undermine the balance of the national system.[1184] Moreover, the contested national rule deprived potential reimbursement for all insured persons in urgent situations similar to the one of Mr. Elchinov when they were unable to wait for authorization to receive

1177 Opinion of AG Cruz Villalón in Case C-173/09 *Georgi Ivanov Elchinov v Natsionalna Zdravnoosiguritelna Kasa* [2010] ECLI:EU:C:2010:336 para 49.
1178 ibid para 46.
1179 ibid para 48.
1180 Case C-173/09 *Elchinov* para 36.
1181 ibid para 40.
1182 ibid para 41.
1183 ibid para 42.
1184 ibid para 46.

a service despite meeting all other conditions for the reimbursement.[1185] Accordingly, the CJEU concluded that the relevant national law constituted an unjustified restriction on the freedom to provide services.[1186] Like the Advocate General, the Court referred to previous case law[1187] and argued that when a request for reimbursement according to Article 22(1)(c) of Regulation No 1408/71 was unjustifiably refused, the patient was entitled to reimbursement.[1188] Moreover, since the same or equally effective treatment could not be provided without undue delay in the Member State of residence of the insured individual, the reimbursement request could not be refused by the national authority.[1189] Therefore, in the case of an unjustified refusal of the national authority according to Article 22(1)(c)(i) of Regulation No 1408/71, the national court had to oblige the competent institution to reimburse the expenses of the insured person in the amount determined by rules of the Member State where the medical treatment was provided.[1190]

Despite the CJEU judgment, the national system was not subsequently reformed. To be precise, there were changes in the related legislation in the aftermath of the judgment, but they abstained from addressing the subject matter of case C-173/09. Some members of Parliament even criticized the subsequent reform processes for their failure to remedy the elements declared as violating EU law by the CJEU.[1191] The related issues of the national law were amended only two years later with a reform[1192] that was reportedly not motivated by compliance with the judgment but instead aimed at translating Directive 2011/24/EU into the Bulgarian legislation.[1193] In particular,

1185 ibid para 45.
1186 ibid para 47.
1187 More specifically, the Court referred to Case C-368/98 *Abdon Vanbraekel and Others* [2001] ECLI:EU:C:2001:400.
1188 Case C-173/09 *Elchinov* para 48.
1189 ibid paras 65-67.
1190 ibid para 81.
1191 'Meeting Protocol of the Committee on Healthcare, Protocol No 96/18.12.2012' (2012) <https://parliament.bg/bg/parliamentarycommittees/members/233DANIELA/steno/ID/2703> accessed 20 May 2020.
1192 'Motives in Draft of the Law Amending and Supplementing the Law on Health, No 302-01-1' (2013) <https://parliament.bg/bg/bills/ID/14416> accessed 20 May 2020; 'Draft of the Law Amending and Supplementing the Law on Health, No 302-01-1' (2013) <https://parliament.bg/bg/bills/ID/14416> accessed 20 May 2020.
1193 Law Amending and Supplementing the Law on Health, SG 1/3.1.2014.

the Law on Health Insurance was amended by repealing Article 36,[1194] which was subject to the findings in the judgment of Case C-173/09. Further, the reform implemented some of the Directive 2011/24/EU provisions in a new section of the Law on Health Insurance titled "Cross-border Healthcare".[1195]

The reform settled the rules on receiving medical services in another member state that can be subsequently reimbursable by the NHIF.[1196] Regarding services requiring prior authorization, the national law relied heavily on Article 8 of Directive 2011/24/EU. The law adopted the Directive's wording on which healthcare might be subjected to prior authorization[1197] and the conditions when a refusal for prior authorization may be granted.[1198] The reform further envisioned that the medical services requiring prior authorization would be made public on the website of the NHIF (Article 80g(2), LHI). Most importantly, the amendment introduced the requirement that prior authorization cannot be refused when the national health insurance system covers the medical service and when the service cannot be provided in Bulgaria within a time considered acceptable from a medical point of view (Article 80g(6), LHI).

dd. Free Movement of Capital and the Internal Market

The European Union law further resulted in alterations of the national system through its free movement of capital and internal market requirements. These channels of EU law influence resulted in two major impacts. First of all, the national system opened up to allow different private social protection providers located in the other Member States. Second, the EU law contributed to a considerable diversification of the financing mechanisms of private providers.

The opening of the national social protection system to the EU internal market entailed adaptation to the freedoms of provision of services. One of the preparations for the accession to the EU involved a reform of

1194 §15, ibid.
1195 Section XII, LHI.
1196 § 15, Law Amending and Supplementing the Law on Health, SG 1/3.1.2014.
1197 Article 80g(3), LHI, literally adopted the wording of Article 8(2) of the Directive 2011/24/EU.
1198 Article 80g(5), LHI, literally adopted the wording of Article 8(3) of the Directive 2011/24/EU.

the Law on Social Assistance that enlarged the scope of social services providers.[1199] Namely, the reform stipulated that companies established in the other Member States would be eligible to become providers of social assistance services in the country. Such service providers would need to comply with the same conditions as the national providers of social assistance services. In addition to social service providers, the national system similarly opened up to institutions of occupational retirement provision registered in other Member States[1200] due to the requirements of Article 20 of Directive 2003/41/EC.[1201]

Moreover, EU law considerably affected the financing practices of private providers registered in the country. A major strand of EU influence in this regard occurred in the pre-accession period before 2007. A reform in 2006[1202] managed to diversify the investment process involved in the financing of supplementary pension insurance schemes in line with Directive 2003/41/EC.[1203] After the accession to the EU, further reforms aiming at opening up the national social protection to the EU's internal capital markets affected considerably the organization of the financing of companies offering voluntary health insurance plans and private and occupational pension insurance. A reform of the Social Insurance Code in 2007 continued with implementing Directive 2003/41/EC requirements by enriching and modifying the financing mechanisms of voluntary occupational pension schemes in the country.[1204] Implementing the Directive in the national law entailed creating the possibility for institutions offering occupational pension plans to be allowed to appoint licensed custodians established in the other Member States.

Similarly, a reform in 2012 was triggered by a procedure initiated by the European Commission against Bulgaria for non-fulfillment of obliga-

1199 *See* 'Motives' in 'Draft of the Law Amending and Supplementing the Law on Social Assistance, No 550-01-251, Archives of the National Assembly' (2005).

1200 § 3, Law Amending and Supplementing the Social Insurance Code, SG 56/11.7.2006.

1201 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'.

1202 Law Amending and Supplementing the Social Insurance Code, SG 56/11.7.2006.

1203 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'.

1204 *See* 'Motives' in 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 750-01-26, Archives of the National Assembly' (2007).

tions[1205] and failure to bring the voluntary health insurance in line with the free movement of capital (Article 63, TFEU) and the provisions of two related directives.[1206] The national reform introduced the possibility for companies licensed to provide voluntary health insurance services to engage in investment activities in the EU internal market. Previously, this option used to be a limited possibility available only through explicit permission granted by the national Commission of Financial Regulation.[1207] Moreover, the reform introduced a wide variation of investment instruments, in contrast to the narrow and limited investment possibilities offered before the introduced change. In addition to enlarging the investment possibilities, additional technical changes in the national law translated the EU requirements regarding solvency and asset management for insurance companies, such as companies engaging in the provision of supplementary health and pension insurance.[1208]

2. Control of Norms

a. Contribution-based Systems: Common Questions

After examining the concrete constitutional, international, and European Union law influences in the phase of norm creation, the research turns to how the phase of control of norms has influenced social protection in Bulgaria. In examining this issue, the following will group the main questions reviewed by the Constitutional Court based on their subject matter and on whether the concrete case concerned a more general and structure-relevant matter or rather dealt with a concrete benefit or measure. The analysis will also bring forward the main legal problem that came to the fore in

1205 *See* 'Motives' in 'Draft of the Law Amending and Supplementing the Law on Health Insurance, No 202-01-28' (2012) <https://parliament.bg/bg/bills/ID/13984> accessed 20 May 2020.

1206 Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, OJ L 228, 16.8.1973, 3–19 1973; Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC, OJ L 228, 11.8.1992, 1–23.

1207 Prior to the reform, investment activities outside of the national market were subject to a permission of the Commission for Financial Supervision.

1208 The changes were introduced with Law Amending and Supplementing the Social Insurance Code, SG 92/17.11.2017.

the discussion. Accordingly, the examination will begin with the common institutional problems reviewed by the Constitutional Court in terms of coverage and general financing of the Contribution-based Systems (i.e., the social and health insurance). Next, the specific legal questions and resulting constitutional influences concerning social and health insurance will be reviewed separately. Third, the research will examine the constitutional influence concerning the Risk-Specific, Non-contributory Benefits in terms of the constitutional interpretation of the right to free obstetric care. Fourth, the Minimum Protection and Support and Social Inclusion Benefits will be initially examined together since the related constitutional jurisprudence has provided insight into the similarities and differences between the two systems. Finally, the constitutional influences concerning concrete Support and Social Inclusion Benefits will be analyzed.

aa. Mandatory Participation in Social and Health Insurance

The obligation for mandatory participation in social and health insurance always includes a certain restrain of personal freedom.[1209] This restriction is necessary for the functioning of the social insurance systems.[1210] However, the restrain of personal freedom entails that the coverage of the systems is carried out in a way complying with constitutional requirements. In Bulgaria, the mandatory coverage of social and health insurance has been constitutionally assessed in terms of its appropriateness and compliance with the principles of equality and the rule of law. On the one hand, the principle of equality detected whether the law had adopted an oversimplified approach towards mandatory participation that neglected certain crucial differences between some social groups. On the other, equality would also prevent similar situations from being treated in a way that placed one group in an unjustifiably privileged position. In addition, the application of the rule of law assessed whether the mandatory inclusion of certain groups in the mandatory insurance would not create incoherencies in the legal framework. In deliberating on mandatory coverage, the constitutional jurisprudence has also touched upon the differences between the mandatory character of social and health insurance systems.

1209 Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 592–593.

1210 ibid.

To begin, soon after the enactment of the Social Insurance Code back in 2000, the Constitutional Court was requested to review the law's requirement for mandatory participation in the social insurance system.[1211] Namely, 53 members of Parliament argued that the right to social security, provided for in Article 51(1) of the Constitution, established a right instead of an obligation for mandatory participation. Hence, according to the claimants, the principle of mandatory participation, which laid the foundation of a great part of the Social Insurance Code, was unconstitutional.

The Constitutional Court did not accept this argument.[1212] The Court pointed out that the Constitution provided the right to social insurance but did not determine how this right would be realized. Hence, the Constitution gave freedom to the legislature to create a normative framework for the realization of the right to social security. This normative framework needed to guarantee the actual possibility of the citizens to benefit from their constitutional right to social insurance. The Court pointed out that the social insurance system is based on mutual help and solidarity. Thus, the system protected the common interest through the gathered contributions that ensured the financial protection of individuals in situations when social risks occurred. The mandatory character of the social insurance is, therefore, a necessary precondition for the realization of the constitutional right to social insurance. A voluntary participation character of the social system could undermine the realization of this constitutional right. In its argumentation, the Constitutional Court also referred to the fact that the mandatory character of social insurance is a fundamental element of a range of ILO conventions that Bulgaria had ratified.

After declaring that mandatory participation in social insurance was constitutional, the Constitutional Court examined the coverage of mandatory participation.[1213] The Court concluded that it was unconstitutional to include two particular groups under the scope of Article 4(3) of the Social Insurance Code that provided for mandatory insurance against the risks of disability due to general sickness, old age, and death. The first group was comprised of Ph.D. students.[1214] The Social Insurance Code provided that the mandatory social insurance contributions were owned based on the income obtained from an occupational activity. However, according

1211 Constitutional Decision No 5/2000 on case 4/2000.
1212 ibid para I. A.1.
1213 ibid para I. A.2.
1214 ibid para I. A.2.2. b).

to the Law on High Education, the PhDs received grants that cannot be considered an income from an occupational activity. The inclusion of this group in the scope of mandatory insurance thus created incoherence in the legal framework and, in doing so, violated the rule of law principle stated in Article 4(1) of the Constitution.[1215]

Self-employed pensioners or pensioners exercising liberal professions represented the second group that was unconstitutionality included in the scope of mandatory insurance against the risks of disability due to general sickness, old age, and death.[1216] In general, the employed population needed to be placed under the same conditions in terms of social insurance and taxing requirements.[1217] Accordingly, the Constitutional Court considered that the employed pensioners could not be relieved from the mandatory social insurance contributions since this would place them in an unequal position compared to employed individuals who were not pensioners.

However, the Court also reasoned that concerning the self-employed retirees, the law has misinterpreted the principle of equality and mistakenly sorted together diverging groups. Namely, the legislative solution had neglected the differences between labor and social law requirements for employed pensioners and pensioners who worked as self-employed or exercised a liberal profession.[1218] First, the two groups of pensioners exercised activities founded upon different legal bases, such as, for instance, labor law basis versus the self-employment basis. Next, the employed pensioners were mandatorily insured against all social risks. In contrast, the self-employed and liberal professions retirees were insured against the risks of disability due to general sickness, old age, and death. Third, while the first group shared the payment of their social insurance contributions with their employers, the second group needed to carry the burden of contribution payment only by themselves.

Consequently, the considerable differences between the two groups did not allow for their subjecting to equal mandatory participation requirements. While the employed pensioners could not be removed from mandatory social insurance since this would violate the principle of equality concerning the rest of the employed population, the case would be different regarding the self-employed pensioners. The Court considered that the

1215 ibid para I. A.2.2. b).
1216 ibid para I. A.2.2. c).
1217 ibid para I. A.2.2. a).
1218 ibid para I. A.2.2. c).

inclusion of the second group of pensioners in the scope of mandatory insurance did not possess a social character but was instead fiscal in its motivation. Therefore, the pensioners working as self-employed or exercising liberal professions needed to be removed from the requirement for mandatory insurance. The Court concluded that these persons should be provided with the possibility to voluntarily insure themselves should they like to increase the amount of their pension benefit.

Mandatory health insurance coverage concerning certain social groups has also been subject to constitutional review. Curiously enough, the health insurance coverage became a subject of disagreement between the High Administrative Court and the Constitutional Court.[1219] The concrete reason for the constitutional review was a referral by the High Administrative Court and concerned the mandatory health insurance contributions paid by self-employed pensioners. According to the Bulgarian pension system, the health insurance contributions of pensioners are covered by the state budget.[1220] Thus, the review request pointed out that if self-employed pensioners had to pay health contributions, this would imply that there would be two health contributions made for them since the public budget also covered their health insurance.

Moreover, the referral stated that by the time of reaching pension entitlement, the principles of reciprocity and solidarity in the public health insurance have already been realized in regard to the people who have acquired the right to a pension. These people have fully complied with their obligations to the health insurance system due to their previous contributions. A final argument was that the payment of the health insurance contributions by the self-employed pensioners violated the equal treatment principle since it represented a differentiated treatment between working self-employed pensioners and non-working pensioners.

However, the Constitutional Court did not agree with the arguments of the High Administrative Court and considered the self-employed retirees' obligation for health insurance contributions as constitutional.[1221] Regarding the argument on equal treatment, the Court pointed out that the legislature had provided that all people who receive income from an occupational activity were subjected to payment of contributions to the

1219 Constitutional Decision No 7/2017 on case 2/2017.

1220 Article 40(1)4, Law on Health Insurance, SG 70/19.06.1998. For more on this issue, refer to the analysis of the social protection system.

1221 Constitutional Decision No 7/2017 on case 2/2017.

public health insurance. If self-employed pensioners were exempted from payment of contributions, this would lead to unequal treatment since the rest of the economically active population (including the employed retirees) would have to continue to mandatorily contribute to the health insurance system. Like the rest of the working pensioners, the self-employed pensioners who continued to work had retained their working capacity. Therefore, the protection of the public interest would imply that the self-employed pensioner should pay health insurance contributions based on their additionally acquired income from the labor activity. Furthermore, for the working pensioners, the risk for health problems could be relatively greater than for the ones who do not work.

The Constitutional Court also addressed the fact that the self-employed pensioners could voluntarily contribute to the social insurance system but at the same time had to mandatorily contribute to the public health insurance. On the one side, the constitutional social and health insurance rights were close in nature since they both provided protection to citizens in some kind of need. On the other side, however, these rights differed considerably in their subject and content. While the social insurance was directed towards the individual's insurance against social risks, the health insurance concerned the biological survival. The legislation had defined that social insurance was paid by the recipients of income, while health insurance contributions were owed even by the unemployed. Furthermore, the health insurance system provided equal access to all insured and did not tie the benefits it provided to the levels of the made contribution. Therefore, these fundamental differences allowed for certain varying regulation approaches in the social and health insurances.

bb. Questions Regarding Social and Health Insurance Financing

The Constitutional Court had the chance to rule several times on general financing questions regarding health and social insurance. The Court engaged with the issue of the fund-structured financing of the Contribution-based Systems and, by doing so, contributed to fortifying the institutional structure of social and health insurance. In this regard, the reasoning of the Court was adamant that contributions are the vital connection between the realization of a given risk and the individual's rights to social and health insurance benefits. The funds of the different branches of the Contribution-based Systems accumulate their budget mainly based on contributions.

