

IMPLEMENTATION OF WELFARE STATE PRINCIPLES IN THE RUSSIAN FEDERATION: PROBLEMS OF LEGAL REGULATION AND LAW ENFORCEMENT PRACTICE

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ABSTRACT

The urgency of the problem under study is due to the issues arising in the process of attempts to build a welfare state; current situation in the Russian Federation at present stage of statehood and social phenomena development, as well as the difficulties that arise in the normative regulation of these groups of social relations. In this regard, this article is aimed at a comprehensive analysis of the issues of welfare state formation that arise when trying to settle them by the national legislator. The leading approach to the study of this problem is a comparative legal analysis of the European and domestic experience to build a social security system and the impact of the European Court of Human Rights practice on it. The article summarizes problematic points associated with the search for an optimal domestic model of social security, as well as a doctrinal approach to the topic under consideration.

Keywords: Social Welfare State, Social Justice, Social Policy, Litigation Practice, Socio-Economic Human and Civil Rights, Right to Welfare, Legal and Lexical Interpretation

INTRODUCTION

The relevance of development issues and welfare state approval is determined in the modern world not only by theoretical problems in the study of this phenomenon, but also by practical difficulties in the way to build the institutions of socially developed states. Attitudes system development and attitudes as a basis for humane democratic transitions are of particular importance. Formation of such attitudes can be facilitated by corresponding practice of court decisions to a large extent. It should not be forgotten, however, that the concept of a welfare state can be applied in slightly different meanings. If we identify the "social" and "public", each state can be judged as social. But in this article, attention is focused specifically on the state as an institution, on management features, on implementation degree of the set managerial goals with the help of the state mechanism.

Nowadays great attention is paid to the problem of antagonism between a large volume of human rights on the one hand and real possibility of their implementation in the state on the other hand. Indirectly, this problem is touched upon in the acts of the Constitutional Court of the Russian Federation which states that human rights realization degree in a particular state depends on the level of its social and economic development (Nevinskiy, 2015).

The relevance of theoretical and practical study of "welfare state" category is due to the following factors:

- 1) Lack of "social welfare state" definition;

- 2) Insufficient theoretical and legal framework;
- 3) Significance of research object itself.

The urgency of the problem under consideration is also given by the fact that the process of building a high-quality social security system in Russia is directly related to the possibility of borrowing foreign experience while preserving what has been achieved in the USSR. Consequently, finding the most optimal model of social security for the Russian Federation which would open the prospects for the movement of our country to a high level of civilizational development is of great importance.

METHODS

This study is based on the dialectical cognition method of various (political, legal and socio-economic) processes and phenomena in a modern state which made it possible to systematize and comprehensively analyze legal relations that make up its object, as well as to classify them. In addition, when writing the article, a complex of general scientific (analysis and synthesis, ascent from the abstract to the concrete and from the concrete to the abstract, etc.) and special (formal legal, comparative legal) research methods have been involved. Their correct use makes it possible to determine the place and role of legal norms application practice by judicial authorities that consolidate the foundations of the "social state" in the improvement of this group of social relations.

In development trends of world order modern structure, social values occupy a leading position. Moreover, this applies both to the foundations of globalization in a broad sense, and to very specific constructions of social principles in the Russian Federation and the overwhelming majority of states.

Every socially oriented, developed state currently uses legal norms that consolidate social principles to build a affluent society in its constitutional legislation. However, despite the similarity of formalized provisions spelled out in the national legislation of countries, their implementation in a particular society is always individual. Moreover, the implementation of constitutional norms in practice also requires a "competent course of policy" (Belov et al., 2002) on the part of the state.

