

CURRENT TRENDS OF LEGAL REGULATION OF RELATIONSHIPS IN THE SOCIAL PROTECTION SPHERE

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Abstract: The research is devoted to the complex analysis of legal bases of the relations in the social protection sphere in the Republic of Kazakhstan. The problems of contents and the directions of legal regulation in relation to the social protection sphere are systematically investigated in this work. The definition of social protection as the subject of legal regulation, as the legal institute and as the special sphere of public relations in which the mechanism of guarantees of the social implemented rights is given. The questions of increase in efficiency of legal support in the social protection sphere are investigated. As a result, the conclusions and offers directed to improvement of standards of the current legislation of the Republic of Kazakhstan and law-enforcement practice in the context of process of forward formation of the Republic of Kazakhstan as the social state are formulated. While analyzing the problems of legal support of the social protection sphere, system approach which is provided with the versatile nature of legal regulation (standards of the constitutional, administrative, labor, medical, educational, housing right, the rights of a social assistance) is applied. Legal orientation of the research caused the need to use the scientific methods in jurisprudence: legalistic analysis, comparative and legal, logic-legal, historical methods. As a result, following aspects are offered: theoretical justification of social protection system bases; the perspective directions of the development of social protection institute; the argumentation of the idea about unification of the regulations making institute of social protection the unified codified act – the Social Code of the Republic of Kazakhstan.

Keywords: Social protection, social assistance, social rights.

INTRODUCTION

In broad meaning the term “social protection” represents economic, legal, ecological, medical and moral protection for people from infringement of their rights, and also providing safe conditions of their life, protection against criminal encroachments, the help in emergency situations, at elemental disasters (floods, earthquakes, fires, epidemics, environmental disasters, etc.). In narrow meaning the term “social protection” can be used in connection with implementation of protection of one of the listed types of the rights or designation of several types of the rights.

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The legislation connects a concept of social protection with ensuring a certain level of access to the vital benefits and the certain welfare to citizens upon the occurrence of socially important factors provided from solidary and accumulative systems of financing of the relevant activities. Social protection is multidimensional phenomenon, including, undoubtedly, considerable number of forms of material support of the population, rehabilitation and adaptation actions, and also measures for social service. We believe that categories “social assistance” and “social protection” correspond as private and unit, where a social assistance is private in system of social protection.

The system of social protection has the high organizational level of creation including a set of subsystems of providing the population on a sufficient level of living according to social standards, that is more universal in relation to social security systems and includes wider range of social measures. Wide use of the term “social protection” in practical activities, in the sphere of public administration, in a set scientific research, etc. did not become prerequisites of his uniform understanding. In fact, representatives of various spheres of public life put their own sense in this definition.

The aim of the research is to analyse a complex of the questions connected with dynamics of the public relations on realization of the social rights of the personality on the basis of the sources of legal support of the relations on social protection, achievements of a modern domestic and foreign scientific thought. Besides, the main goal is further development of the theory of legal bases of social protection system as perspective direction of legal science and as methodological and theoretical basis social legislation. The following tasks for the achievement of the specified aim are set by authors:

1. to disclose the essence and the maintenance of the concept “social protection”, to formulate definitions of the concepts “social protection” and “social protection system”;
2. to investigate the mechanism of interrelation of the concepts “social protection” and “social rights”, to formulate the definitions of the concepts “social rights”, to show their role in ensuring social security of the person;
3. to give a general characteristic of a condition of a legal regulation of the relations in the social protection sphere, to define current trends of development of the legislation on social protection, to formulate the offers connected with formation of the Social code;
4. to carry out the analysis of the current state of the legislation on a social assistance and social insurance, to define the prospects of its development.

The theoretical conclusions on the basis of a creative approach to understanding scientific achievements of scientists in the field of social security law are formulated

in Martha Derthick (1979); Mesa-Lago C. (1978); Lubove R. (1986); Reich C.A. (1964); Estevez-Abe M., Iversen T. & Soskice D. (2001); Rein M. & Rainwater L. (1986); Blank R.M. (2009); Norton A., Conway T. & Foster M. (2001); Khamzina Z.A., Buribayev Y.A. (2016) etc.

Current trends in the development of the social security law sector are analyzed on the basis of such works: Posner E.A. (2009); Aaron H. (2010); Diamond P.A. & Orszag P.R. (2006); Angelaki M. (2007); Millar J. (2009); Carney T. (2007); Goss S.C. (2010) etc.

The analysis of the social protection concept, its essence and content was carried out on the basis of studies of such economists, sociologists, political scientists, historians as Arbour L. (2007); Holzmann R. & Jørgensen S. (2001); Nowak M. (2008); Boix C. (1998); Bonoli G. (2005); Rimlinger G.V. (1971) etc.

