

Olga Chesalina

Max Planck Institute for Social Law and Social Policy, Munich

THE RIGHT TO SOCIAL SECURITY IN THE CONSTITUTION OF THE REPUBLIC OF BELARUS

Abstract

The author analyses the constitutional guarantees of social security rights in the Republic of Belarus and investigates the relevant decisions of the Constitutional Court of the Republic of Belarus. The article scrutinizes the modern system of social security and the recent legal reforms related to social security. On the one hand, a strong historical path dependency of the Constitution of 1994 in relation to the Constitution of the Belarusian Soviet Socialist Republic of 1978 is notable regarding detailed regulation of social rights. On the other hand, considerable reforms in the area of social security (increasing of retirement age and contribution record, introduction of a professional pension insurance and abolishment of the social insurance against accidents at work and occupational diseases) have taken place.

Słowa kluczowe: prawa z zakresu zabezpieczenia społecznego, gwarancje konstytucyjne, partycypacja w zabezpieczeniu społecznym, emerytura, świadczenia z zabezpieczenia społecznego

Key words: social security rights, constitutional guarantees, social security contributions, pensions, social security benefits

The constitutional guarantees of social security rights

The Constitution of the Republic of Belarus (henceforth – the Constitution) was adopted on March 15, 1994 and amended and supplemented at the national referenda on November 24, 1996 and October 17, 2004. It has supreme legal power, Art. 10 Part 1 Law of the Republic of Belarus (henceforth – Law) No. 361-Z of January 10, 2000 “About normative legal acts of the Republic of Belarus.”¹ The Constitution² defines “Belarus as a unitary, democratic, social state based on the rule of law” (Art. 1). Art. 2 of the Constitution refers to mutual obligations of the state and the citizen: “The State bears responsibility towards the citizen to create the conditions for the free and dignified development of his

¹ All normative legal acts and decisions of the Constitutional Court of the Republic of Belarus are cited from the Belarus Legislation Database “ETALON-ONLINE”, <http://www.etalonline.by>.

² Here and further the translation of the Constitution of the Republic of Belarus from Russian into English is derived from: <http://constitutionnet.org/sites/default/files/Belarus%20Constitution.pdf>.

identity. The citizen bears a responsibility towards the State to discharge unwaveringly the duties imposed upon him by the Constitution”.

The Constitutional Court of the Republic of Belarus (henceforth – the Constitutional Court) has stressed in its decision N P-626/2011 of September 27, 2011 that one of the *goals of the social state* is the achievement of social stability through the enforcement of rights and freedoms of every person. Based on Art. 1, 21, 41, 47 of the Constitution (*right to social security*) the Constitutional Court held that the state is responsible towards the citizen for the creation of conditions for the free and dignified development of his or her identity; at the same time, the citizens have to be active, earn their livelihood through gainful activity (through the realisation of their right to work). The task of the state is to guarantee the economical, organizational and legal conditions for the realisation of constitutional rights. At the same time, the state is obliged to provide assistance and support in line with its financial and material capacities.

It is worth mentioning a historical path dependency of the Constitution of 1994 in relation to the Constitution of the Belarusian Soviet Socialist Republic (henceforth – BSSR) of 1978 with a view to detailed regulation of social rights and classification of basic rights and freedoms.³ In the Constitution of 1994 the socio-economic rights are provided for in Section II “Person, Society, State”, in the Constitution of 1978 it were set in Chapter 6 “Basic Rights, Freedoms and Obligations of Citizens of the BSSR”. While the Constitution of 1978 stipulated the right to material security in old-age, in case of an illness, full or partial loss of ability to work and loss of a breadwinner, the Constitution of 1994 provides explicitly the right to social security (Art. 47) and contains a non-exhaustive list of cases in which the right to social security is guaranteed:

Citizens of the Republic of Belarus are guaranteed the right to social security in old-age, in case of illness, disability, loss of ability to work and loss of a breadwinner and in other cases established by law. The state displays particular concern for veterans of war and labour, as well as for those who lost their health in the defence of national and public interests.