Accordingly, the funds' finances could only be spent for the funds' legally specified purposes.

First of all, from a constitutional point of view, no reallocation of the funds' finances to other institutions was permissible as this violated the principles of the rule of law and legitimate expectations. In 2011, the Law on the Budget of the National Health Insurance Fund (NHIF) for 2012 stipulated that the NHIF could provide transfers of 100 million BGN to the Ministry of Healthcare for expenses that the Ministry made in 2011 for medical services, devices, and products.[1222] The Constitutional Court declared the introduced transfer of resources unconstitutional.[1223] The Court argued that the health insurance was built upon the so-called "fund" principle ("фондовия принцип") that entailed that the fund's incomes can only be spent for the strictly defined fund's purposes.[1224] This principle was indirectly clarified in the Law on Health Insurance. Namely, Article 24 of the latter stated where the incomes of the fund could be spent, and there was no provision allowing for the transferring of NHIF's finances to other institutional bodies. The financing mechanism of the fund involved the receiving, storing, and spending of the capital for the realization of the health insurance. According to the Court, the so-called "fund principle" was characterized by the specificity of the fund's incomes (primarily based on contributions) and the targeted spending of incomes specified in Article 24 of the Law on Health Insurance. Thus, diverting incomes from their targeted usages for financing the budget of another institution violated the principles of the rule of law and legitimate expectations.[1225]

Second of all, in another judgment, the Constitutional Court decided that the fund's sources of financing, coming from contributions, were intended only for the funds' accounts themselves.[1226] Accordingly, it was constitutionally not permissible for these sources of financing to be assigned

1222 Constitutional Decision No 8/2012 on case 16/2011 para IV.

1223 ibid para V.

1224 ibid.

1225 ibid. The request for constitutional review also claimed that the Law on the Budget for the NHIF further violated the right to property of the insures as well as their right to health insurance. The Constitutional Court rejected both of these claims. The health insurance contributions to the National Health Insurance Fund were not accumulated in individual accounts and did not benefit from the right to property; the contributions became part of a solidarity pool ensuring equal access to all insured individuals. The Court also considered that there was no related violation of the right to health insurance.

1226 Constitutional Decision No 2/2014 on case 3/2013 para I.

some other purpose since this led to a violation of the rule of law and the constitutional social protection rights. A reform in 2012 of the Tax-Insurance Procedural Code merged the accounts for payment of mandatory social insurance contributions and health insurance contributions with the account for the payment of the accrued tax debts.[1227] In addition, the changes introduced automatic payment through this unified account of the oldest pending public law debt, regardless of whether the debt was of tax or social or health insurance nature. The reform proponents stated that the unified account would significantly lower the administrative burden of managing social insurance and tax payments and liabilities. However, the members of Parliament who requested a constitutional review claimed that the merging of the accounts created the possibility that social and health insurance contributions could be used to cover pending tax debts. Such probability could lead to interruptions of the individuals' insurance status and the inability to rely on the health or social insurance system in case of a given social risk. Therefore, it was claimed that there is a violation of the rights to social and health insurance (respectively, to Articles 51(1) and 52(1) of the Constitution).

In its deliberations, the Constitutional Court stepped on its previous reasonings regarding the "fund principle" by stating that the latter was fundamental for financing social and health insurance.[1228] The mixing of social and health insurance contributions and the merging with the tax revenue incoming means posed the danger that contributions might not be used for the purpose for which they were originally paid. The mixing of public payments with different characters thus represented a potential violation of the constitutional rights to social and health insurance.

The Court further reiterated that, according to the Constitution, the legislature indeed had relative freedom in designing health and social insurance financing, including by determining how the contributions would be collected. However, the legislature was limited in this freedom by the constitutional requirement to provide a legal framework where the rules were unambiguous and did not create the possibility that the paid contributions might not be used for their targeted purpose. The social and health insurance fund principle demanded the law to take care of where the incomes came from. Further, the law had to be precise concerning the contributions'

1227 Law Amending and Supplementing the Tax and Insurance Procedure Code, SG 94/30.11.2012.

1228 Constitutional Decision No 2/2014 on case 3/2013 para I.

spending.[1229] Consequently, mixing duties on tax and social and health insurance payments violated the rule of law principle.

Moreover, the Court underlined that people were provided with constitutionally guaranteed rights through their obligation to pay social and health insurance contributions.[1230] However, mixing contributions and tax payments created unclarity for the individuals on whether their social and health insurance contribution obligations are met. Respectively, there could be ambiguity on whether persons would be able to benefit from their rights to health and social insurance in case of the occurrence of social risk. Hence, the Court concluded that the reform violated the constitutional rights to social and health insurance.[1231]

The Constitutional Court had to also separately engage with the questions on the financing of health insurance in the country.[1232] Namely, the Court was requested to provide a constitutional review on the introduced possibility for payment of medical services in public medical establishments. The change in the law envisioned that insured or uninsured patients would be able willingly to pay for medical services in case they wanted specific (specialized) treatment in a given medical establishment. The referral to the Constitutional Court argued that the possibility of payment of medical services in public medical establishments violated the right to health insurance of those already insured. However, the Court disagreed; the possibility for payment of medical services in public medical establishments did not violate the right to health insurance.[1233] Instead, the reform provided the option to those who were insured to either pay for the services themselves or cover their treatments through the NHIF, which would imply observing the respective health insurance procedures on medical access, such as the medical referral process to a specialist.[1234]

A further case[1235] concerned the introduction of a requirement by the Law on Health Insurance for the payment of a fee for every visit to the doctor or dentist and for each day of treatment at a medical establishment.[1236]

1229 ibid.
1230 ibid para II.
1231 ibid.
1232 Constitutional Decision No 8/1998 on case 3/1998.
1233 ibid para II.
1234 ibid.
1235 Constitutional Decision No 32/1998 on case 29/1998.
1236 The fee's amount for visit to the doctor/dentist used to be determined as 1% of the minimum wage. Currently, the fee amount is determined by a decree of the

The referral to the Constitutional Court argued that the fee violated the right to health insurance of the insured individuals since the law introduced a double payment for the same service. Further, it was claimed that the changes undermined the requirement of Article 52(1) of the CRB that medical care needed to be affordable.

Despite such arguments, the Constitutional Court concluded that the introduction of the fee was constitutional. The Court reasoned that the principles of solidarity, mandatory participation, and equality in medical treatment are foundational for guaranteeing the affordability requirement of the constitutional right to health insurance. The fee indeed represented a condition for accessing doctors or dentists. However, the medications and services provided during the treatment of health-insured patients were not set in relation to the level of contributions to the system. Instead, medical treatment continued to be determined only based on the disease's type.

Additionally, the introduced fee was quite modest as its amount depended on the minimum wage and was not based on the provided medical treatment. Thus, the payment of additional fees did not interfere with the principles of solidarity and equality. The law also foresaw that certain special and more vulnerable societal groups were exempted from the fee payment (such as those receiving social assistance, juveniles, children, etc.). Hence, the law did not limit health insurance coverage and did not interfere with the constitutional requirement for the affordability of medical care.[1237]

Nevertheless, the dissenting view of one of the judges pointed out that despite the currently small amount of the fee, its introduction was unconstitutional.[1238] The judge reasoned that the issue did not lie in the modest fee amount but in its function as an additional barrier to accessing medical care. The judge argued that the unconstitutionality in the case followed from the fact that the reform implied that people who were already health insured could still be barred from accessing healthcare. In this regard, the judge provided as an example the possible scenario in which this fee was increased several times. In addition, it could be the case that people might not have the amount for the fee with them when they visit a doctor or dentist. Then, these people could actually be deprived of their right to health insurance despite having made health insurance contributions.

Council of Ministers (Art. 37(1), LHI). For more, refer to the analysis of the social protection system.

1237 Constitutional Decision No 32/1998 on case 29/1998.

1238 Dissenting Opinion of Judge Thodorov on Constitutional Decision No 32/1998 on case 29/1998.

b. Social Insurance Questions

aa. Protected Positions in Pension Insurance

In general, pension insurance represents the social insurance branch with the largest divergence periods between contribution payment and benefit entitlement. [1239] This considerable divergence has been involved with numerous controversial issues in different countries. Bulgaria is no exception to this observation, as evidenced by the number of pension-related rulings of the Constitutional Court. Namely, the cases on pension issues represent the category with the greatest number of constitutional judgments in the field of social protection in the country. The Constitutional Court had to deliberate on various pension insurance matters and, in doing so, was able to delineate the protected positions in pension insurance that cannot be subject to legislative interference.

First and foremost, the protected positions included the constitutional safeguard against the limiting of already acquired individual benefit entitlements. Nevertheless, the constitutional right to social insurance fell short of influencing the amounts of future benefits entitlements and could not prevent the introduction of a pension ceiling. Next, the disputed issues established the irrevocability status of the constitutional right to social insurance (and the derived right to pension), thereby implying that this right cannot be infringed upon in an arbitrary manner. Finally, the legislature was not allowed to differentiate between acquired qualification periods based on characteristics that violated the principle of equality.

Two of the outlined conclusions were already reached in the first-ever social protection decision of the Constitutional Court. At the beginning of the period of the country's transition to democracy, a reform targeted the insurance periods of individuals who used to work in leading positions in the structures of the former socialist regime.[1240] Namely, the law intended to exclude the insurance periods from the pension qualifying periods for such individuals. The Constitutional Court declared this reform unconstitutional. The Court argued that the legislature aimed at sanctioning the moral choice of a group of persons, i.e., the choice of individuals who worked for the structures of communist organizations. However, the legislature had not made it clear how this moral choice was able to trigger legal repercussions.

1239 Becker and Hardenberg, in Becker and others, *Security* (2010) 110–111.
1240 Constitutional Decision No 11/1992 on case 18/1992.

The absence of such an explanation implied that the legislature's actions were arbitrary. Thus, the reform violated the principle of equality provided in Article 6(2) of the Constitution, as the population was arbitrarily placed in two categories regarding the recognition of their insurance periods.

Moreover, the right to pension belonged to the scope of the right to social insurance.[1241] As a result of the change in the law, certain individuals' insurance periods were excluded from the qualifying conditions, thereby leaving those persons without a right to a pension. Nevertheless, as part of Article 51(1), the right to pension was irrevocable. As such, the right could not be stripped out of its core and could only be temporarily limited based on the constitutional provisions for temporary restrictions in emergency or military situations (Art. 57(3), CRB), which did not concern the given case.

The Court pointed out that if the legislature aimed at targeting some aspects of the insurance history of the respective groups of individuals, then this needed to be done within the borders of what was allowed by the Constitution.[1242] For instance, a possible aspect of the then applicable Law on Pensions that could be tackled influenced the size of some pensions based on the priority amounts of salaries. These amounts included remunerations such as those paid to individuals who worked in leading positions of the former socialist regime. Hence, the Court considered that the legislature's aim could be to remove unjustified privileges. Still, in doing so, the legislature had to act within the margins of discretion allowed by the Constitution.

On a later occasion, the Constitutional Court adjudicated that a provision intending to limit or reduce the amount of the pension benefit of pensioners who receive income from the occupational activity was also unconstitutional.[1243] The case concerned a well-established approach in the Bulgarian pension law that had its roots in the 1957 Law on Pensions. The law initially postulated that the working pensioners could not receive a pension. This provision was eventually softened over time. In 1994, the law was reformed, and working pensioners were entitled to receive their pensions if the monthly income from that activity did not exceed twice the minimum wage for the relevant period. Any income that surpassed this amount was to be reduced from the pension benefit and its supplements.

1241 ibid.
1242 ibid.
1243 Constitutional Decision No 12/1997 on case 6/1997.

The Court considered that this legislative solution violated the 1991 Constitution. Namely, the legislature had to refrain from curtailing rights that had already been acquired. Furthermore, the state had an obligation to preserve the acquired right once the conditions for its realization were met. The right to old-age pension was a constitutional right falling under the umbrella of the constitutional right of social insurance and, as such, represented an irrevocable right (Art. 57(1), CRB). The constitutional protection involved both the requirement for the state to foresee and create a public system for pension insurance and an obligation to guarantee the concrete realization of the right when the given entitlement conditions had been met. Once a right had been realized, it could only be curtailed when this was provided for in the Constitution, such as if some significant social interest might justify certain curtailment (Art. 57(2), CRB).

In some countries, the acquired pension rights can benefit from the constitutional protection of the right to property.[1244] In the given case, however, the constitutional debate was rather framed alongside the lines of the beneficiaries' legitimate expectations, even if the Court did not explicitly state this. The constitutional logic focused on the fact that the individuals have complied with the law's conditions. The compliance with the conditions and their fulfillment resulted in a given pension benefit. Hence, infringement upon the acquired right to pension can interfere with the beneficiaries' legitimate expectations (given the further entailed aspect of the limited individual freedom), which follows from the objective principle of the rule of law.

In the case proceedings, the government placed forward the argument that the necessity for limiting pension benefits of working pensioners was grounded on the PAYG character of the public pension system. The mode of financing implied that the incomes from the working population were needed to cover the benefits of the current pensioners. Therefore, the government considered that the PAYG character allowed a limitation of the acquired rights to a pension because of the rights of the rest of the participants in the system. Yet, according to the Court, an argument on the mode of financing was not of constitutional nature and thus could not be used to justify the interference with a constitutional right. Accordingly,

1244 Pieters, *Navigating Social Security Options* (2019) 18. On extent of protection of social rights in Germany through the right to property, *see* Becker and Hardenberg, in Becker and others, *Security* (2010) 197 ff.

it was concluded that the incursion upon the size of the already acquired right to pension was a violation of Article 51(1) of the Constitution.[1245]

The legislature, however, was allowed to adjust the amounts of future pensions through the introduction of a pension calculation ceiling.[1246] In a judgment concerning the respective reform, the Court stated that as long as the constitutional principles and requirements were observed, it was up to the legislature to determine the order and conditions for the right to a pension, including its amount. The key argument of the judgment was that the legislative measures did not concern already acquired rights and therefore did not violate the right to social insurance.

In developing its reasoning, the Court relied on argumentation based on public financing character. Namely, in its argumentation, the Constitutional Court underlined that the reform not only set a pension ceiling but further introduced a minimum pension.[1247] The pension ceiling provided for the payment of minimum pensions and contributed to their increase. Consequently, the Court considered that the ceiling's introduction was necessary to support the proper functioning of the PAYG financing of the pension system. In contrast to the reasoning in the case discussed above, the Court allowed the PAYG mode of financing to serve as an argument that could limit future pension benefits. This future limitation was constitutional since it did not interfere with acquired positions and additionally aimed at securing a minimum statutory pension level.

bb. Private Pension Insurance

The integration of private insurance schemes into social insurance represents a general European tendency.[1248] The section on the history of national social protection revealed that Bulgaria is also part of this trend. Following the work of the World Bank in the country in the 1990s, a new so-called "pillar" of capital-funded pensions was introduced as a part of the mandatory pension insurance.[1249] Right from the very beginning of the

1245 Constitutional Decision No 12/1997 on case 6/1997.
1246 Constitutional Decision No 21/1998 on case 18/1997.
1247 ibid.
1248 Pieters, *Navigating Social Security Options* (2019) 7.
1249 Petrova, in *The International Labour Organization and Bulgaria/Международната организация на труда и България* (2020) 369.

functioning of the multi-pillar system in the country, the Constitutional Court considered that insurance in private schemes did not violate the constitutional right to social insurance.[1250] The state, however, had an obligation to continue to regulate and oversee the insurance process carried out by private providers.[1251] In addition, the integration of special regulatory provisions was needed to secure the rights of the individuals from the risks of the capital-funded financing of private insurance.[1252]

However, the pension model in the country was partially reversed in 2014 by the establishment of the opting-out possibility from the capital-funded pension schemes, i.e., people were provided with the opportunity to relocate all of their mandatory pension insurance contributions towards the statutory old-age pension insurance.[1253] The High Administrative Court posed the question to the Constitutional Court[1254] of whether the introduced possibility for opting out from the capital-funded schemes violated constitutional provisions.[1255] The main argument of the High Administrative Court was that by taking advantage of the opting-out option, individuals would be, at times probably unknowingly, changing the nature of their pension insurance rights. Namely, the pension insurance in the capital-funded schemes was characterized by certain rights which were not available in the statutory pension insurance. The rights concerned the accumulation of the capital in an individual account, different possibilities for the payment of the accumulated capital after reaching the statutory retirement age, as well as survivor rights over the amount in the individual account. All of these rights were lost when a transfer to the statutory pension insurance would occur. Therefore, the option for the relocation of the contributions could violate the rule of law principle, as well as the right to social insurance (Article 51(1), CRB) and the right to property (Article 17(1), CRB).

