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CURRENT ISSUES OF ENSURING DECENT AND SAFE WORKING CONDITIONS

This article is devoted to the current issues of ensuring decent and safety working conditions. The notions: "safe and healthy working conditions" and "work safety" are analyzed. It is proved that these categories are identical, the main similar feature of what is inherency of professional risk. In the author's opinion, the content of "safe and healthy working conditions (work safety)" takes new doctrinal meaning in the light of the concept of decent work today. It is emphasized that "safe and healthy working conditions" and "social security" are attributed to some key features of decent work. Also they are the principles of decent work implementation that haven't been studied in modern law science and they're the promising directions for future research.

Key words: safe and healthy working conditions, work safety, social protection, decent work, social security, social development.

Achieving sustainable economic and social development of Ukraine is directly related to the welfare of society that developed at the base of a decent, safe and productive labour of employees and at the same time ensured a high level of social protection of the population. According to the Strategy for Sustainable Development "Ukraine - 2020", approved by the President of Ukraine Decree on 12 January 2015 № 5/2015, one of the major motion vectors to implementation in Ukraine European standards of life is the safety vector. Under this vector the state authorities should paid the special attention to the life safety and human health, to the protection of socially vulnerable groups and others. (Chapter 2: "The purpose of the Strategy implementation and vectors")¹.

Today in Ukraine there are many factors, including in social and humanitarian fields that hinder the security of individuals, society and the state (national security). Thus, article 7 of the Law of Ukraine "On National Security of Ukraine" named such major threats in this area: crisis of social protection system, aggravation and others².

So, despite the fact that in Ukraine as in the social, legal state human, his life and health, honor and dignity, integrity and security recognized the highest social value (Art. 3 of the Constitution of Ukraine) and also Art. 43 and 46 of the Basic Law declares the right of everyone to safe and healthy working conditions and social protection, unfortunately, the level of public safety and social security tends to decrease.

Thus, in the context of abovementioned, we exemplify the dynamics of several important indicators of life quality in Ukraine in the field of labour safety and social protection in the last three years. According to the State Statistics Service of Ukraine for 2012 every ninth injured at the production place lost employability and became disabled, in 2013 - every ninth, and in 2014 - every eighth³. So, unfortunately, the level of labour safety at the production place actually decreased in recent years.

Considering the wise saying of Pope of the Roman Catholic Church Benedict XVI that qualitative indicators of civilization determined by attitude of society to older generation⁴, we should note another one important indicator of life quality in Ukraine, but in the social protection field (dynamic of correlation of average monthly pension and the average monthly salary for the last three years, in %). Thus, the correlation of average monthly pension to the average monthly salary (at the beginning of the year) in 2013 was 47%, in 2014 - 45% in 2015 - already 44%⁵. So, and this indicator has stable decreasing dynamics in

¹ Указ про Стратегію сталого розвитку "Україна – 2020" 2015 (Президент України). Офіційний вісник України, 4, 67.

² Закон про основи національної безпеки України 2003 (Верховна Рада України). Урядовий кур'єр, 30.

³ Травматизм на виробництві у 2013 році (2014). Державна служба статистики України. Статистичний бюлетень. Київ, 8.

⁴ Kiger, P. (2013). *On Aging, Some Papal Pearls of Wisdom*. Bulletin Today.

⁵ Соціальний захист населення (2015). Державна служба статистики України. Статистичний збірник, 11.

Ukraine compared to the EU, where the average value is 60%¹.

In connection with the situation in the east of Ukraine and the massive displacement of the population of Donetsk and Lugansk regions to other regions of the country there are new manifestations of poverty risks related to the loss of property and work, injury risks to employees, especially working in services of gas, water, electricity delivery, etc., located on the boundary of the zone of the antiterrorist operation.

In Art. 8 of the Law of Ukraine "On National Security of Ukraine" the main direction of government policy on national security in the social and humanitarian fields considers as the development of an effective social security system, protection and recovery of persons' physical and mental health [2]. Therefore, taking into account the national level of issues concerning with the improvement of the employees safety in Ukraine, development an effective and multifunctional system of social security of the population, in our opinion, it is necessary and timely to conduct comprehensive studies of the legal nature of mentioned elements of national security, to study a variety of conceptual approaches to its definitions and problems of its relationship. The above mentioned in future will conduct the terminological unification of these concepts in the labour law and social security law sciences. It will contribute to the improvement of legal regulation of relations in the field of enforcement of the right to safe and healthy working conditions and social protection that, eventually, provides the quality of our lives.