The analysis of the practice of modern social protection systems functioning in European countries was carried out according to the works of the authors Berghman J. (1997); Ferrera M. (1996); Hvinden B., Heikkilä M. & Kankare I. (2001); Rys V. (2001); Picot G. (2013).

The empirical basis of the research is made by a wide range of sources: The Constitution of the Republic of Kazakhstan, the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the European Convention on human rights protection and fundamental freedoms (1950), the European social charter (reconsidered, 1996), the Kazakhstan legislation (codes, laws, other regulations) on questions, substantially or terminologically concerning social protection (including a social assistance, social insurance, social support, the public assistance, etc.) irrespective of branch accessory of precepts of law, court practice, and also materials of scientific conferences, articles of periodicals directly related to a subject of the research and the regulations of the public relations opening practice in the sphere of social protection.

MATERIALS AND METHODS

As methodology components authors used the general scientific methods assuming the research of all phenomena and processes in their development, interrelation and interconditionality and also special methods. In particular, methods of dialectic materialism, the system analysis, analysis and synthesis, logical, historical, comparative and legal, legalistic were used.

Researches proceeded from the following provisions explaining the essence of the legal regulation method of the relations in social protection.

Based on theoretical approaches in understanding the legal regulation method, in the process of carrying out the research authors recognized that at the present stage the following structure of signs which disclose the branch specifics of the legal

regulation method and characterize: (1) the ways of content formation of the rights and subjects' duties; (2) the bases of emergence, change, termination of the legal relations; (3) general legal provision of subjects; (4) legal corrective actions.

The method of legal regulation should not be perceived formally or abstractly. Its task not only in legalistic fixing of the citizen rights, but also in the legal providing conditions for realization of these rights (including provision with legal means the material basis for distributive relations functioning). Without concrete financial source the rights and duties cannot be exercised (there are not only limits of implementation of the rights, but also limits of fulfillment of duties). For this purpose, the existence of a source of funds, which are subject to redistribution and sufficiency of its volume, is necessary for the corresponding payments.

The specific feature of the relations regulation of the social protection sphere at the present stage has the direct coordination of social laws with laws of the budget and tax legislation. The right of social protection as a "customer" of financial means cannot be indifferent to their volumes. The financial law cannot act only as the limiter for the right of social protection (in the part concerning budgetary funds). On the basis of the law rules about social protection determination of obligatory parameters of social obligations execution by the state has to be carried out (in the part of establishment of types and providing volumes).

RESULTS

By the results of the essence research and the maintenance of the concept "social protection", the conclusion is drawn that social protection is carried out at the state and non-state levels, in different forms (including a social assistance), with granting different types of the material and non-material benefits and advantages, by means of establishment of the mitigation modes of encumbrances or establishment of responsibility measures (proceeding from the special social importance of the carried-out actions). Taking it into account, the definitions of the concepts "social protection" and "social protection system" are formulated:

Social protection is an activity of the public and non-state authorities and organizations for implementation of economic and legal measures with organizational character which are directed to the prevention or mitigation of negative consequences for the person and his family upon the occurrence of socially important circumstances (including social risks), and also to preservation of the acceptable level of their material and social welfare.

Social protection system is a set of institutes and a package of economic and legal measures with organizational character which are directed to the prevention or mitigation of negative consequences for the person and his family upon the occurrence of socially important circumstances (including social risks), and also to preservation of the acceptable level of their material and social welfare.

In relation to the Republic of Kazakhstan it is impossible to speak about the creation of full-blooded social protection system which in modern conditions is in a development stage to the level of the set standards. We believe that social protection can be considered as the system of the measures and actions directed to create the conditions for a sufficient living level of the population conforming to the accepted social standards and indicators. The social security system is, in our opinion, a subsystem of social protection, its integral part and the major link.

Depending on concrete historical prerequisites, an economic situation of the country, each state defines for the social protection system what legal facts are necessary to recognize and when it is necessary to acknowledge citizens about the possibility to realize the right of social insurance, protection and help.

At the present stage the following vital circumstances are defined by the law as the social facts in the Republic of Kazakhstan: disability (general, special, both completely and partially); achievement of a retirement age; loss of the supporter; work in special working conditions; child's birth; adoption, child's adoption; monthly income of the person or in general family below the poverty line; participation in fighting; military service, work in law-enforcement bodies; accommodation in the territories affected by ecologically adverse factors and impact on the person of consequences of nuclear tests; presence of a socially important disease; education in a family of four and more and some others.

The problem of streamlining of the precepts that is regulated by the law in the social protection sphere objectively exists. The need of the legislation improvement on the basis of uniform definition of subject structure, a conceptual framework, terminology, steady legal designs, etc. in order to avoid discrepancy, inconsistency, discrepancy of the norms governing the relations on ensuring social security of the person is very urgent.