1250 Constitutional Decision No 5/2000 on case 4/2000 para VI.

1251 In general, scholars point out that private pension insurance models are permissible in constitutional terms. However, the state must provide for the proper forms of private insurance regulation, especially given the risks involved with this type of insurance. *See* Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 601–602.

1252 Constitutional Decision No 5/2000 on case 4/2000 para VI.

1253 The changes to the pension insurance were based on the adoption of the following laws: 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.

1254 Constitutional Decision No 9/2017 on case 9/2016.

1255 ibid.

Furthermore, the opting-out option could potentially violate the rights of the companies that managed private schemes. In particular, Article 19(2) of the Constitution established that there should be equal conditions for business activities in the country and that the state needed to establish protection against unfair competition.

The Constitutional Court did not establish any constitutional violation in the case.[1256] The Court defined as "paternalistic" the argument that by opting out of the capital-funded schemes, persons might be changing their pension rights without realizing the consequences of their choice. This paternalistic approach did not conform with the idea of the freedom of individual choice and the responsibility for the consequences of making a certain choice.[1257] The legal consequences of the choice to opt out were illustrated in the respective legal norms, and a person who was unaware of them was not excused from the consequences of the law.

Regarding the argument that the right to social insurance was violated, the Constitutional Court pointed out that the constitutionally proclaimed right to social insurance referred to the public insurance system.[1258] Hence, private pension insurance was allowed to exist under the Constitution but was not constitutionally provided for, in contrast to the public right to pension insurance that fell under the scope of Article 51(1). The Constitution established the public insurance model and did not require the setting of private social insurance. Furthermore, the public social insurance model complied with the goal of creating a social state as provided in the constitutional Preamble.

Still, even though private pension insurance did not fall within the scope of the constitutional right to social insurance, it benefited from the safeguards of other constitutional provisions. Namely, since private pension insurance had a concrete monetary value even before the realization of the given social risk, it entailed property rights in the sense of Article 17(1) of the Constitution.[1259] Moreover, the right to property necessitated that the insured individual would have the freedom to decide how the accumulated capital in the individual account was to be administered. Therefore, the right of individuals to opt out of one type of pension insurance and relocate

1256 ibid para V. 1.
1257 ibid.
1258 ibid para I. 2.
1259 ibid para II.

to another did not infringe their pension rights but rather enriched them since it provided greater choice.

Finally, the Court also addressed the claim that the reform had infringed the principle of fair competition. The Constitutional Court reasoned that while the private pension insurance indeed engaged in competition practices, this was not the case in the conduction of public pension insurance.[1260] Public social insurance represented a *conditio sine qua non* for all who remained in the private pension schemes. Therefore, there can be no competition between the public and private pension insurance models.

cc. Right to Property and Pension Insurance

The case discussed above implied that the right to a public pension could not benefit from the protection of the right to property since this right could not be associated with a concrete amount in the public insurance process.[1261] However, the case on the right to opt-out from the private pension schemes clarified that private pension insurance fell under the umbrella of the constitutional right to property. This argument was developed further by the constitutional jurisprudence. The constitutional case law demonstrated that the right to property could affect private pension insurance by prohibiting legislative interference in private insurance that would violate the property right of the insured individuals.

To elaborate, the Constitutional Court was confronted with a reform that relocated the sums from the individual accounts of a private pension scheme as part of the mandatory pension insurance to the public pension fund. Namely, the reform transferred the capital accumulated until 2011 in the accounts of certain age groups of women (born after 1954 and before 1960) and men (born after 1951 and before 1960).[1262] The explanation for the reform was that the given age groups were nearing the specific early retirement age for the 1st and 2nd labor categories. Hence, these persons working under hazardous conditions were soon to be provided with the option to retire earlier and receive a fixed-term early pension until qualifying for the standard old-age pension. The said individuals were to be the first wave of recipients of a fixed-term early pension from the PPF scheme. Provisionary calculations estimated that their pension benefit amounts would

1260 ibid para IV.
1261 ibid para II.
1262 Constitutional Decision No 7/2011 on case 21/2010.

be greater if their accumulated capital were instead transferred to the public fund. Therefore, for the sake of greater benefits, the legislature opted for transferring the accumulated capital in the individual accounts to the public fund.

The Constitutional Court declared the reform as being unconstitutional in two main regards.[1263] First, the insurance in the capital-funded schemes was based on private law principles. The private nature was evidenced in the necessity for the conclusion of an insurance contract between the individual and the pension company managing the given private pension fund. In addition, the private insurance rights were characterized by a concrete numerical value even before the benefit entitlement. In contrast, the public social insurance rights in the pension insurance were organized in a public system of solidarity where they could not be guaranteed a concrete benefit amount. The private law character of the pension insurance and the concrete accumulated capital in the individual account implied that the private pension insurance rights possessed property character and thereby benefited from the protection of Article 17(2) of the Constitution. Thus, transferring the accumulated capital in the individual accounts to the public fund could not be done without the owners' permission. Hence, the legislature had trespassed the constitutional limits, and the transfer had violated both the rule of law principle and the right to property provided for in Article 17(2) of the Constitution.[1264]

Second, the reform selectively targeted the individual accounts of particular generational groups. In doing so, it deprived these groups of the early pension provided by capital-funded schemes by treating the said individuals differently on the grounds of age. In comparison, all other age groups working in similar conditions continued to be mandatorily insured in the capital-funded schemes. Consequently, due to the differentiated treatment based on the individuals' age, there was also a violation of the constitutional principle of equal treatment as provided in Article 6(2) of the Constitution.

dd. Legitimate Expectations in Pension Insurance

The discussed case law on the financing of the social and health insurance systems demonstrated that the rule of law and the derivative principle of

1263 ibid.
1264 ibid.

legitimate expectations could halt reforms aiming to fundamentally alter the institutional structure.[1265] The profound character of the changes could destabilize the financing organization of the given systems. The legitimate expectations principle could then be potentially violated since the financial reorganization could undermine the possibility of social rights realization. However, the constitutional debate in the country has demonstrated that legitimate expectations do not result in an absolute right to preservation of the existing conditions. In that sense, the constitutional principle of legitimate expectations has not been particularly influential in halting a given reform when the latter would not endanger social rights realization.

In general, the protection of legitimate expectations is especially crucial for long-term insurances, such as pension insurance, where confidence can be acquired through the continuous existence of the given system.[1266] The Bulgarian constitutional jurisprudence also deliberated on the implications of legitimate expectations of pension reforms. The Constitutional Court demonstrated that the legislature was not absolutely bound by the principle of legitimate expectations and had the freedom to initiate changes to the pension system in order to be able to preserve its future functioning.[1267] The legitimate expectations would instead entail the need for smooth transition periods accompanying the initiated reforms.

Accordingly, a reform increasing the retirement age and the minimum insurance periods for the statutory old-age pension was judged to be constitutional.[1268] The Constitutional Court argued that the introduced increase was an expression of the social state declared in the Preamble of the Constitution. The social state goal involved maintaining the provision of social protection. The measures strived to adapt the PAYG-financed pension system to the changing social realities given the demographic and social challenges, such as the aging population and higher unemployment rates, that affected the incomes used for pension payments.[1269]

A couple of years later, the Constitutional Court was confronted again with the issue of the retirement age increase. The given reform jumpstarted a progressive increase of the retirement age nine years earlier than what was

1265 Constitutional Decision No 8/2012 on case 16/2011.
1266 Becker and Hardenberg, in Becker and others, *Security* (2010) 117.
1267 Constitutional Decision No 5/2000 on case 4/2000 para IV. A.1.
1268 ibid.
1269 ibid.

initially planned in the law.[1270] The Court one more time concluded that the raised qualifying requirements were constitutional and the necessity for the alterations in the qualifying conditions followed from the social state objective.[1271] The social state represented the constitutional framework and basis for social protection in the country. The main feature of social protection was maintaining the functioning of its different systems. Henceforth, the Constitutional Court argued again that given the PAYG character of the statutory old-age pension system and the challenging demographic conditions in the country, the state had to undertake measures to maintain the functioning of the statutory pension system.

The Court acknowledged that, in general, reform measures needed to be foreseeable, and thus the earlier beginning of the increase could be seen as a challenge to the principle of the legitimate expectations that was a hallmark of the rule of law. Still, the Court pointed out that the legitimate expectations did not represent an absolute requirement for the legislature. Correspondingly, in challenging times, social protection could be altered more abruptly as long as the state continued to enable the conditions for the realization of constitutional rights.[1272]

ee. Disability Pension Rights

The constitutional control over the conditions for general sickness disability pension led to the introduction of international law influence in this social insurance sector. The Constitutional Court examined the qualifying insurance periods for entitlement to disability pension due to general sickness. The examination was carried out in the light of the respective international law requirements[1273] stemming from ILO's conventions on invalidity insurance, i.e., conventions No. 37[1274] and No. 38.[1275]

The Court reasoned that both ILO conventions allowed the state parties to require certain minimum insurance periods for the entitlement to a disability pension. However, according to the conventions, the maximum

1270 Constitutional Decision No 10/2012 on case 15/2011.
1271 ibid II. 1.
1272 The Court also cited some recommendations of the Council of the European Union that advised the increase of the actual retirement age in Bulgaria. *See* ibid.
1273 Constitutional Decision No 5/2000 on case 4/2000 para V.
1274 C037 - Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37) 1933.
1275 C038 - Invalidity Insurance (Agriculture) Convention, 1933 (No. 38) 1933.

length of these insurance periods could not exceed five years. Yet, the Bulgarian legislation established that the minimum insurance periods for disability pension entitlement reached up to seven and even ten years, depending on the individual's age. Therefore, the Constitutional Court established that the provisions of the national legislation were not in conformity with the international law requirements.[1276] The conventions did not only serve as programs for legislative action but entailed subjective positions that had to be reflected in the national legislation. The discrepancy had to be addressed by the legislature. The Social Insurance Code was reformed accordingly,[1277] and the maximum requirement for insurance periods was limited to five years (Art. 74(1), SIC).

ff. Paid Maternity Leave Rights

Apart from the pension-related problems, the Constitutional Court has further engaged with social insurance rights related to maternity. The examination of influences in the norm-creation revealed that reforms on the social insurance for maternity considered the content of Article 47(2) of the Constitution, which provides that, among others, mothers are to benefit from the special protection of the state. The Constitutional Court also deliberated on Article 47(2) in terms of the Article's requirement that (expecting) mothers are to benefit from prenatal and postnatal paid leave from work.[1278] The concrete case resulted from a request from the Prosecutor General for a constitutional review on a reform of the Social Insurance Code. The reform specified that mothers needed to have a minimum of six months of insurance periods to benefit from prenatal and postnatal leave from work. The Prosecutor General argued that the constitutional requirement on providing "special protection" to (expecting) mothers implied that there could be no conditions for minimum insurance periods regarding the right to prenatal and postnatal leave.

Nonetheless, the Constitutional Court considered that introducing the minimum insurance requirement was constitutional. The social insurance system was built upon solidarity and mandatory participation principles.

1276 Constitutional Decision No 5/2000 on case 4/2000 para II.
1277 § 16, Law Amending and Supplementing the Mandatory Social Insurance Code, SG 64/04.08.2000.
1278 Constitutional Decision No 2/2006 on case 9/2005 para II. 6.

The payment of contributions to the respective funds was thus a measurement of the persons' actual participation in the system. The completion of the participation time indicated with the minimum insurance periods led to entitlement to certain subjective rights. Hence, the insurance periods were fundamental for the social insurance rights and determined the content and the limits of these rights.[1279] The requirement for insurance periods was further congruent with the social insurance principles.[1280] The Constitutional Court pointed out that the minimum insurance periods did not need to be acquired immediately before the occurrence of the given social risk.

In case of missing minimum insurance periods, the mother would not be covered by the social insurance. Still, even in such cases, the state had the positive obligation to guarantee her protection according to Article 47(2) of the Constitution. The constitutional requirement for the provision of special protection for mothers was not equated with the system of social insurance.[1281] Therefore, if the mother did not qualify for the social insurance system, special protection could be provided by other means, such as through the social assistance system. Providing protection through this alternative system was not a violation of the Constitution.[1282]

c. Health Insurance Questions

aa. Legislature's Discretion in Health Insurance Organization

Similar to the right to social insurance, the constitutional jurisdiction on the right to health insurance demonstrated the legislature's disposal of wide discretion in terms of the health insurance's organization. The legislature's freedom was further strengthened due to the latter's ability to assess the system's organization based on the available resources. However, this discretion was limited in a narrower sense as it had to comply with the rule of law principle. This restriction implied the obligation of the legislature to realize the constitutional right to health insurance through the enactment of laws that settled the fundamentals of the system in a clear fashion and did not allow for contradictory interpretations. The constitutional character of the right to health insurance did not allow for its fundamental organ-

1279 Constitutional Decision No 11/1992 on case 18/1992.
1280 Constitutional Decision No 2/2006 on case 9/2005 para II. 10.
1281 ibid para II.12.
1282 ibid para II.14.

ization through administrative acts. These main constitutional influences resulted from two constitutional judgments.

First, the Constitutional Court had a chance to rule on the constitutionality of a reform that introduced fundamental changes to the organization of the health insurance system. In an effort to alleviate the pressure upon the limited capacity of the healthcare establishments, the reform aimed at introducing two "packages" in the Law on Health Insurance. The first and main one of these packages are intended to provide fast and priority access to treatment of certain major diseases. The medical care and services provided by this main package were to be entirely covered by the NHIF. The second "supplementary" package was to provide coverage for treatments that could be delayed in time so that the workload of the healthcare establishments could be eased down. The treatments belonging to the supplementary package were to be carried out based on waiting lists. Those who did not wish to wait for their treatment could obtain these services faster by paying for them. The precise medical services falling in the main and the supplementary packages were to be determined by an ordinance issued by the Minister of Healthcare.

A group of 61 members of the Parliament requested a constitutional review of the reform.[1283] A main argument for the request was that it undermined the rule of law principle. Namely, the law did not provide clear requirements and definitions on how it would be decided which services were to be featured in the two packages. Furthermore, fundamental aspects of the Law on Health Insurance, such as the precise content of the two packages, were to be established with an executive act of the Minister of Healthcare, which ranked lower in the hierarchy of norms. The lack of criteria for the content of the two packages further violated the principles of legitimate expectations and foreseeability. Finally, the Constitution stated in Article 52(1) that the right to health insurance should guarantee affordable medical help. The separation of the medical services into two packages under such unclear conditions posed the threat that the affordability aspect of the right to health insurance could be undermined.

The Constitutional Court adjudicated that the reform indeed violated the principle of the rule of the law and the constitutional right to health insurance.[1284] The reform did not clarify the basis on which the two pack-

1283 Constitutional Decision No 3/2016 on case 6/2015.
1284 ibid para I.

ages could be distinguished and the consequences of this distinction. In addition, there were no legal definitions of what the terms "main" and "supplementary" package stood for. Therefore, the unclarities contained in the reform violated the rule of law principle enshrined in Article 4(1) of the CRB. Such omissions could only enable the contradictory interpretation of the newly introduced legal provisions. These lacks also presupposed the incomplete regulation of the financial coverage of the included services, especially the services belonging to the supplementary package. Moreover, the Constitutional Court pointed out that the right to health insurance contained in Article 52(1) required that the realization of this right must be regulated by law. The Constitutional Court considered that the legislature had not upheld this requirement due to the lack of legal criteria for the formation of the two packages.[1285]

In a second decision, where no unconstitutionality was found, the Constitutional Court engaged with the issue of the health insurance's territorial organization.[1286] A reform in 2016 aimed at introducing a National Health Map (NHM), which intended to reorganize the healthcare system in the country based on the varying population numbers in the different regions of the country. The reform aimed at more targeted territorial resource allocation. For this purpose, in cases where the available number of beds for hospital treatment exceeded the specific needs for the number of beds by type defined by the NHM, the NHIF could choose with which medical establishments to conclude a contract according to the criteria and procedure adopted by a regulation of the Council of Ministers.

