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ON THE DEFINITION OF THE CONCEPTS "SOCIAL PROTECTION" AND "SOCIAL SECURITY" (LEGAL ASPECTS)

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Introduction: *the article gives a comparative analysis of the nature and content of the concepts "social protection" and "social security" in legal literature and social legislation. In the few scientific and legal sources dealing with this issue, there have been developed several approaches to their definition. Some authors who write about the content of "social protection" consider it as a complex concept, and not only use the basic provisions of social security law but also include the context of labor, family and civil law. As for the "social security" concept, in legal publications one can find statements that this term is more of a historical character, as it only relates to a specific period of the 20th century. In addition, there is an opinion that this legal concept is connected with the subjective right of citizens to receive assistance from the state or is characterized as a special form of distribution relations.*

Purpose: *to justify the need to analyze these concepts as objects of system analysis in order to determine their comparative characteristics.*

Methods: *the analysis is based on the systemic and comparative law methods.*

Results: *the revealed ambiguity in interpretations of "social protection" and "social security" confirms the complexity of the social phenomena denoted by these terms. It is shown that the difficulties with the interpretation are largely due to the lack of the legal interpretation of the concepts.*

Conclusion: *the concepts of social security and social protection are not identical, since social security represents only one of the forms of social protection, which is dominated by the principles of state organization with a very limited use of it.*

Keywords: social protection; social security; key concepts; analysis

**К ВОПРОСУ ОБ ОПРЕДЕЛЕНИИ ПОНЯТИЙ «СОЦИАЛЬНАЯ ЗАЩИТА»
И «СОЦИАЛЬНОЕ ОБЕСПЕЧЕНИЕ» (ПРАВОВОЙ АСПЕКТ)**

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Введение: в статье дается сравнительный анализ сущности и содержания понятий «социальная защита» и «социальное обеспечение» в юридической литературе и социальном законодательстве. В немногочисленных научно-правовых источниках, посвященных данной проблематике, сложилось несколько подходов к их определению. Отдельные авторы, которые пишут о содержании понятия «социальная защита», рассматривают его комплексно, не только используя основные положения права социального обеспечения, но и включают контекст трудового, семейного, гражданского права. Что касается категории «социальное обеспечение», то в публикациях правового характера можно встретить высказывания о том, что термин «социальное обеспечение» в большей степени имеет исторический характер, поскольку относится только к определенному периоду XX в. Кроме того, существует мнение, что данная правовая категория имеет отношение к субъективному праву граждан на получение помощи со стороны государства, либо характеризуется как особая форма распределительных отношений. **Цель:** обоснование необходимости анализа этих понятий как объектов системного анализа с целью выявления их сравнительных характеристик. **Методы анализа:** основу данного анализа составляют системный и сравнительно-правовой методы. **Результаты:** выявленная неоднозначность толкований понятий «социальная защита» и «социальное обеспечение» подтверждает сложность общественных явлений. Показано, что трудности в толковании во многом обусловлены отсутствием нормативно-правовой трактовки указанных терминов. **Вывод:** понятия «социальное обеспечение» и «социальная защита» не являются тождественными, поскольку социальное обеспечение отражает лишь одну из форм социальной защиты, где преобладают принципы государственной организации с очень ограниченным ее использованием.

Ключевые слова: социальная защита; социальное обеспечение; ключевые категории; анализ

Introduction

The interpretation of the concepts “social protection” and “social security” in scientific legal literature and social legislation is ambiguous, both due to the complexity of the social phenomena they denote and due to the absence of their legal interpretations. Therefore, it is important to analyze these concepts with a view to their comparative characteristics.

The starting point of our discussion is an assumption that the concept of social protection is more varied and richer than the concept of social security since social protection involves many subsystems including social security. Disregard for this fact results in blurring of characteristics of these concepts.

Let us refer to the conventions of the International Labor Organization (ILO), which primarily considers the concept of social security. This will allow us to relate the essential aspects of the definition of social security to its actual content.

All the conventions and recommendations on social security are presented in two aspects¹.

The first group of the documents of the international level contains conventions that are of universal significance. Thus, the basis of Convention No. 102 (adopted by the ILO in 1952) is the concept of social security which proclaims the right of all citizens to social assistance, irrespective of their work history and the amount of the insurance contributions paid². It includes nine areas in which this assistance should be provided: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

¹ Conventions and Recommendations of the International Labor Organization (ILO). International Labor Office: in 2 vols. (1918–1966; 1967–2002).

