

## THE SIGNIFICANCE OF THE INTERNATIONAL SOCIAL-LABOUR STANDARDS IN THE NATIONAL LAW

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**Abstract:** The topicality of the work is conditioned by the lack of a well developed theory of the system of the international legal basis to provide human social and labour rights in Kazakhstan Republic, by the demand of practice of forming and developing the social and labour legal system in Kazakhstan on the fundamental basis of generally accepted rules and standards in this sphere. The conclusions have been made that the significance of the international social-labour standards is in the national law development as to its correspondence to the generally accepted and universal norms; the standards serve as determinants of unification and consolidation of the national legislation, define the level of guarantees in the social-labour sphere and also perform the function of the national lawmaking development; serve as parameters of the internal social policy.

**Keywords:** Social-labour sphere, social rights, labour rights, social standards, social protection, social security.

### INTRODUCTION

The contemporary global world makes a demand on the states' cooperation in the social-labour sphere and also on the parameters and mechanisms of providing human rights on the national level with regard to the correspondent international standards. "The necessity of close constructive cooperation of the international and national legal systems is predetermined by social-political, economic and specific law factors of the objective character generated among other factors by the globalization process of the surrounding world. It conditions the social-normative community of the creative processes, development and functioning of the mentioned normative systematic constructions" (Babaeva, 2009).

The international law is the most important source to form the internal law, the legal basis of the effective countries' cooperation in different spheres. The modern globalization processes that are characterized by the development of economic, financial, scientific, cultural and other social ties between the countries that bring the countries' cooperation parameters to the new level. "Globalization as a characteristic of the modern civilized process is a form of the human integration in the integral system on the basis of the western European humanism values that ideologically provide the political legal process that is going on the national, regional and global level" (Gavrilov, 2006). The processes of the world safety systems creation, countries' integration are the most essential premises to work

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out the generally accepted standards that are required to consolidate and observe the human rights, their guarantees mechanisms. In this a leading role is played by the international organizations activity whose goals are to make, consolidate and implement the international standards of human rights that are to establish stable basis for the whole world safety.

One of the important ways of the countries cooperation development is the social labour sphere as a sphere of social relations where the basic social and labour human rights are realized. It is even more important because of the special values of social-labour rights as natural person's rights, specific meaning to consider the state to be really social. The state's development as a socially organized one supposes functioning of high guarantee level of the social and labour human rights that are secured by political, legal, managerial mechanisms including state and non-state institutions means.

The legal provision of the social and labour human rights is done by the national and international law system because "being included in the state's law system the international norms act as a part of the system and are supplied by the intrinsic mechanism. At the same time the international law norms preserve their status without losing their international-law quality that is they remain a part of the international-legal system" (Hohlova, 1996). The mentioned peculiarity of the international norms is considered by us as an important characteristic of the international-law basis of the social-labour human rights in Kazakhstan. On the one hand, the international community has worked out and set the basic parameters of the social-labour human rights, on the other hand, the international law acts that assign the main list and mechanisms of the social-labour rights realization are the component element of the national legal system.

The legal assuring is directed to form the system of law sources that adequately reflect the existing these or those social relations types. The international-legal base of the social labour human rights assurance is, in our opinion, a complex of important fundamental international norms that regulate the basic foundations of the international institutes, functioning in this sphere, and the international relations directed to assurance, guarantee and realization of the social-labour human rights that gives the grounds to single it out into an independent international-law institute.

The topic is also chosen because "Kazakhstan Republic is to cover a long, difficult way to assure effective human rights protection in accordance with the international standard. That is why to think that our society guarantees the total realization of the human rights standards is very early; to be objective we have not achieved any considerable advances in this sphere. It can be explained by the fact all social reforms taken place lately have not been directed to the humanitarian development in the community sphere. The goals of effective human rights protection have been shifted aside in comparison with the goals in economic, social and political problems of the society" (Matveeva, 2008).

The category “social-labour rights” has been chosen by us to define the whole complex of social and labour human rights in terms of their general nature, closeness of the subject structure, interconnection and interdependence.

The labour and social human rights are guaranteed by the Constitution.

