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SOCIAL RIGHTS AFTER THE GLOBAL FINANCIAL CRISIS: EUROPEAN DIMENSION

Abstract. The article emphasizes the existence of the concept of "social Europe" as a social dimension of European integration. Modern understanding of social rights as a foundation for the formation and functioning of a social state has been justified. The influence of the global financial and economic crisis on the reform of the constitutional texts of European states has been studied out. The influence of the budget pact (as an independent constitutional way of overcoming crisis phenomena in the economy) on the mechanisms for realizing the social rights and freedoms of a person and a citizen has been established. It is justified that the introduction of the budget balance implies a restriction on public spending, since the only constitutional way out will be to cut costs, if the income does not cover a certain level of expenditure, and the limits of the deficit and debts have already been overcome. This implies the reduction of social programs, therefore - the possibility of violating citizens' constitutional rights to health, education, social security, etc.

Key words: welfare state, economic crisis, Social Europe, Stability and Growth Pact, humans rights, social rights.

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СОЦІАЛЬНІ ПРАВА ПІСЛЯ ГЛОБАЛЬНОЇ ФІНАНСОВОЇ КРИЗИ: ЄВРОПЕЙСЬКИЙ ВИМІР

Анотація. У статті акцентується увага на існуванні концепції «соціальної Європи» як соціального виміру європейської інтеграції. Обґрунтовано сучасне розуміння соціальних прав як фундаменту формування і функціонування соціальної держави. З'ясовано вплив глобальної фінансово-економічної кризи на реформування конституційних текстів європейських держав. Встановлено вплив бюджетного пакту як окремого конституційного засобу подолання кризових явищ у економіці на механізми реалізації соціальних прав і свобод людини і громадянина.

Ключові слова: держава загального добробуту, економічна криза, Соціальна Європа, Пакт стабільності та економічного зростання, права людини, соціальні права.

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СОЦИАЛЬНЫЕ ПРАВА ПОСЛЕ ГЛОБАЛЬНОГО ФИНАНСОВОГО КРИЗИСА: ЕВРОПЕЙСКОЕ ИЗМЕРЕНИЕ

Аннотация. В статье акцентируется внимание на существовании концепции «социальной Европы» как социального измерения европейской интеграции. Обоснованно современное понимание социальных прав как фундамента формирования и функционирования социального государства. Выяснено влияние глобального финансово-экономического кризиса на реформирование конституционных текстов европейских государств. Установлено влияние бюджетного пакта как самостоятельного конституционного способа преодоления кризисных явлений в экономике на механизмы реализации социальных прав и свобод человека и гражданина.

Ключевые слова: государство всеобщего благосостояния, экономический кризис, Социальная Европа, Пакт стабильности и роста, права человека, социальные права.

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Introduction. A special role of the influence of the global financial and economic crisis on the current situation in European countries should be highlighted. The cuts of post-crisis budget and redistribution have led to the fact that domestic implementation of social rights has slowed in many countries. To achieve cost consolidation in the situation of strictly (and sometimes not so much) limited resources, developing countries have adopted a regulatory policy that is large-scale and timely. Obligations taken by States concerning the balance of the budget should help ensure compliance with economic and financial restrictions imposed in accordance with the legislation of the European Union. However, as a consequence, there is a reduction or restriction of costs for public sector wages, the termination or removal of subsidies for basic goods and services (such as utilities), the reduction of social protection programs, the reform of old-age pensions and the introduction of regressive tax measures. These regulatory and institutional changes are issues of public finances that influence the implementation of social rights directly or indirectly.

Literature review and the problem statement. The study of issues related to general theoretical problems of the genesis of social rights has been developed in the scientific works of leading scientists, particularly Yu. H. Barabash, D. Barak-Erez, S. Giubboni, A. M. Gross, L. Malcolm, V. V. Rechytskyi et al. Among the authors of works dedicated to social rights during the transformation of financial and economic processes, we can distinguish the following: D. W. Bruno, R. O'Connell, X. Contiades, A. Fotiadou, C. Harvey, C. Kilpatrick, A. Nolan, O. Parker, R. Pye et al. Enormous contribution to the development of the problem of balancing the budget as a stabilization mechanism in the conditions of austerity policy was made by a number of researchers, particularly C. González, R. Martínez, S. Navarro, R. Ruiz et al.

The purpose of the article is a scientific analysis of the constitutional norms of the EU countries related to the adoption of the budget pact as an independent constitutional way of overcoming the crisis phenomena in the economy, and its impact on the mechanisms for realizing the social rights and freedoms of the man and the citizen. To study the theoretical bases of constitutional changes related to the world transformation of the economy, the method of constitutional comparative analyses is applied. This allows us to analyze the practice of foreign states, thereby avoiding miscalculations in carrying out constitutional reforms in Ukraine. Along

with this, a prognostic method is used, based on scientifically based assumptions concerning the future development of European constitutionalism.

