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SOME ASPECTS OF RESEARCH ON THEORETICAL KNOWLEDGE ON HUMAN RIGHTS TO SOCIAL PROTECTION

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Honcharov A.V. Some aspects of research into theoretical knowledge about human rights to social protection.

The article examines some aspects of research into theoretical knowledge about human rights to social protection.

Social protection of the population is one of the defining directions of the state's social policy, the implementation of its social function. Even with the traditional nature of the issues of social protection for sectoral legal sciences, a significant number of general theoretical aspects related to the essence of social protection require careful rethinking and further constructive coverage. The law of social protection is developing on the basis of new concepts and principles. Its scope includes new social relations that were not previously included in the area of legal regulation. In the time since Ukraine gained independence until today, perhaps no other branch of law has undergone such cardinal changes.

The social function of the state is diverse in content and significant in the scope of its activities. Its main purpose is to eliminate or mitigate possible social tension in society, to equalize the social status of people, to develop healthcare, education and culture. This clearly reflects the goal of the state - to ensure a decent existence for a person, free development of the personality, protection of the family, social justice and social security.

The main content of the social function of the state is socio-economic human rights. The formation of the concept of human rights and the social state are considered as two mutually dependent processes, because the formation of a social legal state was historically and logically preceded by the recognition of the concept of human rights and freedoms. In legal literature, the basic social rights and freedoms of a person and a citizen are understood as a set of constitutional rights of a person (or only a citizen of a particular state), which enables his claims to receive certain material benefits from the state under appropriate conditions. The basic social rights and freedoms of a person are designed to ensure the last decent standard of living, the right to work, the right to housing, the right to free medical care, etc. One of the social rights that the state guarantees and must ensure is the right to social protection.

However, the implementation of rights in the field of social protection requires the state not only to proclaim such rights, but also to foresee a legal mechanism for their provision (specific grounds, conditions and procedure for exercising the right, obligated subjects) and a financing mechanism. It should be noted that the legal mechanism for the implementation of human rights in the field of social protection has significant differences in states of different socio-economic orientation.

It is noted that social protection is associated with the social policy of the state, which is implemented in the interests of the main social groups of the population. Therefore, social policy is understood as the purposeful activity of clearly defined subjects, primarily the state, aimed at regulating social relations, social needs and interests of various groups of the population, related to ensuring their well-being and personal development.

Key words: social protection, pension provision, social insurance, human rights.

Гончаров А.В. Деякі аспекти досліджень теоретичних знань про права людини на соціальний захист.

У статті розглянуто деякі аспекти досліджень теоретичних знань про права людини на соціальний захист.

Соціальний захист населення є одним із визначальних напрямів соціальної політики держави, реалізації її соціальної функції. Навіть за традиційності проблематики соціального захисту для галузевих юридичних наук, значна кількість загальнотеоретичних аспектів, що стосуються сутності соціального захисту, потребує ретельного переосмислення та подальшого конструктивного висвітлення. Право соціального захисту розвивається на основі нових концепцій і принципів. До його сфери включаються нові суспільні відносини, що раніше не входили до зони правового регулювання. За час від набуття Україною незалежності до сьогодні, мабуть, ніяка інша галузь права не зазнала таких кардинальних змін.

Соціальна функція держави різноманітна за змістом і значна за обсягом своєї діяльності. Головне її призначення – усунути або пом'якшити можливу соціальну напруженість у суспільстві, вирівняти соціальний стан людей, розвивати охорону здоров'я, освіту та культуру. У цьому чітко простежується мета держави – забезпечити людині гідне існування, вільний розвиток особистості, захист сім'ї, соціальної справедливості та соціальної захищеності.

Основним змістом соціальної функції держави є соціально-економічні права людини. Становлення концепції прав людини та соціальної держави розглядаються як два взаємозумовлені процеси, адже формуванню соціальної правової держави історично та логічно передувало визнання концепції прав і свобод людини. У юридичній літературі під основними соціальними правами та свободами людини і громадянина розуміється сукупність конституційних прав людини (або лише громадянина конкретної держави), яка уможливлює її претензії на отримання від держави за відповідних умов певних матеріальних благ. Основні соціальні права та свободи людини покликані забезпечувати останній гідний життєвий рівень, право на працю, право на житло, право на безоплатне медичне обслуговування тощо. Одним із соціальних прав, які гарантує та має забезпечувати держава, є право на соціальний захист.