Despite the fact that the Constitution does not provide for a provision concerning a minimum subsistence level, the qualitative standards of social protection can be derived from Art. 21 Part 2 of the Constitution: “Everyone has the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.” Qualitative social standards concerning pensions, health care, social assistance and social services are regulated in Law No. 322-Z of November 11, 1999 “About state minimum social standards”.

The right to health care is provided in a separate Article of the Constitution: “Citizens of the Republic of Belarus are guaranteed the right to health care, including free treatment at state health-care establishments. The state makes health care facilities accessible to all

³ V. Kivel, *Constitutional Rights of the Individual and their Protection* (В.Н. Кивель, *Конституционные права личности и их защита*), Minsk 2005, p. 89.

of its citizens.” (Art. 45 Part 1 and 2). The Constitutional Court stated in its Conclusion No. 3-157/2003 of May 26, 2003 “Concerning compliance with the Constitution of the Law of the Republic of Belarus ‘About health care’ (Art. 5)...” that provision of paid medical services to the population beyond the guaranteed package of free medical care at the state health-care establishments does not contradict the Constitution.

The Constitution contains two articles with provisions concerning unemployment. In these articles, two different – but in terms of content overlapping – aspects of unemployment are regulated. On the one hand, protection against unemployment is a constituent part of the right to work:

The state creates conditions necessary for full employment of the population. Where a person is unemployed for reasons, which are beyond his control, he is guaranteed training in new specializations and an upgrading of his qualifications having regard to social needs, and to an unemployment benefit in accordance with the law (Art. 41 Part 2).

Protection against unemployment in a broader sense also comprises social benefits for unemployed persons. The right to social security stipulated in Art. 47 of the Constitution also implies a right to social security in the event of unemployment. The case of ‘unemployment’ is not explicitly mentioned in Art. 47 of the Constitution; it is included in the ‘other cases established by law’ in which social security is guaranteed in line with this provision. Several other eastern European constitutions do not mention the social risk of ‘unemployment’ either (e. g. the Russian Federation).

The right to social security stands in connection with Art. 32 Part 1 of the Constitution, which states that “marriage, the family, motherhood, fatherhood, and childhood are under the protection of the state” and Art 48 Part 2 of the Constitution, which stipulates that “the state and local self-government grant housing free of charge or at reasonable prices in accordance with the law to citizens who are in need of social protection.” Furthermore the right to social security is linked to Art. 22 of the Constitution (equality principle): “All are equal before the law and entitled without discrimination to equal protection of their rights and legitimate interests”) and Art. 23 of the Constitution (“Restriction of personal rights and freedoms shall be permitted only in the instances specified in law, in the interest of national security, public order, the protection of the morals and health of the population and the rights and freedoms of other persons”).

State obligations regarding social security can also be derived from international law as Art. 8 of the Constitution states: “the Republic of Belarus recognizes the supremacy of the universally acknowledged principles of international law and ensure that its laws comply with such principles”. Obligations for the Republic of Belarus from international treaties can arise directly, unless the treaty provides that national legal act must be adopted (issued). They have the force of the normative legal act by virtue of which the

Republic of Belarus has expressed consent to be bound by the respective treaty.⁴ Art. 1 of the Law No. 1596-XII of April 17, 1992 “About provision of pensions” provides that in case of a conflict of rules contained in an international treaty of the Republic of Belarus with the rules contained in this law, the international treaty applies.

Belarus ratified some human rights instruments which are relevant for national social security rights, especially: the International Covenant on Economic, Social and Cultural Rights of 1966 (1973⁵), the UN Convention on the Rights of the Child (1990), the UN Convention on the Rights of Persons with Disabilities (2016).⁶ In its decisions concerning social security rights the Constitutional Court referred to Art. 9 of the International Covenant on Economic, Social and Cultural Rights and Art. 22 of the Universal Declaration of Human Rights of 1948.⁷ Furthermore Belarus ratified some of the ILO Conventions related to social protection in a broad sense, e.g. Conventions No. 88, 155, 167, 183.⁸ Belarus did not ratify Convention No. 102 on Social Security (Minimum Standards).

