
ТРУДОВЕ ПРАВО. ПРАВО СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ

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**INTERNATIONAL MEASURE OF SOCIAL SECURITY RIGHTS
UNDER MODERN CONDITIONS OF GLOBALIZATION**

Abstract. *The author tries to prove the need to form the branch of international law - the international law of social security based on the theory of international law and the social rights, as well as the development and current state of international legal regulation of social rights in the scientific article.*

Keywords: *social rights, international law of welfare, international standards of social rights, international-legal regulation of social rights.*

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**МІЖНАРОДНИЙ ВИМІР ПРАВА СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ
В СУЧАСНИХ УМОВАХ ГЛОБАЛІЗАЦІЇ**

Анотація. *У даній науковій статті автор на основі теорії міжнародного права та права соціального забезпечення, а також розвитку та сучасного стану міжнародного правового регулювання сфери соціального забезпечення робить спробу обґрунтувати необхідність формування галузі міжнародного права - міжнародне право соціального забезпечення.*

Ключові слова: *право соціального забезпечення, міжнародне право соціального забезпечення, міжнародні стандарти соціальних прав, міжнародно-правове регулювання соціального забезпечення.*

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**МЕЖДУНАРОДНОЕ ИЗМЕРЕНИЕ ПРАВА СОЦИАЛЬНОГО ОБЕСПЕЧЕНИЯ
В СОВРЕМЕННЫХ УСЛОВИЯХ ГЛОБАЛИЗАЦИИ**

Аннотация. *В данной научной статье автор на основании теории международного права и права социального обеспечения, а также развития и современного состояния международно-правового регулирования социального обеспечения пытается обосновать необходимость формирования отрасли международного права - международное право социального обеспечения.*

Ключевые слова: *право социального обеспечения, международное право социального обеспечения, международные стандарты социальных прав, международно-правовое регулирование социального обеспечения.*

At the present time, and the system of international relations and the system of international law that governs them have got extremely complicated. Since the middle of XX century to the present time changes in the system of international law take place which are expressed first in the reflected: the excessive increase in the number of branches of international law, in the event of autonomous (special) regimes under

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international law; in the strengthening of clashes between international law in resolving various issues.

Indeed, as a result of intensive development of international relations was a number of new areas of international law has been appeared. In the conditions of globalization, the proliferation of international standardization forming of national policy, a special role and significance gain the questions of international dimension and social security law.

The purpose of this research paper is to study international legal aspects of the regulation of social relations and attempt to justify the relatively independent existence of international law as a branch of social security and discipline. In legal literature, some aspects of the mentioned issues are reflected in the works as a domestic legal scholars N.Bolotin, M.Feskova, V.Zhernakova, S.Prylypko, N. Hutoryan, as well as several foreign scientists A. Lushnikov, M. Lushnikovoyi, K. Tomashevskoho, G. Laptev and others.

International legal aspects of social security law in the academic and scientific literature until recently examined through generalized category of "international public settlement", "international standards", "international protection" of socio-economic rights. In the academic literature on international law, international legal regulation of social relations is studied in the context of international human rights protection.

The need and opportunity to form a new industry and discipline "international social security law" indicate the scientific works of famous Ukrainian scientists [1, 2], with colleagues in Russia [3] and Belarus [4]. Complex study of international legal regulation of relations in the field of labor and social security are increasingly becoming the subject of dissertation research under the specialization 12.00.05 "Labour Law, Social Security Law" [5, 6].

Separation of areas of law in the system of international law is dictated primarily by interest of the international community in the development of this branch and the improvement of legal regulation of a particular group of public relations. As some scholars note, in cases where there is increasing array of regulations and the quantity conventionally exceeds a certain critical mass, there is appropriateness to distinguish new branches of positive law [7, p. 211]. The doctrine of international law more loyal relates to the question of international law and its distribution in the industry. In fact, the subject of law regulation is the only criterion of its division into subject field, and the method of regulation, law to the distinction from national law is one - coordination between subjects [8, p. 33- 34]. Sometimes there is no consensus on the understanding of a particular subject area. Therefore, the division of international law into the field is rather conditional grouping of rules and is explained by expansion of the public relations and an array of international instruments.

