


SERHII SERHIIOVYCH POLESOV,*Kharkiv National University of Internal Affairs;* <https://orcid.org/0009-0009-2936-1030>,*e-mail: pfpolesov@ukr.net*

THE MECHANISM OF THE SOCIAL STATE AND THE PLACE OF THE PENSION SYSTEM IN IT: THEORETICAL AND LEGAL ASPECTS

The article is devoted to the theoretical and legal study of the role and place of the pension system in the mechanism of the social state on the example of the modern Ukrainian legal experience. Based on the analysis of legislation, doctrinal positions and practice of the Constitutional Court of Ukraine, the author has formulated the own vision of the substantive and ontological core of pension provision. It is demonstrated that pension provision as a set of legal relations and a real legal phenomenon in the substantive and ontological dimension cannot be identified either with the process of providing an individual with a set of certain social and material services (procedural approach), or with a set of measures taken by the State to meet the needs of an individual for adequate material security upon reaching retirement age or due to adverse social circumstances which exclude their opportunities for active participation in economic and social life. According to the human-centred paradigm, the substantive and ontological essence of pension provision is not only the right (legal possibility) to demand from the state a certain level of pension payments in accordance with certain objective criteria, but also the real possibility to receive such payments in the amount that allows a person to maintain a decent existence, to ensure their key needs in life and social environment, avoiding poverty and social isolation.

The importance of the State's guarantee of the right to pension as a component of the constitutional right to social protection is substantiated. It has been revealed that the social state implements such a social policy which guarantees not only pension payments, but also their amount, frequency of receipt and indexation in accordance with the established procedure, which ensure that every person entitled to a pension has an adequate standard of living, the stability of the established standards of pension provision, the guarantee of this provision, the predictability of the legislative policy of pension provision (in accordance with the concept of legitimate expectations), and the appropriate law enforcement policy of pension provision. It has been proved that in the context of the social state concept, the problem of legislative fixation of the optimal model of pension provision (which would take into account the issues of determining the amount of pension provision, their ranking in various, including special, laws, methods and pace of pension indexation, etc.), taking into account the economic situation of the State and the compliance of such provision with the task of realisation of basic human needs for decent living conditions, requires careful consideration (in accordance with the concept of "space for consideration"). The article emphasises that compliance with the constitutional principles of the social state requires legislative regulation of pension provision on the basis of equity and proportionality, taking into account the State's obligation to ensure decent living conditions for every citizen of Ukraine.

Key words: *human rights, human centrism, decent living conditions, pension provision, social state, social policy, equity, proportionality.*

Original article

INTRODUCTION. Due to the systematic changes in the social security of Ukrainian citizens, which have not yet allowed to optimise the national pension system and bring it closer to the advanced European standards of social protection, it is important for legal science and practice to address a wide range of theoretical and applied legal issues in this area. These problems are related to clarification of the main parameters of the pension provision system in the context of the social state, determination of algo-

rithms for their optimal implementation, and improvement of the regulatory, legal, institutional, functional and axiological characteristics of pension provision. It is essential that the above characteristics are based on a conceptual framework that allows us to assert the creation of a modern, progressive and economically sound pension system. This system should meet the key parameters of a social welfare state and really serve to protect and develop the rights of citizens to pension security.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of the article is to make a theoretical and legal study of the pension system's role and place in the mechanism of the social state on the example of the modern Ukrainian legal experience.

In the light of the stated objective, the article identifies the following objectives, namely:

- to prove that the social welfare state is connected in all respects with the implementation of effective and fair, proportional (proportionate) and socially determined pension provision;
- to characterise in a comprehensive manner the substantive and ontological essence of pension provision from the perspective of the human-centredness paradigm;
- to demonstrate with arguments that the right to pension provision cannot be cancelled by the State, nor can it be narrowed or restricted;
- to determine the mandatory requirements and criteria to be taken into account when introducing changes to the legal regulation of pension provision.

METHODOLOGY. The methodological basis of the article consists of a wide range of general scientific, specific scientific and special legal methods. The dialectical method was fundamental among them, and it allowed for a thorough description of the place of the pension system in the mechanism of the social state from the perspective of the theoretical and legal approach. The axiological method in the perspective of the human-centred paradigm allowed to show the substantive and ontological essence of pension provision in a comprehensive manner. Scientific pluralism, as an expression of the high level of participation of legal science in the elaboration of many topical theoretical and applied issues of pension provision modernisation, contributed to the consideration of pension provision from the perspective of legal approaches referred to as procedural and activity-based approaches.

In addition, a wide range of special scientific methods were used in writing the article. The hermeneutic method was useful in analysing the provisions of the Fundamental Law of Ukraine, legislation on pension provision, and opinions and decisions of the Constitutional Court of Ukraine on issues related to the subject of scientific analysis of the article. The systematic approach made it possible to establish that the implementation of the basic principles and tasks of the social state is naturally associated with the implementation of effective and fair, proportionate (proportionate) and socially justified pension provision. The logical-semantic and formal-logical methods were used to further develop the scien-

tific position that the implementation of pension provision depends on the policy of the social state, its directions, priorities, and their legal support.

Special legal methods have also played an important role in analysing the role and place of the pension system in the mechanism of the social welfare state.

The formal legal method was used to analyse a number of mandatory requirements which are taken into account when amending the legal regulation of pension provision.

