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THE DEVELOPMENT OF SOCIAL INSURANCE IN UKRAINE DURING THE SOVIET AND POST-SOVIET PERIODS OF ITS HISTORY

The life of any society, as well as the life of any of its members, is closely associated with numerous social relations of various types. Every human being, due to his ontological nature, is doomed to dwell within a society, to accept and to obey some universal, generally recognized rules of coexistence with other individuals, thus being able to affect the lives of certain people. Even Ancient Greek philosophers stated that no human being is ever able to exist beyond the society, but only God and insane people. Naturally, some laws of coexistence are typical for most live creatures that inhabit our planet, since their survival directly depends on the way they keep to these laws. Consequently, a considerable number of animal species possess the feature of mutual assistance, which, however, is significantly different from that of the human society. Only a human being is capable of helping the members of his society he is not familiar with. In this way, society has acquired certain generally accepted rules of mutual assistance, which appeared in ancient times and preserved their functionality till present days, at the level of self-consciousness of each of its members. One of such unwritten rules that appeared long ago is leaving dry firewood and food in shelters on the territory of Siberia, as well as in other inaccessible and severe areas of our planet. Those who leave them do not know, who will get hold of this food and firewood, nevertheless, such actions may be regarded as a desire and hope to save somebody's life. Manifesting charity, we donate the people we have never seen or known, we thus express compassion to the individuals we are not familiar with. The factors of social assistance have always developed together with the society, acquiring thereby new forms and universal features, thus turning into universal social phenomena. In our previous articles, we have considered and investigated the processes of formation and development of the field of social help on the whole, and the institution of social insurance in particular, beginning with the ancient times up to the early XX century¹. That is why, in order to provide a complete, objective, comprehensive analysis in the field of social insurance, we decided to continue this scientific research and to trace up the process of social insurance evolution on the territory of our country during the Soviet and Post-Soviet periods of its history.

It is worth mentioning that the issue of formation of the basics of social insurance in Ukraine during the Soviet and Post-Soviet periods is, unfortunately, not sufficiently investigated in the field of law. We suppose that insufficient investigation of the causal relations of the negative factors, typical for the field of social protection in the times of the USSR, as well as the negative phenomena, which occurred in the process of its reformation at the times of sovereign Ukraine, have led to certain ambiguity today. The above-mentioned negative features have essential effect on the life of the present-day society in our state. They cause such negative phenomena as the growth of the number of poor families, unemployment, migration of skilled and experienced experts, etc. Consequently, profound and comprehensive research of the issue under discussion, as well as the implementation of the obtained results into the normative-regulatory statutes of our country, may positively influence the processes of overcoming the above difficulties or, at least, reduce their effect on different spheres of our everyday life.

The issue of various aspects of social insurance in Ukraine has been an object of investigation of numerous scholars: V. Andriyiv, V. Dziundziuk, V. Korzhenko, N. Meltiukhova, O. Mala, V. Ermilov, V. Marchenko, H. Odintsova, Y. Pavlenko, A. Stopchak, M. Shavarina, N. Shamanska, S. Yuriy. However, we should admit that there are no works in juridical literature, which would directly deal with the topic, reflected in the title of the article under discussion.

This article has been written with the purpose of thorough logical analysis of axiological and ontological components of the phenomenon of social assistance to the population of Ukraine at the time of the Soviet regime, as well

as with the purpose of determining the peculiarities of drastic transformation of the social insurance system after Ukraine has become a sovereign state. The research has been carried out on the basis of contemporary achievements of juridical science. The subject of the investigation is the processes of social insurance formation and development at the times of the Soviet system of government in Ukraine. In addition, it lays particular emphasis on the wide-scale reforms that took place in the institution of social insurance after Ukraine has attained its sovereignty.

