

## 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”.<sup>1325</sup> Therefore, the involved institutional setting and levels of protection reflect the political decisions on social protection’s design.<sup>1326</sup> 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 This course has resulted in outdated and extremely low minimum income levels, which are further aggravated by the narrow coverage of the minimum protection measures.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.

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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.<sup>1327</sup> Moreover, the increase of new forms of work, such as platform-based work that could be regulated through civil-law instruments in the country,<sup>1328</sup> 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.

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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.<sup>1329</sup> However, this intention was altered,<sup>1330</sup> 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.<sup>1331</sup>

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.<sup>1332</sup> 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.<sup>1333</sup>

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](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,<sup>1334</sup> 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.<sup>1335</sup> 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.<sup>1336</sup> 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.<sup>1337</sup>

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 ошетени' (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 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.l68chasa.bg/Article/9188855>> accessed 12 March 2021.

Yet, as the overview of the social protection history revealed,<sup>1338</sup> 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.<sup>1339</sup> 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,<sup>1340</sup> 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.<sup>1341</sup> Hence, the

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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 ППЗППП’ (2021) 2 <[https://ime.bg/var/images/IME\\_GMI\\_july2021.pdf](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<sup>1342</sup> 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.<sup>1343</sup> 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.<sup>1344</sup>

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.<sup>1345</sup> 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".<sup>1346</sup> Such aspects lead some scholars to the grim and

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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](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](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, 'Opinion 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.

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.<sup>1347</sup>

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<sup>1348</sup> 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.<sup>1349</sup>

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.<sup>1350</sup>

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](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.<sup>1351</sup> Scholars argue that this high share of the uninsured population compromises the solidarity foundation of the public health insurance.<sup>1352</sup> 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.<sup>1353</sup>

The limited actual coverage gave rise to critiques that the state has retreated in terms of healthcare management.<sup>1354</sup> Simultaneously, the state did not comprehensively engage in healthcare policy development targeting active disease prevention.<sup>1355</sup> 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.<sup>1356</sup>

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.<sup>1357</sup> This aspect concerns issues such as undeclared

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1351 Zahariev, 'Financing Social Protection: Bulgaria' (2019) 23.

1352 Dimova and others, 'Bulgaria: Health System Review 2018' (2018) 213 <<https://euro.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.<sup>1358</sup>

The second symptomatic aspect touches on the occasionally untransparent and complicating approach toward reforming the social protection framework.<sup>1359</sup> 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.<sup>1360</sup> Such legislative solutions could be considered debatable in light of the rule of law principle, especially given the untransparent reforming of the legal framework.<sup>1361</sup> Second, the frequent and hasty reforms represent a hurdle for social rights implementation.<sup>1362</sup> 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.<sup>1363</sup>

### 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

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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.<sup>1364</sup> 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.<sup>1365</sup> 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.

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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.<sup>1366</sup> Further, the Law on People with Disabilities was allegedly heavily influenced by the CRPD.<sup>1367</sup> 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.<sup>1368</sup> 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 fundamentals of social protection systems had to be established through parliamentary laws and not through administrative acts.<sup>1369</sup> The creation and development of the systems needed to be carried out in accordance with the social state objective,<sup>1370</sup> which entailed the legislature’s obligation to optimize and manage available resources to ensure the continued existence of the systems.<sup>1371</sup> 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.<sup>1372</sup> The compliance with the

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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<sup>1373</sup> and did not result in incoherencies in the legal framework.<sup>1374</sup>

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.<sup>1375</sup> 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.<sup>1376</sup> 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.<sup>1377</sup>

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.<sup>1378</sup> 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

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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.<sup>1379</sup>

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.<sup>1380</sup> 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.<sup>1381</sup> 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.<sup>1382</sup> 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.<sup>1383</sup> 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

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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.<sup>1384</sup> 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.<sup>1385</sup>

Furthermore, the sources of financing for the health and social insurance funds that originated from contributions were intended only for the funds' accounts themselves.<sup>1386</sup> 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.<sup>1387</sup> 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

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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.<sup>1388</sup> 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.<sup>1389</sup>

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.<sup>1390</sup>

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.<sup>1391</sup> 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

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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.<sup>1392</sup> Additionally, a judgment of the ECtHR contributed to the refinement of social services connected to people with mental disabilities.<sup>1393</sup> 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<sup>1394</sup> leading to a considerable increase in paid leave days.<sup>1395</sup> By relying on the general obligation to provide special protection to mothers, the legislature extended twice the total amount of paid leave days.<sup>1396</sup>

#### 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

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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 Assistance, 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<sup>1397</sup> 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.<sup>1398</sup>

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.<sup>1399</sup> 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

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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.<sup>1400</sup>

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.<sup>1401</sup> 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.<sup>1402</sup> 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.<sup>1403</sup> The Constitutional Court

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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.<sup>1404</sup>

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.<sup>1405</sup> 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.<sup>1406</sup>

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 intertwining 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.<sup>1407</sup> 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-

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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<sup>1408</sup> and indirect impact on social rights through the protection of the Treaty freedoms.<sup>1409</sup> 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.<sup>1410</sup> In contrast, the general Eastern European trend for weak trade unions is also pronounced in Bulgaria, where the trade union structure is

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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](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.<sup>1411</sup> 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.<sup>1412</sup> 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.<sup>1413</sup> The constitutional approaches and traditions embedding social rights vary in their nuances by far and wide.<sup>1414</sup> 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.