It is well known that one of the tasks of legal science is the creation of categories system; all such concepts have become reliable tools, the basis for the correct and precise, logical and adequate reflection of the provisions of labour and social security legislation. Legal science (or its fields) should have the appropriate tools of knowledge: the developed system of categories and concepts - conceptual framework defined by the subject of this science. Its formation is an important task and purpose of the science, the constant of its existence².

Some issues of concept definition of "safe and healthy working conditions (safety)" and "social protection (social security)" in labour law and social security law fields have been studied by such scientists: N. B. Bolotin, S. A. Goloshchapov, J. A. Gorbachev, P. O. Izuyita, S. M. Prylypko, S. M. Sinchuk, E. E. Machulska, O. H. Chutcheva, I. I. Shamshina and others. However, a comprehensive study of the nature of these legal concepts in modern conditions of developing the innovative socially-oriented market economy in Ukraine is not yet done.

The article aims to clarify the content of concepts of "safe and healthy working conditions (safety)" and "social protection (social security)," to identify the characteristics of doctrinal formal and legal approaches to definitions of these concepts, to study the problem of its relationship.

The objectives that specify this purpose include: 1) generalization of general-theoretical, special legal literature provisions on the legal nature of the concepts of "safe and healthy working conditions (safety)" and "social protection (social security)"; 2) the use of formal logic, comparative legal methods of knowledge in the process of identifying and studying of these issues; 3) formulation and substantiation of conclusions and proposals on the research and others.

Thus, let's consider the essential features of synonymous concepts of "safe and healthy working conditions" and "labour safety". Its synonymy follows from the fact that the term "safe and healthy working conditions" enshrined in the Basic Law, frequently replaced by the term "labour safety" in the laws on labour^{3,4}. In the special legal literature these terms are also often identical^{5,6}. Thus, the present study fully supported the position of legislators and lawyers that identify these concepts.

Under the influence of communist ideology, with technocratic approach or from the position of the

¹ Сазонець, О.М. (2014). Європейські пріоритети у реформуванні пенсійної системи в Україні. *Ефективна економіка*. <<http://www.economy.nayka.com.ua/?op=1&z=3591>>.

² Панов, Н.И. (2006). Методологические аспекты формирования понятийного аппарата юридической науки. *Правоведение: Известия высших учебных заведений*, 4, 18.

³ Закон про охорону праці 1992 (Верховна Рада України). *Відомості Верховної Ради України*, 49, 668.

⁴ Закон про затвердження Загальнодержавної соціальної програми поліпшення стану безпеки, гігієни праці та виробничого середовища на 2014-2018 роки 2014 (Верховна Рада України) *Відомості Верховної Ради*, 10, 112.

⁵ Амелічева, Л.П. (2008). *Забезпечення безпеки праці як умови трудового договору*. Харків: Національна юридична академія України ім. Я.Мудрого, 85.

⁶ Шемшученко, Ю.С. (1998). *Юридична енциклопедія. Том 1*. Київ, 211.

concept of "absolute security"¹ that aims "to provide full safety of collision of employee (servant) with working environment"², the term of "safe and healthy working conditions" defined as production factors that directly provide the consumption (use) of workforce (ability to work) within the framework that allows it normally recovering and development. In other words, such factors directly provide safety to a longer period of ability of employees and servants during their normal ability of the organism to work³. The definition of the term "labour safety" didn't improve by the science at that time. Special legal literature duplicated this concept in the same form that was enshrined in the standard "National State Standard 12.0.002-80. Interstate standards. Labour safety standards' system. Terms and definitions" approved by the USSR State Committee on Standards on 30 September 1980 (labour safety - the state of working conditions that excluded the impact of dangerous and harmful factors on employees)⁴. As we noted above, this definition is based on the concept of "absolute security". The wrong sense of what has been noted in the decision of the Federal Constitutional Court of Germany in 1979 (NJW 1979, p. 359). The wrong sense has been substantiated by that the fulfillment of requirement of absolute security would lead to the proscription of almost any application of technology, would lead to disregard of the limits of human cognitive abilities that are unacceptable for social development⁵.

During the years of Ukraine's independence, in the field of labour legal terminology, these concepts began to fill with content already in constitutional anthropometric approach of knowledge, considers the existence of risk theory⁶, the axiom about the potential danger⁷. Thus, an important scientific event was the proposal to include the concept of "security" to the components of axiological (value) foundations of labour law⁸. Labour law science has had no doubt the assertion that the labour safety has become such an area that in even the highest achievements will never be considered as sufficient, because it comes from the health and lives of people⁹. Legal encyclopedias fixed the labour safety as the system of legal, socio-economic, organizational and technical, sanitary measures oriented to creation of safe for health employees' working conditions¹⁰ and others.

