



Olena Tishchenko,

*Doctor of Law, associate professor,
professor of the department of labor law and
social security of Taras Shevchenko National
University of Kyiv*

УДК 349.3

Perspectives of the institution of social security legislation of Ukraine: theoretical and legal aspects

Target setting. The issue of the formation of sources of social welfare rights is one of the most controversial in the scientific literature. Creation of a functioning legislative framework is one of the most important signs of the development of a civilized state. The complex process of the formation of national security and social legislation of Ukraine indicates a large amount of theoretical and practical issues that require in-depth study, among them - the problem of the future prospects of codification as the highest form of systematization. The creation of a European social security system in Ukraine should be based on an active legislative process in the field of social security. However, in general, legal science continues to remain "nationally closed" and does not go beyond our Ukrainian environment. This affects the processes of lawmaking, which ... absolutely do not fit into European processes with their legal tendencies [1, p. 64]. Y. S. Shemshuchenko, analyzing the codification processes in Ukraine, emphasizes that since the state is unable to stop the pace and extent of the accumulation of social issues

requiring legal regulation, and artificially reduce its interference in the regulation of these issues, then to resolve this contradiction only the search for ways to improve the law-making activity remains [2, p. 32].

Status of research. The analysis of the doctrine of the right to social security shows that the issue of codification of the social security legislation of Ukraine are the most mentioned in the special scientific literature. The process of systematization of the social and legal legislation of Ukraine was studied by scientists: V. M. Andriiv, N. B. Bolotina, V. Ya. Burak, Ye. A. Hetman, O. V. Moskalenko, O. L. Kuchma, S. M. Prylypko, S. M. Synchuk, B. I. Stashkiv, M. M. Shumylo, O. M. Yaroshenko and others. At the same time, scientists have not yet reached a common view on this issue. Therefore, a comprehensive study should be carried out taking into account the trends of modern state development in order to deal the issue of improving social security legislation.

Presentation of the main material. There is a position in the doctrine of



social security that adoption of a codification act in the field of social security is a precept of time and necessity. However, the current chaotic fragmentation of security and social legislation of Ukraine, the lack of a systematic approach to legal regulation and the inconsistency of many rules create practical difficulties in implementing effective social security and codifying legislation. In this regard, N. B. Bolotina emphasized that there is an urgent need for a general act in the field of social security, which would establish the general principles of the whole system of legal mechanism in this area. Such an act should be the Fundamentals of the law on social security, which would provide a structural and systemic link in each structural part of the right to social security (its sub-sectors) and in general in the field of law [3, p. 29]. As S. N. Prylypko quite rightly emphasizes that at the present stage the theoretical and practical basis for the systematization of social legislation has been formed, which must be carried out through codification [4, p. 26]. Yu. V. Vasilieva states that social security legislation is unsystematic, controversial and difficult to apply. It is increasingly becoming a secret area of expertise, which can only be understood by professionals. An obvious crisis of social welfare legislation requires action not only to streamline, but to substantially revise all sectoral legislation [5, p. 3]. Accordingly, there is no unanimous opinion among scholars as to what the new social security code should be. A. V. Skorobogatko believes that such an act should be the Social Code, which will include the most important norms and at the highest level will regulate the entire set of relations in this area [6, p. 479]. According to T. S. Prokopova, Ukraine needs an act that would record the unity and completion of the creation of a system of legislation on social security and insurance as a summing document. Such an act should be a new legislative act - the Code of Social Insurance and

Citizens' Securement [7, p. 326]. L. M. Kniazkova points out that taking into account the existing system of legislation of Ukraine, it is worth supporting the idea of establishing a Social Security Code [8, p. 456]. I. S. Yaroshenko writes about the necessity of adopting the Code of Social Security which, in her opinion, will promote the harmonization of legal norms in this sphere [9, p. 7]. In view of this, the concept of a new codification act remains open to the fact that it does not become an unsystematic collection of social security regulations. The fact that such fears are not groundless is evidenced by the practical attempts to codify the social legislation that we can observe now in Ukraine. For example, as it is seen from the draft of Social Code dated February 15, 2013, No. 2311 [10] (hereafter - the draft of Social Code) the document lacks a clear systemic approach *to divide* into General and Particular parts. In particular, the attribution to the General Part of the bases of compulsory state social insurance and social services appears to be alogistic. In addition, the General Part of the draft of Social Code proposes a list of state standards and guarantees, the regulations of which are placed inconsistently. Namely: among the main state guarantees, which are determined exclusively by the laws, there is no living wage guaranteed by the Constitution of Ukraine (Article 15), although in Article 12, 18 of the draft of Social Code, this notion applies and determines its legal content.