Fifty-seven members of Parliament, however, requested a constitutional review. The claimants argued that the possibility of the NHIF to conclude agreements only with some medical establishments violated the right to health insurance since it limited the choices of the individuals in terms of the medical establishment. By choosing to conclude agreements only with some medical establishments, the health insurance regulation created unequal market conditions and hence also interfered with Article 19(2) of the Constitution. Furthermore, the opponents of the reform claimed that Article 52(1) of the Constitution required that the right to health insurance is regulated by law. Therefore, the National Assembly could not delegate an essential aspect for realizing the right to health insurance, such

1285 ibid.
1286 Constitutional Decision No 8/2016 on case 9/2015.

as determining the criteria for the conclusion of agreements with medical establishments, to the executive competences of the Council of Ministers.

The Constitutional Court did not establish any unconstitutionality.[1287] Namely, the Court did not see the reform as infringing upon the right to health insurance. On the contrary, given the limited public resources, there was a need to optimize the system so that the medical care was available in amounts and specifications corresponding to the varying territorial demands. The right to healthcare, which encompassed the rights to health insurance and free medical help stated in Article 52(1), represented a public good. The market forces were not always able to secure this public good. Thus, the state needed to interfere in order to ensure that the right to healthcare was properly guaranteed. When public resources were limited, the right to healthcare took precedence over economic freedom, which was not absolute.

Moreover, the Court pointed out that the decisions on which medical establishments were to conclude agreements with the NHIF were not permanent due to the foreseen actualization of the NHM and the criteria for the conclusion of agreements. Hence, the ultimate effect of the adopted reform would be that it promoted competition between the medical establishments in the different parts of the country. The Court concluded that the adopted measures were, therefore, proportionate given the legitimate goal of ensuring healthcare and did not violate Article 19(2) of the Constitution.[1288]

bb. Affordability of Health Insurance

Apart from engaging with concrete health insurance problems, the Constitutional Court has also provided interpretation on the constitutional adjective of "affordability" of the public health insurance. Even though this constitutional reasoning did not result in a concretely traceable influence upon the social protection system, it still indicates a constitutionally bind-

1287 ibid.

1288 ibid. Interestingly enough, the High Administrative Court later on decided that the NHM violated the Administrative Procedure Code since the NHM was not promulgated in the State Gazette. According to the Court, the NHM represented a statutory administrative act which required promulgation in the State Gazette. *See* Decision No 12271/2017 of the High Administrative Court on case 8076/2017.

ing interpretation of this term. The Court reasoned that the right to health insurance consisted of the individuals' right to be included in the public health insurance system. Hence, the legislature had to establish the pathways for the right's realization by creating appropriate legal frameworks and mechanisms.[1289] According to the constitutional text, this right needed to be able to guarantee "affordable" medical care. The Constitutional Court clarified that "affordable" did not imply "cheap" medical care. Instead, the term indicated medical care that each citizen could pay for in order to benefit from it when needed.[1290]

It needs to be pointed out that the adjective used in the Bulgarian text of Article 52(1) of the Constitution is broader in meaning than the adjective used in the official English translation of the constitutional text.[1291] On the one hand, the used Bulgarian adjective ("достъпна") implies something that is "affordable". On the other hand, the Bulgarian adjective also has the broader meaning of "accessible". The Constitutional Court seemed to recognize this second broader meaning of the term. The Court explicitly pointed out that the aspect of the medical care's cost was not sufficient to reflect the essence of Article 52(1). Namely, the price factor represented just one of the nuances of the constitutional expression of "affordable medical care".[1292] Consequently, the Court pointed out that the expression of "affordable medical care" stated in Article 52(1) implied that all citizens could receive the required medical help in case of need. "Affordable medical care" also entailed that access to medical care would be equal for all and organized based on the same conditions.[1293]

Apart from engaging with the term "affordable" medical care, the Constitutional Court also connected the right to health insurance with the social state. The Court pointed out that apart from logically stemming from Article 52(1) of the Constitution, the right to health insurance was further

1289 Constitutional Decision No 8/2012 on case 16/2011 para VI.

1290 ibid.

1291 Official English translation of the CRB can be found at the National Assembly's webpage at https://www.parliament.bg/en/const.

1292 Some authors argue that the "affordability" aspect concerns first and foremost to the poorest members of the society and results in obligations for the legislature to secure the affordability of the medical care for these people. *See* Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 358–359.

1293 Constitutional Decision No 8/2012 on case 16/2011 para VI; Constitutional Decision No 32/1998 on case 29/1998.

based on the social state stated objective in the Preamble since public health insurance represented an expression of the latter objective. Consequently, all changes to the health insurance law needed to be carried out following the social state objective.[1294]

cc. Limitation of Claims

As explained above, the Constitutional Court understood the constitutional right to health insurance as resulting in an obligation for the legislature to establish a health insurance system. Another constitutional case highlighted that this system could not provide boundless access to claims for health services. More concretely, given the system's limited resources, it was constitutionally permissible that there could be a monthly limit to the number of available specialized nonhospital medical and medical-diagnostic services covered by public health insurance.

Namely, a reform in the health insurance introduced by the annual Law on the Budget of the Health Insurance Fund for 2007 established a concrete number of medical referrals to specialized nonhospital medical and medical-diagnostic services. [1295] The exact number of such available referrals, usually issued by the general practitioner,[1296] was to be decided every three months by the NHIF. The respective request for constitutional review was made by 53 members of Parliament and was to a great extent supported by the Bulgarian Doctors' Association.[1297] The request for constitutional review claimed that introducing a limited number of specialized nonhospital medical and medical-diagnostic services violated the constitutional right to health by limiting access to such services. The introduction of this limited package of services placed the general practitioner in front of the dilemma of balancing, on the one side, the needs of the patients for specialized nonhospital medical services and, on the other side, the number

1294 Constitutional Decision No 8/2012 on case 16/2011 para V.

1295 Constitutional Decision No 2/2007 on case 12/2006.

1296 For more on the medical referrals, refer to the analysis of the social protection system.

1297 The Bulgarian Doctors' Association is the professional organization of the doctors in the country that develops and accepts the Code of Professional Ethics for the doctors in the country. The Constitutional Court has declared the Association as public body which has some public law functions on "organizing, controlling and disciplining" these medical professionals. *See* Constitutional Decision No 29/1998 on case 28/1998 para II.2.

of remaining referrals for services covered by the public health insurance. A further concern raised by the constitutional review request was that NHIF held a monopolistic position in the national market.

Interestingly enough, prior to the proceedings in front of the Constitutional Court, the newly introduced provisions into the health insurance law became subject to a judgment of the High Administrative Court.[1298] The High Administrative Court repealed the contested provisions and declared that they limit rights provided by higher legal acts, namely the Law on the Health Insurance and the Constitution. The Court reasoned that both of these laws guaranteed the right to health insurance and in no way placed some limit on the right's exercise.

Nevertheless, the Constitutional Court took a more conservative view, which was later highly criticized by some legal scholars. In tacitly-fashioned reasoning, the Court began its argumentation by stating that the 'Fundamental Rights" Chapter of the Constitution enlisted different kinds of rights. Social rights did not belong to the classical rights since they were not directly applicable, and their realization entailed the state's actions. The Court considered that the constitutional social rights were not universal since they tended to refer to "specific groups, such as the mothers, children without parental care and elderly without relatives, or like in the concrete case – only to those in need of medical help".[1299] Accordingly, the Constitution provided that social rights were to be realized in accordance with conditions and procedures established by law.

The annual Law on the Budget of the Health Insurance represented, according to the Court, a reflection on the economic situation in the country. Consequently, the budgetary law sought to enable the realization of the right to health insurance through the available resources. The legislature had the freedom to determine how the right to health insurance would be realized. The Law on Health Insurance postulated that health insurance guarantees free access to a determined package of health services. Hence, the law did not promise unlimited access to health services. According to the Court, social rights were "hard to realize"[1300] and the changes in the health insurance did not infringe upon the right to health insurance.

1298 Decision No 12098/2006 of the High Administrative Court on case 3696/2006.
1299 Translation from Bulgarian by author. *See* Constitutional Decision No 2/2007 on case 12/2006 para III.
1300 ibid para III.

As mentioned above, the Bulgarian Doctors' Association brought forward the claim that the NHIF occupied a monopolistic position in the country. In this regard, the Court argued that the NHIF did not exercise economic activity in the sense of Article 19(2) of the Constitution and did not make profits.[1301] All in all, the Constitutional Court also referred to the subject-related judgment of the High Administrative Court and stated that the differences in the conclusions of the courts were to be naturally solved by the hierarchy of norms and the supremacy of the Constitution and its interpretations by the Constitutional Court.[1302] Three judges presented dissenting opinions. The general argument in these dissenting opinions was that the introduced changes could mean that the medical referrals might be less than the current need. Such a scenario would mean that only a part of the insured individuals will, in practice, have access to health insurance.[1303]

The judgment was criticized in the academic literature. In particular, the claim of the Court that social rights are not universal was rejected with the argument that the universal character of the fundamental rights did not imply that those were rights applicable to everyone.[1304] The universality of the social rights, including the rights of the specific groups, enlisted in the judgment of the Constitutional Court, followed by the fact that these rights concerned all (vulnerable) persons who would fall into a given group. Hence, the rights stemming from Article 47(2) of the Constitution would apply to all pregnant women in the country. Similarly, the rights resulting from Article 47(4) and 51(3) of the Constitution would apply to, respectively, all children without parental care and all elderly who do not have relatives and cannot provide for themselves.

d. Free Medical Care: Scope of the Right to Free Obstetric Care

The research revealed that in addition to the right to health insurance, the healthcare system further envisions certain free medical care services following Article 52(1) of the Constitution. The Constitutional Court was

1301 ibid para IV.
1302 ibid para V.
1303 Dissenting Opinion of Judge Neykov on Constitutional Decision No 2/2007 on case 12/2006; Dissenting Opinion of Judges Gotsev and Slavov on Constitutional Decision No 2/2007 on case 12/2006.
1304 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 53–54.

approached with a request for a binding interpretation of some of these free medical care services. The request for interpretation concerned the material scope of the provision that (expecting) mothers needed to be guaranteed free obstetric care, as stated in Article 47(2) of the Constitution.[1305]

The Constitutional Court reasoned that the term "free obstetric care" included medical care that was to be provided to the woman in three phases, namely pre-birth, during birth, and post-birth period.[1306] Furthermore, the Court emphasized that the constitutional provision was not only limited to preventive and medical care associated with the pregnancy, birth, and post-birth period. Instead, the constitutional provision covered all other accompanying complications that threatened the woman's health in this period. The provision was relevant even if the health problems were not directly related to the pregnancy and birth. The free obstetric case further included miscarriages, as well as abortions due to medical grounds, abortions of high school and university students, and minors' abortions. Abortions outside of these enlisted options, which were performed willingly, were not covered by the scope of Article 47(2).

e. Minimum Protection & Support and Social Inclusion Benefits

aa. Constitutional Similarities and Differences

So far, there has been no constitutional jurisprudence concerning a concrete case of Minimum Protection benefits. The constitutional case law, however, has touched upon this social protection branch in the course of the deliberations in cases concerning Support and Social Inclusion Benefits. Namely, relevant judgments demonstrated the constitutional similarities and differences between these two types of social protection branches and, in doing so, also provided important interpretations.

1305 Constitutional Decision No 8/1998 on case 3/1998 para II. The analysis of the social protection system revealed that the obstetric care may be provided either by the health insurance system (in case of the presence of health insurance) or the system of Free Medical Care if the individual lacks health insurance.

1306 As pointed out in the research section on the concrete benefits in the mandatory health insurance, the pregnancy and birth benefits are either provided by the health insurance system (in case the individual has interrupted health insurance rights), or is covered by the tax-financed system of free medical care.

The Constitutional Court has clarified that Minimum Protection and Support and Social Inclusion Benefits rest upon different constitutional logic and different constitutional provisions.[1307] For instance, because of their special nature, the benefits provided to children and families did not necessarily address a situation of material need and thus could not be defined as belonging to the realm of social assistance.[1308] The logic behind these measures was not grounded in Article 51(1) of the Constitution, which contained the right to social assistance. According to the Constitutional Court, the different constitutional foundation behind the benefits for children was twofold. First, such measures expressed the social policy goal provided in Article 14 of the Constitution that children, motherhood, and families were protected by the state. Second, these social benefits embodied the constitutional provision of Article 47(1) that the state must support the parents in child-raising.

Moreover, in its constitutional jurisprudence, the Constitutional Court has established that the development of the Support and Social Inclusion Benefits and the social assistance measures represented an important expression of the social state objective.[1309] Accordingly, the social state entailed that special care needed to be provided to the vulnerable groups in society. Such groups included children, elderly persons, and people with disabilities. The Court went on to add individuals in a situation of material need to this list. Hence, the constitutional similarity between the Support and Social Inclusion Benefits and the social assistance measures was that they were both embodiments of the development of the social policy in line with the social state objective. The Constitutional Court further pointed out that the social state realization was not a single act but entailed a goal that was to continuously guide the policy in the respective fields.[1310]

bb. Equality and Support and Social Inclusion Benefits

The present research repeatedly mentioned that the Support and Social Inclusion Benefits intend to ameliorate given social inequality and support greater social inclusion. Over the years, measures aimed to achieve these goals through different legislative approaches. The resulting legislation be-

1307 Constitutional Decision No 3/2013 on case 7/2013.
1308 ibid.
1309 Constitutional Decision No 8/2012 on case 16/2011 para V.
1310 ibid.

came subject to constitutional review based on its consistency with the constitutional principle of equality. On the one side, the benefits' aim of addressing specific situations of inequality implied that some of the related measures could have varying coverage regarding different groups. On the other side, the state's constitutional requirement to organize and set financing sources for the provision of such measures could not be carried out in a manner that violated the principle of equality.

Namely, a constitutional review of monthly and one-time benefits provided to children with one living parent examined the personal scope of the benefits against the equality principle. The reform, which introduced this specific type of children-benefits in the Law on Family Benefits for Children, established these benefits as not means-tested. In general, when it came to the monthly benefits, the law stipulated that depending on the beneficiaries, some of these benefits were means-tested. Others, such as those provided to children with one alive parent and children with disabilities, were not means-tested.

The request for constitutional review argued that the provision of non-means-tested benefits only to children with one alive parent violated the principle of equal treatment. The claim was that the legislative change treated children in similar situations differently. For instance, the law failed to consider the equal situation of children raised by a single parent. Yet, the Constitutional Court was not of the same opinion.[1311] Instead, the Court contemplated that families, where one of the parents had passed away, were placed in exceptional, stressful, and unforeseen circumstances. Hence, the state needed to provide greater support. The Court has already established the introduction of certain differentiation does not automatically imply that the principle of equality is violated.[1312] On the contrary, in certain instances, differentiation between groups is required so as to contribute to greater equality. Accordingly, the situations of the children with only one alive parent were not comparable to other scenarios, and there was no violation of the principle of equal treatment.[1313]

Another constitutional judgment in the lane of the principle of equality concerned the Support and Social Inclusion Benefits, intending to provide disadvantaged groups with more equal opportunities. However, the provision of such special protection to vulnerable social groups could not be

1311 Constitutional Decision No 3/2013 on case 7/2013.
1312 Constitutional Decision No 6/2010 on case 16/2009 para IV.
1313 Constitutional Decision No 3/2013 on case 7/2013.

made at the expense of the principle of equality. This conclusion was portrayed by a constitutional judgment[1314] concerning the financing of social integration disability benefits. The said benefits used to be regulated by a law-predecessor[1315] to the Law on the People with Disabilities.[1316] This older law envisioned a range of non-contributory benefits and services for people with disabilities. The law established a separate social fund for its purposes called the "Rehabilitation and Social Integration" fund. The law established that the incomes to the fund were to be acquired by sources such as the state budget, voluntary donations, and insurers providing insurance against civil liability in respect of the use of motor vehicles. The insurers were supposed to provide 1% of their incomes from the owners of motor vehicles who insured themselves for this risk of civil liability.