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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,<sup>1415</sup> in Germany, the past experience prompted the inclusion of only clearly formulated and enforceable rights in the Basic Law.<sup>1416</sup>

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<sup>1417</sup> and institutional setups<sup>1418</sup> that embrace them. The latter determines the distributions of powers and responsibilities on how social rights are interpreted and implemented<sup>1419</sup> and to what extent they would be justiciable.<sup>1420</sup> 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,<sup>1421</sup> 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.<sup>1422</sup> The Nordic countries provide a clear counterexample to this approach.<sup>1423</sup> In the case

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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.<sup>1424</sup> Accordingly, social rights are left to the political realm, and the judiciary tends not to interfere with their legal implementation.<sup>1425</sup>

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.<sup>1426</sup> 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.<sup>1427</sup> 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.<sup>1428</sup> This responsibility includes tackling the combination of “guaranteeing individual freedoms and enabling their actual enjoyment”.<sup>1429</sup> 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

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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,<sup>1430</sup> 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,<sup>1431</sup> 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.<sup>1432</sup> 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.<sup>1433</sup>

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.<sup>1434</sup> A crucial and comparable aspect in this regard is the constitutional development of the idea of acquired rights in Bulgarian law.<sup>1435</sup> 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,<sup>1436</sup> in others, the constitutional practices can be diverging and contradicting.<sup>1437</sup> 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

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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.<sup>1438</sup> 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.<sup>1439</sup>

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.<sup>1440</sup> From a Bulgarian constitutional perspective, the right to property currently explicitly yields protection only over the social insurance concerning private law positions.<sup>1441</sup>

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.<sup>1442</sup> Just like in Slovenia,<sup>1443</sup> 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.<sup>1444</sup> The principle of equality also managed to

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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<sup>1445</sup> and Slovenia.<sup>1446</sup>

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.<sup>1447</sup> The loose grip of the principle of legitimate expectations was also evident even in situations of very abrupt reforms.<sup>1448</sup> Although the Constitutional Court generally implied the need for appropriate transitional periods, this need could not override the reforms' motives needed for overcoming economic hardships.<sup>1449</sup> 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 transitional periods and compensatory mechanisms, despite the present economic pressures.<sup>1450</sup>

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.<sup>1451</sup> Therefore, in a sense, the Bulgarian constitutional jurisprudence followed the German example of requiring transparent reasoning from the law-maker and necessitating consequent actions.<sup>1452</sup> This requirement, however, con-

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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.<sup>1453</sup>

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,<sup>1454</sup> especially concerning the minimum level.<sup>1455</sup> In contrast, the constitutional jurisprudence in different countries in both Eastern<sup>1456</sup> and Western Europe<sup>1457</sup> 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.<sup>1458</sup>

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.<sup>1459</sup> In contrast, in some respects, the international law instruments in Bulgaria managed to address certain gaps in the national social protection system by serving

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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.<sup>1460</sup> International law motives also influenced the legislature's decisions to retract certain reforms.<sup>1461</sup> 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.<sup>1462</sup> Authors report similar trends for Belgium, although when doing so, warn against the factor of politicizing the supposed international law motives.<sup>1463</sup>

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.<sup>1464</sup> 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.<sup>1465</sup>

Finally, EU law triggered various individualized influences in the field of social protection in the different Member States.<sup>1466</sup> 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.<sup>1467</sup> The European Union law influence then prompts alterations in the national systems that tend to occur on "a case by case" basis.<sup>1468</sup> 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<sup>1469</sup> and the reforming of residence as representing a basic insurance condition.<sup>1470</sup>

In Bulgaria, a more comprehensive trend of EU influence involved the gender equality requirements that shaped the country's voluntary private

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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.<sup>1471</sup> In comparison, in Greece, the constitutional principle of equality was the one to influence the elimination of certain gender discriminations in social insurance.<sup>1472</sup> 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.<sup>1473</sup> 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.<sup>1474</sup> In this sense, the approach in Bulgaria is congruent with the views also held in countries such as Slovenia<sup>1475</sup> and Romania,<sup>1476</sup> 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

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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.<sup>1477</sup> 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.<sup>1478</sup>

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.<sup>1479</sup> 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.<sup>1480</sup>

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.

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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](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.transparencynldn.org/images/TI\\_GCB\\_EU\\_2021\\_web\\_2021-06-14-151758.pdf](https://files.transparencynldn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf)> accessed 12 March 2021.