The experience of using "catalysts for social activity realization" (Mamut, 2001) among states is very diverse, however, some basic provisions can be distinguished, thanks to which this trend is supported:

- 1) Desire to maintain a decent society living standard as a priority condition for the formation and functioning of state institution;
- 2) Smoothing the acuteness, characteristic social tension in society and preventing disunity in society and conflicts in it;
- 3) Observance of the world community of humanitarian and social standards of a civilized community as a participating state;
- 4) Striving for cultural and social globalization between countries, establishing migration policy;
- 5) Promoting prescriptions of moral and ethical attitudes, mercy principles implementation, mutual assistance, altruism.

Modern German sociologist Hans-Jürgen Urban adheres to the assertions that the mechanisms to implement legislation in the field of social policy are "functions that are entrusted to the state (Pastukhov, 2008). "However, the functional responsibilities of the welfare state are not only an element of social benefits redistribution and social inequality smoothing. There are several fundamental responsibilities in a civilized state that carries out its functions in a democratic way:

- Compensatory function or obligation to compensate. It is determined by sociality development trends in society. First, the activity itself and employment in the service sector are increasing. Secondly, the number of citizens engaged in entrepreneurial activity with an unstable financial situation has naturally increased (for example, in Germany, only 23% of this category use pension insurance). Compulsory social insurance can

include all forms of employment including individual ones. This happens because the population reconsiders its values and, often, wage workers become entrepreneurs and employers, or choose part-time employment instead of consistently high wages.

- Investment function is a contribution to the future. State investment activities should cover socially significant areas: medicine, science, education, innovation. Investments in space exploration and sea depths are becoming increasingly important.
- Emancipation function implies protection of the country's citizens from possible social risks that are associated with dependence on the unstable wages of the population in a market economy. Social welfare state must have mechanisms to restrain the market, despite the importance of this institution. This is done by granting the right to individual personal development, education and independence in choosing a specialty and “social security in the labor market” (Torlopov, 1999).
- Responsibility for the distribution and redistribution of social benefits. Previously, the greatest accumulation of values was carried out at the expense of waged labour. However, at present, capital intensity is in a better position than labour intensity. Therefore, "distribution mechanisms for the development of national goods are increasing their momentum" precisely at the expense of self-employed citizens, and the state contributes to such a course of economic and social development (Starshun, 2001).

According to the Russian legal scholar Veniamin Chirkin: “indicators of stable development are inherent in constitutional mechanisms” of state social principles (Chirkin, 2016). Particularly important signs of this kind include:

- Norms on private property. Similar provisions in the context of social function appeared initially in the German Constitution during the Weimar Republic in 1919, and later in the Constitution of the Federal Republic of Germany. The Russian Constitution does not specify social function definition of private property. In particular, Article 35 of the Constitution does not contain a direct possibility to nationalize certain industries, although it does not deny this;
- Constitutional provisions consolidation on the socio-economic human and civil rights. In particular, rights to education, work, pension provision, health care. In the early constitutions, only personal and political rights were formalized, but in accordance with the (International Covenants on Human Rights, 1966), practically in all modern constitutions of countries, albeit in different volumes, socio-economic rights are also enshrined;
- Principle of social solidarity or social partnership. Such norms cover labour relations and interaction with private property. In the Russian Federation, these provisions are not constitutionally enshrined, however, they are reflected in Article 27 of the (Labour Code of the country, 2009);
- Social justice principle. Domestic constitutional legislation does not mention this principle and no specific characteristic standards reflecting this concept have been identified. However, it is indirectly mentioned in internal regulations. For the Russian society, it is necessary to concretize this principle in view of unstable situation in the spheres of education and healthcare. We need some criteria to assess fair and efficient implementation of this type of activity;
- Establishment of a socially oriented economic course. This development vector has been chosen by many European powers but there are no clearly formulated positions in this direction in the Russian legal field. This hinders the provision of a fair level of payments and benefits to socially needy segments of society.

It is difficult to imagine the absence of provisions on the social principles to build a state in modern constitutional legislation. Developed countries strive to introduce as many norms as possible that contribute to the progress of the population in all spheres of activity, including by providing independence to individuals in the accumulation and redistribution of social benefits of this kind. However, modern political scientists and sociologists distinguish several models of “social welfare state” based on the features of theoretical substantiation of social system and the mechanisms of its implementation.