The scope of the material and personal social security rights guaranteed by the Constitution

The Constitution does not prescribe a certain social security scheme (e.g. social insurance). The Belarusian statutory social security system comprises social insurance, social services, social assistance and other social security instruments. The social benefits are divided into contributory and non-contributory (from the state budget).

According to Art. 3 of Law No. 138-XIII of February 29, 1996 “About compulsory insurance contributions to the budget of state non-budgetary Fund of social protection of the population of the Republic of Belarus⁹” there are two kinds of compulsory state social insurance in Belarus: the “pension insurance” (old-age pensions, disability pensions, survivor pensions) and the so called “social insurance” (insurance in case of temporary disability, pregnancy, childbirth, child care up to the age of 3 years, provision of one day off in a month for a mother /stepmother or a father/stepfather, guardian/trustee raising a disabled child up to the age of 18 years, the death of the insured person or a member of his family).

⁴ Art. 33 of Law No. 421-Z of July 23, 2008 “On Treaties of the Republic of Belarus”; Art. 20 of Law No. 361-Z of January 10, 2000 “About normative legal acts of the Republic of Belarus”.

⁵ Here and further – the year of ratification.

⁶ UN human rights. Office of the high commissioner. Status of Ratification. Belarus. <http://indicators.ohchr.org/>.

⁷ E.g. Conclusion of the Constitutional Court of the Republic Belarus No. Z-36/96 of May 28, 1996, Decision of the Constitutional Court of the Republic Belarus No. P-922/2014 of May 2, 2014.

⁸ Ratification of ILO Conventions: Ratifications for Belarus. https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103154.

⁹ Henceforth – Fund of social protection.

The state social insurance has a wide scope of application and covers both dependent employed and self-employed persons and also unemployed persons in some cases:

- citizens working for legal entities or for individual entrepreneurs under employment contracts or civil-law contracts concerning the provision of services, the performance of works and the creation of intellectual property objects as well as individuals, who are at the owners, shareholders or founders of a legal entity and also heads of the respective legal entity;
- individual entrepreneurs, notaries, advocates;
- convicted prisoners, involved in the performance of paid works;
- unemployed disabled people who did not reach the generally established retirement age, receiving a monthly insurance payment in accordance with the legislation on the state obligatory insurance against accidents at work and occupational diseases;
- persons receiving sickness benefits in accordance with the legislation on the state obligatory insurance against accidents at work and occupational diseases.

The following categories of persons can join the state social insurance voluntarily:

- citizens working for physical persons under civil-law contracts concerning the provision of services, the performance of works and the creation of intellectual property objects as well as individuals, who are the owners, shareholders or founders of a legal entity and also heads of the respective legal entity;
- creative workers;
- physical persons performing craftsman activities without state registration as individual entrepreneurs.¹⁰

In 2006 the *social insurance against accidents at work and occupational diseases* was replaced by the *state insurance against accidents at work and occupational diseases*.¹¹ It is a state insurance *sui generis*, which is no longer regulated as part of social insurance. The insurer is the Belarusian Republican Unitary Enterprise “Belgosstrakh”. The insured persons are dependent employees, civil servants, students, persons working under civil-law contracts concerning the provision of services, the performance of works and the creation of intellectual property.

Social security contributions

The social security contributions for the pension insurance are paid both by the employer (28% of all payments in favour of employees) and by the employee (1%). Self-employed persons are liable for the pension insurance at the rate of 29%. The social security contributions for the so called “social insurance” are paid only by the employer (6%). Self-employed persons are liable for the “social insurance” at the rate of 6%. These rates

¹⁰ Art. 7 of the Law No. 3563-XII of January 31, 1995 “On the basics of the state social insurance”.