The Soviet period of social insurance dates back to 1917. In November 1917, there was published a “Governmental Announcement of Social Insurance”. Later on, there were issued numerous normative-regulatory acts (in the form of decrees), regarding complete social insurance of all the hired employees and poor layers of urban and rural population of the newly created Soviet state². Adopted in 1918, the “Provisions on Social Insurance for the Workers” aimed at solving the problem of providing social welfare for temporarily disabled individuals, unemployed citizens, invalids, etc. The system of social insurance in the USSR was also supposed to ensure the minimal wages and pensions, the norms of food consumption for children and adults in all types of boarding houses. The state was administratively and financially responsible for paying out social insurance, which automatically turned any employee into a passive participant of the system of social protection³.

Since 1922, social allowances have been paid out by the enterprises, at the expense of respective insurance premiums. In 1929, state social insurance had a single target budget. However, the normative-regulatory acts of that time pointed out the target nature of the state social insurance funds. In other words, this money could not be spent on anything else. Since 1931, the state social insurance funds have been spent on treatment in specialized institutions, such as sanatoriums, boarding houses, rest houses and children’s camps. The breaking point in the history of social insurance was its transition to the field of professional trade unions. In compliance with the decision of the USSR Government of June 23, 1933, all the social insurance funds, as well as sanatoriums, rest houses and some other institutions became subject to the trade unions⁴.

In the 20-s, the change of social provision for social insurance was justified by the fact that a new economic policy (which, under the social and economic conditions of that time, presupposed the necessity of creating a strong layer of private entrepreneurs and state enterprises) shifted some responsibilities for the lives and health of the employees onto their employers. This was done by means of introducing a special tax in the form of contributions to the social insurance fund⁵.

Nevertheless, very soon the legal effect of the acts in the field of insurance medicine and rate differentiation was cancelled. Besides, insurance service was also eliminated, which proved a backward nature of social insurance, as well as of respective insurance funds. In the framework of the issue under studies, it is also important to emphasize that neither industry, nor intra-industry specifics of labor conditions were taken into account at that time. The threats of harmful and dangerous labor conditions were completely ignored. To sum it up, social assistance was no longer a certain insurance guarantee for the employees. Consequently, social insurance has lost its peculiar features and turned into social provision.

Pension provision was introduced in 1924. Its introduction was caused by the old age of certain categories of employees (teachers of higher education institutions, workers of textile and transportation industries, etc.). In 1932, pension provision extended to all fields of national economy. The legislation has established the pension age – 55 years old for women and 60 years old – for men. This age difference was stipulated by the analysis of the peculiarities and axiological essence of the German solidarity pension system, the latter having been introduced at the time of Otto von Bismarck (1883–1889). In the late XIX century, an average German man was five years older than his wife⁶. This was a basic factor that has determined a 5-year difference in men’s and women’s pension age, making it possible for both husband and wife to retire at the same time.

In the 50-s – 60-s, mandatory medical insurance was gradually introduced on the territory of Ukraine. Some citizens were happy about it, thinking that it would lead to financial well-being and social welfare, while others experienced completely opposite feelings. The latter were anxious that the above processes would ruin the national economy of the country and cause the fall in the living standards of all the layers of the population⁷.

The European approaches administered direct and indirect effects on the field of Ukrainian social policy in the Soviet epoch. Throughout the above-mentioned period, the transformation processes of economic and social nature were very fast and efficient. They were affected by the achievements of the scientific-technical revolution, as well as by the introduction of new forms of labor in the sphere of economics. Employees’ education, skills and experience (the so-called human capital) played a significant role in all spheres of production and all fields of the national economy.