Однак реалізація прав у сфері соціального захисту вимагає від держави не лише проголошення таких прав, а й передбачення юридичного механізму їх забезпечення (конкретні підстави, умови та порядок здійснення права, зобов'язальних суб'єктів) та механізму фінансування. Слід зазначити, що юридичний механізм реалізації прав людини у сфері соціального захисту має суттєві відмінності в державах різного соціально-економічного спрямування.

Відзначено, що соціальний захист пов'язаний з соціальною політикою держави, яка реалізується в інтересах основних соціальних груп населення. Тому під соціальною політикою розуміється цілеспрямована діяльність чітко визначених суб'єктів, перш за все держави, спрямована на впорядкування соціальних відносин, соціальних потреб та інтересів різних груп населення, пов'язаних із забезпеченням їх добробуту та особистим розвитком.

Ключові слова: соціальний захист, пенсійне забезпечення, соціальне страхування, права людини.

Problem statement. Social protection of the population is one of the defining directions of the state's social policy, the implementation of its social function. Even with the traditional nature of the issue of social protection for sectoral legal sciences, a significant number of general theoretical aspects related to the essence of social protection require careful rethinking and further constructive coverage. In this regard, the study of human rights to social protection in the context of modern social transformations is of great importance for the successful resolution of urgent problems related to the improvement of current legislation, law-making and law enforcement activities. After all, the level of social protection of the population is an indicator of the quality of life of society, the level of development of the state as a guarantor of human and citizen rights and freedoms.

The state of development of this issue. The study of human rights to social protection was carried out by such scientists as, for example, N.B. Bolotina, E.E. Machulska, P.D. Pylypenko, V.A. Rudyk, I.M. Syrota, B.I. Stashkiv, O.G. Chutcheva, V.Sh. Shaikhatdinov, I.S. Yaroshenko and others.

The aim of the article is to study some aspects of knowledge about human rights to social protection.

Presentation of the main material. At present, Ukraine is experiencing a period of its formation as a democratic and legal state, the foundation for the development of a social state is being laid. The latter should create conditions for providing citizens with work, redistribute income, provide the population with a living wage through the state budget, promote the formation of a middle class, protect wage labor, take care of education, culture, family, health care, improve social security, etc. [1, p. 126].

The term "social state" characterizes a state in which improving the well-being of citizens is a priority task [2, p. 183]. The social state assumes the obligation to care about social justice, the well-being of citizens, their social security. According to V.P. Hetman, a social state can be defined as one that seeks

and is able to implement a policy aimed at ensuring civil rights for all members of society, guaranteeing a decent life, and also creating conditions for the comprehensive development of the individual and the implementation of the legally embodied interests of each citizen in combination with the interests of the whole society [3, p. 5].

The main content of the social function of the state is socio-economic human rights. The formation of the concept of human rights and the social state are considered as two mutually dependent processes, because the formation of a social legal state was historically and logically preceded by the recognition of the concept of human rights and freedoms. In legal literature, the basic social rights and freedoms of a person and a citizen are understood as a set of constitutional rights of a person (or only a citizen of a particular state), which enables his claims to receive from the state under appropriate conditions certain material benefits. Basic social rights and freedoms of a person are designed to ensure the last decent standard of living, the right to work, the right to housing, the right to free medical care, etc.

According to O.F. Skakun, social rights are the possibilities (freedom) of an individual and a citizen to freely dispose of their labor force, to use it independently or in accordance with an employment contract, that is, the right to free labor (choice of activity, safe working conditions, guaranteed minimum wage, etc.), the right to social security, rest, education, a decent standard of living, etc. [4, p. 181].