On the issue of Social code preparation, the following offers are stated: it is necessary to decide the norms volume which have to be included in the code; to carry out branch identification of the norms included in regulations; to carry out codification step by step; by way of the first stage of preparation of the Social code to begin carrying out systematization and codification of the legislation on a social assistance and social insurance.

The analysis of the legislation development on a social assistance and social insurance allowed to assume that in the long term this development will include a number of the directions, including: legislative fixing of concrete criteria and standards of nation-wide level which will allow to define types and volumes of the guaranteed social assistance more accurately; further development on new additional forms of a social assistance.

DISCUSSION

The analysis of the concepts “social protection” and “social assistance” on the example of conventions and recommendations of the International Labour Organization (ILO) is carried out. These documents do not contain concrete definitions of the specified concepts. Nevertheless, proceeding from texts of conventions and recommendations, authors found confirmation to the fact that the maintenance of the concept “social protection” is beyond the maintenance of the concept “social assistance” which is always connected with certain forms and types of provision, concrete social risks. In the specified documents quite wide range of the state and non-state, general and special social security systems are designated, and also some organizational forms of a social assistance demonstrating that the social assistance includes not only social insurance and a social relief aid.

At the same time, it should be noted that the lack of uniformity in an interpretation of the designated concepts on theoretical and on practical levels lead to an illegibility, ambiguity, and sometimes to uncertainty of their characteristics in conventions and recommendations of the ILO. Any application of terms, different values of the same concepts, lack of necessary definitions negatively influence the quality of the international legal documents. All this, in our opinion, testifies the need of formation of uniform approach to legal terminology development and a conceptual framework at a formulation of provisions of conventions and the ILO recommendations, including the questions concerning a ratio of the concepts “social protection” and “social assistance”.

During the research the practice of functioning of social protection systems in the European Union countries was analysed (on the basis of works of such authors: Scharpf F.W. (2002); Erikson R. (1987); Trifiletti R. (1999). This analysis showed an ambiguous picture of a condition of social protection systems in the mentioned countries. In this connection various types and models of social protection systems are allocated (Scandinavian-Anglo-Saxon and continental types; distributively-institutional and marginal models; continental, Anglo-Saxon, Scandinavian and South European models). The mentioned models of social protection do not purely exist in any state, it is possible to speak only about prevalence of elements of one of them. The characteristics of each model over the countries, by types of providing were generalized, the review on the certain countries (Germany, France, Great Britain, Sweden, Italy) is given.

Despite the distinctions in the ways of development and features of the organization, quality and volume of services, and also financing methods, all social protection systems of function on the basis of uniform approaches and the principles. These are the general approaches defining fundamental characteristics of social protection systems: insurance approach (principle of insurance) and not insurance approach (principles of providing and relief aid).

It is typically for the social protection systems: (a) a combination of voluntary and obligatory types of social insurance; (b) competitive or exclusive order of the organization of social protection institutions; (c) a combination of various forms of implementation of social protection in the public, public, commercial institutions and the organizations that allows to provide as the guaranteed social protection of citizens from social risks, and fuller satisfaction of demand of various categories of the population for social services. In spite of the fact that the majority of social protection systems in the countries of the European Union have organizational distinctions, practically all of them include the following components: (1) medical insurance; (2) old-age insurance and loss of the supporter; (3) work accident insurance; (4) unemployment insurance; (5) disability insurance. The social protection system also joins minimum social assistance (public assistance) and social transfers within housing, educational and family policies. As well as at the international level, social protection in various European states is carried out on the basis of a wide range of the state and non-state, general and special systems which include various forms of a social assistance.

The analysis shows that the development of questions of social protection on international and national levels continues. The developing system of social protection in our country did not lead to formation of uniform system of categories, concepts and terms yet. Ambiguity of the concept "social protection" demonstrates what formulation of the corresponding definitions at the same time in wide and narrow senses of the word testifies to not settled process.

From the theoretical and methodological points of view, studying the concept of social protection with inevitability mentions the most important constitutional and legal institute of human rights. In legal acts and in special literature the social and economic rights are most often described in the block without accurate differentiation on economic and social, without indication of the bases of their unity and differentiation. The constitutional rights, united in system of the social and economic rights, possess the uniform rod basis defining them as the rights providing material resources of activity of the person. A main goal of realization of these rights is the receiving material benefits by the person or possible income level by means of self-sufficiency or providing at the expense of economic opportunities of society. Conditionally these forms can be designated as "individualized" and "socialized" forms of receiving material benefits (income). This category of rights provides also a possibility to use socially significant material benefits in various social and economic forms, depending on the level of material security of citizens. Granting material benefits at the expense of the public (socialized) financial sources is carried out in the form of realization of the social rights.