¹¹ Edict No. 530 of the President of the Republic of Belarus of August 25, 2006 “On insurance activity”.

are regulated in Art. 3 of Law No. 138-XIII of February 29, 1996 “About compulsory insurance contributions to the budget of state non-budgetary Fund of social protection of the population of the Republic of Belarus”.

In addition, since January 1, 2009 employers are obliged to pay social insurance contributions for certain categories of employees for a professional pension insurance. Initially the rates for the professional pension insurance were set by the Edict No. 23 of the President of the Republic of Belarus of January 10, 2009 “On rates of insurance contributions for the professional pension insurance”. By Edict No. 441 of the President of the Republic Belarus of September 25, 2013 “On some issues of professional pension insurance and provision of pensions”, some of these rates have been raised since January 1, 2014: the rate of contributions for employees occupied full time with underground works or with work under especially harmful and especially severe conditions have been raised from 4.8 to 9% and for the employees occupied with work under harmful and severe conditions from 2.6 to 6%.

The contributions to the so called “social insurance”, the pension insurance and the professional pension insurance are paid to the Fund of social protection. It is a state non-budgetary fund under state administration.

According to the Belarusian legislation, pension rights do not emerge for the periods of work, for which pension insurance contributions were not paid either by the employee or by the employer. The legislation does not provide a subsidiary responsibility of the state in such cases.¹²

Since January 1, 2016 foreign citizens and stateless persons working in the Republic of Belarus or acting as individual entrepreneurs are subject to the compulsory state social insurance under the conditions established by the legislation for the citizens of the Republic of Belarus.¹³

Pensions

The current pension scheme in Belarus is a state one-pillar pay-as-you-go scheme.¹⁴ Voluntary occupational pension schemes have been gradually introduced. But the participation rate is insignificant.¹⁵ It is recommended by the Edict No. 137 of the

¹² Ministry of Labour and Social Security of the Republic of Belarus, http://www.mintrud.gov.by/ru/new_url_662027559.

¹³ Before January 1, 2016, foreigners in Belarus had a right to join the social security scheme voluntarily. See Edict No. 534 of the President of the Republic of Belarus of December 31, 2015 “On issues of social security”. See also http://revera.by/en/analytical_materials_en-amendments_in_the_payment_of_contributio.html.

¹⁴ K. Lisenkova, K. Bornukova, *Effects of population ageing on the pension system in Belarus*, Baltic Journal of Economics 2017, 17, 2, p. 103–118 (104), <https://doi.org/10.1080/1406099X.2017.1318000>.

¹⁵ See: *Social protection and social inclusion in Belarus*. European Commission. Directorate – General for Employment, Social Affairs and Equal Opportunities Unit E2 2009, p. 62; http://Ec.europa.eu/employment_social/spsi.

President of the Republic of Belarus of April 11, 2016 “On the improvement of pension provision” to increase the participation of employers in voluntarily occupational pension schemes according to their financial capacities.

Since January 1, 2009 the (*funded*) *professional pension insurance* was introduced,¹⁶ which replaces the pensions for working under special working conditions and the long-service pensions. The following categories of employees are covered by professional pension insurance: employees occupied full time with underground works, with works under especially harmful and especially severe conditions, with works under harmful and severe conditions of work; some categories of employees occupied in civil aviation, in textile production, in agricultural production; drivers of urban transport; some categories of actors; athletes; some categories of health and pedagogical employees.¹⁷ The following transition regulation was provided: employees who have worked half of the required for a pension for working under special working conditions or a long-service pensions before January 1, 2009, can choose between a professional pension or additional payment to wage.¹⁸ The amount of the additional payment is set by the employer and must not be below the amount of contributions to the professional pension insurance. Professional pensions are divided into *early professional pensions*, which are paid to the insured person before reaching the general retirement age and *additional professional pensions*, which are paid to the insured person after reaching the general retirement age.¹⁹

The *pensions* are divided into *labour* and *social* pensions. The labour pensions are: old-age pensions, disability pensions, survivor pensions, long-service pensions and pensions for meritorious service to the Republic. The labour pensions are financed by the Fund of social protection and the pensions for meritorious service to the Republic are in addition partially financed through the state budget. There are special pension's provisions for the military staff (non-contributory, paid from state budget), for civil servants and for persons, who have suffered by the catastrophe at the Chernobyl nuclear reactor and for members of their families (contributory).