The interest to the isolation in the international law the international social security law is explained by the history emergence of international legal regulation of social and labor relations, followed by targeted law-making activity and the formation of a large body of international law instruments in this field.

The origin of the international regulation of social security was in the plane of international law regulation in relations labour, the idea of which was expressed in the early nineteenth century. The beginning of the activation of a universal international legal regulation of social human rights becomes the activity of which ILO was created in 1919 as a structural unit of the League of Nations.

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The main task of the ILO is to achieve the social justice through the protection of labor and social rights. Significant place in the organization activity are problems of social security, social insurance and social protection. The key method in the ILO activity is lawmaking, the results of which is the adoption of declarations, conventions and recommendations.

ILO has adopted more than 30 conventions and recommendations in the field of social security. Conventionally, these acts can be divided into several groups. The first group consists of Conventions and Recommendations on general status and principles of social policy and security - Convention number 102 on Minimum Standards of Social Security (1952), the Convention number 117 on the main objectives and standards of Social Policy (1962), the Convention number 118 on equality of nationals and foreigners and stateless persons in the field of Social Security (1962), the Convention number 157 on the establishment of an international system of human preservation in the field of Social Security (1982), Recommendation number 167 to establish an international system of securing rights in social Security (1983). Within these documents, first, are identified those areas of social life in which efforts should be made to promote social progress (health, housing, education and welfare of children, social security, etc.) and priority of social protection of the population in relation to other areas, and secondly, it is defined forms and types of social security protection, conditions of their giving and the range of social risks in which a person acquires the right to social security and principles of realizing the rights in the field of social security (the principle of equality, the principle of preserving human social security).

The second group consists of conventions and recommendations for specific types of social protection - Convention number 8 on unemployment benefits in the event of loss or shipwreck (1920), the Convention on unemployment number 2 (1919), the Convention number 130 on medical care and assistance sickness (1969), the Convention number 128 on the Invalidity, old-Age and lots of breadwinner (1967), the Convention number 121 on assistance in cases of occupational injuries (1964), the Convention number 168 employment Promotion and Protection against Unemployment (1988), Recommendation number 44 on unemployment insurance and giving assist are to unemployment in 1934, and others.

The third group consists of conventions and recommendations on the welfare of certain categories of persons - Convention number 165 on seafarers welfare (Revised) (1987), the Convention number 173 and number 173 Recommendation concerning welfare facilities seafarers at sea and in port (1987), the Convention № 103 "On Protection of motherhood" (1952) Convention number 183 on the revision of the Convention (revised), 1952 maternity Protection (2000), the Convention № 159 "On the vocational rehabilitation and employment of people with disabilities" 1983. and others. It seems that in general by means of Conventions and Recommendations, ILO laid the foundations of social standardization at the international level.

Ukraine at the 2013 ratified just 69 conventions. Now of them operates 61 because some documents were eventually denounced. Meanwhile, Ukraine has not ratified the fundamental Conventions in the field of social protection. With these conventions in the field of social welfare Ukraine ratified only Convention № 103, № 156 and № 159. One reason for the small number of ratifying international instruments is the nature of social security relationships that should not just be guaranteed by the state, but also ensured the extent decent standard of living. However, it should be noted

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that while forming and reforming the Social Policy of Ukraine considers the main principles and provisions of ILO Conventions and Recommendations in the field of social security.

The beginning of the second phase of the development of international legal regulation of social and economic human rights, the formation of international standards of social security and protection associated with the work of the UN and its structural units. The main contribution of the UN in international legal regulation of social security is to define the catalog of fundamental rights that must be provided by law in any country. Adopted in 1948, the Universal Declaration of Human Rights enshrines the basic set of integral and inalienable social rights. Thus, p. 22 Declaration proclaims the right of everyone for social security, to realization of needed rights for maintenance of his dignity and the free development of personality rights in the economic, social and cultural sectors through national effort and international co-operation in accordance with the organization and resources of each State. Article. 25 Declaration complements this provision and establishes the human right to adequate standard of living, necessary social services, to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood due to conditions beyond its control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Despite the fact that the Universal Declaration was (and still is) a declaration and do not impose any obligations on the state, its value in the recognition of human rights in any particular state is quite important. It was first formulated certain social standards - social standards of human rights, has become a kind of concept model of a social phenomenon as "human rights". This document was the basis for the entire system of international instruments on human rights, including the Declaration on the Rights of certain categories of persons which need of increased social protection, the UN covenants and conventions.