Anglo-Saxon or Liberal Model. The functions of state support cover a minimum of aspects of the company's activities. In particular, the functional mechanisms of the state provide support for the poor, as well as for the disabled. The rest of the groups of socially needy citizens independently carry out economic activities and self-sufficiency on the basis of free market mechanisms. The financial basis of social policy is made up of private types of insurance and personal investments of citizens. An example of a model is England, Ireland, Australia, Canada.

Scandinavian or social democratic model. In this formation, the state is responsible for the development of society, "mainly through budgetary allocations and insurance funds, (Lindbeck, 2002)" as well as through the control of regional administrations from the central state apparatus. The tax system is very developed which allows the population to implement a socially oriented political course. The model oversees all strata of society which allows individuals to enjoy social security on the basis that they are citizens of the state and are included in the system of professional employment. An example of a model is Sweden, Denmark, Norway, the Netherlands, Finland.

Continental European or conservative model. Much has been said about this interpretation of social development in the writings of John Galbraith, the renowned explorer of capitalism. With such a structure of the state, there occurs a "symbiosis of social goals" (Galbraith, 2004). The state seeks both to improve the situation of the poor and to ensure a decent standard of living for the entire population of the country. Centralized control of the labour market and a policy to reduce unemployment are being implemented.

This is due to the fact that in addition to financial support from the state, employees and directly employers also make private equity investments in the budget. These budgetary allocations are redistributed to all citizens, ensuring a decent social welfare level. An example of a model is Germany, France, Belgium, Austria.

Priority criterion of this classification in science is considered to be the way to achieve welfare, both by a specific individual and by an organized society. On closer examination of the proposed models of "social welfare state", one can notice that, in one way or another, they are interconnected with the degree of state involvement in the development of social institutions.

It can be assumed that the Europeanization of social policy and social law is now taking place. Some scientists believe that this process is one-side. However, we adhere to the point of view that there is an interaction between national and international social policy, which leads to their improvement. There is also a general vision picture of how the process of providing social protection in the member states of the European Union should take place, although in each individual state these issues are resolved through an independent internal policy.

In our opinion, a significant contribution to the full functioning of social security institution and rights realization in the social sphere was made by international judicial bodies, whose activities are focused on protecting human rights.

The question of social welfare state essence from the point of view of the European Court of Human Rights seems to be interesting.

Interesting, in its acts the European Court of Human Rights very often refers to the model of social security system, although the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms does not officially formalize either the right to social benefits or the right to human well-being. Here we see a clear analogy of law applied by the European Court.

When analyzing litigation practice on the highlighted issue, we have also found decisions of the European Court of Human Rights containing an approach to the interpretation of welfare state, social welfare state, despite the fact that the provisions of the Convention ignore the interpretation of this concept (Aristov, 2016).

The question of litigation practice role in improving public relations in the framework of our research is open. Some authors clearly endow the practice with a high degree of significance for scientific analysis, while others, on the contrary, reject even the very need to study litigation practice for scientific and legal research. In our opinion, the correct answer should be somewhere in between these two extreme points of view.

As we know, the legal technique is far from perfect, gaps in the law, lack of official interpretation and interpretation of important legal terms are quite common. To avoid adverse consequences with such imperfections, there is an effective system of courts designed to perform today some kind of compensatory, replenishing function.

As B.A. Edidin says, “formation of litigation practice as a component and result of judicial activity begins from the moment when the court, in order to apply the law to a disputable case and make a judicial decision on the case, needs to interpret the law, to understand its meaning and content by specifying those concepts that expressed in the verbal formula of the law” (Edidin, 2004).

The difficulty also lies in the fact that most of the legal terms can be interpreted in different ways: the meanings of concepts tend to vary, depending on the context.