The concept of "social" used in the draft of Social Code of Ukraine implies, in its essence, covers of all social human rights, not only social standards, social insurance, social services and social security of vulnerable categories of citizens. Proceeding from the positions defined in the scientific literature, social rights and freedoms of a human and citizen – are a measure of possible behavior or human activities in the social sphere, which involves satisfying legitimate interests and needs in the field of labor, social security and health

care maintaining [11, p. 189]. As we see from this definition, the concept of "social rights" is derived from the notion of "social" and therefore, besides the state social standards, social insurance, social assistance, social services includes the right to work, education, health care. Accordingly, the name "Social Code" is much broader in its meaning than the range of social relations covered by the proposed codification act. Taking into account the above arguments, we consider that the name of the codification act of the social-security legislation proposed by the drafters of the Social Code project needs to be reconsidered and changed. In our opinion, the Code of Social Security of Ukraine, which in its essence is in line with the European Code of Social Security, would be more acceptable as regards to linguistic positions and the content of this codification act. Thus, it is specified that this collection of laws is the result of the codification of the social security legislation.

Although it seems premature to codify all of the social security legislation of Ukraine. In this issue, the N. M. Tolkunova's opinion is stressed, which emphasizes that the possibility of streamlining a large array of social-security legislation through codification in one codification act in the present day looks controversial [12, p. 137]. This approach will lead to the creation of a very cumbersome collection of laws, which is unlikely to contribute to the effective systematization of the social security legislation of Ukraine. Innovative on this issue is the position of the scientist O. V. Moskalenko, which points to the expediency of codification of social security legislation, depending on the organizational and legal form of social security. She stresses that such an approach will make it possible to eliminate the plurality and controversy of normative acts, will greatly facilitate enforcement, promote the rule of law and increase the level of guarantees for the realization of the rights of Ukrainian citizens in the field of social security [13, p. 326]. In our

opinion, the codification of social security legislation should be carried out under the sub-sectors of social welfare.

Based on doctrinal approaches, it should be noted that among scholars was formed the idea that as a formed sub-sector of social welfare law should be considered pension law. Accordingly, in our opinion, it is desirable to start codification with the drafting of the Pension Code of Ukraine, which in turn will help to streamline the dispersed pension legislation and eliminate the possible conflicts that exist in this legislation. We support the view F. G. Burchak who writes that the improvement of legislation is essential to overcome the conflicts in laws. In the process of codification it is possible to detect and eliminate existing contradictions between different acts in order to streamline the entire system. But for this purpose it is necessary to develop a methodology for passage of draft codification legislative acts. It is about providing proper legal terminology and expertise [14, p. 8].

It should be noted that the idea of creating the Pension Code of Ukraine is not new in the right of social security, in particular, this issue was studied in Ukrainian studies by Ukrainian scientists: V. M. Andriiv, N. B. Bolotina, I. M. Syrota, L. P. Shumna, M. M. Shumylo and others. The argument of M. M. Shumylo that the crisis of sources of social security law is present in Ukraine is argued. He considers that the main way of overcoming this crisis is the codification of pension legislation [15, p. 281-282]. The scientist argues that the result of the pension reform should be the Pension Code of Ukraine, which will take into account the provisions of the current legislation, as well as consolidate innovations that will improve the pension provision of citizens [16, p. 152]. For example, scientists M. L. Zakharov, E. H. Turchkova, V. B. Sevostianova, based on modern realities, reasonably indicate that the basis of the draft of Pension Code should be based on universally



recognized in the world practice of the concepts of social insurance, the international experience of the operation of obligatory insurance pension systems in economically developed countries [17, p. 3]. It is clear that the content of the future Pension Code should be determined through a constructive dialogue between scientists and practitioners in order to prepare a draft quality regulatory act that will cover all the peculiarities of this area of social security relations. Thus, the initial stage of the codification of the social security legislation of Ukraine, we believe, should be to streamline the pension legislation of Ukraine as an important component of the law of social security.

