

## 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”<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup> As

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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. д-р 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](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\\_E\\_NG.pdf](http://osi.bg/cyeds/downloads/Report_Health_Uninsured_2009_E_NG.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,<sup>4</sup> whose development has been challenged by an ever-worsening demographic crisis, rapid aging, and an overall astute economic situation.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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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 съзга 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.<sup>10</sup> 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<sup>11</sup> 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.<sup>12</sup> 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/DMSDRIS++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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.

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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/Oсигурително право* (2014) 19.

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

## *B. Purpose of the Research and Research Question*

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”<sup>17</sup> 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.<sup>18</sup>

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-

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<sup>17</sup> Becker, ‘Security from a Legal Perspective’ (2015) 3 *Rivista del Diritto della Sicurezza Sociale* 515.

<sup>18</sup> Becker, in Ruland, Becker and Axer, *Sozialrechtshandbuch* (2018) 57.

antee citizens' rights.<sup>19</sup> 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.<sup>20</sup> This limiting side of influence concerns the submission of the legislature to control based on constitutional requirements,<sup>21</sup> 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.<sup>22</sup> In addition to the limiting aspect, which constrains legislative power negatively, constitutional influence may also lead to the creation or expansion of social benefits.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> Therefore, it could be presumed that these international sources may exude a certain influence on social protection.

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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/Oсигурително 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.<sup>26</sup> Given “the absence of harmonisation”<sup>27</sup> 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<sup>28</sup> from the scope of the coordination rules.<sup>29</sup> 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”,<sup>30</sup> the different national systems nevertheless need to operate within the EU legal framework, which undeniably triggers some influence and adaptation from the national sides.<sup>31</sup>

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

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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.<sup>32</sup> 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

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<sup>32</sup> 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.<sup>33</sup>

In terms of the existing legal scholarship, several works have described the country's social and health insurance systems.<sup>34</sup> 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<sup>35</sup> and the constitutional protection of fundamental rights.<sup>36</sup> 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 Constitution/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* II; Penev, 'The Bulgarian Constitutional Justice and

in the country throughout history.<sup>37</sup> Regarding the interactions between Bulgarian law and the international legal orders, some studies examined the relationship between the Constitution and European and international law.<sup>38</sup> Moreover, general studies reflected upon the implications of EU law<sup>39</sup> and international law<sup>40</sup> 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.<sup>41</sup> Different economic disturbances coupled with societal changes give rise to proposals for various reforms that limit the scope and expenditure of social protection measures.<sup>42</sup> 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](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) 1ff.

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.<sup>43</sup> In this regard, the Bulgarian Constitution entails a range of social rights, including the right to social security and social assistance.<sup>44</sup> Furthermore, the constitutional law establishes constitutional control on the state's actions through institutional mechanisms, the main one being the Constitutional Court.<sup>45</sup> 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.<sup>46</sup> 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

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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](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<sup>47</sup> 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.<sup>48</sup> Comparative law, in general, deals with the approximation and systematic juxtaposition of comparable elements.<sup>49</sup> A main aspect of the comparative methodology is *tertium comparationis*<sup>50</sup> or a pre-legal, exogenous questioning to begin the research.<sup>51</sup> Namely, the starting point is the phenomenon

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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-Fülop, *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.<sup>52</sup> This approach is necessary to set a common ground, an invariant,<sup>53</sup> 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.<sup>54</sup> 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”.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup> 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

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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.<sup>58</sup>

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,<sup>59</sup> 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

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

<sup>59</sup> 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.