In our opinion, the necessary interpretation of legal concepts with a relatively high degree of verification can be gleaned directly from scientific and legal research. But here, too, the obvious difficulty will be the fact that different authors often have completely "polar" points of view.

In such a situation, litigation practice comes to the rescue, compensating for legal and lexical interpretations with the most common models:

- A way to offer a rather detailed, clear, explicit and more detailed definition than in legislative acts;
- Consolidation of signs, essential features of the concept, through which its meaning is interpreted;
- A way to indicate the permissible boundaries of the definition by filtering out all processes, elements that do not belong to its essence and other ways (Aristov, 2016).

Hence, the role of litigation practice is not only to develop a unified understanding of a legal concept, but also (to a greater extent) in the search for a relevant, legally grounded understanding of legal categories. In addition, practice, as mentioned above, has a direct impact on the legislator.

Courts of different countries (depending on the legal system and the legal regime in force) and even different courts of the same city (considering peculiarities of the legislation, personal opinion of judges) have the right to make different interpretations of the same concept. For some common questions and problems in this area, of course, there is a stable approximation of the interpretation. But there are also some cases when the practice is fragmentary and insufficient to resolve the incident.

On the other hand, it is obvious that in any situation one can find litigation practice, even if only on related topics.

The very process of searching for a suitable litigation practice already yields a result to reconstruct a holistic picture of legal object description (process, legal relationship, norm) by the researcher. The lack of the necessary litigation practice is a kind of "problem area" for the research scientist which they will try to study and fill.

From the point of view of Aristov, the role of litigation practice for fundamental, and most importantly, high-quality legal research, considering the topic of social welfare state, is extremely great (Aristov, 2015).

As mentioned above, the European Convention for the Protection of Human Rights and Fundamental Freedoms does not formally fix the interpretation of the concept of "the right to welfare" and a number of other social rights, as well as the procedural form itself: the possibility of filing an appropriate application with judicial authorities.

But despite this gap in law, some decisions of the European Court of Human Rights contain an approach to the interpretation of such a concept as a welfare state.

The complex of acts of the European Court contains indications of the principle of states freedom in choosing a social security system for citizens, which, nevertheless, must meet certain criteria (The judgment of the European Court of Human Rights, 2011).

In this case, the Court ruled that there had been a violation of Article 3 of the Convention, arguing that the state did not meet the basic needs of the applicant, who was also classified as a vulnerable category of people (seeking asylum), which implied the need for special state protection and support. In view of this, the treatment of the applicant amounted to “inhuman ... degrading”.

The understanding by the European Court of Human Rights of Art. 3 of the Convention is based on the fact that the article contains obligation of the member states of the Convention to ensure social welfare of the person. Specifically, the state is obliged to take preventive measures to ensure that there is no deprivation of funds to meet the vital needs of a person.

Not all judges considered it reasonable to classify the applicant as a vulnerable part of the population in the case before us. Thus, Judge Andras Sagjo suggests that not all asylum seekers can act as a socially vulnerable category of people. This issue requires careful and thorough study (Final Judgment of the European Court of Human Rights, 2012).

Due to the fact that the national public authorities are sufficiently aware of what their population needs, what are its basic needs, they are in a better position than international judges, for whom the interpretation of the concept of “public interest” is a rather difficult process. Therefore, according to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the initial assessment of the current situation and whether it is critical or not is the responsibility of national authorities.

In other words, in a modern state, a clear balance should be struck between broad public interests and humane requirements for the implementation and protection of recognized fundamental human rights and freedoms.

Here is another case from litigation practice.

The applicant, who was officially recognized as disabled, who underwent a diagnosis and was diagnosed by a medical commission (he was diagnosed with a complex disease - schizophrenia), did not receive specialized assistance they needed. Sometime later, he was assigned to a specialized institution.