As noted by Yu.M. Todyka and V.S. Zhuravsky, social rights are rights related to the social relations of a person with society, the state, collectives, and other people. According to A. Pazenok, this definition does not fully reveal the essence of social rights, because all relations of a citizen with society, that is, society, can be considered social [5, p. 36–37].

According to V. Dahl's dictionary, the term «sociality» comes from French and means public; that is, that which characterizes common life, mutual obligations of civic life, life. In philosophical encyclopedic literature, it is indicated that the term «social» comes from the Latin. *socialis* - public, common and connected with the common life of people, with various forms of communication between them, primarily those that concern society, have a public and common character.

In the Oxford Fundamental Explanatory Dictionary of the series «A Dictionary of Business», the term «social security» is interpreted as a state system of payment of benefits for illness and unemployment, as well as various assistance to women and children, including pensions. That is, this term outlines the system of social protection mainly through the form of social security entrusted to the relevant state ministry with an indication of the measures of responsibility for its implementation.

One of the social rights that the state guarantees and must ensure is the right to social protection. The concept of «social protection» in our country began to be widely used only at the stage of transition to market relations. It replaced the concept of «social security», which was used in the Soviet economy, characterizing a specific organizational and legal form of social protection, which was carried out directly by the state.

However, the implementation of rights in the field of social protection requires the state not only to proclaim such rights, but also to foresee a legal mechanism for their provision (specific grounds, conditions and procedure for exercising the right, obligated subjects) and a financing mechanism. It should be noted that the legal mechanism for the implementation of human rights in the field of social protection has significant differences in states of different socio-economic orientations.

An important component of the theoretical study of social protection is the definition of this concept in order to clarify its essential features. The meaning of legal concepts comes from their property of reflecting the most important aspects of objects and phenomena of reality. The concept is revealed by means of a definition, which is a logical operation by means of which the content is revealed and (or) its scope is established. It must be remembered that the concept denotes such features of a set that: firstly, are characteristic of each element of a certain set; secondly, reveal the essence of this element and the entire set as a whole; thirdly, in their totality, they distinguish this set from any other. Such features are called essential. Additional essential features that characterize other relations of the reflected phenomena can be the basis for distinguishing varieties of a particular phenomenon [6, p. 36].

In legal encyclopedic literature, social protection is understood as a system of economic, legal, organizational and other measures of the state to ensure social rights and guarantees of citizens. This protection is conditioned by the constitutional principle, according to which Ukraine is a social state (Article 1 of the Constitution of Ukraine), and is aimed at the care of the state and society for citizens who need assistance due to age, health, social status, due to insufficient provision of means of subsistence, etc. The social protection system includes the payment of pensions, various types of material assistance and compensations, care for the sick and elderly, care for children and youth, financing from state and local budgets of relevant social programs (healthcare, education, housing construction, overcoming unemployment, etc.). An important component of social protection is social

security, which is a state system of protecting the population from social risks (loss of work, illness, old age, disability, loss of breadwinner). The main organizational and legal forms of this provision are: mandatory state social insurance, state social assistance to low-income citizens, state material support for certain categories of persons at the expense of budget funds [7, pp. 558–559].

According to I.M. Syrota, the term «social protection» belongs to the function of the state, which means a set of measures for the material support of citizens unable to work. According to the position of E.E. Machulskaya, in a broad sense, social protection should be understood as the activities of the state aimed at ensuring the process of formation and development of a full-fledged personality, identifying and neutralizing negative factors affecting the personality, creating conditions for self-determination and affirmation in life [8, p. 4].

In other scientific sources, social protection is defined as a set of organizational and legal (creation of social protection institutions and laws regulating their activities) and economic measures aimed at ensuring the well-being of each member of society in specific economic conditions.

According to the considerations of I.M. Belov and N.V. Semenyshen, social protection is a multi-level system of economic, social and legal relations for managing social risks of society to eliminate their undesirable consequences and ensure an adequate standard of living [9, p. 103].