Minimum levels for old-age pensions, disability pensions and survivor pensions are established by law (Art. 7 Law No. 322-Z of November 11, 1999 “About the state minimum social standards”).

The pension insurance covers citizens of the Republic Belarus who are permanently living in the Republic of Belarus, foreign citizens and persons without citizenship who are permanently residing in the Republic of Belarus.²⁰

The right to *old-age pensions* is granted if the following conditions are fulfilled:

- *Length of service* of at least 25 years for men and at least 20 years for women is required;

¹⁶ Law No. 322-Z of January 5, 2008 “About professional pension insurance”.

¹⁷ Art.5 Law No. 322-Z of January 5, 2008 “About professional pension insurance”.

¹⁸ This regulation came into force on October 1, 2013.

¹⁹ Art.1 Law No. 322-Z of January 5, 2008 “About professional pension insurance”.

²⁰ Art. 1 Law No. 1596-XII of April 17, 1992 “About provision of pensions”.

- *Retirement age*: For a very long period of time Belarus was one of the countries²¹ with the lowest retirement age: since 1928 it was 55 years for women and 60 years for men. Due to the ageing of population in Belarus²² since January 1, 2017 the retirement age is raised by 6 months every year until 58 years for women and 63 years for men in 2022²³;
- *Contribution record*: in 2006 a contribution record (minimum insurance period) of 5 years was introduced. The contribution record was raised up to 10 years in 2014 to and up to 15 years 6 months in 2016. Since January 1, 2017 a contribution record is raised by 6 months every year until 20 years of paid contributions.²⁴

The increasing of the contribution record from 5 to 10 years was subject to constitutional control (Decision No. P-943/2014 of the Constitutional Court of the Republic of Belarus of July 7, 2014 “Concerning compliance with the Constitution of the Republic of Belarus of the Law of the Republic of Belarus. About amendments and additions to some laws of the Republic of Belarus on issues of pension provision”). The Constitutional Court held that the legislative regulation, according to which the minimum period for payment of compulsory pension insurance contributions increases, corresponds to one of the main principles of state social insurance – mandatory participation of employers and working citizens in the formation of state extra-budgetary social insurance funds, from which pensions are paid (Art. 1 and 2 of the Law of the Republic of Belarus “On the basics of the state social insurance”). The payment of the compulsory insurance contributions during a certain period of time, provided for by the legislator as a condition for the pension claim, allows the state to guarantee properly the realization of the right to pension. The Court confirmed and further developed its legal position outlined in the decisions of October 11, 2010 and October 16, 2012. The essence of this position is that pensions are one of the main social guarantees, since they affect the interests of the entire population, both working and non-working. The legislator, in exercise of his constitutional mandate to determine the basics, the main content and the principles of social protection (para. 2 Part 1 Art. 97 of the Constitution) is entitled to define the general rules of pension provision and conditions for pension claims. Concerning the further raising of the contribution record up to 20 years, the Constitutional Court in its decision No. P-1080/2016 of December 27, 2016, confirmed its legal position, laid down in the abovementioned decision of July 7, 2014. At the same time, the Court remarked that the legislator should guarantee the right to labour pension to certain categories of citizens who perform (performed) socially significant activities or functions (which are

²¹ Also Russia and Uzbekistan.

²² “According to the World Bank, the Belarusian population decreases from 10.2 in 1991 million to 9.5 million people in 2014. 2013 became the first year with registered Pension Fund deficit”. K. Lisenkova, K. Bornukova, *Effects of population...* (see fn. 14), p.103–104.