In the judgment of the European Court of Human Rights (2012), it was emphasized that the person obviously had the right to count on the provision of the necessary assistance by the state. The importance of protecting their rights was reinforced by the fact that the man had no housing and no opportunity to work. As a result, the court pointed out the need to provide support measures to a person in need. However, any such measures must be applied with the approval of the person themselves. If the state uses protective measures without considering opinion of the interested person, as well as in cases where it is not possible to obtain their approval, there is a great risk of violating the rights of the latter.

In other words, the obvious lack of a person's place of residence and material resources and their need for help (as in the situation under consideration) does not automatically mean that the state, represented by its organs or organization, has the right to take measures in the form of placing him in a closed institution, that is, essentially limit their freedom.

Considering another case (Decision of the European Court of Human Rights, 1999), the European Court noted the importance of the provision by the state of certain types of social benefits to the needy part of the population.

The applicant in this case convinced the Court that they were discriminated against on the basis of gender, since their state, represented by the competent authorities, refused to grant them childcare benefits. The appointment of this type of social benefit, according to national legislation, was provided only for women mothers.

The European Court of Human Rights, when considering, concluded that the provisions of Art. 8 of the Conventions concerning the principle of respect for family life have not been violated by the state. The Court reasoned this position as follows: this article does not at all assign to the contracting countries (parties to the Convention) any obligations regarding such financial security. That is, the solution to this issue is completely left “in the hands” of the national public authorities.

For scientific and legal research, the legal positions of the European Court on whether the failure to provide the necessary social assistance to the category of people considered to be the most

vulnerable (including the right of such persons to go to court) can be considered a violation of human rights).

The applicant in one of these cases (Decision of the European Court of Human Rights, 1999) complained to the Court that she was an unemployed citizen due to the prevailing socio-economic situation in Latvia. And the lack of any material support and free medical care does aggravate her already difficult situation.

The European Court of Human Rights in its decision (Decision of the European Court of Human Rights, 2002), referred to the lack of enshrinement in the European Convention for the Protection of Human Rights and Fundamental Freedoms of such social rights as the right to free medical care, as well as the right to employment, the right to free housing. At the same time, the European Court clarified that a too difficult situation could fall under the protection of Art. 3 of the Convention prohibiting inhuman or degrading treatment of a person (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

In this case, the applicant received several types of social benefits, including an old-age social benefit. In total, her monthly income was 653 roubles. In her opinion, this was clearly not enough to meet the most basic needs.

The European Court of Human Rights clarified that it cannot substitute for the organs of her state and determine the necessary amounts of payments to meet the needs of the population. As a result of complaint examination, the Court did not find that the amount of the benefits paid caused any harm to the applicant's health. Accordingly, the applicant's personal problem does not fall under the protection of Art. 3 of the Convention, the application is thus inadmissible.

Thus, the following can be said about the influence of European litigation practice on the problems of the welfare state and the ways of their resolution:

- The state needs to provide the basic needs of the neediest population group;
- In the normative legal acts of most states there are no criteria by which it is possible to distinguish from the population its most vulnerable part;
- It is necessary to achieve a fair balance between the "public interest" and the obligations of the state to ensure the protection of human rights and their freedoms;
- The use of a detailed categorization of the population, from the point of view of its well-being, is necessary in order to provide targeted social assistance to the neediest segments of the population;
- Any protective measure applied by the court must first of all meet the interests of the person in need of protection, and not just society;
- Of course, the general prohibition of inhuman and degrading treatment by all levels of government is recognized.

CONCLUSION

A decisions analysis of the European Court of Human Rights, as well as the legislative framework defining the constitutional and legal foundations of the social state in the Russian Federation and foreign countries, provide the basis for the following conclusions:

In Russia, power is organized in such a way that, on the one hand, it performs class tasks, that is, it protects the interests of certain classes (support of large business entities that monopolize domestic markets), and, on the other hand, it tries to solve certain general social problems (for example, issues related to health care or social security of the population). Hence it follows that the organization of power in the Russian Federation corresponds to a compromise or class-general social approach to the essence of the state.