² ILO Convention No. 102 “Social Security (Minimum Standards) Convention”. *Conventions and Recommendations adopted by the International Labor Conference*. 1919–1956. Geneva, International Labor Office, 1991. Vol. I. Pp. 1055–1086.

Another document is Convention No. 117 (adopted by the ILO in 1962)¹. It proclaimed the aims and standards of social policy that should be considered in the framework of a comprehensive social security system aimed at satisfying real-life needs of people, taking into account the minimum subsistence level: a man has the right to the standard of living including food, clothing, housing, medical care and social services that are necessary for the maintenance of health and well-being of himself and of his family.

Recommendation No. 67² (adopted by the ILO in 1994) is also significant for characterizing the system of social security, which draws attention of different subjects at both governmental and non-governmental levels to ensuring incomes of the citizens and their families.

In summary, the conventions and recommendations of the international level which determine the characteristic features of the social security system could contribute to a system understanding and comprehensive analysis.

Let us look at conventions and recommendations in the second group of the international documents which refer to social security of particular subjects. For comparison, we will consider certain aspects of Conventions No. 128, 103, 159 and Recommendation No. 162³.

These documents identify the terms of old-age benefits, disability benefits, and survivor's benefits. They deal with the provision of labor rights and social protection of the elderly. Special importance

is given to the situation of the unemployed among the elderly. The documents contain provisions on the protection of the rights of mothers and the government's responsibility to provide them with guarantees. The rights of persons with disabilities to social and professional rehabilitation, employment guarantees for persons with disabilities and some others are also addressed in the documents.

On the basis of the above-mentioned provisions one can conclude how great their significance is for the understanding of the social security concept. They contain not only the mechanisms, specific guidelines and regulations which should ideally conform to social legislation of all countries, but also determine the conditions for its integration into the international legal space.

To define the approaches to the content of the other concept – social protection – let us consider some of the provisions of the Revised European Social Charter of May 3, 1995 (adopted by the European Union (EU) in 1989). This document contains rules of advisory character which describe the basic rights to social protection of both the citizens who work (in case of social risk and loss of earnings they are provided with adequate payment) and the persons without means of subsistence [3, p. 85].

At the same time, an arbitrary use of the terms, different understanding of the same definitions, lack of relevant and clear concepts have a negative impact on the quality of legal documents. There is the need for a unified approach to the development of legal terminology and the conceptual approach to social security and social protection.

Results of the Study

At the time when the meaning of the concept “social protection” compared with that of “social security” is becoming more important not only in theory but also in legal practice, it is necessary to define these basic concepts more precisely.

In legal publications, you can find statements that the term “social security” is temporary in nature since it only refers to a specific period of the 20th century.

In our view, this conclusion is controversial. On the one hand, in the post-Soviet period there appeared a tendency for a more active use of the generalized term “social protection”, on the other hand – the need for retaining the concept “social security” to refer to the government activities directed towards the implementation of social guarantees and human rights was recognized.

¹ ILO Convention No. 117 “Social Policy (Basic Aims and Standards) Convention”. *Conventions and Recommendations adopted by the International Labor Conference*. 1919–1956. Geneva, International Labor Office, 1991. Vol. II. Pp. 1321–1329.

² ILO Recommendation No. 67 “Income Security Recommendation”. Philadelphia. Adopted in 1944. *Conventions and Recommendations adopted by the International Labor Conference*. 1919–1956. Geneva, International Labor Office, 1991. Vol. I. Pp. 591–612.

³ ILO Convention No. 128 “Invalidity, Old Age and Survivors' Benefits Convention”. *Conventions and Recommendations adopted by the International Labor Conference*. 1957–1990. Geneva, International Labor Office, 1991. Vol. II. Pp. 1531–1552; ILO Convention No. 103 “Maternity Protection Convention” (revised in 1952). *Collection of Existing Treaties, Agreements and Conventions Signed by the USSR with Foreign States*. Moscow, 1960. Iss. XIX. Pp. 302–309; ILO Convention No. 159 “Vocational Rehabilitation and Employment (Disabled Persons) Convention”. *Conventions and Recommendations adopted by the International Labor Conference*. 1957–1990. Geneva, International Labor Office, 1991. Vol. II. Pp. 2031–2035; ILO Recommendation No. 162 “Older Workers Recommendation”. *Conventions and Recommendations adopted by the International Labor Conference*. 1957–1990. Geneva, International Labor Office, 1991. Vol. II. Pp. 1927–1934.