²³ Edict No. 137 of the President of the Republic Belarus of April 11, 2016, Art. 11 of Law No. 1596-XII of April 17, 1992 “About provision of pensions”.

²⁴ Edict No. 534 of the President of the Republic Belarus of December 31, 2015 “On issues of social security”.

included in the service record), but do not have the necessary contribution record until reaching the general established retirement age (because the respective periods are not included in the contribution record, e.g. periods of military service, child care leave up to the age of 3 years). In particular the Court held, that the legislative regulation, which does not include into the contribution record the time of childcare up to the age of 3 years, does not fully take into account the constitutional principle of social justice, which is inherent in a social state and Art. 32 of the Constitution, according to which the family, motherhood, fatherhood, and childhood are under the protection of the state. The legislator should include certain periods of such activities or functions into the contribution record or otherwise take into account these periods.

For some categories of persons (war veterans, mothers of soldiers killed in action, mothers of five or more children, parents of children with disabilities, persons with disabilities since childhood) a reduced contribution record of at least 5 years is required. For these categories of persons furthermore a decreased retirement age (minus 5 years) is provided for by law and in some cases also a reduced length of service. Since January 2018 persons, who have reached retirement age and worked at least 40 years (in case of men) or 35 years (in case of women) are entitled to old-age pensions if a contribution record of 10 years is fulfilled.²⁵ Also for working under hazardous conditions the length of service and the retirement age are reduced in comparison to the general requirements.

Old-age pensions are paid in the amount of 55 per cent of the average wage of the last 21 working years (and in case of less total working years for the whole working period), but not below the minimum level for the old-age pension. The minimum level of the old-age pension is 25 per cent of the highest subsistence minimum level set by the Ministry of Labour and Social Protection of the Republic of Belarus for two last quarters (Art. 23 and 57 of Law No. 1596-XII of April 17, 1992 “About provision of pensions”).

Disability pensions are granted regardless of the cause of the disability if there is a certain length of service (between 1 and 15 years depending on the age of the disabled person) at the time of the occurrence of the disability or the time of claiming for a pension. There are three groups of disability. The length of the insurance period does not matter. It is enough that insurance contributions were paid at least for one month.²⁶

For the *survivor pension* are eligible members of the family of the deceased without working ability, if they had been financially dependent on the deceased. Irrespective of a financial dependence from the deceased the pensions are paid to:

- children, siblings and grandchildren younger than 18 years of age (younger than 23 years of age if a student), and also children, siblings and grandchildren above

²⁵ Art. 5 and 22.1 of Law No. 1596-XII of April 17, 1992 “About provision of pensions”.

²⁶ H. Meleshko, *Disability pensions*, in: H. Meleshko (ed.), *The Social Security Law: A Textbook* (X.T. Мелешко, *Трудовые пенсии по инвалидности*, в: *Право социального обеспечения: Учебное пособие*. Под ред. X.T. Мелешко), Minsk 2013, p. 248.

18 years if they had been disabled before age 18. Siblings and grandchildren are entitled if their parents reached a retirement age;

- one of the parents or spouse, grandparents, siblings, irrespective of age and capacity to work, who do not work and care for children, siblings or grandchildren of the deceased younger than 8 years of age.

A survivor pension is granted if the deceased by day of his death has had a length of service which would be necessary for the entitlement to disability pension. The survivor pension does not cease on remarriage.

The Fund of social protection pays also disability pensions and survivor pensions caused by a work accident or occupational disease and these cost are to be reimbursed by “Belgosstrakh” to the Fund.²⁷

Social pensions (financed from state budget) are paid to the following persons who are not entitled to a labour pension:

- persons with disabilities, including persons with disabilities since childhood;
- children with disabilities younger than 18 years of age;
- children who lost their breadwinner;
- citizens aged 65 and over (men) or 60 and over (women).²⁸

Until 2017²⁹ the age requirement was 60 years for men and 55 for women. Concerning the raising of the age requirement for the entitlement to social pension, the Constitutional Court in its decision No. P-1080/2016 of December 27, 2016 stated, that the raised age requirement complies with the constitutional principle of social justice. The legislator can within the scope of his discretion determine the conditions for obtaining a social pension, and in a particular the age requirements. The differences in the legal nature of the labour and the social pensions justifies different regulations for these pensions.