Assessing the current situation in the field of social policy of our country, we see that its directions, on the one hand, are developing, they have a sufficiently large legal base, and on the other hand, the policy pursued by the state in the social sphere is contradictory, since it requires the creation of great conditions for it carrying out in parameters corresponding to the scale of the whole country. The main reason for the ineffectiveness of social policy is that in our country there is no fundamental concept of policy directions in the social sphere, based on the real economic potential of the state and its population.

The developing system of social rights is clearly the dominant attribute of social welfare state. In addition, we believe that the state deserves a high social status, when regulations contain a list of social rights of citizens, and state policy guarantees their implementation. Such a list should not be inferior in volume to the list provided for by minimum international standards.

Analysis of foreign constitutions shows that the definition of social policy is absent in almost all basic laws. In accordance with this, it is proposed to make an addition to the current constitutional legislation, replenishing it with a definition of the state's social policy, namely: a set of tools used by state bodies in the development and implementation of socially oriented programs to support each individual in social terms (especially the most vulnerable population) is the social policy of the state.

Comparative legal analysis reflects a significant degree of similarity between the systems of social rights of different states, with different economic and social potentials. Most of the constitutions of foreign countries, including the Russian Federation, officially establish norms of a social nature. However, the European constitutions regulate the goal, principles, and the very essence of social policy in more detail than in Russia. Therefore, the Russian Federation should consider the possibility of borrowing foreign legal norms and translating them into its own legislation. It is possible that it is proposed to amend the preamble of the Russian Constitution (in terms of supplementing the principles of state social policy): “to guarantee a decent standard of living for each individual and create a highly developed civil society that cares about the welfare and prosperity of its state.”

Russia needs to develop and implement a multilevel, socially oriented policy. For this, it is necessary to develop and adopt a separate Federal Law “On Social Policy in the Russian Federation” in detail. In such a normative legal act, the very definition of the welfare state, the social policy it pursues, as well as its constituent attributes (principles, goals, functions and tasks) should be prescribed. The current mechanism of social policy, the tasks of state authorities and their responsibility in exercising their powers should become an integral part of this Law.

Now there is a Europeanization of social policy and social law. Some scientists believe that this process is one-side. However, we adhere to the point of view that there is an interaction between national and international social policy, which leads to their improvement. There is also a general picture of the vision of how the process of providing social protection in the member states of the European Union should take place, despite the fact that this issue is being resolved at the national level.

For the full functioning of social security institution and the realization of rights in the social sphere, it is very important to have really functioning social security bodies, as well as judicial bodies to resolve social disputes. But the very codification of legal norms is not so important.

The process of building fundamental foundations of social welfare state (including its constituent element - social insurance) proceeds ambiguously: with the aggravation of crisis phenomena. Consequently, finding the most optimal model of social welfare state for the Russian Federation, which would be able to prevent the country from sliding down, is important. For this purpose, the experience of decision-making by the European Court of Human Rights is considered, which is of great interest to scientists in the field of social legislation.

In its acts, the European Court of Human Rights very often refers to the model of the social security system, although the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms does not officially specify either the right to social benefits or the right to human well-being. Here we see a clear analogy of law applied by the European Court.

The role of litigation practice is not only to develop a unified understanding of a legal concept, but also (to a greater extent) in the search for a relevant, legally grounded understanding of a particular legal category. In addition, practice, as mentioned above, has a direct impact on the legislator.

To successfully implement the concept of a modern welfare state into reality, considering the Russian, Soviet, foreign experience, it is necessary to: consolidate the criteria for the effectiveness of social welfare state (social justice, social responsibility to citizens and other similar criteria), as well as specific social guarantees provided for different categories of people (military personnel, their families, as well as civil servants and other categories) provided by the state, legally; to determine effective mechanisms for the implementation of social policy in the field of supporting population considering real differentiation of income, thereby ensuring the free development and a decent standard of living of the individual.

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