The Constitutional Court declared that the insurers' obligation to contribute to the "Rehabilitation and Social Integration" fund violated the principle of equality since it burdened with contributions only these specific business owners.[1317] The state was indeed constitutionally obliged to foresee the provision of protection to people with disabilities. Yet, this could not be done in a way violating Article 19(2) of the Constitution, which stipulated that the state should establish and guarantee equal legal conditions for the carrying out of economic activity.[1318] Thus, the Court considered that introducing the financing obligation only for the particular insurers also undermined the general idea of the trust in the law.

cc. Social Services & Support and Social Inclusion Benefits

The analysis of the social protection system portrayed that the social services form part of the *Support and Social Inclusion Benefits* and target

1314 Constitutional Decision No 31/1998 on case 24/1998.
1315 The legislation that the judgment concerned was the Law on the Protection, Rehabilitation and Integration of People with Disabilities which was repealed in 2005 by the Law on the Integration of People with Disabilities. The Law on the Integration of People with Disabilities was then also repealed in 2018 by the Law on People with Disabilities.
1316 The Law on People with Disabilities is discussed in the section on norm creation and is also elaborated upon in the part on the analysis of the Bulgarian social protection system.
1317 Constitutional Decision No 31/1998 on case 24/1998.
1318 ibid.

different needs for greater social inclusion. It was already mentioned that different provisions of the recently enacted Law on Social Services were submitted for a constitutional review by a group of 54 members of Parliament.[1319] The request for constitutional review argued that a range of the provisions in the law violated different constitutional provisions. The allegedly violated provisions included, among others, the rule of law principle and the right to social assistance (Art. 51(1), CRB) due to the broad definition of the subject matter of the law. In addition, it was argued that the law violated the right to private life (Art. 32(1), CRB) since social services providers could interfere with beneficiaries' personal life and acquire extensive personal data.

The Constitutional Court decided that some of the referred provisions were indeed unconstitutional but did not agree with all of the claims for unconstitutionality. The reasoning of the Court started from the position that, in contrast to the classical civil and political rights, the constitutional social rights required the state actions for their realization. Social rights were a projection of the social state objective, and the legislature had to undertake measures ensuring a social system in the country that was "as much as possible capable of guaranteeing social justice and social security".[1320]

Regarding the argument that the definition of social services was too broad and could encompass a range of activities, the Court mentioned that the legislature was free to design the social model in the country by observing the constitutional norms and principles. The Law on the Social Service represented an expression of the legislature's freedom to organize the order and the conditions for providing this form of social protection. Still, the formulation of the legal provisions had to be done in a clear and uncontroversial way to be compatible with the rule of law principle.

The social services were defined in Article 3(1) of the draft law as "activities for the protection of individual" with the purposes of: "prevention and/or overcoming of social inclusion; realization or rights; improvement of the quality of life".[1321] The Constitutional Court considered that the subject matter of the given law enlisted in Article 3 was clear. First, the goal of "prevention and/or overcoming of social exclusion" was a clear purpose on its own. Second, the goals of "realization of rights" and "the improvement of the quality of life" had to be understood in light of other provisions, such

1319 Constitutional Decision No 9/2020 on case 3/2020.
1320 Translation from Bulgarian by author. *See* ibid.
1321 Translation from Bulgarian by author.

as Articles 5, 6, and 7, which outlined the right to social services and the involved individual approach in assessing need. Moreover, Article 3 should be read in conjunction with Articles 15 and 17 of the same law, which listed the types of social services and the places where they are provided. The Court underlined that it was not in its powers to assess the suitability of the chosen norm formulation by the legislature; the Constitutional Court was empowered to only assess whether in the formulations the legislature had indeed abided by the norms of the Constitution.

However, the Constitutional Court established that Article 87 of the Law on Social Services was unclear and vague and thus violated the rule of law principle. The Article entailed the prohibition for a provider of social services to deny the provision of support to a child, including when the parents had no knowledge of the requested social service. Furthermore, Article 87(4) stipulated that if the child was above the age of 14, the social services provider could inform the parents of the child's decision to seek social services only with the child's agreement. The Constitutional Court considered that Article 87 would result in limited information for the parents regarding their child. In doing so, the legal provision violated Article 47(1) of the Constitution, which provided that raising children is a right and duty of their parents. Hence, the introduction of a child's right to seek social services without the parents' knowledge had to specify the nature of the cases in which this was permissible. However, the provisions of the Article were framed in a very broad manner, thereby presupposing differing interpretations by the institutions which were to implement the law in practice. Hence, the given Article also violated the rule of law principle due to its lack of clarity.

The other legal aspect found to be unconstitutional was Article 81(1) that concerned the preparation of an individual assessment of beneficiaries' specific needs and the development of an individual plan for support. According to Article 81(1), in the assessment preparation, the social service provider could ask for information, cooperation, and opinions from a variety of institutions and persons related to the beneficiary.[1322] The Constitutional Court considered that the lack of clarity and preciseness of the legal provision on what type of data may be requested and from

1322 The social services provider could ask for information from state bodies, municipalities, general practitioners, family and relatives, medical establishments, institutions in the system of pre-school and school education, and other institutions and providers of social services.

whom it may be requested entailed that the social services providers would have access to a great amount of data concerning the beneficiary. This unlimited access to personal data could represent a serious interference in the individual's personal life, thereby violating the right to personal life enshrined in Article 32(1) of the Constitution. The Constitutional Court acknowledged that the social services had to address the needs of very different categories of people, which could not be done without the needed information on the concrete case and individual. However, the adequate protection of citizens' rights implied the need to request the beneficiary's consent for the gathering of personal data.

Finally, two further provisions of the Law on Social Services were incompatible with the right to private life enshrined in Article 32(1) of the Constitution. The provisions of Article 116 of the Law on Social Services pertained to the control functions of the Executive Agency on the Quality of the Social Services. Article 116(1)3 stipulated that in the execution of monitoring functions, the employees of the Agency could visit the beneficiaries in their homes.[1323] Additionally, Article 116(1)7 stated that the Agency's employees could receive the needed information directly from the social service beneficiaries.[1324] Once again, the Court reasoned that the provisions were too vague and could broaden the control mechanisms to an inadmissible interference with the private life of the beneficiary. Accordingly, the provisions were incompatible with Article 32(1) of the Constitution.

1323 Former Article 116(1)3 (subsequently declared as unconstitutional).
1324 Former Article 116(1)7 (subsequently declared as unconstitutional).

Part 4: Conclusion

A. Bulgarian Social Protection: Critical Evaluation

The present work provides a systematized examination of the Bulgarian social protection system by focusing on its legal framework. In general, "[s]ocial (protection) law is the instrument for putting social policy into practice".[1325] Therefore, the involved institutional setting and levels of protection reflect the political decisions on social protection's design.[1326] Accordingly, the following pages will critically evaluate the systematized social protection in terms of the undertaken social policy courses of action. The winding social policy goals resulted either in cracks or gaps in the social protection law in certain aspects. While it is true that generally, social protection systems tend to be subjected to constant alterations due to the evolving social and economic foundations, unstable social policy directions in Bulgaria did lead to inconsequential legislative actions and omissions in terms of the protection scope. Simultaneously, although some social protection fields were constantly reformed, others were strained in their development for years. In this regard, Bulgarian social policy has been persistently abstaining from developing objective indicators for determining the amounts of minimum income benefits. This course has resulted in outdated and extremely low minimum income levels, which are further aggravated by the narrow coverage of the minimum protection measures.

After the fall of socialism, the Bulgarian social protection had to be reinvented to operate under the new economic and political conditions. The system reforms were slow in their coming: the main regulatory frameworks that established the new social and health insurance models were only enacted ten years after the beginning of the transition to democracy. The development of other laws concerning social integration proved to be an even longer process that came to certain fruition only recently. On the positive side, the reforms managed to set the institutional footing of the contribution-based social and health insurance systems, as well as to enrich the regulation on support and social inclusion benefits.

1325 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 2.

1326 ibid.

Nevertheless, the enacted legislative frameworks were not comprehensive enough, thereby leaving the regulation of certain essential aspects as open questions. The insufficient regulation resulted in the subsequent development of more and more laws and normative instruments of lower ranks, thus ultimately causing a patchy regulatory framework as evidenced in the systematized examination of social protection. The slow and sometimes uneven legislative development did leave some unexplainable gaps. The latter is well exemplified in the lack of possibility of those working based on civil contracts to insure themselves for short-term work incapacity in the cases of general sickness and maternity. Such a legislative omission could only be regretted, especially given the rising number of individuals who work based on civil law contracts in the country.[1327] Moreover, the increase of new forms of work, such as platform-based work that could be regulated through civil-law instruments in the country,[1328] could also contribute to the lack of protection of platform workers in cases of short-term incapacity.

The system has been continuously altered so as to significantly tighten the expenditures of the public funds. This trend could be observed in different social protection branches. In the case of maternity leave, the analysis of the social protection revealed that the respective benefits had been reformed by tightening the qualifying conditions through an increase in the contribution period. Simultaneously, benefit amounts were restricted. This approach has affected both types of maternity leave benefits, i.e., the benefit provided during the initial period of maternity, which amounts to 410 days, and the benefit provided after the initial 410 days and until the child's second year. Namely, the change could lead to lower maternity benefits in the first period of child-raising due to the increase in the reference period, which relies on the minimum wage for the calculation of missing working months.

1327 More and more employers tend to rely on civil law contracts in order to avoid labor law regulations that stem from the legal terms of employment relationship. *See* Ministry of Labour and Social Policy, 'Analysis of Expected Changes in the Organization of Work and Employment in Bulgaria Due to Emerging "New Forms of Work"' (2019) 38 <https://www.mlsp.government.bg/proekt-bg05m9op001-1025-bdeshcheto-na-truda> accessed 30 September 2020.

1328 A report of the Ministry of Labor and Social Policy argues that platform work in the country could not be regulated through labor law provisions. Instead, the regulation should rely on either civil law or the laws on obligations and contract, in particular the regulation of workmanship or procurement contracts. *See* ibid 129.

Regarding the benefit in the second maternity period, initially, the social policy envisioned that the benefit would mirror the minimum wage amount.[1329] However, this intention was altered,[1330] and the benefit amount is instead determined yearly with the annual law on the social insurance budget (Art. 53(1), SIC). Currently, the fixed benefit level represents an amount that is almost half of the minimum wage and is just above the at-risk-of-poverty threshold for the country. The low benefit amount prompted some scholars to argue that the social policy is not in accord with the general public policy goal of incentivizing higher birth rates especially given the serious demographic challenges in the country.[1331]

The goal of securing sustainable public finance has not always been accompanied by stable and long-term policy development. The absence of a comprehensive long-term vision is exemplified in the regulation of mandatory pension insurance. Bulgaria did not stray from the general path of similar reforms in Eastern Europe, which introduced private schemes as part of the mandatory pension insurance.[1332] Even though the private insurance in the UPF scheme was not intended to top up the old age income, it was misleadingly labeled by the legislature as "supplementary". Instead, the UPF insurance aimed at compensating public financing deficits and reducing the state's responsibility for the future pension provision due to the demographic problems and the PAYG character of the public scheme. Nevertheless, subsequent concerns for the future profitability of the private pension scheme led to the introduction of the possibility for people to opt-out of private insurance; this enabled the relocation of the entire pension insurance into the public scheme. Estimations of the benefit amounts of the first waves of pensioners to receive a pension from the private scheme demonstrated that their total pension benefit amounts would be lower than the pension benefits of persons who would receive their pension only from the public pension fund.[1333]

1329 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 294–295.

1330 ibid.

1331 ibid.

1332 Ortiz and others, in Ortiz and others, *Reversing Pension Privatizations* (2019) 3 <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_648574.pdf> accessed 30 September 2020.

1333 The Ministry of Labor and Social Policy officially admitted in 2019 that the first waves of pensioners of the UPF scheme will receive smaller pensions in comparison to what they could have received had they been entirely insured in

The legal framework contributed to reducing benefit amounts in two main ways. First, the public pension's individual coefficient of persons insured in the UPFs was reduced, thereby lowering the public pensions,[1334] despite that people were insured in the private schemes by default. Second, the social protection analysis showed that the legal framework allowed the companies managing the private schemes to charge high administrative rates for each contribution payment. These administrative rates, alongside the inflation trends, led to the zeroing of investment yields from 2001 to 2019, thus causing the insurance contributions to lose their purchasing power.[1335] Economic estimates claim that this 18-year fallback is so great that it will not just affect the first waves of pensioners of the private schemes but could only be overcome after 2042.[1336] Hence, the legislature's actions have stirred long-term negative consequences, despite that recently both the lowering of the individual coefficient has been softened, and the administrative fee rates have been progressively lowered. Additionally, the frequent reforms have also spiked public distrust in the legislature's ability to efficiently navigate the future of the pension system in the country.[1337]

The social protection system has also been affected by some uneven reform measures stirred by opposing political goals. For instance, measures that aimed at reducing the pension expenditure included the subjecting of the retirement age and the contribution periods to progressive increase.

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the public scheme. *See* Sokolova, 'The Pensioners after 2021 Will Be Irreversibly Disadvantaged/Новите пенсионери след 2021 г. ще са необратимо ощетени' (2019) <https://www.mediapool.bg/novite-pensioneri-sled-2021-g-shte-sa-neobratimo-oshteteni-news300159.html> accessed 30 September 2020. This estimate does not apply for individuals whose pension amount would be adapted by either the minimum or maximum pension amounts, i.e. for those who would otherwise receive a lower or higher pension than the minimum or maximum pension thresholds. *See* Christoff, 'Pension (In)Adequacy in Bulgaria/Неадекватност на пенсиите в България' (2020) 12.

1334 As it was already discussed in the research part on the calculation of the public pension, the lowering of the individual coefficient has been ameliorated as of 2021. However, under the older rules, the reduction could to lead to the losing of 20% of the public pension amount. *See* Christoff, 'Pension (In)Adequacy in Bulgaria/Неадекватност на пенсиите в България' (2020) 7.

1335 ibid 31.

1336 ibid 6.

1337 Kalfin, 'The Pensions Became a Mess Due to the Frequent Alterations/Пенсиите станаха миш-маш заради честите промени' (2020) <https://www.168chasa.bg/Article/9188855> accessed 12 March 2021.

Yet, as the overview of the social protection history revealed,[1338] the lack of stable policy direction and winding political agendas halted the increase for years, thereby stirring an additional social divide on the necessity of the measure. Nowadays, when gradual increases are in progress, the greater qualifying conditions could be deemed questionable, especially given that Bulgaria has some of the lowest life-expectancy estimates in the EU.[1339] The insurance period requirements could also be questioned against the background of the decreasing number of people who manage to qualify for the statutory old-age pension,[1340] despite the general trend of aging demographics in Bulgaria.

The growing number of people who cannot qualify for the statutory old-age pension implies that some of these individuals would need to rely on the minimum income measures for their old age income. However, the minimum income benefits could hardly prevent poverty among the elderly or the population in general. The development of the minimum income benefits in the country portrays a lack of social policy agenda for securing greater minimum income levels. The first aspect in this regard is the lack of a transparent and objective methodology for determining benefit amounts. Both the social old-age pension and the social assistance benefits are ultimately based on reference amounts set by the Council of Ministers. Apart from determining the amounts, the Council of Ministers can also freely decide when the amounts are to be updated. Hence, there are no independent indexing mechanisms in place. The lack of an objective estimation allowed halting the same reference amount for nine years for calculating social assistance benefits (i.e., the so-called "guaranteed minimum income") at the level of 65 BGN despite the simultaneous steady annual increase of household expenses.

Nowadays, the amount of the "guaranteed minimum income" is 75 BGN which is 11.5% of the minimum wage in the country compared to the 2009 value of 65 BGN, which equaled 27% of the minimum wage.[1341] Hence, the

1338 For more on this, refer to the research section on the historical examination of the social protection system and more concretely to the development after 1990.

1339 Eurostat, 'Life Expectancy by Age, Sex and NUTS 2 Region' (2021).

1340 Hallaert, 'Poverty and Social Protection in Bulgaria' (2020) 22.

1341 Institute for Market Economy, 'Opion on the Council of Ministers' Draft Amending and Supplementing the RALSA/Становище относно проект на Постановление на Министерския съвет за изменение и допълнение на ППЗПП' (2021) 2 <https://ime.bg/var/images/IME_GMI_july2021.pdf> accessed 12 March 2021.

reference amounts for calculating social assistance benefits and the social old-age pension (148,71 BGN in 2021) are at levels that are way lower than the at-risk-of-poverty threshold for the country[1342] set at 369 BGN for 2021. While maintaining low amounts of minimum income benefits leads to less public spending, it also does little to provide sufficient protection for the 32.5% of the Bulgarian population at risk of poverty and social exclusion.[1343] The lack of transparent mechanisms for determining the minimum income and the insufficient benefit amounts have been a subject of critique by the European Commission.[1344]

The second aspect concerns the tight qualifying conditions that have led to fewer beneficiaries of minimum income benefits. Namely, the restrictive requirements result in the fact that only 4.6% of those with incomes under the at-risk-of-poverty threshold are recipients of social assistance benefits.[1345] Moreover, the qualifying conditions for social assistance prevent the system from being able to interplay with and supplement low pensions, such as the social old-age pension and the minimum statutory old-age pension. The limited actual coverage of social assistance and the low benefit amounts prove the Bulgarian social protection's extremely restricted and insufficient "safety net".[1346] Such aspects lead some scholars to the grim and

1342 The at-risk-of-poverty rate indicator entails "the share of people with an equivalised disposable income (after social transfer) below the at-risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income after social transfers". *See* Eurostat, 'Glossary: At-Risk-of-Poverty Rate' (2021) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:At-risk-of-poverty_rate> accessed 12 March 2021.