### **DATA, ANALYSIS AND RESULTS**

Constitution by virtue of its specific quality as a basic law country’s act defining in the legal form the state characteristic, its goals and tasks assign forms of realization by the citizens their abilities for labour activity.

The Constitution proclaims equality and impossibility to restrict citizens’ rights (in the sphere of creative activity among them) independent of sex, race, nationality, origin, religion, believes, social organizations membership, etc. The distinctive feature of the KR Constitution of 1995 is that the state refused to proclaim declaratory the absolute citizens’ right for labour as it was understood in the USSR Constitution. At present the state having no economic possibilities is unable to guarantee the realization of the mentioned right. According to the Constitutional regulations the state assumes a commitment to realize the activity directed to creation the conditions that can provide a life of dignity and free man’s development. The forms of implementation can vary: providing organization – legal conditions for different forms of the labour abilities realization (enterprise, contract work, public service and others), unemployment benefit pay, etc.

Under article 24 of the Constitution in the Kazakhstan Republic everybody has a right for labour conditions that meet the safety and hygiene demands, for the labour recompense without any discrimination and also for the social protection from unemployment.

The right for individual and collective labour dispute using the assigned by the law ways of their resolution including the right for the strike. Everybody has a right for rest. Working under the labour contract people are guaranteed the legally established working day, days off and holidays, annual paid vacation.

In accordance with article 28 of the Constitution citizens of the Kazakhstan Republic are guaranteed a minimal payment and pension, special benefits related to age, disease, disability, loss of breadwinner and other legal reasons.

The Constitution of the Kazakhstan Republic prescribes the right to freedom of associations, freedom of enterprise, the right to protection of health and the equal right to access to public service.

Under article 28 of the Constitution citizens of the Kazakhstan Republic are guaranteed a minimal pension size, special benefits related to age, disease, disability, loss of breadwinner and other legal reasons. Voluntary social insurance, creation of additional forms of social security and charity are encouraged.

The right for the social security as an integral human right enters into force on condition of definite life situation with which the law links the subject's right to demand from the legal entity to provide this or that social security type. The Constitution of the Kazakhstan Republic in article 28 establishes only the minimal list of the social factors according to which the social security is guaranteed, they are age, disability, loss of the breadwinner, the list of other reasons is set by the Republic laws.

The Constitution of the Kazakhstan Republic establishes another social rights such as the right to housing specified in the law the citizens category, who needs a home, that according item 2 of article 35 of the KR Constitution are given for reasonable fee out of the public housing under the established legal norms, the right to free education, to health protection that supposes to provide free guaranteed amount of medical aid. The enumerated rights refer to the social ones in its broadest sense as connected with the social sphere of the community activity. But on a more narrow analysis taken as the basis of the scientific analysis to the social human rights one should refer the right to social security, to a guaranteed minimal level of social welfare, social assistance, social service, participating in the system of social insurance and insurance benefits, that is all the human rights guaranteed by the system of the citizens security.

The social-labour human rights are of natural character. In the law theory the notion denoting a set of principles, rules, rights and values required by the human origin and due to this fact independent on the legal recognition or non-recognition them in the particular state. Under the law theory the natural law used to exist long ago before the state appearance and can exist without it (Tileubergenov & Pelevin, 2016a).

Nonetheless, the real guarantees of the right to free labour, material and social safety of citizens can exist only at the state community structure, at first it is connected with creation and incentive mechanisms to provide a possibility for a man to work in the conditions that meet the labour protection requirements, to receive a decent payment, to finance the social security measures. So, the working possibilities and means of the social-labour rights realization are possible only in the state institutes frames, but as a legal category the social labour rights are not connected with the state's ability to provide them or guarantee. The right to a decent, sufficient level of living belongs to everybody from the birth, the persons, who are in a hard life situation (loss of the breadwinner, work, disease, disability and many other cases), have a right to a free set of the guaranteed medical aid, remuneration not less than the minimal one, the person has a right to housing.