The social rights in narrow (special) sense of the word genetically are also inseparably linked with institute of social protection. Granting material benefits (ensuring a certain income level) at the expense of economic opportunities of society

already initially, by definition provides the restriction of volume of the social rights caused by limited economic opportunities of society. In this regard the volume of the established social rights always has to correspond to the volume of financial security of these rights. On the other hand, the formed volume of a financial source has to be sufficient for minimum necessary level of ensuring the main (natural) human rights and its socialization. Such interrelation and interdependence cause the special nature of legal regulation of the social rights which are exercised through system of social protection. Implementation of the social rights – an important condition of social satisfaction of the population. Level of security of the social rights which are exercised through system of social protection serves as criterion of social security of the person in the social state.

The term “social protection” quite often occurs in the existing regulations. The Kazakhstan legislation contains a number of laws which in general are devoted to questions of social protection, and it is reflected in the names of laws. However, the sphere of the legislation on social protection in system of the Kazakhstan legislation is not allocated as independent. In general, the considered array of acts in many cases confirms the interindustry nature of legal regulation of the social protection relations. It concerns spheres within which social protection, the list of the subjects who are subject to social protection, types of the providing which is carried out through system of social protection, etc. is carried out. That circumstance that the relevant acts not always correspond with each other on terminology, on the nature of legal regulation of similar questions requires special attention, between them there are contradictions, law-enforcement practice reveals gaps.

Regardless of how the further development of social protection legislation will proceed, it is important to consider the following. The social code is necessary, but at first it is necessary to decide on the volume of norms which have to be included in it. It depends on what regulation of the relations will be carried out by the corresponding precepts of law. The maximum coverage of all norms governing the relations in the sphere of social protection will lead to formation of such conglomerate which will hardly promote achievement of clearness, unambiguity, orderliness of a regulation of the relations in the sphere of social protection.

We believe that codification of the legislation (to those limits which will be recognized as optimum) has to be carried out step by step. It is expedient to begin this work with the legislation on social insurance and a social assistance.

The analysis of the problems connected with development of the legislation on social protection allowed to designate the main current trends of this development:

1. solution of fiscal capacity of social protection measures. Within this tendency distribution of the budgetary powers and responsibility of two levels of the government – all-republican and regional is carried out;

2. searching the ways of material losses completion to citizens in connection with “monetization” of privileges. The assessment in the terms of money of the privileges provided earlier, as a rule, is totally underestimated. Within the current legislation attempts to find opportunities otherwise “to compensate” the underpaid sums will be shown to keep access to the same material benefits. Obviously, this situation begins to be shown within provision of pensions in the form of further expansion of practice of providing citizens with the right for simultaneous receiving two pensions;
3. in the development of the legislation on social protection one more major tendency which is connected with more active formation and manifestation of non-state elements in social protection system is planned. To provide an effective combination of the state and non-state forms of social protection, an adequate legal perception of this process is the task which should be solved in the near future.
4. consideration about the introduction of standards of the European social charter in the Kazakhstan legislation. We consider that the European social standards of a living level have to become reference points on which it will be necessary to equal.

The need of the legislation improvement on the basis of uniform definition of subject structure, a conceptual framework, terminology, steady legal designs, etc. in order to avoid discrepancy, inconsistency, discrepancy of the norms governing the relations on ensuring social security of the person is very urgent.

CONCLUSION

Having considered about the social assistance and social insurance legislation, it is noted in the research that the functioning system of the legislation should not be subject to momentary and unreasonable changes, unpredictable deformations. The frequent changes and additions made to laws complicate law-enforcement practice. Not less difficult situation develops when again adopted laws contain essentially other approaches to realization by citizens of their social rights through social protection system. Lack of qualitative legal base in these cases leads to gaps and contradictions in the legislation that does not allow citizens to exercise the rights in full. In such conditions it is important to see the prospect of development of the legislation and in advance to define the main conceptual directions of this development.

The analysis of social assistance and social insurance legislation development allowed to assume that in the long term this development will include a number of the directions, including: (1) starting to work on the systematization and codification of the social assistance and social insurance legislation (in full or partially); (2) continuation of legal base formation on obligatory social insurance on temporary

disability, on pregnancy and childbirth; updating of the legislation on medical insurance; entering into the pension legislation of the changes providing essential increase in the sizes of solidary pensions; implementation of work on introduction of amendments to the law on bases of obligatory social insurance and laws on concrete types of obligatory social insurance for the purpose of achievement of bigger coherence and interrelation between them that will promote formation of full-fledged system of regulations in this sphere and to carrying out codification; (3) legislative fixing of concrete criteria and standards of all-republican level which will allow to define types and volumes of the guaranteed social assistance more accurately.

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