1343 Eurostat, 'Over 20% of EU Population at Risk of Poverty or Social Exclusion in 2019' (2020) <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20201016-2> accessed 12 March 2021.

1344 For instance, *see* European Commission, 'Country Report Bulgaria 2017' (2017) 3 <https://ec.europa.eu/info/sites/default/files/2017-european-semester-country-report-bulgaria-en_3.pdf> accessed 12 March 2021.

1345 Institute for Market Economy, 'Opion on the Council of Ministers' Draft Amending and Supplementing the RALSA/Становище относно проект на Постановление на Министерския съвет за изменение и допълнение на ППЗППП' (2021) 2.

1346 The characteristics of the Bulgarian social assistance has also led international research to categorize the scheme as one of the most restrictive universal minimum income schemes in Europe which in practice fails to cover many of those in need of support. *See* Coady and others, 'Guaranteed Minimum Income Schemes in Europe' (2021) 9 <https://www.imf.org/en/Publications/WP/Issues/2021/07/02/Guaranteed-Minimum-Income-Schemes-in-Europe-Landscape-and-Design-461341> accessed 12 March 2021.

sobering conclusion that the "social state" objective is only declarative in the country and hardly corresponds with reality.[1347]

On a more positive note, international influences contributed to revising certain social policy objectives. Namely, the reliance on the "guaranteed minimum income" indicator has been overcome concerning the support and social inclusion benefits for people with disabilities. The law used to determine the number of such benefits as percentages of the guaranteed minimum income value. Nevertheless, the strive to set a legal framework in line with the goal of continuous improvement of living conditions stemming from CRPD's Article 28[1348] resulted in setting a benefit calculation method relying on the at-risk-of-poverty threshold. The latter represents a dynamic monetary indicator that is updated annually and leads to more favorable benefits. Still, the present research revealed that the "gatekeeping" to these benefits passes through (re-)certification involving the previously discussed hurdles for the disabled individuals as well as time-related limitations. Coupled with the few numbers of Territorial Expert Medical Commission around the country, these impediments translate into substantial delays in benefits' qualification or could cause the ceasing of benefit payment and provision of social services.[1349]

As to health insurance, the Bulgarian national system has transitioned from tax-based to insurance-based financing after the end of socialism. While this institutional change managed to financially preserve healthcare in the country, it also brought along a number of additional challenges. To begin, replacing universal healthcare with health insurance has led to smaller actual coverage due to the possibility of interruption of the health insurance rights in the case of failure to pay health insurance contributions. This risk is especially high for people with low incomes and unemployed individuals who are not receiving income-replacing benefits.[1350]

1347 Mrachkov, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2017) 56.

1348 'Motives in Draft of the Law on People with Disabilities, No 802-01-41'.

1349 Ombudsman of the Republic of Bulgaria, 'Report on the Activities of the Ombudsman/Доклад за дейността на Омбудсмана' (2021) 166.

1350 Pashev, 'Corruption in the Healthcare in Bulgaria/Корупция в здравеопазването в България' (2007) 6 <https://csd.bg/fileadmin/user_upload/publications_library/files/2007/2007_03_BG_Corruption_in_the_Healthcare_Sector_in_Bulgaria.pdf> accessed 12 March 2021; Zahariev, 'Financing Social Protection: Bulgaria' (2019) 23.

According to some estimates, about 900,000 people of working age were not covered by the health insurance system.[1351] Scholars argue that this high share of the uninsured population compromises the solidarity foundation of the public health insurance.[1352] In response, the legislature opted to introduce punitive measures to sanction the lack of payment of health insurance contributions. As the research demonstrated, these include fines and the obligation to pay all pending health insurance contributions for the last five years in the case of interrupted health insurance rights. However, some argue that this legislative approach only made the reentry into health insurance harder, thereby reaffirming the lesser healthcare coverage.[1353]

The limited actual coverage gave rise to critiques that the state has retreated in terms of healthcare management.[1354] Simultaneously, the state did not comprehensively engage in healthcare policy development targeting active disease prevention.[1355] Moreover, even when the individual has uninterrupted health insurance rights, the limited monthly medical referral system could still restrict access to certain specialized healthcare. This restriction triggered many complaints from patients that their GPs refused to issue a referral or have postponed the issuing to the next month due to the exhaustion of allocated referrals.[1356]

All in all, the winding social policy goals resulted in uneven reform efforts. Moreover, the bumpy socio-economic development of the country has left its mark on the social protection system. In addition, the social protection system bears the consequences of the problems experienced in the related legal systems and the sometimes chaotic approaches in the development of the social protection legal framework. Concerning the setbacks in the related legal area, the problematic implementation of labor rights deserves mention.[1357] This aspect concerns issues such as undeclared

1351 Zahariev, 'Financing Social Protection: Bulgaria' (2019) 23.

1352 Dimova and others, 'Bulgaria: Health System Review 2018' (2018) 213 <https://eurohealthobservatory.who.int/publications/i/bulgaria-health-system-review-2018> accessed 12 March 2021.

1353 Zahariev, 'Financing Social Protection' (2019) 23.

1354 Pashev, 'Corruption in the Healthcare in Bulgaria/Корупция в здравеопазването в България' (2007) 6.

1355 ibid.

1356 ibid 10.

1357 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 430–431.

labor that directly affects the payment of social insurance contributions and therefore limits protection in case of realization of social risks.[1358]

The second symptomatic aspect touches on the occasionally untransparent and complicating approach toward reforming the social protection framework.[1359] Two main examples stand out in this regard. First, the extensive usage of the transitional and final provisions of the legislation developed a troubling tendency. The trend is so widespread that these sections of the social protection law have grown into separate and independent sources of law that at times contain reforms concerning up to 29 further laws.[1360] Such legislative solutions could be considered debatable in light of the rule of law principle, especially given the untransparent reforming of the legal framework.[1361] Second, the frequent and hasty reforms represent a hurdle for social rights implementation.[1362] The numerous and contradictory alterations do not give enough time to the administrative organs, the courts, and the citizens to get acquainted with the updated framework and contribute to the general lack of trust in the state authorities.[1363]

B. Cross-sectional Discussion on Concrete Influences

There are different phases where influences on social protection can manifest themselves. These phases are tightly connected to the institutions that possess the decisive competence and legal power to apply constitutional and international influence to ordinary law in the respective phase. For the purposes of the research, two levels of possible influence were considered, the phase of norm creation, where the legislature occupies the leading role, and the phase of norm control, where the Constitutional Court can

1358 The issue with the undeclared labor has been a persistent problem for the country. To address this issue, recently a number of changes were initiated in the labor legislation, such as considerable increase of the fines for the employers who hire workers without the declaring of their work (Art. 414(7), LC). Also *see* 'Motives in Draft of the Law Amending and Supplementing the Labor Code, No 002-01-32' (2020) <https://www.parliament.bg/bg/bills/ID/163309> accessed 12 March 2021.

1359 Sredkova, in *Topical Issues of the Labour and Social Security Law/Актуални проблеми на трудовото и осигурителното право* (2016) 88–89.

1360 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 398–399 citing the Transitional and Final Provision of the Law on Social Services.

1361 ibid.

1362 ibid 434–435.

1363 ibid; Dimova and others, 'Bulgaria: Health System Review 2018' (2018) 213.

exercise constitutional review over the constitutionality of the law and its compatibility with international law.

The following section will look into the results of the study. In doing so, an additional analytical layer will now be added to reflect upon the dimensions of a given influence. These dimensions can indicate whether the influence leads to creation, expansion, or halting a curtailment of social protection rights.[1364] Therefore, the discussion and conclusion on the study results will rely on the dimensions of influences to portray any existing cross-sectional aspects piercing through the different phases and the various social protection branches. Finally, the dimensions of influence regarding EU law will be examined separately.

I. Creation of Rights and Systems

A plethora of constitutional and international law influences played a role in the creation of rights and systems in social protection. However, the influences' intensity and prevalence varied throughout the different primary laws. The motivating considerations for the legal drafts of the Social Insurance Code and the following reforms did not contain comprehensive constitutional arguments. Rather, the importance of the Constitution was generally assumed, and the parliamentary debates focused on some constitutional provisions, such as the principle of solidarity in the functioning of the public pension system. In contrast, the enactment of the Law on Health Insurance was associated with greater intensity of engagement with constitutionally-based arguments. Both the motives for the legal draft and the overall discussions in the National Assembly made it clear that the constitutional principles of solidarity and equality allegedly represented the founding pillars for the proposed health insurance system.[1365] Further, the debates on the nature of the concept of healthcare and the requirements for the affordability of medical care insurance both reflected upon Article 52(1) of the Constitution and various constitutional principles, such as solidarity, equality, and the social state.

1364 Becker, in Becker and others, *Alterssicherung in Deutschland* (2007) 605–610.

1365 'Motives in Draft of the Law on Health Insurance, No 02-01-49, Archives of the National Assembly'; 'Transcript of Extraordinary Parliamentary Plenary Session No 20, 16.12.1997'.

International law considerations informed the creation and some subsequent reforms of the Law on Social Assistance. The ICESCR was reportedly instrumental in defining the term "basic needs of life" in the social assistance legislation.[1366] Further, the Law on People with Disabilities was allegedly heavily influenced by the CRPD.[1367] The latter played a role in the definition of the goal of the national law, as well as motivated the introduction of more comprehensive and individualized support measures.

As expected, the phase of norm control was not particularly influential regarding the dimension of the creation of rights and systems. Still, the Constitutional Court provided some relevant insights, particularly about translating the legislature's broad objective obligations into subjective rights. Namely, the Court has affirmed that the legislature, in general, enjoyed a wide margin of discretion in shaping the social protection systems. [1368] The legislature's freedom was crucial for its ability to design the realization of a given social system while observing the available resources.

Due to the constitutional nature of social rights, the fundaments of social protection systems had to be established through parliamentary laws and not through administrative acts.[1369] The creation and development of the systems needed to be carried out in accordance with the social state objective,[1370] which entailed the legislature's obligation to optimize and manage available resources to ensure the continued existence of the systems.[1371] Further, the creation of the systems needed to be based on clear and consistent rules to comply with the rule of law and not undermine the constitutional rights' subjective realization.[1372] The compliance with the

1366 'Transcript of Parliamentary Plenary Session No 127, 16.05.1998'.
1367 'Motives in Draft of the Law Amending and Supplementing the Law on Social Assistance, No 902-01-57'.
1368 Constitutional Decision No 5/2000 on case 4/2000; Constitutional Decision No 8/2016 on case 9/2015; Constitutional Decision No 3/2013 on case 7/2013; Constitutional Decision No 3/2016 on case 6/2015; Constitutional Decision No 9/2017 on case 9/2016.
1369 Constitutional Decision No 3/2016 on case 6/2015 para I.
1370 Constitutional Decision No 8/2012 on case 16/2011 para V.
1371 Constitutional Decision No 5/2000 on case 4/2000; Constitutional Decision No 9/2020 on case 3/2020.
1372 Constitutional Decision No 3/2016 on case 6/2015; Constitutional Decision No 9/2020 on case 3/2020.

rule of law entailed the creation of systems that did not contradict other legal sources[1373] and did not result in incoherencies in the legal framework.[1374]

Moreover, the introduction of mandatory participation in the established systems was constitutional as this enabled the continuous existence of systems and the eventual realization of social rights.[1375] From a constitutional point of view, the contribution payment was considered a fundamental aspect of the subsequent subjective rights in social and health insurance. However, the established social protection systems could not offer boundless possibilities for claims given the constrained available resources. Accordingly, it was constitutional for the health insurance to limit the monthly possibilities for medical referrals to specialized treatments.[1376] Overall, the constitutional jurisprudence demonstrated great respect for the legislative decisions based on balancing and optimizing social protection's resources. As mentioned above, balancing relevant finances represented an expression of the social state objective.[1377]

Finally, the Constitutional Court provided a binding interpretation on the scope of the right to obstetric care enlisted in Article 47(2) of the CRB.[1378] Namely, the Constitutional Court considered that the right to free obstetric care included medical care provided during the birth and encompassed medical care provided during the three phases of pre-birth, during birth, and post-birth period. Moreover, the Court emphasized that the constitutional provision concerned not only preventive and medical care associated with the pregnancy. The provision also covered all other accompanying complications that threatened the woman's health in this period, even if such health problems were not directly related to the pregnancy and birth.

II. Prevention of Curtailment of Rights and Systems

The prevention of curtailment of rights and systems has expectedly occurred predominantly in the phase of control of norms. However, this is

1373 Constitutional Decision No 8/2012 on case 16/2011 para V.
1374 Constitutional Decision No 5/2000 on case 4/2000 para I. 2.2. b).
1375 ibid.
1376 Constitutional Decision No 2/2007 on case 12/2006 para III.
1377 Constitutional Decision No 5/2000 on case 4/2000; Constitutional Decision No 9/2020 on case 3/2020.
1378 Constitutional Decision No 8/1998 on case 3/1998.

not to say that this dimension was not also present in the phase of norm creation. Namely, under the ESCR's influence, the legislature did reverse a previous curtailment of rights and systems. The decision of the European Committee of Social Rights on non-compliance with the Charter, coupled with the political pressures related to the adoption of a Resolution by the Committee of Ministers, led to removing the time limit for entitlement to monthly social assistance by unemployed persons of working age.[1379]

Turning to the phase of norm control, already in its very first judgment on social insurance, the Constitutional Court prevented pension rights' curtailment resulting from the arbitrary exclusion of certain insurance periods from the pension qualifying conditions.[1380] The different recognition for the qualification periods based on individuals' political views violated the principle of equality. In addition, the fundamental character of the constitutional right to social insurance implied the irrevocability of the derivative right to a pension. Accordingly, the right can only be temporarily limited based on the constitutional provisions listed in Article 57 of the Constitution. Moreover, the legislature was constitutionally prohibited from interfering with already acquired rights to a pension.[1381] Hence, the curbing of pension amounts of working pensioners was declared unconstitutional.

At the same time, however, the principle of legitimate expectations did not manage to avert increases in the retirement ages and minimum contribution periods.[1382] Legitimate expectations could not prevent reforms even when the introduction of the retirement age increase was sudden and potentially challenged the trust in the foreseeability of the law. Similarly, introducing a pension ceiling for future pension benefits was justified based on the goals of guaranteeing the minimum old-age pensions and achieving an overall financial balance in the system.[1383] Hence, legitimate expectations could not prevail over concerns about the financial stability of social insurance.

Nonetheless, the principle of legitimate expectations played a much more decisive role in halting reforms that had far-reaching consequences and

1379 'Decision of the Merits, European Roma Rights Centre v. Bulgaria, Complaint No. 48/2008' (2009) para 46; 'Motives in Draft of the Law Amending and Supplementing the Law on Social Assistance, No 902-01-57'.
1380 Constitutional Decision No 11/1992 on case 18/1992.
1381 Constitutional Decision No 12/1997 on case 6/1997.
1382 Constitutional Decision No 5/2000 on case 4/2000; Constitutional Decision No 10/2012 on case 15/2011.
1383 Constitutional Decision No 21/1998 on case 18/1997.

could potentially undermine the realization of social rights. Namely, the principle of the rule of law and the related principle of legitimate expectation contributed to constitutional influence in two important cases on health and social insurance financing. First, the legislature was not allowed to divert part of the capital of the NHIF and provide it to the Ministry of Healthcare.[1384] The targeted use of the NHIF incomes was explicitly specified in the Law on Health Insurance. The redirecting of incomes for another purpose, which was not part of this targeted usage, violated both aforementioned principles.[1385]

Furthermore, the sources of financing for the health and social insurance funds that originated from contributions were intended only for the funds' accounts themselves.[1386] The mixing of the payment in one account of social and health insurance contributions with the payment of tax obligations created the danger that social protection contributions could be used for the payment of accrued tax debts. Hence, the mixing was constitutionally not permissible since it violated the rule of law. Further, the mixing of taxes with social contributions entailed that those contributions can be assigned a purpose other than enabling social rights realization in case of risk occurrence. Such legislative actions violated the principle of legitimate expectations and the respective constitutional rights to social protection.