Standards of human rights to social protection enshrined in the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on XXI session in 1966 and ratified by USSR 19 October 1973. Article 9 of the Covenant contains the obligation of States which take part in present Covenant to recognize the right of everyone to social security, including social insurance. Article. 10 of the Covenant establishes standards of social protection of the family, children and mothers. Special measures of protection and allowances should be taken on all children and young persons without any discrimination for reasons of parentage or other conditions. Children should be protected from economic and social exploitation. Article. 11 of the Covenant provides that States which take part in the present Covenant recognize the right of everyone committed themselves to an adequate standard of living for himself and his family. Article. 12 of the Covenant provides for everyone the right to the highest attainable standard of physical and mental health. To ensure the full realization of this right, States oblige to create conditions which would assure to all medical service and medical attention in the event of illness. Thus, the pact establishes the obligation of the state for social protection as every person, and certain vulnerable people - children, teenagers, mothers, workers with family responsibilities and so on.

UN Convention on the Rights of Disabled Persons adopted by the UN General Assembly December 13, 2006 and entered into force 3 May 2008 aimed at protecting

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and promoting the rights of persons with disabilities, elimination of discrimination against them, ensuring their rights to work, health care, education and full participation in society. Article. 28 of the Convention, called "Adequate standard of living and social protection" fixes "States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the grounds of disability. States Parties recognize the right of persons with disabilities to social protection and to use this right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right".

The aim of the Convention on the Rights of the Child, adopted by the UN General Assembly November 20, 1989 is to establish standards for children protection from neglect and abuse, they face every day in some way in all countries. It takes into account the different cultural, political and economic characteristics of the states. At the forefront of this document are the interests of the child. Article. 26 of the Convention provides that States Parties shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law. These benefits are provided as required in accordance with available resources and circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits the child or on its behalf. Article 27 establishes the obligation of States Parties recognize the right of every child to a standard of living adequate for physical, mental, spiritual, moral and social development.

States Parties in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and in case of need shall provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

Formation of another set of international instruments in the field of social welfare due to the activities of regional organizations connects with Ukraine. It should be noted that the existence of solid guarantees state social protection for citizens in countries which enter the European Union, offers European law. According to the German scholar, Professor Abbo Juncker, EU social law achieved better results than the right of individual countries in the field of social protection [9, p. 72]. Moreover, the current social security system here, the foundations of which were laid in the first half of the twentieth century. Is the most advanced in the world [10, c. 657]. The Council of Europe has more than 150 acts on human rights, including those containing social standards. The basic standards for the protection of human rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1952) standards in the social sphere enshrined in the European Social Charter (revised) (Strasbourg, 3 May 1996), the European Code of Social Security (Rome, 6 November 1990), the European Community Charter of Fundamental Social Rights of Workers (1989), the Charter of Fundamental rights of the European Union (Nice, December 7, 2000).

Characteristic of Ukraine in the context of international legal regulation of relations in the sphere of social protection are acts taken within the CIS. International instru-

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ments CIS in the sphere of social security can be divided into several groups: conceptual acts that reinforce the fundamentals and direction of social policy of the member states of the CIS (Charter of social rights and guarantees of Independent States (1994), the concept of legal frameworks forming and mechanisms for the implementation of the welfare state in State of the Commonwealth (2007) documents that establish uniform standards of welfare and legal forms (model acts "on Indexation incomes" (1998), "On compulsory social insurance against industrial accidents and occupational diseases" (1998), "On basic guarantees of children's rights in the country" (1999), new edition (2009), "On the foundations of social services for the disabled" (2002) "on Social Protection of the Disabled" (2008), "On social protection of citizens affected by radiation due to radiation accidents, nuclear tests and incidents " (2005). These measures aimed at ensuring the unification of national legislation of CIS countries; agreements concerning social security of certain categories of citizens. This is a fairly wide range of transactions, including: agreement for guarantees the rights of citizens of the Commonwealth of Independent States in the field of pensions (1992), the Agreement on social and legal protection of servicemen, persons discharged from military service and their families (1992), the Agreement on Cooperation in Labor Migration and Social Protection of Migrant Workers (1994), the agreement for guarantees the rights of citizens in social welfare payments, compensation payments to families with children and child support (1994) agreement on the Procedure for pensions and national insurance to the Interior employees of the Commonwealth of Independent States (1993), the Agreement on the Procedure for pensions of military personnel and their families and the state insurance of servicemen of the Commonwealth of Independent States (1993) The agreement for safeguards the of citizens rights of the Commonwealth of Independent States in the field of pensions (1992) and others.