Research results. Following the Great Recession, public social spending rose to just over 21 % of GDP in 2009, and the OECD average has stabilized at this historically high level. Public social spending-to- GDP ratios are highest at just over 30% of GDP in France and Finland, but Germany, Italy and Spain also devote more than a quarter of their economic resources to public social protection. In contrast, countries such as United States, Canada and Mexico, spend less than 18% of GDP on public social support [1]. Data mentioned above, once again confirm the statement that European Union countries are real Social Europe [2], and the lower social formation of the countries of the American continent («adherents of liberal identity - defenders of exclusively civil and political rights»).

The fundamental principle of the social state is a vector for the development of social rights. Moreover, it is worth noting that the social rights existed in pre-modern societies had a completely different justification («natural law», meaning those established by God himself) than the social rights that emerged (precisely, conquered) at the turn of the 19th-20th centuries, distinguished by the process of amending constitutions (During the first era of their constitutionalization, social rights were treated as nonbinding principles setting goals to the government [3]). However, the modern European doctrine of social rights points to their postmodern interpretation.

Namely, social rights are fundamental human rights. Only the enjoyment of socio-economic rights, and social inclusion, allow people to fully enjoy their civil and political rights [4]. Social rights entail budgetary expenses or call for government action and not mere forbearance does not differentiate them radically from the constitutionally protected rights to property, to equality before the law and to so-called negative liberties [5]. Social rights were simply not susceptible to judicial review and implementation. This argument was pursued with particular vigor by those who clung to the old certitudes that social rights were by their very nature «positive» and thus not amenable to judicial consideration [6]. In Europe, many can benefit from social rights guarantees at respectable levels, and protection through strong legal instruments and mechanisms, but too many still remain trapped in cycles of disadvantage and poverty. Moreover, an overall trend towards downgrading social rights guarantees can be observed across Council of Europe member States and the inequality gap between the rich and the poor is on the rise, in terms of income and wealth. Social rights the most important asset in meeting the challenge of global economic competition [7]. One of the most important challenges in contemporary human rights law and practice: the linkage between public finance, particularly budget decisions, and the realization (or not) of economic and social rights.

These rights are seen as derogable in times of crisis, a luxury only permissible in times of plenty. For all the progress made in normative recognition of (socio-economic rights), the response to the crisis reveals that these rights are still treated by many if not most governments as mere rhetorical aspirations rather than binding principles of public policy. However, at least by beginning to think about budgetary processes (about decisions as to how revenue is raised and dispersed, as to what projects to prioritise in society and, ultimately, about the proper distribution of wealth and power) we can start to break with the stranglehold of neoliberal orthodoxy and confidently assert that there is an alternative to austerity, immiseration and the undermining of socio-economic rights [8].

The very interest arises from the thesis that the «positive» social rights of the second generation should work exclusively in the budget sphere (as this sphere is somehow «humiliating» for an inventive and capable person). This means that the state should maintain at a worthy level only those who literally work..., completely devoted themselves to serving the state [9]. A citizen has the right to plan his life in such a way to be sure that when he/she reaches retirement age or in another insurance case he will be able to receive the expected payments, benefits and other guarantees. However, during an economic crisis, all groups of population, not just one of them (for some reason, as a rule, these are pensioners and the least socially protected citizens) have to bear difficulties [10].

The Eurozone crisis and its management prompted dramatic changes to social rights and entitlements, specifically in the Member States which were most severely affected by the economic downturn. Fundamental rights, including fundamental social rights, from different sources can be a means to contest those crisis-imposed changes to social rights [11].

The protection of social rights also remains permanent under the conditions of the financial crisis.

The damage done to social rights realization is not only attributable to specific crises-related outcomes such as turmoil on markets and labour opportunities but also results from a «creeping» of austerity measures and excessive economic contraction in terms of public expenditure beyond those countries/economies (e.g. the US, Spain, Greece, Ireland, Portugal and Italy) that have dominated the financial headlines since 2008. While most governments affected by the crisis introduced fiscal stimulus programmes (fiscal expansion) and ramped up public spending in 2008–2009, by 2010, premature expenditure contraction – in the form of «austerity» measures – became widespread, and this public expenditure consolidation is now expected to intensify at least into 2016. And, far from being exclusively a Eurozone or North American issue, fiscal contraction has been most severe in the developing world [12].

At the time of the economic downturn in 2008, the states of the European Union developed protection mechanisms that make it possible to overcome the sharp jumps in the global market.