In addition, the right to property exuded influence in terms of private pension rights. The constitutional jurisprudence made it clear that pension rights in private pension rights benefit from the protection of the right to property. Thus, the legislature was not allowed to relocate to the public pension fund the accumulated capital in the individual accounts of the private pension insurance as this led to a violation of the insured individuals' right to property.[1387] The fact that the accumulated capital was based on contributions forming part of the mandatory pension contributions was irrelevant to the constitutional reasoning. What was decisive was the presence of a private law relationship. The latter entailed that the individual account owner had to provide permission for any relocation.

The principle of equality was foundational for constitutional influence on different social protection aspects. First, equality was used to assess the appropriateness of the population groups subjected to mandatory social

1384 Constitutional Decision No 8/2012 on case 16/2011.
1385 ibid para V.
1386 Constitutional Decision No 2/2014 on case 3/2013.
1387 Constitutional Decision No 7/2011 on case 21/2010.

insurance.[1388] Next, it also influenced the organization of the sources of financing for the integration benefits for people with disabilities. The Constitutional Court recognized the obligation of the legislature to provide additional protection to certain vulnerable groups in society. However, the financing of this supplementary protection could not be organized in a manner that burdens just one particular economic sector in the country since this violated the principle of equal treatment.[1389]

Concerning the social service benefits, the Constitutional Court deliberated on the extent of social services' interference in the private life of the beneficiaries. The provision of social services required an individual assessment of the beneficiary's needs. While it was understandable that this assessment might require gathering personal data from different related people and institutions, the possible far-reaching extent of such data gathering could violate one's right to privacy and the derived right to private data protection.[1390]

Finally, the prerogative of the Constitutional Court to examine the conformity of the national law with the international treaties to which Bulgaria is a side resulted in some international law influence upon the social protection system. Namely, the Constitutional Court established that the introduced conditions for granting disability pension due to general sickness were not in conformity with the indicated maximum qualifying conditions in ILO Conventions 37 and 38.[1391] The Constitutional Court demonstrated that the respective conventions did not simply entail promotional goals but yielded subjective positions. Accordingly, the legislature was obligated to reform the law in line with the international law requirements.

III. Expansion of Rights and Systems

Some expansion and refinement of rights occurred in the phase of norm creation based on international law. A decision based on the ECHR led to changes in the social assistance legislation by improving access to judicial

1388 Constitutional Decision No 5/2000 on case 4/2000.
1389 Constitutional Decision No 31/1998 on case 24/1998.
1390 Constitutional Decision No 9/2020 on case 3/2020.
1391 Constitutional Decision No 5/2000 on case 4/2000.

appeal regarding administrative decisions.[1392] Additionally, a judgment of the ECtHR contributed to the refinement of social services connected to people with mental disabilities.[1393] As a consequence of the ECHR jurisprudence, the institutionalization procedures were revised and limited in their duration. In addition, an attempt was made towards the greater integration of the individual's opinion in terms of the type of needed social services.

Furthermore, rights expansion in the phase of norm creation occurred through constitutional influence regarding the prenatal and postnatal paid leave for mothers. The constitutional provision on the special protection of mothers provided in Article 47(2) of the Constitution was instrumental in the parliamentary debates[1394] leading to a considerable increase in paid leave days.[1395] By relying on the general obligation to provide special protection to mothers, the legislature extended twice the total amount of paid leave days.[1396]

IV. The Dimensions of Influence and European Union Law

The influencing potential of European Union law has been examined through the phase of norm creation. The main influence of EU law upon the national social protection system may be described as pertaining to the dimension of rights extension. Initially, the impetus for this extension was naturally the legislative efforts to synchronize the national legal order with

1392 *Kovachev against Bulgaria*; Council of Europe, 'Human Rights Information Bulletin No. 52, November 2000 – February 2001' (2001) 14.

1393 *Stanev v. Bulgaria*; 'Motives in Draft of the Law Amending and Supplementing the Law on Social Assisstance, No 502-01-65'.

1394 'Transcript of Parliamentary Plenary Session No 433, 19.11.2008'.

1395 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'; 'Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84'; 'Motives in Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84'; 'Transcript of Parliamentary Plenary Session No 433, 19.11.2008'.

1396 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 654-01-73, Archives of the National Assembly'; 'Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84'; 'Motives in Draft of the Law on the Budget for the Public Social Insurance for 2009, No. 802-01-84'; 'Transcript of Parliamentary Plenary Session No 433, 19.11.2008'.

the European Union law. However, this underlying motivation sometimes spilled over and stimulated a more general reorganization of the national system that ultimately contributed to further extension of rights. Moreover, European Union law motivations led to the finalization of a long-standing reform in the national law requirements on pension entitlement.

First of all, European Union law enabled the extension of voluntary occupational and private pension rights. In particular, reforms that aimed at transposing the relevant EU law requirements into the national law[1397] triggered greater impetus for developing the overall voluntary occupational pension in the country. Second, the principle of equal treatment enshrined in the related EU legislation introduced the aspect of equal treatment between men and women in the capital-funded pension insurance schemes in the country. On the one hand, EU law influenced the establishment of equal qualifying conditions and benefit calculation requirements in the voluntary occupational and private pension insurance. On the other, the benefit calculation rules were equalized for both sexes in the capital-funded pension insurance, which is part of the mandatory pension insurance.[1398]

Third, EU law was the motivating factor for several reforms that extended rights in the course of addressing requirements stemming from the right of freedom of movement. The aforementioned was exemplified in the development of the regulation ensuring the cross-border payment of short-term social insurance benefits and the possibility of retaining occupational and supplementary pension rights in case of freedom of movement.[1399] The EU law coordination requirements motivated the development of the national administrative mechanisms enabling the right to freedom of movement. In addition, on the grounds of EU law impetus, particularly the rights to freedom of movement and establishment, the national law was finally

1397 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 602-01-37, Archives of the National Assembly'; 'Draft of the Law Supplementing the Law for the Protection against Discrimination, No 702-01-29'; 'Motives in Draft of the Law Supplementing the Law for the Protection against Discrimination, No 702-01-29'.

1398 'Draft of the Law Amending and Supplementing the Social Insurance Code, No 702-01-9'; 'Motives in Draft of the Law Amending and Supplementing the Social Insurance Code, No 702-01-9'.

1399 *See* 'Motives' in 'Draft of the Law Amending the Social Insurance Code, No 402-01-44'.

reformed to remove the requirement for the termination of employment and social insurance for the purpose of pension entitlement.[1400]

All of this is not to say that relevant EU law requirements were always able to effortlessly result in some extension of rights. Namely, the national law was slow in accommodating EU requirements relating to cross-border healthcare despite that the national provisions were found to violate the freedom to provide and receive services and Regulation No 1408/71.[1401] The national law was altered years later due to fear of sanctions for failing to meet the deadline for the transposition of newer and related secondary sources of EU law.[1402] The reform was thus not motivated by the related judgment of the CJEU but by the subsequent secondary EU law. Hence, in comparison to the other detected instances of influence, in this regard, the presence of EU influence in terms of extension of rights was seemingly less observable.

C. Constitutional, International and European Union Laws: Similarities and Difference of Influence Capacities

This work demonstrates that the Bulgarian social protection system was shaped to a certain degree by different constitutional, international, and European Union law influences. A question arises on the different manners in which these three strands influenced social protection. The answer lies in the different *modus operandi* of the three channels in the national legal system and their specific implications vis-à-vis social protection in general.

First, the 1991 Bulgarian Constitution contains all fundamental rights in one Chapter on citizens' fundamental rights and duties. Therefore, there is no formal distinction between, on the one side, the classical negative rights and, on the other, the positive rights that include the social and economic rights. However, the Constitutional Court's judicial doctrine clearly distinguishes between the two categories of rights. In contrast to social rights, classical liberal rights are directly applicable.[1403] The Constitutional Court

1400 Case C-103/13 *Somova*. Also *see* §3.24, Law on the Budget for the Public Social Insurance for 2015, SG 107/24.12.2014.

1401 Case C-173/09 *Elchinov* para 47.

1402 Law Amending and Supplementing the Law on Health, SG 1/3.1.2014.

1403 Constitutional Decision No 2/2007 on case 12/2006. There are many views in the legal scholarship, however, challenging the clear-cut conclusion that liberal rights can always be simply directly enforceable. *See* Michelman, in Barak-Erez

has openly declared that constitutional social rights are hard to fulfill and cannot confer immediate subjective positions.[1404]

Nevertheless, this constitutional conclusion does not imply that social rights are not binding. Throughout its jurisprudence, the Court has explicitly clarified that social rights are still fully-fledged rights and could not be reduced to mere goals for policy development. Rather, the realization of such rights is subjected to a legislature's broad discretion, primarily due to the latter's ability to assess the economic situation of the social protection system based on the available resources. Therefore, constitutional social rights entail a requirement for setting an institutional structure that conveys certain subjective public law positions. Social rights thus result in obligations for the legislature, predominantly regarding the requirement for creating systems for social rights realization in constitutionally acceptable ways.[1405] It can be claimed that through its sobering approach, which clearly distinguishes between classical and social rights, the Constitutional Court averted the danger of devaluating social rights to mere declarations that in practice remain unfulfillable.[1406]

The influencing factor of constitutional law contributed to the creation and preservation of the institutional structure of the social protection system. This statement is especially relevant for social and health insurance. Particularly, the constitutional jurisprudence was pivotal for preserving the respective institutional design by establishing the constitutionality of the mandatory character of social insurance that serves the realization of the functions of the given social protection system. In addition, the constitutional influence contributed to the preservation of the fundamentally different nature of taxes and contributions and the role of contributions as a backbone to social and health insurance. Furthermore, the constitutional reasoning on the targeted role of incomes to the social and health insurance funds prevented diverting of funds' incomes. The constitutional review asserted the strictly fund-specific usage of funds' finances for addressing benefit claims. Apart from these structural influences, constitutional control has further contributed to uncovering the protected individual positions

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and Gross, *Exploring Social Rights* (2007) 24–25; Holmes and Sunstein, *The Cost of Rights* (1999).

1404 Constitutional Decision No 2/2007 on case 12/2006 para III.

1405 Constitutional Decision No 5/2000 on case 4/2000; Constitutional Decision No 10/2012 on case 15/2011; Constitutional Decision No 9/2020 on case 3/2020.

1406 On the danger of devaluation of social rights, *see* Zacher, in Kurzrock, *Menschenrechte* (1982) 117–118.

in social protection. These included, for instance, the introduction of the constitutional protection over acquired rights and the building of bridges between social rights realization and foundational principles such as the rule of law and equality.

Aside from the constitutional review, the legislature has also been seemingly involved with constitutional motivations in relation to relevant laws. The engagement with constitutional arguments at the legislative level should always be assessed with special care due to the natural intertwinement of the discussions with political reasons. Still, the importance of the Constitution was at least assumed in principle in the development and reforming of different social protection laws. Arguments bearing constitutional flares, such as the connection between human dignity and minimum income, were extensively deliberated regarding the tax-financed benefits in the development of social assistance.

Next, international law's manner of influence was examined in the background of the place of international law instruments in the domestic legal system. Due to the superior standing of international law in comparison to ordinary national law, the former was able to serve as a sub-constitutional level contributing to the extension of social rights or their preservation from legislative interferences. This influence was further fortified by one of the hallmarks of the post-socialist constitutional framework in the country, namely the general openness of the domestic legal order to international law.

The international law implications were especially evident in different tax-financed systems where the national law lagged behind. In this regard, international law served as motivation in developing some legal frameworks. Prior to the international law influence, some of the national social protection areas, such as tax-financed support and inclusion measures for people with disabilities, used to be considerably underdeveloped and were criticized by international bodies.[1407] While the Constitution established the provision of special protection to people with disabilities, it simultaneously lacked concreteness and left the organization of the social protection measures to the legislature's discretion. In comparison, the CRPD entailed a more detailed blueprint of the design on the support and social inclusion benefits. The CRPD provisions contributed to the overall reforming of the national legal framework and the setting of diversified and more individual-

1407 Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Bulgaria CRPD/C/BGR/CO/1' (2018) para 10.

ized social protection approaches. Accordingly, it can be argued that the CRPD served to a certain extent as a sub-constitutional source of law that managed to trigger the addressing of some gaps in the national system.

Finally, the influences of the European Union law upon the Bulgarian system were observed in the background of the specific EU competences in the field of social protection. The various ways through which EU law can impact social protection have been exemplified by the isolated and, at times sporadic, case-based influences upon the national system. The generally limited EU powers regarding social rights and the CJEU's case law result in the individualization of influences[1408] and indirect impact on social rights through the protection of the Treaty freedoms.[1409] Therefore, no systematic and comprehensive influencing EU law effect on the Bulgarian system could be detected, aside from the market-related EU influence targeting private financing, which led to some wider and more comprehensive results. Hence, in the context of Bulgaria, European Union law did contribute to some isolated changes.

Nonetheless, despite that the channels of EU law provided isolated results, some of the related influences contributed to the modernization of the national social protection system. When the process of translating EU law into the domestic sphere was initiated, the national system was still underdeveloped and colored by socialistic legal inheritances. To a certain extent, the implementation of EU law necessitated the presence of more or less modernized social protection systems which can respond to challenges related to the freedoms of movement of persons and capital. Consequently, EU law served as an informal influence factor that kickstarted some modernizing aspects in the Bulgarian system, such as the developing the voluntary occupational law framework and establishing the possibility for pension entitlement without the need for employment termination.

In addition, in some western states, mechanisms such as trade unions were essential for developing certain social protection framework aspects.[1410] In contrast, the general Eastern European trend for weak trade unions is also pronounced in Bulgaria, where the trade union structure is

1408 Paju, *The European Union and Social Security Law* (2017) 156–157.

1409 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1490.

1410 Butt, Kübert and Schultz, 'Fundamental Social Rights in Europe' (1999) 16 <https://www.europarl.europa.eu/workingpapers/soci/pdf/104_en.pdf> accessed 12 March 2021.

still unable to yield comprehensive results in extending social and labor rights protection.[1411] In the national context of the country-specific social and historical background, EU law managed through its informal influence to bring forward the development of a general framework on occupational pension rights. All of this implies that apart from the individual instances of influence, European Union law served on a greater scale as an insight for modernizing the development of some social protection branches.

D. The Influences on the Bulgarian System in Comparative Perspective

A question arises on how the Bulgarian example relates to the situation in other European countries. For example, can the study's results be positioned in the overall Eastern European system rebuilding trend in the 1990s? In addition, how does the Bulgarian experience compare vis-à-vis the older Western democracies? Furthermore, as demonstrated above, the three studied channels of influence left different footprints in the national system. Can these varying influence paths be distinguished in other national systems, and if so, how do these differences relate to the study's results?

As underlined throughout this work, countries generally mind constitutional provisions in shaping social protection in case of a constitutional requirement for social protection rights.[1412] A look through the constitutions in Europe demonstrates a diverging matrix of solutions on whether and to what extent social rights are included in the constitutions and what this implies in terms of state obligations.[1413] The constitutional approaches and traditions embedding social rights vary in their nuances by far and wide.[1414] While social rights can be awarded a weight of political guidelines, they could also follow from the general social state principle or could even embody fundamental rights ranking.

1411 Magda, 'Do Trade Unions in Central and Eastern Europe Make a Difference?' (2017) 7 <https://wol.iza.org/articles/do-trade-unions-in-central-and-eastern-europe-make-a-difference/long> accessed 12 March 2021.

1412 Becker, 'Security from a Legal Perspective' (2015) 3 Rivista del Diritto della Sicurezza Sociale 517.

1413 For a concise overview on the different constitutional presence of social rights, or no presence thereof, in several of the constitutions in Europe, *see* Mars, Pieters and Schoukens, in Becker and others, *Security* (2010) 606–615.

1414 ibid.

