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PRINCIPAL IDEAS OF THE RIGHT TO SOCIAL SECURITY

O. Tyshchenko Principal ideas of the right to social security

The article analyzes the scientific theses on the development of doctrinal teaching on the principles of social security law as the social and legal foundations embodied in social security law. It is noted that the humanistic principle is the fundamental principle of the branch, on which the general principles of the social security law are based. It is pointed out that in the theory of social security law, in addition to general principles, the principles of individual spheres of the branch are distinguished, such as: social insurance, pensions, and the rest. Taking into account the current trends in the development of social security law, we propose our own vision of the system of the branch principles of social security law.

Key words: *principal ideas of social security law, humanistic principle of social security law, principles of branch, social insurance, pensions.*

Тищенко О.В. Основні ідеї права на соціальне забезпечення

У статті аналізуються наукові положення про розвиток доктринального вчення щодо принципів права соціального забезпечення як соціально-правових основ, втілених у соціально-забезпечувальному законодавстві. Відзначається, що гуманістичний принцип – це основний принцип галузі, на якому базуються загальні принципи права соціального забезпечення. Вказується, що в теорії права соціального забезпечення, крім загальних галузевих принципів, виділяються принципи окремих сфер галузі, таких як: соціальне страхування, пенсійне забезпечення та ін. З урахуванням сучасних тенденцій розвитку права соціального забезпечення запропоновано власне бачення системи галузевих принципів права соціального забезпечення.

Ключові слова: *основні ідеї права соціального забезпечення, гуманістичний принцип права соціального забезпечення, галузеві принципи, соціальне страхування, пенсійне забезпечення.*

Тыщенко О.В. Основные идеи права на социальное обеспечение

В статье анализируются научные положения о развитии доктринального учения о принципах права социального обеспечения как социально-правовых основах, воплощенных в социально-обеспечительном законодательстве. Отмечается, что гуманистический принцип –

основополагающий принцип отрасли, на котором базируются общие принципы права социального обеспечения. Указывается, что в теории права социального обеспечения, кроме общих отраслевых принципов, выделяются принципы отдельных сфер отрасли, таких как: социальное страхование, пенсионное обеспечение и др. С учетом современных тенденций развития права социального обеспечения предложено собственное видение системы отраслевых принципов права социального обеспечения.

***Ключевые слова:** основополагающие идеи права социального обеспечения, гуманистический принцип права социального обеспечения, отраслевые принципы, социальное страхование, пенсионное обеспечение.*

Introduction. The complex social and legal process of the evolution of the state and society reflects the features of the formation and development of the right to social security as an independent branch of law. Social and legal ideas embodied in the norms of social and security legislation, in fact, should be considered as the basis for the functioning of the social security system. In the doctrine of social security law, the problem of branch principles was raised in the works of scientists, such as V.S. Andreev, V.M. Andriiv, N.B. Bolotina, K.S. Batyigin, T.Z. Garasimiv, E.V. Moskalenko, A.S. Krasnopolskiy, S.N. Prilipko, S.N. Sinchuk, E. G. Tuchkova, M.N. Shumilo, A.A. Shyrant, L.P. Shumnaya. At the same time, the realities of today require a new rethinking of the importance of the principles of the social security law as the basic ideas that, in their direction, are aimed to determine the degree of humanization of the social security legislation.

Terms of references. To consider the trends in the development of the scientific idea in the context of the evolution of doctrinal theses on the social and legal fundamental ideas of social security law as the social and legal foundations reflected in social and security legislation.

Research results. In the scientific literature the concept of “idea of law” is actually identified with the concept of “principles of law”. This aspect is drawn to the attention of R. Z. Livshits, who points out that the principle of law is first and foremost an idea. But not only the idea, since law is not confined to ideas alone, it also encompasses both norms and social relations and its principles go beyond the limits of ideas and are embodied in the normative law enforcement content [1, p. 195]. A.N. Kolodii logically notes that the category of “principles of law” should be used in all cases when it comes to starting ideas and theses pertaining to jurisprudence [2, p. 138]. Considering the essence of legal principles, G.F. Shershenevich stresses that the legal principle is understood as a general opinion, the direction included by the legislator, consciously or unconsciously, into a whole series of norms created by him. Such principles are often established by the legislator and their predominance in

legislation speaks in favor of the legislator's efficiency. Unfortunately, our legislation, on the contrary, is limited to the establishment of separate norms and rarely contains general theses [3, p. 32]. Indeed, the analysis of legislation makes it possible to understand which social ideas and general principles are directly or indirectly embodied in the norms of this or that branch of law. Based on the fact that, as we noted above, the principles of the law are regarded by scientists as criteria for the existence of a separate branch of law, we consider it advisable to address the problem of developing the principles of social security law with the aim of investigating the evolution of the general ideas that form the basis for the development of the branch.