A large number of international standards of social security is enshrined in multilateral agreements with Ukraine interstate (on behalf of Ukraine), intergovernmental (on behalf of the Government of Ukraine) and interagency (on behalf of the central authorities). Ukraine has signed a number of bilateral agreements on cooperation in the field of social security with EU countries (Latvia, Estonia, Lithuania, Slovakia, Czech Republic, Bulgaria, the Kingdom of Spain, the Republic of Portugal), the CIS countries (Azerbaijan, Belarus, Moldova, Georgia). Simultaneously, Ukraine continues to fulfill the obligations of the former Soviet Union under international agreements made with the Mongolian People's Republic, Romania and Hungary. Also it is expected to sign new agreements on social security with Germany, the State of Israel, Hungary. Being prepared for signing and the new agreement with the Kingdom of Spain. Their plans have been prepared. Now experts Pension Fund of Ukraine with the Ministry of Social Policy and the relevant foreign institutions working on projects of bilateral agreements with Romania, Republic of Serbia, the Hellenic Republic, Montenegro.

Summarizing content analysis and other acts of law-making trends in social security can be argued that in the XXI century, the international community has come to the International Code of Social Protection. A set of international social standards - regulatory substance of international law and social security have been created by general efforts.

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Література

1. Болотіна Н. Б. Європейська соціальна хартія (переглянута) і Україна [Електронний ресурс] / Н. Б. Болотіна, М. М. Феськов // Юридична наука. – 2011. - № 3. – С. 43-44. - Режим доступу: http://archive.nbuv.gov.ua/portal/soc_gum/Jursci/2011_3/36-47.pdf.
2. Болотіна Н. Б. Право соціального захисту: становлення і розвиток в Україні / Н. Б. Болотіна - К.: Знання, 2005. – 381 с.
3. Лушникова М. В. Международное и сравнительное трудовое право и право социального обеспечения: введение в курс: учеб. Пособие / М. В. Лушникова, А. М. Лушников - М.: Юрлитинформ, 2011. – 304 с.
4. Козик, А. Л. Международное и национальное трудовое право (проблемы взаимодействия): монография / А. Л. Козик, К. Л. Томашевский, Е. А. Волк. - Минск: Амалфея, 2012. – 244 с.
5. Лаптев Г. С. Международные стандарты социального обеспечения [Текст]: автореф. дис. на соиск. учен. степ. канд. юрид. наук: спец. 12.00.05 "Трудовое право, право социального обеспечения" / Лаптев Геннадий Сергеевич. - Екатеринбург, 2011. - 28 с.
6. Вісьтак М. Я. Міжнародно-правові акти в системі джерел трудового права України [Текст]: автореф. дис. на здоб. наук. ступеня канд. юрид. наук: спец. 12.00.05 "Трудове право", "Право соціального забезпечення" / Вісьтак Марія Ярославівна. - К., 2012. - 16 с.
7. Маврин С. П. О роли метода правового регулирования в структурировании и развитии позитивного права / С. П. Маврин // Правоведение. - 2003. - №1. - С.211.
8. Усенко Е. Т. Теоретические проблемы соотношения международного и внутригосударственного права / Е. Т. Усенко // Советский ежегодник международного права 1977. - М.: Наука, 1979. - С. 33-34
9. Путило Н. В. Европейская интеграция и социальные права граждан России / Н. В. Путило // Журнал Российского права. - 1999. - №7/8. - С. 72
10. Право Европейского Союза / Учебник [С. Ю. Кашкин, А. О. Четвертиков, Е. А. Чегринцев и др.]; под ред. С. Ю. Кашкина. - Моск. Гос. Юр. Акад. - М.: Юрист. - С. 657.