It is necessary to consider another definition of labour safety as a category of labour law that, in our opinion, highlights the essence of this concept in the context of this study. Labour safety – safe and healthy working conditions created by the employer through socio-economic, organizational and technical, sanitary and health care facilities and measures provided for by the system of legal and regulatory provisions to preserve life, health and disability of employees.

Substantive elements of this concept are specified such as: the existence of the system of legal provisions at constitutional, legislative level, and a significant number of technical content regulations that governing the issue of ensuring the safe and healthy working conditions; the presence of complex state-legal, organizational and technical, sanitary and other measures that were created to ensure the safety of employees; inherency of measures – occupational risk that is the subject of analysis and evaluation; diversity, multifunctional nature¹¹.

Thus, all the above mentioned leads to the conclusion that the category of "safe and healthy working conditions" and "labour safety" are identical, the main similar feature of what is inherency of professional

¹ Балюк, Г.І. (1999). Ядерний ризик: правові проблеми визначення, оцінювання та класифікації. Київ: *Держава й право*, 4, 238-244.

² Смирнов, О.В. (1977). *Основные принципы советского трудового права*. Москва, 121.

³ Иванов, С.А., Киселев, И.Я., Лившиц, Р.З., Орловский, Ю.П., Пятаков, А.В., Цепин, А.И. (1974). *Трудовое право и научно-технический прогресс*. Москва: «Наука», 314.

⁴ ГОСТ 12.0.002-80 (2008) Межгосударственный стандарт. *Система стандартов безопасности труда. Термины и определения*, 1.

⁵ Саломе Челидзе (2009). Правовые средства обеспечения соблюдения требований по охране труда *Сравнительное трудовое право*, 1.

⁶ Новиков, Г. (1991.) Техногенный риск и качество. *Безопасность труда в промышленности*, 12, 4-8.

⁷ Кукин, П.П., Лапин, В.Л. (1999). *Безопасность жизнедеятельности. Безопасность технологических процессов и производственная охрана труда*. Москва, 20.

⁸ Панасюк, О.Т. (1993). *Аксиологические аспекты трудового права*. Киев: Киевский гос. ун-т имени Т.Г. Шевченко, 17.

⁹ Прокопенко, В.І. (2000). *Трудове право України*, Харків: Фірма Консул, 362.

¹⁰ Шемшученко, Ю.С. (1998). *Юридична енциклопедія*. Київ: «Українська енциклопедія» імені М.П. Бажана, 1, 211.

¹¹ Амелічева, Л.П. (2008). *Забезпечення безпеки праці як умови трудового договору*. Харків: Національна юридична академія України ім. Я. Мудрого, 85.

risk.

We should note that the content of "safe and healthy working conditions (labour safety)" today takes new doctrinal meaning in the light of the concept of decent work¹: 1) this concept considers as a key component and the defining characteristics of decent work²; 2) this concept recognizes by the principle of realization of decent work and determination of its evaluation criteria³.

As for the next couple of synonymous legal categories of "social protection" and "social security", it should be noted that in legal science the social protection of population and social security largely interpreted as a function of the state and linked with its social policy and on national security policy⁴.

Let's consider the definitions of these categories that already exist in the legal terminology.

Thus, one of the first definitions of social protection in the social security law science reveals its essential features in the broad and in the narrow sense. In the broad sense the social protection considered as state activity aimed at to promote the process of formation and development of a complete personality, at the detection and neutralization of negative factors affecting the personality, at creation the conditions for self-determination and self-fulfillment in life. And in the narrow sense - it is the set of legally enforceable economic and legal guarantees that ensure the compliance with important social rights and achievements of social acceptable level of life⁵.

Later in the special legal literature this concept has already considered as:

1) State activity carried out in the framework of public administration and aimed at preventing the situations of social risk in the normal life of the person. It provides the optimum conditions of life and enshrines in the system of legal provisions concerning with regulation of social relations that develop in meeting the needs of the person in the proper material provision from special funds through the individual form of distribution, instead of salary or as a complement to it in the cases provided for by law, not less than the guaranteed by the state minimum level⁶;

2) The system of economic, legal, organizational and other measures of the state concerning with the ensuring of the social rights and guarantees of citizens. The action of this system dedicated to the state and society care about the citizens who need help due to age, health, social status, insufficient provision of livelihood, etc.⁷;

3) State measures of material, medical, cultural, educational and other character, through what turns state care for the younger generation, for citizens who are in difficult situations and need help, for citizens with special merits to the country and, in fact, for the entire population of Ukraine⁸ and others.