The generally accepted by the world community requirements for the condition and development of the paid labour sphere, social welfare, protection, assistance and service are described in different international acts, such as: the Copenhagen

Declaration on Social Development (adopted by the World Summit of Social Development, Copenhagen, 6-12 March, 1995); the United Nations Standard Minimum Rules “Securing equal opportunities for disabled people” (New-York, 20 December, 1993); the resolution at the thirteen session of the General Assembly of the United Nations Organization 3447 “Declaration of the Rights of People with Disabilities” (9 December, 1975); Declaration of the United Nations Organization “On Social Progress and Development” (11 December, 1969, adopted on 11.12.1969 by the Resolution 2542 (XXIV) at 1829th session of the General Assembly of the United Nations Organization); Convention of the International Labour Organization No 157 “On establishing the international system of the rights securing in the social sphere” (Geneva, 21 June, 1982); Convention of the International Labour Organization No 128 “Invalidity, Old-Age, Loss of the Breadwinner benefits” (Geneva, 29 June, 1967); Convention of the International Labour Organization No 118 “Equality of Nationals and Non-Nationals in Social Security” (Geneva, 6 June, 1962); Convention of the International Labour Organization No 103 “Maternity Protection” (revised in 1952) (Geneva, 4 June, 1952); Convention of the International Labour Organization No 102 “On Minimum Norms of Social Security” (Geneva, 4 June, 1952); Convention of the International Labour Organization No 48 “On Establishing the International Cooperation in securing rights caused by disability, old-age and loss of the family breadwinner” (Geneva, 4 June, 1935); the European Social Charter (Strasbourg, 3 May, 1996); Charter of the Social Rights and Guarantees of Citizens of the Independent States (adopted by the Inter-parliamentary Assembly of the State Members of the Commonwealth of Independent States on 29 October, 1994), etc.

The international social-labour norms, as a rule, are more progressive in relation to the national law and are of the minimum social-labour character to which the state should strive. Thus, the basic meaning of the international social-labour standards is in the national law development as to its correspondence to the generally accepted universal standards. Taking into consideration Kazakhstan particular nature and the international experience working out the institutional basis of the social security the mixed system was preferred where state’s and private possibilities are effectively used, and that is the way in which the contemporary development of the social sphere of the Kazakhstan Republic is realized.

The importance of the international standards in the social sphere is that their acts are basic to make the corresponding law systems. But one should bear in mind that how well the institutions are developed in this sphere in this or that country depends foremost on the economy condition, state’s financial capability, enough funds to cover all who need social aid, providing citizens’ employment. The categories list of the people who need social support is directly depends upon economy state’s capability, historic precondition, vectors of the realized social policy of the state, and also the implementation level of the international standards

into the national law system in this sphere. As it is noted in the scientific-practical sources the social-labour law as an integrated sector-based system is based on, firstly, the constitutional norms, secondly, the international-legal acts adopted and working in the social sphere (Pelevin, 2012).

The international social-labour standards become parameters of the national social policy development. The social development directly influences the economy growth, ensuring state security. The social policy is a constituent part of the national state policy. Its subjects are state structures of all levels. The partners of the state structures on the social policy realization are supposed to become the international, non-state and other organizations.

The characteristic feature of the contemporary state management is the growing tendency to redistribute the roles between the subjects of the state social function, preserving the dominant role of the state governing in the realization of social benefits under the social policy parameters. Considering the specificity of Kazakhstan and on the international basis experience analyzing the institutional basis of the social security the preference should be given to the mixed system where both state's and private institutes facilities are effectively used (Tileubergenov & Pelevin, 2016b).

One of the perspective trends of the international standards introduction into the mechanisms of providing the social-labour human rights, we think is the normative establishment of the social activity standards of the non-state organizations in this sphere (commercial and noncommercial). The modern demands to the realization of the socially oriented state's activity is in its realization by the governmental institutions together with public non-state institutes, the mentioned above demands in the Kazakhstan Republic are at its beginning stages: the proper normative law system is being made, the cooperation forms of state and non-state regulation methods of the corresponding social relations. However, we suppose that the objective process is the dominating state mechanisms that provide the social labour human rights guarantees, that in their turn is the consequence of the heavy financial dependence of the corresponding social relations sphere on the state's financial sources that are of the guaranteed status and define the state mechanisms in the realization of the social measures as priority one. The possibilities of the public non-state structures can complement the social activity of the public structures activity in the organizational aspect.