At the beginning of the 20th century in the period of the birth of doctrinal theses on the need to allocate social security in a separate branch of law, N.A. Vigdorichik proclaimed the so-called guiding principle of the evolution of social insurance, according to which "social insurance develops in the direction of improving the provision of the living standards for the working people" [4, p. 57]. Although N.A. Vigdorichik defined this principle only with regard to social insurance, it is possible to indicate the current and actual sounding of the idea of the need to improve the living standard of the population, which should be attributed to the main social humanistic ideas on which the social security law is based. In the same period, scientist L.V. Zabelin formulated the principle of the need to implement the "full social security in order to eliminate social insecurity" [5, p.156]. The fundamental humanistic tendency is also present in the works of N.A. Semashko, who noted that the basis for the right to social security is the principle of recognition for older citizens, mothers with children, orphans, people with disabilities of the right to help from society and the state [6, p.34]. In the development of these ideas, the principles of material security in case of old age and incapacity for work were determined by V.S.Andreev, who believed that the principles of material security in case of old age and disability are specific for this system of legal norms and the most general guidelines that determine the internal unity and direction of development of the system of norms of law that regulates social relations for the creation and distribution of public consumption funds, intended to provide for the elderly and disabled people [7, p.14]. Further, investigating the principles of social security law in general, V. S. Andreev wrote that the principles of social security law characterize the content of this branch of law, serve as a vivid and expressive indicator of the nature of the right to social security. The scientist referred to the principles of social security law the following: free and affordable social security; the universality and diversity of types of social security; the adequacy of social security due to the level of the repletion of wants of citizens that are formed at the current stage of the development of society;

the implementation of social security by employees themselves through government and public organizations [8, p.25].

An important direction in the doctrine of social security law is the study of the issues of the principles of certain areas of social security – such as social insurance, pensions. Analyzing the basics of social insurance, A.S. Krasnopolskiy believed that the basic ideas of the socialist social insurance are the following principles: the implementation of the Soviet social insurance is entirely at the expense of the state; the management of the insurance matter through trade unions, that is representatives of employees; provision of social insurance to workers and employees [9, p.76-77]. K.S. Batygin considered the legal principles of social insurance as the basic ideas in this area of social relations fixed in the norms of law, conditioned by the laws of the development of society, the distribution of the aggregate social product. The scientist marked the following legal principles of social insurance: the universality of providing employees with social insurance; provision of workers at the expense of the state and public funds of collective farms; comprehensive protection and improvement of the living standards of employees, improvement of their health; optimal combination of interests of the individual, labor collectives and society in the distribution of social benefits; creation of maximum comfort for employees in the exercise of their right to material support for social insurance; the implementation of social insurance through public organizations of workers themselves [10, p.12-13].

In addition, the scientists paid close attention to the issue of the principles of pensions, as a sphere of social security, which was considered in the doctrine of the branch as the basis of the subject of social security law. In particular, E.G. Tuchkova, expressing the point of view that there is every reason to consider the pension law as a sub-branch of the social security law, noted that the branch principles of the social security law, reflecting the legal originality of this branch of law in general, cover the pension rights. The principles of pension law are of a “lower rank”, they are “tied” to an array of legal regulations for governing a pension provision. According to E.G. Tuchkova, the principles of the pension law include: the implementation of pension provision at the expense of the state without any deductions from the earnings or other incomes of members of the society; provision of pensions at a relatively young age to all able-bodied, as well as to citizens who have lost their ability to work; differentiation of conditions and standards of pensions; availability of the conditions that determine the right to a pension and the absence of any rules that set limits on pensions at the same time; the proportionality of pensions in all cases, when possible with past earnings; increasing the size of previously appointed pensions in connection with the growth of wages [11, p.16-18]. In her doctoral thesis on the topic: “Labor and social security of older citizens in the USSR (legal problems)” (1990), E.G. Tuchkova

wrote that the country has not yet formed a unified system for providing citizens with pensions, which corresponds to the main requirements of social justice. The essence of the legal norms of the current pension legislation is very far from those fundamental principles, the guiding ideas that for a long time have been considered by legal science as the main principles of legal regulation of this group of social relations [12, p.17]. I.M. Syrota holds an analogous point of view on the existence of pension law, as a sub-branch of the social security law. The scientist expresses the correct idea about the need to modify the principles of legal regulation of pensions, to which he relates: the universality and availability of terms and conditions for the realization of the right to a pension; variety of types of pensions; differentiation of conditions and standards of pensions; implementation of collateral for the financially disadvantaged citizens; implementation of pension provision from the state pension fund; realization of pension provision by state bodies; social labor rehabilitation and stimulation of labor activity of citizens who have partially lost their ability to work; protection of citizens' rights to pension provision [13, p.16-47]. A significant contribution to the development of the doctrine of the principles of social security law was the monographic study of A.N. Egorov, who studied the system of principles of this branch of law with an emphasis on the development trends of society. In his view, the principles of social security law include the following: the right to social security and its distribution to all citizens; variety of types and forms of social security; the implementation of social security at the expense of society; unity and differentiation in social security; the implementation of social security in a way that satisfies the main material and spiritual needs of citizens; stimulation of socially useful labor activity of pensioners and people with disabilities; protection of the right of citizens to social security [14, p.65-77]. From the point of view of modern legal understanding, A.A. Shyrant states the justified position about the essence of the principles of pension provision in the law of social security (the principles of social (state) pension provision). In her opinion, the principles of pension provision are the guiding ideas of an optimally developed sense of justice about the essential in social (state) pension provision, which have received direct textual fixing in the norms-principles of the Basic Law or the main branch law (another act) [15, p.11].