The process of systematization of social security legislation in the form of codification as a trend towards the future should be based on incorporation measures that should be considered as a prerequisite, the first steps towards codification. Incorporation - (from Latin *In corporo* - in aggregate) - this is a form of systematization, when normative acts of a certain level are combined in whole or in part in various collections or collections in a certain order (chronological, alphabetical, systemically substantive) [18, p. 67]. We support the position of A. V. Mitskevych who in the 1960s emphasized that since the codification of legislation is the most complex, long time-consuming, kind of systematic legislative processing, moreover, never covers all normative material, incorporation becomes a necessary "companion" of codification, its complement and at the same time a prerequisite for further codification works [19, p. 85]. It should be distinguished between official incorporation that is the publication of the relevant collections of incorporated laws specifically authorized by the state authorities and informal incorporation, which is carried out by departments, organizations and individuals [20, p. 141]. In Ukraine, the process of official incorporation of social security legislation as a prerequisite for codification develops slowly, as a rule, it

is a practice of system-substantive or chronological incorporation aimed at uniting in collections of legislative acts by social security institutions. At the same time, in Ukraine, the so-called unofficial incorporation is being widespread, which is realized through publication of collections of legal acts of social security legislation in the private publishing sphere. Although this practice contributes to raising the legal knowledge of citizens, it is not always based on a professional approach in a selection of normative acts and can serve to spread this kind of deformation of the public's legal consciousness as legal dilettantism (meaning free treatment of the law (superficial or inadequate interpretation of legal norms, absence a systematic approach in their assessment) [21].

In order to form a single scientific views on the subject in the scientific literature [22, p. 70] the following proposals are made regarding the need for the creation of an authorized body on the codification of Ukrainian legislation - a specially authorized commission. This point of view deserves attention because it allows us to approach the issue of efficient systematization of the social-security legislation of Ukraine in the form of codification, taking into account the complexity, gradualness, caused by objective factors, some slowness of the process of codification of the social security legislation of Ukraine. Specially authorized commission on the codification of legislation, in our opinion, should be established as a joint body of the Ministry of Justice and Ministry of Social Policy of Ukraine. Such an approach will allow consolidating the efforts of lawyers and specialists in the social security sector to work effectively in the codification system. Timely is also drawing attention to the need to involve the legislative process to the public - this will facilitate counting of the process of drafting the Pension Code of Ukraine, the interests of different social groups, transparency, openness and accessibility of laws [23, p. 5].

Conclusions. Taking into account the aforementioned, it should be concluded that the formation of the right to social security as a branch of law requires the activation of the law-making process in the form of systematization of social security legislation in order to streamline, bring into conformity the chaotic-dispersed array of valid normative legal acts. The codification should be considered as the highest form of systematization of the social security legislation of Ukraine. The codification of the social security legislation of Ukraine is a process of systematization of the current legislation, which requires the coordinated cooperation of representatives of the authorities and society with the aim of developing and adopting codification acts in the field of social security that are consistent with the European traditions of democratic development. An important

step towards the codification of social security legislation should be the intensification of the process of official incorporation in this area, which will increase the general level of legal culture of the population of Ukraine in social matters. The drafting and adoption of a draft of Pension Code of Ukraine can be a grounded start of codification of social and security legislation, taking into account the importance of pension legal relations in the field of social security and doctrinal provisions regarding the existence of a pension right as a sub-sector of social security rights. In the codification process, special attention should be paid to the system that will be the basis of the Pension Code of Ukraine, which will prevent confusion in legal terminology, and will comply with the principle of clarity of the current legislation.