The state's social policy is based on the generally accepted principles and norms of the international law and international treaties of the state, its basic law and other normative legal acts.

The international standards become the benchmarks to introduce new basic principles regulating the social-labour sphere, revision of the state and employers roles, business representatives in the social-labour relations. The effective state's

activity in this sphere is one of the conditions to a successful realization of the economic, political and other functions of the state. At present Kazakhstan Republic development level the subjects of the market economic relations are actively engaged in ensuring the social orientation of the Kazakh economy and creating the developed, adequately reflecting the present state of the society and its citizens' demands social law system. Moreover, we think that the interested state organs together with the business communities' representatives must be developed the national standards of the social business responsibilities. In this direction the work has begun: the State Standard of the Kazakhstan Republic has been adopted the "Social responsibility. Requirements" ST KR 1352-2005 (SA 8000:2001, MOD) the sphere of which is limited by the requirements of the social organization's responsibility despite of the ownership form in the social-labour relations frames that arise in separate organizations, establishments, enterprises that are employers who use the paid labour in their activity. Thus, in the modern conditions the international social-labour standards of the business structures responsibility for the social-laboursphere condition are one of the development vectors of the reorganizing, legal ensuring the conditions for existing of such public relations sphere, moreover they are defined by the state's power as guidance to carry out the national policy.

At present stage of the social reforms realization in Kazakhstan Republic the main goals of the state power are to make an effective security system of the workers' labour rights, their social security, social equality, that are provided by the mechanism of the state social guarantees.

The vital meaning to realize the social guarantees established in the Constitution of the Kazakhstan Republic is forming and using social standards, norms and normative at the republic and local level of the social citizens' security. The social standardization is a new regulating sphere of the social development parameters by the state power bodies, local self-government in the market relations.

The analysis of the contemporary social law-making shows that at present the state realizes its activity to define the social standards in the form of the minimum subsistence and its conforming to the size and its reckoning with all social benefits types paid by the republic and local budgets. The described situations are considered as reduced notion of social standards and also the state role in regulating the social sphere that leads to a misrepresented social standards definition and state's social policy realization, a considerable reduction of the mechanisms effectiveness in realizing the constitutional guarantees of the social human rights. To our mind the common list of the social human rights in its general meaning included into the Constitution guarantees includes:

- the right to the social security in case of disease, disability, loss of the breadwinner and other legal reasons, the right to the minimum pension limit (article 28, KR Constitution);

- the right to the guaranteed by the KR Constitution article 30 free education;
- the right to the housing, providing housing to the mentioned in the law citizens' categories, affordable pay from the state housing funds in accordance with the established norms (article 25, KR Constitution);
- the right to the health protection (article 29, KR Constitution).

Defining the social rights and understanding the state's regulation necessity of their realization displays the problem of the social standards definition as the main one while realizing the whole social policy, goals and tasks of the state in this sphere. We suppose that the said above arguments the priority and vitality of the development and realization of the social standards in the Kazakhstan Republic as the basic mechanisms of the constitutional guarantees of the social and labour rights.

The basic development of the social standards used at making the national law system, realization of the state social policy is done by the special international organs and organizations accepted in the world community. The leading role in this direction belongs to the UNNO and its institutions that are engaged in Development Program UNNO (DPUNNO). DPUNNO contributes to the development and realization of the national development strategies, promotion of the democratic and economic reforms and enhancement of the institutional and human potential. DPUNNO realizes the projects in different Kazakhstan regions helping to soften the negative influence of the transitional period for peoples' lives. DPUNNO provides consulting service, realizes projects on sites and publishes booklets on different aspects of the country's development. Its work in Kazakhstan is focused on three spheres:

- reducing of poverty;
- environment;
- sustainable development.

An active and effective participation of Kazakhstan in DPUNNO is one of the most important channels of international social-labour standards penetrating into all public relations setting the development parameters of the corresponding law.

Moreover the significant role of the International labour organization in the implementation of the generally accepted social-labour standards into the Kazakhstan legal system is done as follows:

- by including the ILO acts in the law system by Kazakhstan's showing its consent to be bound by the international treaty signing it, papers exchange, ratification of the treaty, its adoption, approval, joining the treaty or by any other way that the negotiating parties have agreed;
- by developing and realizing the strategic cooperation programs between Kazakhstan and ILO.