Pensions for people residing abroad. Pensions, granted in the Republic of Belarus before residing abroad are paid for 6 months in advance and ceased for the future, unless a reciprocal agreement is applied.³⁰ There are agreements with Azerbaijan³¹, Ukraine, Moldova and Tajikistan based on the territorial principle and with the Republic of Lithuania, the Republic of Latvia and the Russian Federation based on the proportional

²⁷ Item 292.1 Edict No. 530 of the President of the Republic of Belarus of August 25, 2006 “On insurance activity”.

²⁸ Art.72, 73 Law No. 1596-XII of April 17, 1992 “About provision of pensions”.

²⁹ Law No. 14-Z of January 9, 2017 “About amendment of some Laws of the Republic of Belarus”.

³⁰ Art. 92 Law No. 1596-XII of April 17, 1992 “About provision of pensions”.

³¹ <http://eng.belta.by/society/view/belarus-azerbaijan-sign-administrative-agreement-on-pension-coverage-96760-2016>.

principle.³² Russia pays 22.700 pensions to people in Belarus.³³ The general rule that pensions are paid abroad only for 6 months is inherited from the USSR Law of May 15, 1990 “About provision of pensions in the USSR” (Art. 117).³⁴

Benefits

Sickness benefit (contributory) is calculated at a rate of 80% of the employees average salary for the first 12 days of sickness (until 2013 – for the first 6 days of sickness³⁵) and 100% for the remaining period of sickness.³⁶ If a sickness is caused by work accident or occupational diseases the sickness benefit is financed through the state insurance against accidents at work and occupational diseases.

These categories of persons are entitled to *family benefits*:

- citizens of the Republic of Belarus, foreign citizens and persons without citizenship who are permanently living in the Republic of Belarus;
- foreign citizens and persons without citizenship who are temporarily residing in the Republic of Belarus.³⁷

The following family benefits are financed through the Fund of social protection and paid to persons who are covered by social insurance if they have paid social insurance contributions or such contributions were paid for them: maternity benefit, childbirth benefit, child care benefit up to the age of 3 years, sickness benefit to care for a sick child.

The following family benefits are financed through the state budget and paid to persons who are not covered by social insurance (e.g. unemployed women, students, women in military service, non-working father of a child in relation to child care benefit up to the age of 3 years): maternity benefit, childbirth benefit, child care benefit up to the age of 3 years.

³² Fund of social protection of the population of the Ministry of Labour and Social Security of the Republic Belarus. Payment of pensions for citizens of the Republic of Belarus residing abroad. http://www.ssf.gov.by/priside/payment_pension/coming_pay/; ILO. International social security agreements. Belarus. http://ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=BLR&p_count=424&p_classification=23.01&p_classcount=8.

³³ Some 19,300 pensions awarded in Belarus under social security agreement with Russia. <http://eng.belta.by/society/view/some-19300-pensions-awarded-in-belarus-under-social-security-agreement-with-russia-99923-2017>.

³⁴ E. Machulska, *The right to social security in the Constitution of the Russian Federation*, in: *The right to social security in the constitutions of the world: broadening the moral and legal space for social justice*, ILO Global Study 2016, 1, p. 226; M. Shumylo, *The right to social protection in the Constitution of Ukraine*, in: *The right to social security in the constitutions of the world: broadening the moral and legal space for social justice*, ILO Global Study 2016, 1, p. 293–294.

³⁵ Order No. 1290 of the Council of Ministers of the Republic of Belarus of September 30, 1997.

³⁶ Order No. 393 of the Council of Ministers of the Republic of Belarus of April 25, 2014.

³⁷ They are entitled to a childbirth benefit, if they paid and for them were paid social insurance contributions at least 6 months before the childbirth, see Art. 11 Law No. 7-Z of December 29, 2012 “About state family benefits”.