It should also be noted that the current situation brings in some confusion when the terms in question are used in scientific literature. In some cases, authors do not make any distinctions between the concepts of “social security” and “social protection”, which is reflected in the characteristic of the definitions.

Let us consider the concept of social protection.

In scientific legal literature and in social legislation on social protection, there are several approaches to its definition. It should be noted that certain aspects of social protection are reflected in the main document – the Constitution of the Russian Federation¹.

It is in this document that a shift from the principles of universal social security to the European system of social protection was declared, certain fundamental principles were defined. In this meaning, the concept of social protection is considered widely and “only a comprehensive approach to this legal concept allows us to identify its nature” [7, p. 13].

Our position is supported by the authors who consider the concept of social protection not only in view of the main provisions of the human right to social security but also as part of labor law (unemployment, employment, social guarantees in employment), family law (government support for family and marriage institutions), civil law (protection of private property) [4, p. 439].

When defining social protection, some researchers use an institutional approach considering it as a set of institutions, thus believing that the work of these agencies is primarily aimed at preventing or mitigating negative consequences, if these occur, for the individual and his family and at “maintaining an acceptable level of material and social well-being” [5, p. 69].

This wording, in our opinion, is closer to the understanding of the nature of social security and partly of the goal of social policy.

It is worthy of note that the concept “social protection” is often correlated with the goal of social policy. This conclusion is confirmed by the definition in which social protection is understood as the *activity of the state* in the realization of a set

of legally secured economic, legal and social guarantees that provide every member of society with a number of important social rights, including the right to an adequate standard of living necessary for a normal reproduction and personal development [5, p. 54].

Additional difficulties in determining the content of social protection are related, in our opinion, to the lack of legal interpretation of the concept. This is despite the fact that since the early 1990s, a conceptual framework has been developing, which defines the status of the social protection system as a whole and its separate subsystems in connection with the adoption of a number of federal laws².

These legislative acts reflected the attitude of the public authorities to the definition of such key concepts as social insurance, social welfare, social services, cost of living, and partly social protection.

New legal documents have established the foundation for a new definition of social protection. The implementation of social protection measures was the catalyst for a number of other standards whose realization is connected with social protection of population. Almost every region of the country was developing its own social standards, a system of the most important social indicators of the population’s life and activity.

However, while developing and specifying the provisions of the Constitution of the Russian Federation in the area of social protection, social legislation has not yet been able to fully resolve this issue. Currently, at the regional level, specialists of the social protection system are implementing more than 30 federal laws and about the same number of regional ones, periodically updating and adding to this regulatory framework. At the same time, none of the laws does give a complete interpretation of the concepts of social protection and social security.

² Federal Law No. 178-FZ “On State Social Welfare” of June 17, 1999. *Collection of Legislative Acts of the Russian Federation*. 1999. No. 29. Art. 3699; Federal Law No. 181-FZ “On Social Protection of the Disabled in the Russian Federation” of November 24, 1995. *Collection of Legislative Acts of the Russian Federation*. 1995. No. 48. Art. 4563; Federal Law No. 233-FZ “On Amendments to the Federal Law “On the Minimum Subsistence Level in the Russian Federation”” of December 3, 2012. *Rossiyskaya Gazeta – Russian Gazette*. 2012. 7 Dec.

¹ Constitution of the Russian Federation of December 12, 1993.

It should be emphasized that if we consider social protection as a combination of the social insurance and social welfare systems, the conceptual space of this definition acquires more precise parameters. However, in this case it is difficult to imagine a social protection system in its broad meaning which includes social security according to the Constitution of the Russian Federation.

Here we can refer to the studies of the scientists who believe that a social protection system integrates all ways of protection of the population from social risks. Among Russian scholars, this position is most consistently advocated by V. D. Roik [6, p. 123].

V. I. Sharyn has a different opinion on this issue. He notes that the modern system of social protection of the population consists of four subsystems: social security; social insurance; social assistance (support), a group of other social benefits and social protection forms provided by the state [8, p. 21]. The author believes that the core element of the social protection system is social security as an area which is created and regulated by the government and which bears the main load of social protection.

Let us consider the concept of social security.

There is an opinion that the term "social security" came into use in 1948 after the adoption of the UN Universal Declaration of Human Rights and Freedoms of the Individual. There is a different view, however, according to which the term was first used in 1935 in the US law "On Social Security", which stimulated the development of care programs for the elderly, the disabled and the unemployed.