So, the international social-labour standards become part of the national law system and social-labour sphere of the public relations and the corresponding of the government power using different introduction mechanisms. In the modern conditions of the Kazakhstan Republic the social-labour standards become new parameters of the quality evaluation of the social-labour human rights realizing, their implementation will allow taking citizens' interests into consideration, community and state in the social sphere, providing the effective development of Kazakhstan as a social state.

To our mind the social standards should be given the minimum necessary level of social guarantees expressed by the most important social norms established in the law. The system of the social standards must be formed on the basis of the necessary guarantees of the social rights realization and should not be restricted by the social security and service sphere. The sphere of the social measurement is wider, it must include the most important, generalizing and long-term social indices. To the main types of the social standards one should refer:

- subsistence minimum;
- minimum income as a minimum payment and pension size from the pay-as-you-go system and the basic pension payments;
- minimum limit of the social allowances and payments;
- nomenclature, lists of issues of free and partially paid services that are given to citizens financed by the budget system of the Kazakhstan Republic;
- minimum limit of the social insurance payments;
- minimum level of pension through voluntary contribution and voluntary professional pension savings;
- citizens categories who have the right to social security;
- standards of necessary content, requirements and technologies of providing the social services;
- norms of securing the citizens with social services and corresponding establishments;
- norms of personnel, material-technological and other ensuring of the citizens' social service;
- norms of providing affordable housing among them the standards of the infrastructural social building funds for the priority citizens categories;
- norms of the insurance payments against social risks in the voluntary social insurance frames.

We think that introduction and making in the Kazakhstan Republic the social standards system will allow to increase the effectiveness of the social policy. This mechanism will fully allow realizing one of the basic principles of target as to the social security and social justice (Tihomirov, 2005).

The mentioned characteristics of the legal and organizational ensuring of the social labour sphere are targets of the modern social reforms, state social policy lead by the Kazakhstan Republic. Alongside we consider that nowadays at present as the main priority for Kazakhstan in this sphere must become the tendency to set the subsistence minimum as established in the international standards for its content and payment because this very index is the indicator and main value with which the minimum payment, pension, social payment correlate to.

This activity direction, in our opinion, must include:

- widening of the parameters list that constitute the food basket according to the generally accepted standards of the person's good nutrition with regards to the balanced nutrition demands in Kazakhstan. "The basis of the subsistence minimum is the food basket that has the science-based nutrition evaluation. If you consider this index in the countries of the Commonwealth where it is 2100-2500 kcal per person a day and in the USA where the index is much higher – 3700 kcal, we can establish the difference in the living level of these countries' people" (Romanova, 2009);
- developing the science-based foundation and legal establishment of the value terms expenses on non-food items and services that together with the food basket constitute in natural and value terms the subsistence minimum.

Nowadays in the conditions of the Kazakhstan Republic the nonfood expenses are defined arbitrarily, they are not scientifically based and do not correspond to the parameters and goals of their use in the subsistence minimum value. According to point 8 Calculation rules of the subsistence minimum value (Sabikenov, 2005) the cost of the food basket is calculated by the state statistics organ representative by multiplying the scientifically-based physiological norms of food consumption that are included into the food basket to the average price registered in the retail sphere status mid-month in the city of republic, capital, region and district centers. The food basket is 60 % of the subsistence minimum.

Correspondingly the non-food items and service cost is 40 % of the subsistence minimum. So, the non-food part of the minimum is neither scientifically, nor practically based and is calculated on the food basket value that has nothing in common with the nonfood items and services. The described legal situation demands its solution, intelligent and thorough specialists' approach of different industries and establishing the science based and objective value of the subsistence minimum in the Kazakhstan Republic.