The inclusion or not of an (extensive) list of social rights in the European constitutions was heavily predetermined by historical reasons. Bulgaria is no exception to this observation. The historical examination of the formation of the 1991 Constitution demonstrated how the list of social rights was heavily influenced by the concrete context and daring need for laying the foundations of new social protection models. Similarly, historically relevant reasoning inspired contrasting constitutional solutions in other European states. While the historical background influenced the insertion of a wide catalog of social rights in the Spanish Constitution,[1415] in Germany, the past experience prompted the inclusion of only clearly formulated and enforceable rights in the Basic Law.[1416]

However, the inclusion of social rights in constitutions is by no means an exhaustive indicator for understanding social rights protection and implementation in a given country. The influence of social rights rather depends on the constitutional traditions[1417] and institutional setups[1418] that embrace them. The latter determines the distributions of powers and responsibilities on how social rights are interpreted and implemented[1419] and to what extent they would be justiciable.[1420] Bulgaria adheres to the countries where social rights are embedded as fundamental rights in the Constitution. In addition, in accordance with the example set by Germany,[1421] the legal system in the country allows for the control of governance through legal checks on the exercise of power in the sphere of social rights.[1422] The Nordic countries provide a clear counterexample to this approach.[1423] In the case

1415 Butt, Kübert and Schultz, 'Fundamental Social Rights in Europe' (1999) 18.
1416 Becker and Hardenberg, in Becker and others, *Security* (2010) 100.
1417 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1492.
1418 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 5 ff.
1419 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1492.
1420 King, *Judging Social Rights* (2012) 17 ff.
1421 On the essential role of the courts in the developing of the "reality of the social" in Germany, *see* Zacher, *Social Policy in the Federal Republic of Germany* (2013) 92.
1422 For an examination on the role of the Supreme Administrative Court for the social insurance in Bulgaria, *see* Sredkova, 'Critical Review of the Jurisprudence of the Supreme Administrative Court on the Public Social Insurance in 2008/Критичен преглед на практиката на върховния административен съд по държавното обществено осигуряване през 2008 г.' (2010) 12 Juridical World/Юридически свят 171.
1423 Hirschl, 'The Nordic Counternarrative' (2011) 9 Int. J. Const. Law 450.

of Sweden, social rights are viewed not so much as legal rights but instead are considered as being "goals of the common" that the political strives to achieve through collective action.[1424] Accordingly, social rights are left to the political realm, and the judiciary tends not to interfere with their legal implementation.[1425]

Therefore, Europe contains a colorful muster of approaches to the constitutional expression of social rights and the idea of the welfare state. Still, these various constitutional expressions say little or even nothing at all about the given institutional structure and the level of social protection. The concrete design of social protection varies from country to country and depends on those political decisions that ultimately have been translated into binding legal documents.[1426] In this respect, social law is not only how social policy is put into action, but further reveals some fundamental aspects of the constitutional setup of the state, in particular on what is permissible in terms of public interventions.[1427] Despite the variety of social law solutions and constitutional traditions, the common denominator that authors observe is that all European constitutional traditions, in one way or another, assume a certain degree of responsibility towards the social wellbeing of the individual.[1428] This responsibility includes tackling the combination of "guaranteeing individual freedoms and enabling their actual enjoyment".[1429] The following will comparatively "map" the influence results for Bulgaria. Thus, the examination will concisely reflect on the similarities and differences in the way constitutional law frames and shapes social protection in Bulgaria and other European countries. In addition, similarities and differences will also be briefly examined in terms of EU law and international law.

In terms of general similarities to the other EU Member States, the development of the constitutional influence in Bulgaria acknowledged that

1424 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1495.

1425 ibid 1495–1496.

1426 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 2.

1427 ibid.

1428 Fabre, in de Búrca, de Witte and Ogertschnig, *Social Rights in Europe* (2005) 16; Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1490.

1429 Becker, in Becker and Poulou, *European Welfare State Constitutions after the Financial Crisis* (2020) 2.

social rights are not absolute and cannot be directly enforceable. Just like in Belgium,[1430] this continues to be the case, despite the explicitly proclaimed direct effect of the Constitution. Following in the footsteps of a number of European countries,[1431] the constitutional jurisprudence in Bulgaria acknowledged the legislature's broad discretion given the financial difficulties faced by social protection. The constitutional sensitivity towards the economic hardships is expressed in the understanding that systems need to be optimized in order to sustain their function.[1432] This understanding implies the legislature's freedom in deciding the ways and conditions for social rights implementation. The discretion may at times include the lowering of benefits.[1433]

However, the constitutional influence in Bulgaria further managed to set the constitutional limits to the legislature's wide scope of action and, by doing so, adhered to the practice in some European countries.[1434] A crucial and comparable aspect in this regard is the constitutional development of the idea of acquired rights in Bulgarian law.[1435] Although this constitutional influence cannot guarantee a concrete future benefit amount, it could still preserve the vested social insurance rights, like the one to pension. Such a constitutional approach is not always observable in Eastern Europe. While a similar constitutional influence is evidenced in some countries,[1436] in others, the constitutional practices can be diverging and contradicting.[1437] The sensitivity towards the economic footing of the social protection systems has led some Eastern European scholars to question whether the given Constitutional Court could review legislative realization of social

1430 Pieters and Schoukens, in Becker and others, *Security* (2010) 29.

1431 For Belgium, *see* ibid 30–31. For Germany, *see* Becker and Hardenberg, in Becker and others, *Security* (2010) 102. For Greece, *see* Angelopoulou, in Becker and others, *Security* (2010) 153.

1432 For Italy, *see* Borzaga, in Becker and others, *Security* (2010) 307. For Romania, *see* Athanasiu and Vlăsceanu, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 210–211.

1433 As it was observed by the constitutional jurisprudence in Belgium. *See* Pieters and Schoukens, in Becker and others, *Security* (2010) 30.

1434 Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 590–591.

1435 Constitutional Decision No 12/1997 on case 6/1997.

1436 Strban, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 251.

1437 Athanasiu and Vlăsceanu, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 212–213.

rights taking into account the Court's lack of comprehensive estimate of the economic situation.[1438] In contrast, in the case of Bulgaria, the constitutional influence over the protection of vested rights was not dissuaded by counterarguments on the financing of pension insurance.[1439]

In the Bulgarian context, the protection of vested contribution-based rights was carried out based on the fundamental right to social insurance, the rule of law, and the connected general idea of legal expectations. Yet, the constitutional influence did not go as far as the German approach in postulating that the right to property protects certain contribution-based individual positions.[1440] From a Bulgarian constitutional perspective, the right to property currently explicitly yields protection only over the social insurance concerning private law positions.[1441]

A further important comparative aspect involves the constitutional influence in relation to the principles of equality and legitimate expectations. Equality served to battle arbitrary legislative treatment in the Bulgarian social insurance and, as such, is comparable to practices in different European countries.[1442] Just like in Slovenia,[1443] equality does not imply a one-fits-all treatment but rather calls for an equal approach to similar factual situations. Accordingly, when sound and justified legal grounding is provided, the positions of legal subjects can be regulated differently to favor a particular group in need.[1444] The principle of equality also managed to

1438 Olšovská, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 230–231.

1439 Constitutional Decision No 12/1997 on case 6/1997.

1440 Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 591. On the same issue, also *see* Becker and Hardenberg, in Becker and others, *Security* (2010) 108–111.

1441 The protection of contributory social rights through the right to property is also not observable in other European countries, such as, for example, Spain and Slovenia. *See* Rodas, in Becker and others, *Security* (2010) 458; Strban, in Becker and others, *Security* (2010) 411. In Belgium the right to property may be relevant only when a given social rights is entirely taken away. *See* Pieters and Schoukens, in Becker and others, *Security* (2010) 39.

1442 For Belgium, *see* Pieters and Schoukens, in Becker and others, *Security* (2010) 33. For Germany, *see* Becker and Hardenberg, in Becker and others, *Security* (2010) 116–117.

1443 Strban, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 255.

1444 ibid; Constitutional Decision No 3/2013 on case 7/2013.

serve as an indirect way to protect the trust in the law and the legitimate expectations in both Bulgaria[1445] and Slovenia.[1446]

When taken on its own, the protection of the legitimate expectations in Bulgaria did not impose absolute requirements on the legislature apart from the general goal of consequent and reasonable legislative actions.[1447] The loose grip of the principle of legitimate expectations was also evident even in situations of very abrupt reforms.[1448] Although the Constitutional Court generally implied the need for appropriate transitionary periods, this need could not override the reforms' motives needed for overcoming economic hardships.[1449] In contrast, in some other Eastern European countries, such as Latvia and Slovenia, legitimate expectations contributed to the constitutional requirement of carrying reforms through appropriate transitionary periods and compensatory mechanisms, despite the present economic pressures.[1450]

However, the legitimate expectations could be of considerable relevance to significant legislative changes in Bulgaria, such as structural reforms in social protection. As mentioned above, the constitutional influence played a part in preserving the institutional structure of the social protection system. Legislative solutions violated the rule of law and the related aspect of legitimate expectations when reforms caused unclarities regarding the systems' functioning and potentially endangered social rights realization.[1451] Therefore, in a sense, the Bulgarian constitutional jurisprudence followed the German example of requiring transparent reasoning from the law-maker and necessitating consequent actions.[1452] This requirement, however, con-

1445 Constitutional Decision No 31/1998 on case 24/1998.

1446 Strban, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 252.

1447 Constitutional Decision No 10/2012 on case 15/2011 para II. 1.

1448 ibid.

1449 ibid.

1450 Strban, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 252–253. Also *see* Petrova, in Belov, *Peace, Discontent and Constitutional Law* (2021) 225.

1451 For instance, *see* Constitutional Decision No 2/2014 on case 3/2013.

1452 Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 591. Similar constitutional requirements can be observed in the case of Slovenia, *see* Strban, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 414.

cerns certain crucial cases that may have considerable consequences given the indeterminacy of the aimed results by the legislation.[1453]

The comparative examination of the constitutional influence also reveals a certain grey zone in the Bulgarian constitutional influence. Namely, so far, the Bulgarian Constitutional Court has not yet explicitly delved into the relationship between human dignity and any social protection branch. This gap in the jurisprudence could only be deemed unfortunate given the contested modest amounts of social benefits in the country,[1454] especially concerning the minimum level.[1455] In contrast, the constitutional jurisprudence in different countries in both Eastern[1456] and Western Europe[1457] has already addressed the question of human dignity and minimum benefits. To illustrate, in the case of Lithuania, the constitutional influence postulates that benefits may not be reduced to a level that would not be able to provide the concerned person with living conditions compatible with human dignity.[1458]

Apart from the comparative constitutional influences, the international law influences on the Bulgarian social protection can also be examined from a comparative perspective. The responses of the different countries vary greatly in terms of international law's influence on national systems. In some countries, such as Germany and Italy, international human rights agreements and ILO conventions tend not to take independent significance since they fall behind the national social protection levels.[1459] In contrast, in some respects, the international law instruments in Bulgaria managed to address certain gaps in the national social protection system by serving

1453 Becker, 'Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen' (2010) 99 ZVersWiss 591.

1454 Mrachkov, *Social Rights of the Bulgarian Citizens/Социални права на българските граждани* (2020) 429–430.

1455 A potentially related aspect can be the lack of constitutional complaint in the country, that limits the issues that might be considered as relevant for constitutional review. Petrova, in Belov, *Peace, Discontent and Constitutional Law* (2021) 225 ff.

1456 Petrylaite, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 171.

1457 In Germany, the coupling of the social state with human dignity results in an obligation of a state of providing "the very minimum of existence". *See* Becker and Hardenberg, in Becker and others, *Security* (2010) 103.

1458 Petrylaite, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 171.

1459 Becker and Hardenberg, in Becker and others, *Security* (2010) 104–105; Borzaga, in Becker and others, *Security* (2010) 308–309.

as benchmarking tool in developing minimum systems or support and social inclusion benefits.[1460] International law motives also influenced the legislature's decisions to retract certain reforms.[1461] Bulgaria is naturally not a sole example in this regard. Other countries' legislatures, like the Icelandic one, have also reversed reforms that curbed social rights due to international law obligations.[1462] Authors report similar trends for Belgium, although when doing so, warn against the factor of politicizing the supposed international law motives.[1463]

Besides the legislature, in the case of Bulgaria, the Constitutional Court has not shied away from relying on international law instruments in examining the national law. The Court has even instigated changes in the domestic systems due to establishing a discrepancy between the national framework and ILO conventions.[1464] In comparison, other Eastern European constitutional courts are unwilling to reference directly international law instruments and instead focus on the provisions of the national Constitution.[1465]

Finally, EU law triggered various individualized influences in the field of social protection in the different Member States.[1466] Despite the regulatory autonomy of Member States in the area, EU law does take precedence when there are "chafing edges of conflict" that need to be adjusted.[1467] The European Union law influence then prompts alterations in the national systems that tend to occur on "a case by case" basis.[1468] Still, some more comprehensive trends may be observed, such as the contribution of EU law in Sweden to the practice of juridification of social rights[1469] and the reforming of residence as representing a basic insurance condition.[1470]

In Bulgaria, a more comprehensive trend of EU influence involved the gender equality requirements that shaped the country's voluntary private

1460 'Transcript of Parliamentary Plenary Session No 127, 16.05.1998'; 'Motives in Draft of the Law on People with Disabilities, No 802-01-41'.
1461 'Transcript of Parliamentary Plenary Session No 60, 20.01.2010'.
1462 Jeans, Eydal and Olafsson, in Becker and others, *Security* (2010) 231–232.
1463 Pieters and Schoukens, in Becker and others, *Security* (2010) 38.
1464 Constitutional Decision No 5/2000 on case 4/2000.
1465 Strban, in Becker and others, *Security* (2010) 409.
1466 Paju, *The European Union and Social Security Law* (2017) 190 ff.
1467 ibid 189.
1468 ibid.
1469 Bruzelius, 'How EU Juridification Shapes Constitutional Social Rights' (2020) 58 JCMS 1497.
1470 Erhag, 'Under Pressure?' (2016) 18 EJSS 228.

and occupational insurance conditions.[1471] In comparison, in Greece, the constitutional principle of equality was the one to influence the elimination of certain gender discriminations in social insurance.[1472] Even though EU law provisions could have served as a motivation for the related judgments of the Greek State Council, the Court grounded its reasonings on the constitutional principle of equality.[1473] The Greek approach is improbable to be potentially applicable in Bulgaria. The different qualifying conditions are seen as a part of the Bulgarian legal tradition and, as such, are not contested by the national legal doctrine.[1474] In this sense, the approach in Bulgaria is congruent with the views also held in countries such as Slovenia[1475] and Romania,[1476] where the differentiated qualifying pension conditions are compatible with the principle of equality. Hence, EU law instigated a divergence from the country's legal traditions that would otherwise be improbable on solely constitutional grounds.

E. Final Remarks

At the very end of the research work, it is valuable to briefly consider what the detected influences mean in practical terms for implementing social protection. The present research demonstrated the various strands of constitutional, international, and EU law influence that contributed to shaping social protection in Bulgaria. While these influences have undoubtedly supported the creation, preservation, or extension of certain social rights, they cannot overcome systematic problems impeding the implementation of social rights. These problems concern the overall national economic, social, and political contexts that fairly impede the development and proper functioning of the social protection system. Indeed, the overall societal development is unfeasible solely through the means of constitutional rights

1471 The EU gender equality rules have also contributed towards changes in other social insurance systems across Europe, such as the Irish one. *See* Cousins, in Becker and others, *Security* (2010) 266–267.
1472 Angelopoulou, in Becker and others, *Security* (2010) 160 ff.
1473 ibid 162–163.
1474 Sredkova, *Social Security Law/Осигурително право* (2016) 629.
1475 Strban, in Becker and others, *Security* (2010) 415.
1476 Athanasiu and Vlăsceanu, in Egorov and Wujczyk, *The Right to Social Security in the Constitutions of the World* (2016) 198.

and judicial review.[1477] While the constitutional review does matter to a certain extent, "high education and human capital, a developed market economy alongside a functional social safety net, and strong state capacity" all arguably contribute more to the overall prosperity and state of democracy.[1478]

Undoubtedly, the previously discussed troubling demographic and economic backgrounds and overwhelming corruption practices leave their mark on the implementation of social rights. Namely, some social protection sectors suffer from deeply entrenched corruption practices that seriously affect social rights implementation. The healthcare sector is a good example in this regard. In general, 60% of the population considers that healthcare is one of the spheres with the highest corruption practices in the country.[1479] The COVID pandemic illustrated these corrupt practices in some daring times, with 19% of the people reporting that they have paid a bribe to access or obtain health services during the pandemic.[1480]

Last but not least, the critical evaluation of social protection marked some problematic aspects in the governance of social policy. The outlined examples only show how piecemeal developments and "rushed" reforms stir incoherencies within the functions of the social protection systems. The nature of such challenges exemplifies even better the need for understanding, on the one hand, the functionalities of the different social protection branches and, on the other hand, the relevant constitutional, international, and European Union law influences. While the influences are unable to alone fully develop and preserve the Bulgarian social protection system, they at least benchmark a certain level of safeguard against hasty and arbitrary legislative action.

1477 Hirschl, 'The Nordic Counternarrative' (2011) 9 Int. J. Const. Law 455.
1478 ibid.
1479 Bulgarian Institute for Legal Initiatives, 'Corruption in Healthcare' (2021) 35 <http://www.bili-bg.org/cdir/bili-bg.org/files/Report_Healthcare_2021.pdf> accessed 12 March 2021.
1480 Kukutschka, 'Global Corruption Barometer' (2021) 25 <https://files.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf> accessed 12 March 2021.

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