The law “On Pensions and Assistance to the Collective Farmers” was adopted on July 15, 1964⁸. This law has introduced a universal state system of pension provision for the collective farmers at the expense of the central fund of social provision. The collective farmers started receiving old age and invalid pensions, whereas their families – allowances in case of breadwinners’ death. This very fund has also introduced financial allowances to the female collective farmers in case of their pregnancy and childbirth. The major peculiarity of the period under discussion was that collective farmers were able to retire five years later than other categories of citizens (men – at the age of 65, women – at the age of 60). In 1968, the collective farmers got the right to pensions at the same age as the workers and the clerks, though the level of their pension provision was considerably lower. In 1970, with the introduction of a single insurance system, the collective farmers were supposed to receive some assistance in case of temporary disability. On August 3, 1972, the Council of Ministers of the USSR adopted a new act on assigning the payment of state pensions, which took into consideration all the changes since 1956. In 1973, there was further growth of pen-

sions, assigned for disabled citizens and families that lost their breadwinners. In 1974, social allowance for the children from the families with low income was approved at a legislative level. The Constitution of the USSR of 1977 has strengthened the effect of the system of the state social provision (Art. 24)⁹. However, despite the variety and amount of the introduced normative-regulatory acts, the level of social provision in the country remained rather insufficient. One might notice certain inequality in the field of social provision between the workers and clerks on the one hand, and the collective farmers – on the other. Throughout next years, the level of pension provision for the collective farmers, the participants of the World War II, the war invalids of groups 1 and 2 has considerably improved. In 1981, the Soviet Government took a range of measures in order to increase financial provision for the families with children. They received a one-time allowance right after the child's birth, in addition to the money that was assigned for the children's care till the 1-year age¹⁰.

In September 1986, there was adopted a draft law regarding the pension provision of the citizens. On 15 May 1990, the Soviet Government adopted the law "On Pension Provision of the USSR Citizens", which has set the equal conditions of the pension provision for all the Soviet citizens. According to the law, there existed the state system of social provision, which also included the state social insurance. The latter's activities required about 80 % of all the money, assigned by the state to the field of social provision¹¹.

Thus, the third period of social insurance development is marked with the fact that it appeared in most countries of Europe, in addition to the implementation of numerous social programs. Besides, there have been adopted a lot of normative-regulatory acts that possessed specific features of the state social policy implementation. The guarantee of social insurance was reflected in the contents of the constitutions of many countries. The state social insurance of the third period should be perceived as a major aspect of the universal system of social protection. It performs the functions of an independent mechanism with the purpose of accumulating the necessary amount of finance. A tendency of "nationalizing" social insurance proves that the state has been the main owner of the means of production and the leading employer for quite a while. That is why, the state was entirely responsible for compensating the social risks of diverse types. Consequently, it was expedient to combine the social insurance funds with the state budget.

The fourth period of the development of the institution of social insurance (1991 – present days) may be marked with further evolution in the field of social insurance on the territory of sovereign Ukraine. The market relations (whereby the functions of the only owner of production and the chief employer pass from the state to new subjects of social-labor relation) have caused the necessity of returning to the institution of social insurance its original axiological and ontological functions. To put it differently, social insurance was again to become an efficient mechanism of social protection of the citizens under the conditions of the market economy.

The new stage of our country's qualitative transition to new principles of activities in the social sphere began with the declaration of Ukraine's independence on August 24, 1991. It was a starting point for modern construction of state's independent policy, very rapid, but at the same time not always socially oriented. Unfortunately, the powerful inflation processes, the increase of unemployment, the fall of the citizens' living standards frequently accompanied it. Actually, the Soviet system of social provision stopped meeting the requirements of the ontological reality of that time¹².

The most important problem Ukraine faced in the early 90-s was the necessity of improving and optimizing the system of social insurance. At the end of 1991, the Government of Ukraine, together with Ukrainian trade unions (called at that time The Council of the Federation of the Independent Trade Unions), issued a common resolution "On Managing Social Insurance in Ukraine". In March 1992, the professional trade unions, with the participation of the representatives of the Ministry of Labor of Ukraine, the Ministry of Finance of Ukraine and the National Bank of Ukraine, implemented the provisions of the above resolution. It resulted in founding a completely new institution – The Social Insurance Fund of Ukraine, whose main function was to provide financial independence and stability of the system of social insurance. The newly established organization was also to summarize and apply the previously accumulated experience in order to work out the mechanism of implementing citizens' constitutional right to social insurance.