The further development of social relations, the change in the ideological foundations of the formation of the state – the collective worldview is changing toward a value orientation toward the individual, as the greatest social value. All this served as the basis for the emergence of new approaches to understanding the essence of the principles of social security law. T.Z. Harasymiv notes that by examining the principles of the social security law of Ukraine, the principles of social security law

are the initial principles that reflect the essence of social relations that form the subject of this industry. In the opinion of T.Z. Garasimiv, the laws governing the development of the social security law of Ukraine determine the following principles: the universality of the right to social security; the definition of the sphere of social relations by social risk; guarantees of social security at a level not lower than the minimum subsistence level in the state; the predominant role of centralized legal regulation of conditions and procedure for the implementation of social security [16, p.6]. E.M. Filippova, studying modern scientific views on the system of principles of social security law, points to the existence of fundamental principles of social security law, which are often designated by scientists as the main principles of the branch. According to E.M. Filippova, they include: the universality of social security; access to the realization of the right to social security; guarantee of the right to social security, differentiation of conditions and standards of provision, depending on socially significant circumstances; orientation to a decent standard of living in the implementation of social security [17, p.69]. E.E. Machulska draws attention to the importance of such a general legal principle for the development of the right to social security, as ensuring the right to human dignity [18 p.103]. According to E.E. Machulskaya, the basic ideas of legal regulation in the sphere of social security include the following: the universality of the right to social security; social differentiation of the natural and climatic zone of labor application, the specific status of working people, the working conditions, the length of service, the state of health and other circumstances with due regard to the harmfulness and severity of labor; a guarantee of the coverage of all existing social risks that threaten the population with a loss of livelihood; the ratio of social security payments to former earnings (income) [19, p.303]. T.M. Mironova notes that based on the norms of social security law, the mandatory parameters of the fulfillment of social obligations by the state (in terms of establishing types and scopes of security) should be determined [20, p.13]. In this regard, it should be noted that in modern conditions the principles of social security law are intended to promote the realization of the function of the social regulator of the well-being of an individual and society. According to I.M. Merzlyakova, social regulators should be understood as a set of measures to improve the processes aimed at the formation and maintenance of better social conditions in which the effective distribution of social benefits is possible for the most complete realization of the needs and interests of subjects at different levels of life activity [21, p.179]. Analyzing the legal basis of social security and social services in modern conditions, L.P. Shumnaya states that social security has a great importance for the welfare of citizens, workers, their families and the society as a whole. The right to social security is one of the fundamental socio-economic human rights, it is the basis of social peace the

implementation of which leads to the harmony in society and also gives the opportunity to participate in the life of society to all groups of the population. To develop guarantees for the realization of this right, it is necessary to determine the main directions for improving legislation in this area [22]. M.N. Shumylo emphasizes that the principles of pensions should not only determine the current legal terms, but also perform a predictive function, indicating the development of both legislation and the science of social security law in general and pensions in particular [23, p.116]. E.V. Moskalenko argues that with the activation of the pace of market economy development, with a radical renovation of the legislation, the principles of compulsory state social insurance are gradually gaining their new form and content. They reflect the measure of the direction of the state to help its citizens, the desire for humanity and compassion. These principles found legal support in the current legislation of Ukraine, which is generally a sign of a sufficiently developed and perfect legal system of the state [24, p.284]. We support the position of A.L. Blagodir, that the branch principles of the social security law should be based on the fundamental principles of socio-economic human rights enshrined in international normative documents, and their development in the future will be improved as the legislation in the field of social security is progressed [25, p.87-88]. A.K. Kazanchan asserts the need to create an understandable, effective system of organizational and legal guarantees for the implementation of the principles of social security law in a practical way. Methods, mechanisms for their implementation, the range of responsible subjects and responsibility for improper performance (non-fulfillment) of their duties should be determined [26, p.126].

The foregoing enable us to draw the following conclusions: the principles of the social security law of Ukraine are humanistically directed fundamental ideas that are embodied in the social and security legislation with the aim of realizing by the individual, as the main social value of the state, socio-economic rights and interests. The system of branch principles of social security law by content and mode of distribution can be conditionally classified into general branch principles of social security law and sub-branch (institutional). General branch principles of social security law are the principles on which all norms of this industry are based. Sub-branch (institutional) are principles that contain general principles on which the norms of individual sub-branch and institutions of social security law are based (pensions, social insurance, social services) [27, p.106-117; p.310-311]. Given the current trends in the development of the state's social policy, the general principles of social security law should include the following: the principle of humanism as the fundamental idea of social security; social state guaranteeing the right of everyone to social security;

implementation of state-legal standards and guarantees of social security at a decent standard of living; fair differentiation of the types of social security; social and legal justification for the implementation of social security; combination of legislative and contractual definitions of social security; state encouragement of voluntary forms of social security and charity; ensuring effective judicial and extrajudicial protection against violations of the right to social security.

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