Through the state budget are financed: child care benefit for children aged between 3 and 18 years of age, for the child with disabilities or infected with HIV/AIDS up to the age of 18 years.³⁸

Maternity benefit is paid from the 30st weeks of pregnancy for 126 days, in the event of perinatal complications or multiple birth for 140 days. Maternity benefit is calculated at a rate of 100% of the mothers average salary for the six preceding calendar months, but it shall not exceed the triple amount of the average salary in the Republic of Belarus in the month, preceding the maternity leave and shall be not less than the minimum level of maternity benefit.³⁹

Child care benefit up to the age of 3 years for the first child is calculated at a rate of 35% of the average salary in the Republic of Belarus; for the second child and further children at a rate of 40 %, for a child with disabilities at a rate of 45%.

Sickness benefit to care for a sick child is calculated at a rate of 100% of the average salary in the Republic of Belarus, but it shall not exceed the triple amount of the average salary in the Republic of Belarus, and shall be not less than 50% of the highest level of the subsistence minimum.

A new form of social security is the *maternal capital* as an additional support measure for families, which is provided for the period from January 1, 2015 to December 31, 2019.⁴⁰ Entitled to the maternal capital are families (citizens of the Republic of Belarus) in case of birth or adoption of the third or further children. It is a once-off benefit (cashless payment) at the amount 10 000 US-Dollar. This benefit can be used for the improvement of living conditions, for education, for social services, for health care, for a funded (supplementary) pension of the mother (stepmother) in a full family or one of the parents in an incomplete family.

Eligible for the *unemployment benefit* are persons of working age (older than 15 years), residing in Belarus, registered at the state employment office, looking for job, able and willing to work.

The unemployment benefit is calculated as follows:

- for unemployed persons, who were during the last 12 months in full-time employment at least 12 weeks – 2 basic units⁴¹ during 26 calendar weeks;
- for unemployed persons, who were during the last 12 months in full-time employment less than 12 weeks – 1 basic unit for the first 13 calendar weeks and 75% of the basic unit for the following 13 weeks;
- for unemployed persons, who are looking for a job at the first time or who were not in employment longer than one year – 85% of the basic unit during the first 13 weeks and 70% of the basic unit for the following 13 weeks.

³⁸ Art. 4 Law No. 7-Z of December 29, 2012 “About state family benefits”.

³⁹ Art. 4 Law No. 7-Z of December 29, 2012 “About state family benefits”.

⁴⁰ Edict No. 572 of the President of the Republic Belarus of December 9, 2014 “On additional state support measures for families raising children”.

⁴¹ State January 1, 2018 basic unit is 24,5 rouble.

The payment of unemployment benefits cannot exceed 26 calendar weeks during each 12-month period.

Eligible for the *needs based social assistance* are citizens of the Republic of Belarus, foreign citizens and persons without citizenship who are permanently residing in the Republic of Belarus if their average per capita income, for objective reasons, is lower than the highest subsistence minimum level set by the Ministry of Labour and Social Protection of the Republic of Belarus for two last quarters.⁴² The needs based social assistance is provided in the form of monthly and (or) one-time social benefits for buying food, medicines, clothing, footwear, school equipment and for some other needs.

Conclusion

On the one hand, a strong historical path dependency of the Constitution of 1994 in relation to the Constitution of the BSSR of 1978 can be noted regarding detailed regulation of social rights. In the current Belarusian legislation some regulations from BSSR time (e.g. regulations concerning pensions for people residing abroad, pensions for mothers of five or more children, earlier retirement age for certain categories of employees and for women in comparison to men) have remained. On the other hand, the social security regulations have been considerably reformed (increasing of retirement age and contribution record, introduction of a professional pension insurance and abolishment of the social insurance against accidents at work and occupational diseases).

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⁴² Edict No. 41 of the President of the Republic of Belarus of January 19, 2012 “About state needs based social assistance”.

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