An essential way of restoring the institution of social insurance in Ukraine was setting apart the mandatory social insurance fee. This measure was very unpopular with the Ukrainian citizens, since together with the subjects of entrepreneurship, this fee had to be also paid by the individuals, who performed their own labor activities either in compliance with fixed-term and non-fixed-term employment contracts or in accordance with different civil-legal agreements¹³.

The reformation of the system of social insurance took place after the Verkhovna Rada of Ukraine had adopted the Basics of the Law on the Universal Mandatory State Social Insurance on January 14, 1998. This law was supposed to introduce five separate types of the universal mandatory state social insurance: pension, medical, unemployment insurance, as well as insurance in case of temporary disability and in case of birth or death. The law also touched upon the cases of accidents at work and diseases, caused by professional activities, which led to disability¹⁴.

In this way, a new stage in the development of the field of social insurance began in Ukraine – the introduction of the contemporary universal mandatory state social insurance. The above-mentioned normative-regulatory act has presupposed the implementation of the respective measures of the complex social protection of Ukrainian citizens on the basis of universal-legal, financial and organizational fundamentals of the universal mandatory state social insurance of the citizens of Ukraine. The law also contained the requirements regarding the necessity of creating the five types of the universal mandatory state social insurance. The newly founded arrangement of the system of social

insurance of the population has enabled the transition from the budget principle of financing to the insurance one, whereby there were worked out certain present-day mechanisms of managing the social insurance finance, the principle of parity between the insured individuals, employers and the state being primary and most crucial¹⁵.

Taking into consideration the present-day economic, social, political, and cultural peculiarities of Ukraine's development, the most essential objective of social insurance lies in providing the adequate social assistance to all layers of individuals with low income. Today, the institution of social insurance is to fulfil the following important tasks:

- 1) to ensure the stability of financial system by means of accumulating the insurance fees of all the insured citizens, as well as employers, with the aim of social-material maintenance of any individual in case he faces some risks, envisaged by the legislation;
- 2) to set relevant social partnership in the field of social insurance;
- 3) to improve the existing system of payments at the expense of the respective funds;
- 4) to ensure the work of all the mechanisms for administering thorough control over the money of the target insurance funds.

Presently, the system of social insurance in Ukraine is marked with the following drawbacks: firstly, the current legislation (which is supposed to regulate the efficient work of the insurance market) is far from being complete and perfect; secondly, there is no distinct direction for the further strategic development of Ukrainian insurance market on the whole, and its subdivisions in particular; thirdly, there is a lack of staff, technical, and informational provision in the field¹⁶.

There is another weak point in the system of Ukrainian social insurance. It is known that individuals' salaries have always been regarded as the basics of filling the target insurance funds, as well as a direct source of the hired employees' material well-being. Nevertheless, today's wages (and, consequently, citizens' purchasing powers) are hardly capable of ensuring citizens' high living standards. Under these circumstances, it is crucial to guarantee the hired employees' social protection, which always requires urgent and drastic reaction¹⁷.

When describing the contemporary period of social insurance as a peculiar institution of protecting the working citizens from various social risks, we might distinguish its following features:

- 1) the universal-state nature, as it covers the categories of population, whose income is mostly constituted by their wages;
- 2) social risk is considered as a mass phenomenon, embracing a considerable segment the country's population;
- 3) financing the programs of social insurance is administered at the expense of all parties of a social partnership (these expenses are of non-tax nature).

Hence, the last, fourth stage of the development of the institution of social insurance may be marked with a peculiar progress of this phenomenon in Ukraine at the time of its sovereignty. Ukraine has gone its own interesting and complicated way to build a worthy and efficient system of social insurance. Numerous fundamental normative-regulatory acts in the field of social insurance have been issued with this purpose. However, the drawbacks in the processes of implementing these legislative acts are still obvious. In addition, the normative basis itself is also far from being universal and perfect. Considering this, the Ukrainian legislature has been preparing a wide range of reform measures in order to eliminate these problems.