According to O.G. Chutcheva, the right to social protection is a set of two powers: 1) the rights of citizens to access social benefits that are recognized by a state-organized society as necessary and sufficient for normal human reproduction; 2) the right to compensation in the event of impossibility of access to social benefits due to the emergence of social risks that are defined at the legislative level. As a legal category, the author continues, social protection appears as a set of legal norms that regulate social relations that characterize the desire of society to protect its members from the threat of the impossibility of satisfying needs that it recognizes as important for the stable development of society as a single community.

Taking into account the above, O.G. Chutcheva proposes a definition of social protection as a legal institution that originated in the depths of social security law and determined the transformation processes of the modern legal system associated with the formation of its new element – social law [10, p. 9].

In the Constitution of Ukraine, social protection is understood as a system of measures to protect the population from social risks. This is the content of Article 46, which establishes «the right of citizens to social protection, which includes the right to provide for them in the event of complete, partial or temporary disability, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided for by law». According to the content of the article and in view of the social risks, the provision from which is provided for in the article, the right to social protection is similar to the right to social security. However, the organizational and legal system created in Ukraine to provide for the population from social risks, neither in its composition nor in its essence gives grounds to apply the term «social security» to it. As a result, Ukraine has laid the legal and institutional foundations of a new system of social protection, characterized by a number of features.

Firstly, the Constitution of Ukraine proclaims the right of citizens to social protection and establishes state guarantees for its implementation.

Secondly, numerous social protection legislation has been created (the term «legislation» is used here in the broadest sense), which provides for a legal mechanism for providing the population with social cash payments and social services in certain cases, which according to international legal practice have been called «social risks».

Thirdly, although this system does not yet have a single legal act that would enshrine the general principles of social protection, it nevertheless has a systemic nature of acts regulating relations in the field of social protection, and their functional «grouping», aimed at protecting the population from the negative consequences of the occurrence of social risks.

Fourth, in institutional terms, the national social protection system includes: a) all organizational, financial and legal forms through which social payments are directly made and social services are provided to individual citizens in the event of social risks, these are social insurance, financing through taxes, state social assistance, non-state social security; b) indirect social protection measures, which are becoming increasingly widespread.

Along with the affirmation of human and civil rights and freedoms, the implementation of these rights and freedoms, that is, their mechanism, is of great importance. Thus, citizens have the right to apply to state authorities, local governments, enterprises, institutions, organizations and officials in accordance with their competence to implement any right in general and social rights in particular. When implementing social rights between citizens, on the one hand, and the specified authorities, institutions, organizations, enterprises and their officials, on the other, administrative and legal relations

arise that are imperative in nature. From the point of view of implementation, citizens' rights are divided into absolute (unconditional) and relative. Absolute are rights whose implementation depends only on the citizen's will. And rights whose implementation depends not only on the citizen's will, but also on the availability of actual opportunities for their implementation at the present time, belong to relative rights. Relative rights should also be considered rights for the implementation of which an act of an executive body is required, for example, a decision to assign a pension or assistance.

Conclusions. The study of the theoretical foundations of the human right to social protection allows us to assert that this right is one of the key elements of the modern social security system and the foundation of a socially oriented state. The analysis of scientific approaches shows that the right to social protection encompasses a set of guarantees aimed at ensuring a decent standard of living, support in the event of social risks and creating conditions for social equality. Despite the significant volume of scientific work, the issues of improving the mechanisms for implementing this right, increasing the effectiveness of social policy and adapting legislation to new social challenges remain relevant.

In legal science, social protection of the population is mainly interpreted as a function of the state and is associated with its social policy. Social protection is understood as a set of interacting social and state measures of a legal, financial, economic, and organizational nature aimed at protecting the population from negative manifestations of social risks and creating the prerequisites for the comprehensive implementation of social rights and freedoms of man and citizen, and social policy is understood as the purposeful activities of clearly defined authorized entities aimed at regulating social and protective relations, social needs and interests of various population groups related to ensuring their well-being and personal development.

Therefore, further development of theoretical research and practical models of social protection is a necessary condition for strengthening the rule of law and ensuring an adequate level of social well-being of citizens.

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