References

1. *Spasybo-Fatieieva I. V.* Metodolohichni vytoky kodyfikatsii: potreby, obruntovanist, koniunkturnist [Methodological sources of codification: needs, justification, conjuncture] / I. V. Spasybo-Fatieieva // Law of Ukraine. 2009. № 8. P. 62 - 71.
2. *Shemshuchenko Yu. S.* Kodyfikatsiia zakonodavstva Ukrainy: teoriia, metodolohiia, tekhnika: [monohrafiia] [The codification of the legislation of Ukraine: theory, methodology, technique: [monograph]] / Yu. S. Shemshuchenko. K.: Parliamentary Publication, 2007. 208 p.
3. *Bolotina N. B.* Pravo sotsialnoho zabezpechennia: systemno-strukturnyi analiz [Law of social security: system-structural analysis] / N. B. Bolotina // Law of Ukraine. 2001. No. 5. p. 24-29.
4. *Prylypko S. M.* Predmet prava sotsialnoho zabezpechennia: Avtoreferat dysertatsii ... doktorara yurydychnykh nauk: 12.00.05 [Subject of the right of social security: Author's abstract. The author's thesis ... Doctor of Law: 12.00.05] / S. M. Prylypko; Yaroslav Mudryi National Law University, 2007. 47 p.
5. *Vasilyev Yu. V.* Kodifikatsiya rossiyskogo zakonodatelstva o sotsialnom obespechenii: teoreticheskie i prakticheskie problemy: Avtoreferat dysertatsii ... doktora yurydicheskikh nauk: [Codification of the Russian legislation on social security: theoretical and practical problems: The author's thesis ... Doctor of Law: 12.00.05] / Yu. V. Vasilyeva; MSUA. M., 2010. 54 pp.
6. *Skorobahatko A. V.* Deiaki faktory shchodo kodyfikatsii zakonodavstva Ukrainy pro sotsialne zabezpechennia [Some factors concerning the codification of Ukrainian legislation on social security] / A. V. Skorobahatko // "Law and economy: genesis, current state and prospects of development: International scientific and practical conference (Odessa, May 30, 2008). p.) O.: "Astroprint", 2008. 477-481.



7. *Prokopova T. S.* Deiaki pytannia zakonodavstva pro sotsialne zabezpechennia ta strakhuvannia [Some issues of the legislation on social security and insurance] / T. S. Prokopova // Concept of development of the legislation of Ukraine: Materials of the scientific-practical conference (May 1996, Kyiv). K.: The Legislation Institute of the Verkhovna Rada of Ukraine, 1996. p. 324-326.

8. *Kniazkova L. M.* Problema unifikatsii ta dyferentsiatsii norm sotsialnoho zabezpechennia [The problem of unification and differentiation of social security norms] / L. M. Kniazkova // Systematization of legislation in Ukraine: problems of theory and practice: Materials of international scientific and practical conference (October 1999). K.: The Legislation Institute of the Verkhovna Rada of Ukraine, 1999. pp. 455-459.

9. *Yaroshenko I. S.* Orhanizatsiino-pravovi formy sotsialnoho zakhystu liudyny i hromadianyna v Ukraini: Avtoreferat dysertatsii ... kandydata yurydychnykh nauk: 12.00.07 [Organizational legal forms of social protection of human and citizen in Ukraine: Author's thesis ... candidate of legal sciences: 12.00.07] / I. S. Yaroshenko; Kyiv National Economic University named after Vadym Hetman, 2006. 18 p.

10. *The Draft of Social Code of Ukraine* dated February 15, 2013 No. 2311: URL: http://w1.c1rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=45 (Date of Appeal 01.03.2018)

11. *Pohorilko V. F., Fedorenko V. L.* Konstytutsiine pravo Ukrainy: Pidruchnyk [Constitutional Law of Ukraine: Textbook] / V. F. Pohorilko, V. L. Fedorenko. K.: Legal unity, 2010. 432 p.

12. *Tolkunova N. M.* Osnovnyie chertyi kodifikatsii zakonodatelstva i ee mesto v sisteme rossiyskogo zakonodatelstva, deystvuyushchego v sfere sotsialnoy zaschityi naseleniya [The main features of the codification of legislation and its place in the system of the Russian legislation, which is active in the sphere of social protection of the population] / N. M. Tolkunova // Business in the law. 2011. № 5. P. 136-139.

13. *Moskalenko O. V.* Osnovni zasady zahalnooboviazkovoho derzhavnogo sotsialnoho strakhuvannia v umovakh rynkovoi ekonomiky: [monohrafiia] [Basic principles of compulsory state social insurance in a market economy: [monograph]] / O. V. Moskalenko. Kh. Yurayt, 2012. 400 p.

14. *Burchak F. G.* Kodifikatsiya i problemy kolliziy v prave [Codification and Problems of Collisions in the Right] / F. G. Burchak // Collisions in the Legislation of Ukraine: Problems of Theory and Practice: Materials of the International Scientific and Practical Conference (October 23-24, 1995). K.: Genesis Publishing House, 1996. p. 7-9.

15. *Shumylo M. M.* Kryza dzhherel prava sotsialnoho zabezpechennia yak prychna kodyfikatsii pensiinoho zakonodavstva [Crisis sources of the right to social security as a reason for the codification of pension legislation] / M. M. Shumylo // State and Law: Collection of scientific works. Legal and political sciences. 2010 edition. 49. pp. 281-286.