According to Y. Pavlenko, social insurance is acquiring greater and greater significance in Ukrainian economy. It has already become an essential element in the process of our country's economic development and growth, increasing citizens' well-being and social welfare, as well as creating the necessary conditions for social progress¹⁸.

To crown it all, we might assume that the fear of not satisfying their everyday needs and wants has become a basic factor, which has stipulated people to create the legal phenomena under studies in ancient times. Later, there arose the necessity to declare the right to social-material security at the state level, which, in its turn, has led to the formation of a specialized system of social funds. The latter have been constantly contributed to by the employees with the purpose of further solidary distribution of this money in case of future social risks. Notwithstanding the fact that social insurance exists in a peculiar form in most countries of the world, its status in Ukraine requires considerable improvement. To achieve this improvement, it is essential to find the proper ways of solving the current social problems, as well as to bring to perfection the already existing mechanisms of social insurance.

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Резюме

Боднарук М. Розвиток інституту соціального страхування в Україні радянського та пострадянського періоду.

У змісті даної статті викладено та проаналізовано з правової точки зору характеристику проблематики розвитку інституту соціального страхування в Україні радянського та пострадянського періодів. Зазначається, що становлення інституту соціального страхування на території України у часи формування радянської системи управління відбувалося фактично за зразком німецької моделі, яку було сформовано у другій половині XIX століття. Але, виходячи зі змісту існуючих на той час реалій об'єктивного характеру, розвиток інституту соціального страхування в Україні часів радянського періоду набув притаманних лише йому особливостей як позитивного, так і негативного характеру. Позитивні риси полягали у тому, що з часом сферою соціального страхування було охоплено майже все населення України, а сама доступність соціальної допомоги набула ознак загально-соціальної осяжності. Негативними рисами системи соціального страхування радянського періоду було те, що протягом досить значних періодів часу значне число працюючих членів українського суспільства фактично були позбавлені можливостей користуванням сферою соціального страхування, а, відповідно, не могли скористатися можливостями отримання необхідної соціальної допомоги у повному обсязі.

Також автором проаналізовано процеси становлення інституту соціального страхування в Україні за часів здобуття незалежності.

Ключові слова: соціальне страхування, радянський та пострадянський період, надання соціальної допомоги, право соціального забезпечення, інститут страхування.

Резюме

Боднарук Н. Развитие института социального страхования в Украине советского и постсоветского периода.

В данной статье изложены и проанализированы с правовой точки зрения характеристики проблематики развития института социального страхования в Украине советского и постсоветского периодов. Отмечается, что становление института социального страхования на территории Украины во времена формирования советской системы управления происходило фактически по образцу немецкой модели, которая была сформирована во второй половине XIX века. Но, исходя из существовавших тогда реалий объективного характера, развитие института социального страхования в Украине времен советского периода приобрел присущих только ему особенностей как положительного, так и отрицательного характера. Положительные черты заключались в том, что со временем сферой социального страхования было охвачено почти все население Украины, а сама доступность социальной помощи приобрела признаки обще-социального явления. Негативными чертами системы социального страхования советского периода было то, что на протяжении довольно значительных времен значительное число работающих членов украинского общества фактически были лишены возможностей использования сферой социального страхования, а, соответственно, не могли воспользоваться возможностями получения необходимой социальной помощи в полном объеме.

Также автором проанализированы процессы становления института социального страхования в Украине во времена обретения независимости.

Ключевые слова: социальное страхование, советский и постсоветский период, оказание социальной помощи, право социального обеспечения, институт страхования.

Summary

Bodnaruk M. The development of social insurance in Ukraine during the soviet and post-soviet periods of its history.