The concept of social security was widely used in the legal conceptual space, including at the international level, in the 30–50s, when many countries drastically changed the conditions for the implementation of social policy, which led to the need for the systematization of the social institutions' activities.

In the modern period, especially in domestic legal theory and practice, the concept of social security is characterized as a special form of distribution relations. In addition, it is noted that social security is a function of the state to provide and serve the needs of incapacitated population.

If we consider these views in the context of the cited wordings about social protection, it can be noted that they do not contradict each other.

A number of authors have suggested that "social security" is a legal concept denoting a subjective right of citizens to receive aid from the state, private individuals or legal entities etc.

The emergence of a large number of definitions of social security in scientific literature led to the need for their systematization. *In the first place*, as we have already noted, the concept of social security is considered to be a "system of distribution relations where it refers to the totality of public relations concerning the distribution of the non-budget funds of social insurance and redistribution of a part of the state budget in order to meet the needs of individuals in the event of loss of earnings or earned income" [4, p. 440].

In the second version of the definition, the context is the same, it specifies that "this concept represents one of the possible ways of distribution of the gross domestic product by providing the citizens with material goods in order to equalize their personal income in the event of social risks at the expense of the target financing sources in the amount and on terms strictly regulated by society, government in order to maintain their full social status" [2, p. 74].

Finally, there is an opinion that this is a form of expression of the state's social policy [1, p. 56].

No doubt, this is far from the full list of possibilities that may be covered by the concept of social security. Nonetheless, there are no major differences in the way the concept is treated in literature. Most often similar positions are presented.

Analyzing different opinions, let us pay attention once again to the structure of the definition. The concept "social security" consists of such structural-functional units which can be considered as relatively independent systems: pensions; allowances; medical services; maintenance and upbringing of children in childcare, preschool and health institutions; social services and social assistance. Each system also consists of some functional components (different types of pensions, allowances, food supplies. For instance, the pension system includes old-age pensions,

disability pensions, pensions in the event of the loss of a breadwinner, retirement pensions, social pensions; benefits include sickness benefits, maternity benefits, child care ones, etc.

In other words, the state system of social security creates the conditions directed towards the implementation of the human right to a decent existence by providing a minimum subsistence level, guarantees to protect every individual from major risks which can lead to the loss of the means of subsistence, such as illness, accident at work, old age, unemployment, poverty, etc.

Conclusion

As we noted above, the definition of social security is associated with the state measures which cover social insurance (i. e. the system based on insurance contributions) and universal benefits (i. e. benefits financed by taxes and paid without income verification and testing the recipient's means). The above mentioned is not limited to the problems of social security and, as a rule, is linked to the broader concept of social protection, which includes not only public social security systems, but also private or optional ones intended for similar purposes, provided that contributions to these are determined primarily by market factors.

According to foreign sources, social protection in a broad sense means the activities aimed at ensuring the process of the formation and development of an integrated personality and at the same time at the detection and neutralization of negative factors, creation of the conditions for a person's self-determination and self-fulfillment.

In a narrower understanding, social protection means support and assistance to people in difficult life situations [9, 10, 11, 12]¹.

Accordingly, we can assume that under the narrow approach, the main instruments of social protection are social insurance and social assistance, whereas under the broad approach social protection includes other areas of life sustenance systems as well.

References

1. *Buyanova M. O. Sotsial'noe obsluzhivanie grazhdan Rossii v usloviyakh rynochnoy ekonomiki (teoretiko-pravovoy aspekt): avtoref. dis. ... d-ra yurid. nauk* [Social Services for Citizens of Russia in the Conditions of Market Economy (Theoretical and Legal Aspects): Synopsis of Dr. jurid. sci. diss.]. Moscow, 2003. 63 p. (In Russ.).