It is concerned first (and foremost) with ensuring member state compliance with the fiscal targets enshrined in the revamped Stability and Growth Pact (SGP) (public deficits to be kept below 3% and public debt below 60% of GDP) and the «fiscal compact» of the Treaty on Stability Coordination and Governance (TSCG) (structural deficit to be kept below 1% GDP). Second, it is concerned with ensuring adherence to an array of targets measuring macroeconomic imbalances and economic competitiveness, including current account balance and unit labour costs, determined by the European Commission's Directorate-General for Economic and Financial Affairs (DG ECFIN). Third and finally, it also includes oversight of ostensibly social priorities related to poverty reduction and employment contained in the EU's «Europe 2020» strategy.

Post-crisis reforms of the sort described aforecited have, on the one hand, led to more significant indirect encroachment by the EU through the introduction of tougher macroeconomic rules (especially on public debt) and, on the other hand, led to an expansion of the EU's ability to directly impose its particular vision of the «social» in domestic reform processes [13].

Social economic indicators show that the current global financial crisis is having unparalleled negative consequences on the enjoyment of human rights for many people around the world, in particular for those living in situations of poverty and extreme poverty. And this reality has not changed since then. Research demonstrates that the poorer, more powerless and less visible populations – those who already experienced lower levels of human rights enjoyment than other social groups – have been hit hard by the job losses, poverty, and the economic and political upheaval that have followed the global financial collapse [14].

In response to the challenges of the global financial crisis, the member states of the European Union adopted a «budget pact». It is about a system of stabilizing norms introduced in the national constitutions of member states in order to determine the maximum allowable size of their budget deficit.

Thus, in 2008, France carried out a serious constitutional reform, which also affected the financial sphere (the «golden rule» of budgetary balance [15]). New edition of Art. 34 of the French Constitution of 1957 allows parliamentarians to set the limits of social spending (Laws on the financing of social security determine the general conditions for its financial balance and, taking into account the forecasted revenues, set the target expenditure in accordance with the conditions and with the reservations provided for by the organic law). It must be noted that in the next decades, with increasing life expectancy in France, as in other EU countries, the proportion of elderly people in the total population will increase. This factor will have a major impact on the pension system, requiring its reform. The system of social security and its financing in France in recent years has turned into a special social problem.

In the French social security system, there is a significant deficit in old age insurance (about 11 billion euros), in the case of illness (15 billion euros) or professional diseases and industrial accidents (800 million euros), or on family matters (4 billion euros). All these data indicate the crisis of the French social security system, which today «exists inadequate to its prosperity» [16].

It is easier to solve these problems with greater energy and determination during the crisis periods. Cost reductions are definitely necessary, especially in countries that are in a difficult economic situation, but only to a certain extent. At the same time, such a measure should be considered as a basis for long-term and short-term investments, possibly aimed at combining a reform of social security with a return to economic growth. Special measures of support should be provided for the most severely affected population. The appropriate «fire extinguishing» is vital, but it is clear that the restructuring should be much deeper.

It should be noted that the economic crisis in 2011 has had a profound effect on the Spanish society, thus stipulating the application of austerity policy. In particular, there was a need for a series of measures aimed at reducing the budget deficit and public debt. There was a need for more effective management of social spending for financial stability in the country.

The idea of constitutional reform, in particular Art. 135 of the Spanish Basic Law was justified by its initiators (explanatory note) [17] only by economic and political considerations: the inclusion of an appropriate constitutional provision to strengthen the belief in the medium and long-term stability of the Spanish economy in the situation of deep and long crisis. Firstly, the reform must guarantee the fiscal stability (bounding the public administration by such obligations); to confirm the Spanish compromise with the EU, and at the same time, provide economic and social heredity for the country, the prosperity of the present and future generations of citizens.

Firstly, the new version of Art. 135 adds to the subject of its regulation the subordination of all bodies of public administration to the principle of budgetary stability (Part 1, Article 135 of the Constitution of Spain). Secondly, it prohibits both the state and autonomous communities to create a structural deficit that exceeds the limits established by the EU for member states. Local communities, in turn, must ensure budgetary balance (Part 2, Article 135 of the Constitution). Thirdly, the provision on the need for issuing state loans and obtaining a loan of a permit established by law has been retained with reference to the government. Now this provision is extended to autonomous communities, and the total sum of state debts of all administrations cannot exceed the limit established by the Treaty on the functioning of the EU, namely 60% of GDP. Fourthly, there is a certain possibility of «maneuvering» in the constitutional regulation due to the listed conditions under which the deviation from the specified limit is permissible (natural disaster that the state cannot resist, the economic recession, etc.). An absolute majority of the Congressional deputies must confirm the presence of these exceptions. Fifth, the Organic Law on determining the limits of the structural deficit and the volume of public debt should be issued [18].