One of the directions to solve the set task, we think, can become introducing together with the subsistence minimum notion the category of the minimum consumption budget. "In case the subsistence minimum defines first of all the physiological man's needs than the minimum consumption budget is to satisfy the social man's demands, that is why its value is by several times higher than the

subsistence minimum value. This very index must be the benchmark to establish minimum payments, pensions, allowances, stipends and other social payments. The consumer basket as the basis of the minimum consumer budget differs from country to country not only by the methods it is calculated but also by its content. For example, in the USA the consumer basket includes 300 items of goods and services, in France – 250, in Great Britain – 350, in Germany – 475” (Romanova, 2009);

- the legal affirmation of the poverty line value in the Kazakhstan Republic. Poverty line in accordance with the Act “On Minimum Living Standard” is established depending on the economic state’s abilities and serves as the criterion to provide the social security for the poor people. The value of the poverty line is defined every quarter in percentage of the subsistence minimum value by the Ministry of Health and Social development of the Kazakhstan Republic. The social significance of the poverty line is to give the right to the people, who has an income lower than the mentioned parameter, to apply for target social security in the form of money payments on account of the local budgets. The value of the poverty line is established by the Ministry arbitrary without the legal or science argumentation. This function of the central designated authority has been criticized many times by the deputies of the KR (Shokamanov, 2012). It should be noted that at present this problem has not found its adequate solution because in the Kazakh law system there are no reasonable mechanisms and parameters to establish the poverty line;
- in accordance with the international standards the notions “poverty line” and “subsistence minimum” need correction as to correspondence of the money form of these derived values. Of course, the categories “poverty line” and “subsistence minimum” have different sense and social meaning.

It is natural that satisfaction (in money form) of the minimum human needs, that is the poverty line must correspond to the value of the minimum food basket, that is the subsistence minimum, the income that is lower than the food basket value cannot provide his life.

The concept of basic needs that appeared in the 60s, XX century in the research circles of Scandinavia was taken as basis for the report of the International labour organization in 1976 “Employment, growth and basic needs”.

The core point of this concept is that it suggests to governments building economic and social policy by: (a) obligatory satisfaction of some minimum needs in food, clothes, housing and domestic property; (b) public service improvement in the sphere of fresh water, housing sanitation, public transport, health care and education.

ILO followed by other organizations that are the UNNO members bound satisfaction of these needs to the human rights observing and consider to be the most important condition to obtain the concept goals “basic needs” free people’s initiatives, involving them into the “development through participating” both by making and implementing the decisions. Under the article 25 of the Universal Declaration of Human Rights every person has a right to such a living level, including food, clothes, housing, medical care and necessary social service, that is necessary to support health and wealth both his and his family, right to security in case of unemployment, disease, disability, widowhood, old-age or other case to lose means of livelihood for reasons beyond his control” (Tileubergenov et. al., 2016).

## CONCLUSION

Thus, the international standards in the social-labour sphere not only widen the subsistence minimum content but bound its implementation by the states as to creating guarantees of the social human rights realization at the satisfied from the point of view of the basic person’s needs in case of loss of working capacity on account of social payments, and in case of labour engagement on account of labour pay. The international social standards oblige the states to consider poverty from the point of view of income at the level or lower of the subsistence minimum and suggest providing guaranteed by the state social security for the citizens.

One should point out that the social duties realization is the most important priority in Kazakhstan Republic under any financial-economic conditions. The events of the latest development stage that have taken place in the world level that have a crisis financial economic character cannot but affect the Kazakhstan Republic as an integrated member of the world community. However the negative consequences as heavily reduced income of the revenue part of the state budget have not lead to the decrease of the social responsibilities fulfilled by the state.

We suppose that one of the most important directions in the social labour relations development must become the international standards implementation to ensure the social labour human rights in the Kazakhstan Republic. The analytical work should be done to systemize and analyze the existing national legal system to find out is it meets the criteria: firstly, the international standards of the social-labour human rights; secondly, alignment the content and finance amount of the given social security forms and corresponding requirements with the generally accepted standards demands.

This direction of improving the law-making process, in our opinion, will positively affect the Kazakhstan Republic’s fulfilling its obligations to follow the international social responsibilities and will allow qualitatively introducing and implementing the international norms. It is required to make a scientific prediction

of the consequences introduction of the normative legal acts in the social-labour sphere from the point of social, economic, political and other aspects. It is necessary to study and analyze from the point of the international social-labour standards, that have been accepted by the state, implementation needs into the national law system and as the result to make an effective, corresponding to the international norms, social and labour law of the Kazakhstan Republic.

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