16. *Shumylo M. M.* Pensiinyi vik yak yurydychnyi fakt v pensiinomu zabezpechenni [Retirement age as a legal fact in retirement provision] / M. M. Shumylo // Bulletin of the Odessa National University. 2011. T. 16. Vip. 15. Jurisprudence. pp. 147-154.

17. *Zaharov M. L., Tuchkova E. G., Savostyanova V. B.* Pensionnyi kodeks Rossiyskoy Federatsii. Proekt [The Pension Code of the Russian Federation. Project] / M. L. Zaharov, E. G. Tuchkova, V. B. Sevostyanova. M.: R. Valentin, 2008. 176 p.

18. *Zaichuk O. V., Onishchenko N. M.* Teoriia derzhavy i prava. [Theory of State and Law.] Academic course: Textbook [ed. O. V. Zaichuk, N. M. Onishchenko] / O. V. Zaichuk, N. M. Onishchenko. K.: Yurinkom Inter, 2006. 688 p.

19. *Mitskevich A. V.* Iz istorii predmetnoy sistemizatsii zakonodatelstva SSSR [From the history of the subject systematization of USSR legislation] / A. V. Mitskevich // Jurisprudence. 1967. № 5. P. 85-89.

20. *Shebanov A. F.* Nekotoryie voprosy teorii normativnykh aktov v svyazi s sistemizatsiyei sovetskogo zakonodatelstva [Some questions of the theory of normative acts in connection with the systematization of Soviet legislation] / A. F. Shebanov // Soviet state and law. 1960. № 7. P. 139-151.

21. *Trebin M. P.* Pravosvidomist hromadian Ukrainy: stan ta vydy deformatsii [Legal awareness of Ukrainian citizens: state and types of deformation] / M. P. Trebin: URL: http://archive.nbuv.gov.ua/portal/natural/vkhnu/Soc_dos/2009_844/articles (Applying date 02/27/2018)

22. *Hetman Ye. A.* Kodyfikatsiia zakonodavstva Ukrainy: zahalna kharakterystyka, osoblyvosti, vydy: [monohrafiia] [Codification of Ukrainian Legislation: General Characteristics, Features, Aspects: [monograph]] / Ye. A. Hetman. Kh., "Law", 2012. 192 p.

23. *Bohachova O.* Deiaki pytannia uchasti hromadian u zakonotvorenni [Issues of Citizen's Participation in Legislation] / O. Bohachova // Scientific Notes of The Legislation Institute of the Verkhovna Rada of Ukraine. - 2011. - No. 3 (6). - S. 5-7.

Тищенко О. В. Перспективи впорядкування соціально-забезпечувального законодавства України: теоретично-правовий аспект

В статті аналізуються проблеми вдосконалення соціально-забезпечувального законодавства в Україні. Акцентується увага на особливостях таких форм систематизації законодавства як кодифікація та інкорпорація. Досліджується процес створення бази національного соціально-забезпечувального законодавства. Розглядаються проблеми законотворчої діяльності в частині створення єдиного кодифікаційного акту України в сфері соціального забезпечення.

Ключові слова: соціально-забезпечувальне законодавство, систематизація соціально-забезпечувального законодавства, кодифікація, інкорпорація, Пенсійний кодекс України.

Тищенко Е. В. Перспективы упорядочивания социально-обеспечительного законодательства Украины: теоретическо-правовой аспект

В статье анализируются проблемы совершенствования социально-обеспечительного законодательства в Украине. Акцентируется внимание на особенностях таких форм систематизации законодательства как кодификация и инкорпорация. Исследуется процесс создания базы национального социально-обеспечительного законодательства. Рассматриваются проблемы законотворческой деятельности в части создания единого кодификационного акта Украины в сфере социального обеспечения.

Ключевые слова: социально-обеспечительное законодательство, систематизация социально-обеспечительного законодательства, кодификация, инкорпорация, Пенсионный кодекс Украины.

Tishchenko O. Perspectives of the institution of social security legislation of Ukraine: theoretical and legal aspects

The article analyzes the problems of improving social and security legislation in Ukraine. The emphasis is placed on the peculiarities of such forms of systematization of legislation as codification and incorporation. The process of creation of the base of the national social and security legislation is researched. The problems of lawmaking activity in the part of creation of a single codification act of Ukraine in the field of social security are considered.

Key words: social and security legislation, systematization of social-security legislation, codification, incorporation, the Pension code of Ukraine.