The article under discussion deals with the issue of social insurance in Ukraine during the Soviet and Post-Soviet periods of its history. It has been ascertained that the institution of social insurance on the territory of Ukraine at the time of the Soviet system of government has copied the German model of the late XIX century. However, taking into consideration the objective reality of that time, the development of the institution of social insurance in Ukraine during the Soviet period has acquired certain peculiarities of both positive and negative origin. The positive features were the high involvement of the Ukrainian population in the field of social insurance and the easy accessibility of social assistance to all the layers of the population. As to the negative features of the system of social insurance at the times of the USSR, one should mention the inability of a considerable number of employed Ukrainian citizens to take advantage of the services of the field of social insurance. Consequently, their inability to receive the required social assistance in full.

The author of the article under discussion has also carried out a thorough analysis of the processes of the social insurance development at the times of Ukraine's sovereignty.

Key words: social insurance, the Soviet and Post-Soviet Periods of social insurance in Ukraine, providing social assistance, the right to social provision, the institution of insurance.

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НОРМАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ ОБОВ'ЯЗКОВОЇ ВАКЦИНАЦІЇ: АРГУМЕНТИ «ЗА» ТА «ПРОТИ»

Спалахи захворювання на поліомієліт, кір та краснуху у 2015–2017 рр., прогнозована дифтерія на початку 2018 р. свідчать про те, що Україна знаходиться під загрозою виникнення та поширення інфекційних захворювань. Також слід зважати на низький рівень вакцинації населення України, причинами якого були різні фактори як адміністративного характеру (суперечності у нормативно-правовому регулюванні, фактична відсутність санітарно-епідеміологічного нагляду, реформування структур державних органів у сфері охорони здоров'я), так і суспільного характеру (антивакцинаційні компанії, смерть школяра від вакцини проти кору та краснухи у 2008 р., недооцінка ризиків від інфекційних захворювань).

Питання обов'язкової вакцинації та її нормативно-правового регулювання не є виключно проблемою України. У ряді країн відбувається дискусія щодо обов'язковості вакцинації. Міжнародно-правові стандарти захисту прав людини, норми та принципи, прийняті та рекомендовані ВООЗ, практика ЄСПЛ не дають однозначної відповіді щодо «обов'язковості» вакцинації. Оскільки переважна більшість «обов'язкової» вакцинації здійснюється в дитячому віці, то слід зважати на особливості надання інформованої згоди малолітніх та неповнолітніх осіб, їх батьків чи осіб, що їх замінюють. Чи є вакцинація в Україні обов'язковою? Дане питання активно обговорюється у суспільстві. У ході даного дослідження ми спробуємо дати відповідь на це питання, виходячи з аналізу чинного законодавства України. Вищезазначене дає нам змогу визначити актуальність проблематики нормативно-правового регулювання обов'язкової вакцинації та необхідність у її переосмисленні. Підкреслимо, що в науковій літературі вживається термін «імунізація». Пропонуємо в даному дослідженні не акцентувати увагу на можливих термінологічних відмінностях між термінами «імунізація» та «вакцинація», виходячи з того, що: імунізація – це процес, завдяки якому людина набуває імунітету, зазвичай, шляхом вакцинації.

Мета статті – дослідити положення міжнародних документів, вітчизняного законодавства, положення законодавства інших країн, практику міжнародних судових установ, конституційних та/або верховних судів та наукові розвідки, присвячені питанню обов'язковості вакцинації.

Спробуємо навести аргументи «за» та «проти» щодо нормативно-правового регулювання обов'язкової вакцинації і на основі цього надати пропозиції щодо вдосконалення чинного законодавства України.

Відповідно до поставленої мети дослідження зосереджено увагу на розв'язанні таких завдань: з'ясувати юридичну природу правових відносин відповідальності у сфері профілактичних щеплень за законодавством України; здійснити аналіз законодавчого забезпечення права/обов'язку на відмову від вакцинації за законодавством України; визначити тенденції нормопроектної практики щодо відмови від профілактичних щеплень в Україні; дослідити судову практику України, що стосується проблематики вакцинації, її наслідків та всіх можливих ризиків; відповідальності у цій сфері; викристалізувати правові позиції Європейського