As for social security, it should be noted that in scientific use of social security law this term is not very common, but the theory of social risk that organically intertwined is the concept of social security and is its "cornerstone" was sufficiently developed in social security law science recently^{9,10}. Thus, under the social security as the legal category we understood:

1) legal, economic and political security of social rights that ensures their stability, actual use and decent living level of society members¹¹;

¹ Капліна, Г.А. (2013). Характеристика концепції гідної праці в Україні. *Актуальні проблеми права: теорія і практика*, 26, 47-54.

² Коляда, Т.А. (2010). Безпечні умови праці як визначальна складова концепції гідної праці: до постановки проблеми. *Вісник Харківського нац. ун-ту внутрішніх справ*, 3, 292-300.

³ Шаульська, Л.В. (2014). Реалізація концепції гідної праці на основі забезпечення конкурентоспроможності активів людського капіталу. *Вісник Приазовського державного технічного університету*, 28, 279-278.

⁴ Гончаров, А.В. (2011). *Теоретико-правові засади соціального захисту в Україні*. Луганськ: Луган. держ. ун-т внутр. справ ім. Е. О. Дідоренка, 12.

⁵ Мачульская, Е.Е., Горбачова, Ж.А. (2001). *Право социального обеспечения*. Москва: Книжный мир, 12.

⁶ Ярошенко, І.С. (2006). *Організаційно-правові форми соціального захисту людини і громадянина в Україні*. Київ: Київський національний економічний ун-т ім. Вадима Гетьмана, 24.

⁷ Нагребельний, В.П., Болотіна, Н.Б. (1998). Соціальний захист. Київ: *Юридична енциклопедія*, 5, 558.

⁸ Стаховська, Н. (2000). Соціальне забезпечення чи захист. *Предпринимательство, хозяйство и право*, 8, 52-57.

⁹ Синчук, С.М. (2003). Теорія соціального ризику за правом соціального забезпечення. *Право України*, 3, 55-59.

¹⁰ Болотіна, Н.Б. (2005). *Право соціального захисту України*. Київ: Знання, 48-50.

¹¹ Шашків, Б.І. (2007). Соціальна безпека як ін. ститут права соціального захисту населення. *Актуальні проблеми держави і права*, 34.

- 2) the object of state activity¹;
- 3) the outcome of administrative influence² and others.

All the above mentioned leads to the conclusion that the categories of "social protection" and "social security" are identical, the main feature of both is inherency of social risk.

We should note that the emergence of the concept of decent work also affected at the substance of "social protection (social security)": 1) this concept as well as "safe and healthy working conditions (labour safety)" considered as a key characteristic and defining component of decent work³; 2) this concept recognizes as the principle of realization of decent work and determination of its evaluation criteria⁴.

Thus, this study allows the following conclusions and suggestions. 1. A meaningful description of the concepts of "safe and healthy working conditions (Safety)" and "social protection (social security)" allowed identifying common and special features of these concepts. Mentioned concepts as an objective categories based on universal natural law on safety, on applied risk theory. For the "safe and healthy working conditions (labour safety)" professional risk is inherent, to "social protection (social security)" - social risk is inherent. 2. "Safe and healthy working conditions (labour safety)" is a category of labour law terminology, and "social protection (labour safety)" tends to conceptual apparatus of social security law. These concepts are independent, multifaceted and versatile. 3. The concept of national security of Ukraine causes particular doctrinal interpretation of the essence of these concepts, they are closely related to national security, and they are its independent elements. Its detailed description will be carried out in future studies. 4. Based on the concept of decent work, "safe and healthy working conditions (labour safety)" and "social protection (social security)" attributed to some key attributes of decent work and they are the principles of its implementation that haven't been studied yet in modern law science and they're the promising directions for future research.

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¹ Копан, О. (2001). Соціальна безпека як об'єкт державної діяльності. *Право України*, 11, 26-27.

² Копан, О.Л. (2001). Соціальна безпека – результат управлінського впливу. *Вісник АПіСВ*, 3, 46-61.

³ Коляда, Т.А. (2010). Безпечні умови праці як визначальна складова концепції гідної праці: до постановки проблеми. *Вісник Харківського нац. ун-ту внутрішніх справ*, 3, 292-300.

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