That means that the Spanish rule of law has undergone changes in a severe economic and financial crisis. The constitutional review has led to a reduction in expenditures, and unfortunately, social rights of citizens who need positive action by the state authorities will be imposed on the first place, particularly budget expenditures that are being reduced.

Economic reforms create the necessity of amending not only the current legislation, but also the constitutional level. Germany can serve as a vivid example of the impact of the global financial crisis on the content of the latest constitutional reforms.

As a result of the constitutional reform of 2009 in Art. 109 and Art. 115 of the Federal Law of the Federal Republic of Germany new limits of public debt were established. These are such innovations as: 1) the common rule is included that the budgets of both the Federation and the lands should be balanced in principle without proceeds from loans, but at the same time there are numerous exceptions depending on the type of deficit that needs to be eliminated; 2) the constitutional norm permits the existence of conjunctural debt for both the Federation and for land in anti-cyclical economic policy so that both levels of management can make debts in periods of lower growth and take steps to ensure the saving of funds and depreciation of debts in the phases of economic growth, which creates a balanced budget within a certain time period; 3) The Basic Law establishes more stringent limits for structural debt; 4) in case of a natural disaster or other exceptional situation, the constitutional limits may be increased; 5) The Federation is endowed with

tools for more effective reduction of public debt in the phase of economic growth; 6) the new borders of the state debt for land will be fully effective from 2020, when they will no longer be able to make structural debts, and from 2011 to 2019, so-called «consolidation assistance» will be provided to lands with serious financial problems, especially stated in the Basic Law; 7) limits for public debt established in Art. 109 and 115 are in any case interpreted in the context and in the sense of the *acquis communautaire* about the deficit limit of 3% of GDP [19].

In the new socio-economic conditions that arose after the unification of Germany, it was unable to provide the land with sufficient funds to perform their functions. The need for reform was also motivated by concerns about the high level of debt of both the Federation and the lands, which threatened the EU's arrangements for ensuring stability and economic growth. The crisis in the Eurozone and the austerity measures introduced in response to this fact have led to significant changes in the field of social rights.

Besides, it is necessary to indicate the constitutional provisions of the Basic Law of Italy, which came into force on January 1st, 2014 (adopted in 2012) – especially the so-called «principle of balanced budget». The immediate economic crisis, which had an impact on the financial component of the Italian Republic, pushed for changes to the Constitution, namely Articles 81, 97, 117, 119.

It is noted that the state should balance incomes and expenditures in its budget, taking into account unfavorable and favorable phases of the economic cycle. Considerable attention is paid to the stability of the state debt, the exclusivity of borrowings is indicated, which directly affect the increase of the expenditure part of the state budget. Any law that entails new costs or increases in costs should indicate the resources to cover such costs.

It can be concluded that the «regulatory corrections» made by the Italian authorities will directly affect the guarantee of social rights of citizens. The government's commitment to balance its budget should help to ensure compliance with economic and financial constraints imposed in accordance with the legislation of the European Union.

In closing this paper, it is worth showing some data that already are affecting daily life of Italians, concerning the national funds which should be distributed to the Regions in order to supplement their welfare policies and services: the fund for welfare policies amounted to 656,4 million in 2008 and was reduced to 518,2 in 2009, to 380,2 in 2010, to 178,85 in 2011 and to 10,8 in 2012; the fund for equal opportunities was reduced from 64,4 million in 2008 to 11 million in 2012; the fund for family was cut down from 346,4 million in 2008 to 31,9 million in 2012; the national health fund experienced reductions of 900 million in 2011, 1,8 billion in 2012, 2 billion in 2013 and 2,1 billion from 2015 [20].

Conclusions. Social rights acquire an updated legal content regarding normative and institutional components. Crisis phenomena that occur in the world affect the realization of these positive rights. In some cases (for example, the financial crisis), the state is forced to reduce the size of social payments, and in some – change the mechanism of their payment. Therefore, there is a need to develop certain criteria that allows assessing and establishing the acceptability of such restrictions. At the same time, any modifications should not undermine the social protection of all members of society and should not transform the social security system into the system of social assistance.

Constitutional reforms connected with the global crisis are aimed at balancing national budgets, as examples of France, Germany, Spain and Italy demonstrate. In each state, the updating of the texts of the Basic Law had a different form of consolidation, but the content corresponds to the general criteria of the stabilization norms of the European Union on the principle of budget balancing.

The European Social Model is an achievement – culturally, politically and socially – that should be protected.

Prospective for further scientific researches in this area may be the problem of judicial protection of social rights, which remains unresolved, despite the fact that the side effects of the recent economic crisis are austerity measures, which are increasingly being challenged in the Constitutional Courts of European states.

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