2. *Zakharov M. L., Tuchkova E. G. Pravo sotsial'nogo obespecheniya Rossii* [Social Security Law in Russia]. Moscow, 2004. 608 p. (In Russ.).
3. *Isachenko T. M. Sotsial'naya politika Evropeyskogo Soyuz: opyt razvitiya* [Social Policy of the European Union: Development Experience]. *Trud za rubezhom – Labor Abroad*. 1999. Issue 1. Pp. 84–96. (In Russ.).
4. *Machul'skaya E. E. Perspektivy ratifikatsii Rossiiy mezhdunarodnykh aktov v sfere sotsial'nogo obespecheniya* [Prospects for Russia's Ratification of Acts Instruments in the Field of Social Security. *Novyy Trudovoy kodeks Rossiyskoy Federatsii i problemy ego primeneniya – The New Labor Code of the Russian Federation and Problems of Its Application*; ed. by K. N. Gusev]. Moscow, 2004. Pp. 439–444. (In Russ.).
5. *Mironova T. K. Pravo sotsial'nogo obespecheniya i sovremennye tendentsii pravovogo regulirovaniya otnosheniy v sfere sotsial'noy zashchity naseleniya: dis. ... d-ra yurid. nauk*. [Social Security Law and Current Trends in Legal Regulation of Relations in the Sphere of Social Protection of the Population: Dr. jurid. sci. diss.]. Moscow, 2012. 314 p. (In Russ.).
6. *Roik V. D. Osnovy sotsial'nogo strakhovaniya* [Basics of Social Insurance]. Moscow, 2004. 246 p. (In Russ.).
7. *Snezhko O. A. Konstitutsionnye osnovy sotsial'noy zashchity grazhdan* [Constitutional Foundations of Social Protection of Citizens]. *Konstitutsionnoe i munitsipal'noe pravo – Constitutional and Municipal Law*. 2006. Issue 7. Pp. 7–13. (In Russ.).
8. *Sharin V. I. Sotsial'naya zashchita naseleniya: teoreticheskie osnovy* [Social Protection of the Population: Theoretical Foundations]. *Sotsial'noe obespechenie – Social Security*. 2005. Issue 14. Pp. 21–24. (In Russ.).
9. *About us*. Health and Care Professionals Council. Available at: <http://www.hcpc-uk.org/aboutus/> (accessed 17.01.2015). (In Eng.).
10. *Aldridge M. J., Macy H, Walz T. Beyond Management: Humanizing the Administrative Process*. Iowa City: University of Iowa, School of Social Work, 1982. 180 p. (In Eng.).
11. *Gritsenko E., Walz T. English for Social Work Students*. Perm; Iowa City: Sackter House Media Productions, 2011. 146 p. (In Eng.).

¹ The Care Standards Act 2000. Pp. 56, 61. *The Official home of UK legislation*. Available at: <http://www.legislation.gov.uk/ukpga/2000/14/contents> (accessed 17.01.2015).

12. *Wayne H. Johnson and Contributors. The Social Services. An Introduction. Fifth Edition. F. E. Peacock Publishers, INC. Itasca, Illinois, 1998. 501 p. (In Eng.).*

References in Russian

1. *Буянова М. О. Социальное обслуживание граждан России в условиях рыночной экономики (теоретико-правовой аспект): автореф. дис. ... д-ра юрид. наук. М., 2003. 63 с.*
2. *Захаров М. Л., Тучкова Э. Г. Право социального обеспечения России. М.: Волтерс Клувер, 2004. 608 с.*
3. *Исаченко Т. М. Социальная политика Европейского Союза: опыт развития // Труд за рубежом. 1999. № 1. С. 84–96.*
4. *Мачульская Е. Е. Перспективы ратификации Россией международных актов в сфере социального обеспечения // Новый Трудовой кодекс Российской Федерации и проблемы его применения / под ред. К. Н. Гусова. М., 2004. С. 439–444.*
5. *Миронова Т. К. Право социального обеспечения и современные тенденции правового регулирования отношений в сфере социальной защиты населения: дис. ... д-ра юрид. наук. М., 2012. 314 с.*
6. *Роик В. Д. Основы социального страхования. М.: РАГС, 2004. 246 с.*
7. *Снежко О. А. Конституционные основы социальной защиты граждан // Конституционное и муниципальное право. 2006. № 7. С. 7–13.*
8. *Шарин В. И. Социальная защита населения: теоретические основы // Социальное обеспечение. 2005. № 14. С. 21–24.*
9. *About us // Health and Care Professionals Council. URL: <http://www.hcpc-uk.org/aboutus/> (дата обращения: 17.01.2015).*
10. *Aldridge M. J., Macy H, Walz T. Beyond Management: Humanizing the Administrative Process. Iowa City: University of Iowa, School of Social Work, 1982. 180 p.*
11. *Gritsenko E., Walz T. English for Social Work Students. Perm; Iowa City: Sackter House Media Productions, 2011. 146 p.*
13. *Johnson H. Wayne The Social Services. An Introduction. Fifth Edition. Itasca, Illinois: F. E. Peacock Publishers, INC. 1998. 501 p.*