The normative-dogmatic (legal-technical) method was used to defend the conclusion that compliance with the constitutional principles of the social welfare state requires legislative regulation of pension provision on the basis of fairness and proportionality, taking into account the State's obligation to ensure decent living conditions for every citizen of Ukraine.

RESEARCH RESULTS AND DISCUSSION. Today, conditional pension provision from the perspective of jurisprudence is considered within the framework of those conceptual and legal approaches that are called procedural and activity-based.

For instance, in the context of the first approach, V. Hrushko (2006, p.26) believes that "...pension provision is a form of state minimum social protection for people who cannot work through the provision of labour and social pensions". Along these lines, T. Kravchuk (2008, pp.7–8) argues that "...pension provision is a form of financial support for individuals who are subject to both mandatory state pension insurance and non-state pension provision. Such support includes the payment of pensions and the provision of social services. Funding comes from insurance premiums paid by legal entities and/or individuals, as well as from state and local budgets and trust funds. The collected funds are accumulated on the bank accounts of the Pension and Accumulation Funds, non-state pension funds and banking institutions". However, according to A. Kazanchan (2010, p. 145), "...pension provision is a special form of social protection of the population associated with regular, usually lifelong cash payments that are assigned to citizens who have become unable to work due to certain most unfavourable social circumstances, such as old age, disability, loss of the breadwinner and others, defined by law". Finally, L. Sorokina (2013, p.145) believes that "...pension provision should be interpreted as a process of providing material support to a particular person, which is directly related to his/her labour activity. The specifics of this provision depend on such factors as salary, length of service, working conditions and other aspects".

It should also be noted that in a generalised form, the first approach is also embodied in the Modern Legal Encyclopedia, whose authors propose that “pension provision is considered to be the material support of disabled citizens guaranteed by the state at the expense of public consumption funds through the provision of labour and social pensions” (Zaichuk et al., 2013, p. 97).

The above approach reflects only the process of providing individuals entitled to pensions with appropriate monetary payments (usually by the state). However, it does not cover the substantive and ontological dimension of pension provision, i.e. it does not reveal what the essence of pension provision is and how it, as a specific legal phenomenon, relates to the functioning and purpose of the social state. The mere identification of pension provision with a type of material (social) security, which consists in providing citizens with labour and social pensions, i.e. monthly pension payments of the appropriate amount, in case a person reaches the age prescribed by law or is declared disabled or receives these payments by his/her family members in cases determined by law, is not correct.

The second common approach to the interpretation of the legal nature of pension provision is the activity approach. Its essence is reduced to the interpretation of pension provision as: 1) “...comprehensive organisational and legal measures aimed at satisfying vital needs by making cash payments to citizens entitled to receive them, as well as guaranteeing pensioners the exercise of their right, state protection and protection of their rights” (Didkovska, 2008, p. 14); 2) “...a set of organisational, legal and other actions provided for by law aimed at ensuring social lifetime cash payments to disabled citizens in connection with the occurrence of certain circumstances” (Rusak, 2022, p. 110); “...the system of state social guarantees, according to which pensions should ensure the level in the solidarity pension insurance system based solely on the principle of solidarity redistribution of pension contributions” (Feshchuk, 2010, p. 14); “...the state system of legal, economic, organisational and administrative measures to protect citizens as a result of reaching old age, disability or loss of the breadwinner” (Buriachenko, 2017, p. 25).

However, it is also impossible to agree with the identification of pension provision with the implementation by the State of certain (comprehensive, systemic, etc.) measures. The definition of pension provision through the system of state measures does not meet the criterion of disclosing the substantive and ontological nature of pension provision as a legal phenomenon.

The above approaches to defining the essence of the category “pension provision” have almost the same conceptual shortcoming – they identify pension provision either exclusively with the process of material provision of individuals by the state or with the implementation of *state measures* in this direction. However, the Law of Ukraine “On Pension Provision” states that “...citizens of Ukraine have the right to state pension provision for old age, disability, survivors’ and other cases provided for by this Law”¹, while the Law of Ukraine “On Non-State Pension Provision” provides for “the existence of a non-state pension provision system, which is an integral part of the accumulative pension provision system, based on the principles of voluntary participation of individuals and legal entities, except in cases stipulated by laws, in the formation of pension savings for the purpose of receiving pension benefits additional to the compulsory state pension insurance by participants of private pension provision” (part one of Article 2 of the Law)².

Consequently, pension provision in Ukraine is not an exclusively state activity or a process of material support carried out exclusively by the state. Ukrainian legislation covers the principles and foundations of both state and non-state pension systems. This approach is further developed in auxiliary special legislative acts that define the role and status of authorised entities in the private pension system. This approach is also in line with modern Ukrainian legal science, which considers pension provision as a complex process that includes both state and non-state components (Korobenko, 2011; Stashkiv, 2005; Syvak, 1999; Syrota, 2007; Stychynskyi, 2003).

Meanwhile, “...the trend of human centrism, which has been actively developing in recent years, is not only a theoretical movement in jurisprudence, but also an important applied tool for directing public policy (from the concept of policy) and specific actions of public authorities. Human rights, their content and the state of guarantee are both a criterion for measuring the legal effectiveness of legislation in a particular country and a value vector for the development of society and the state as a whole” (Barabash et al., 2021, p. 473).

According to the author of the article, in accordance with the human-centred approach embodied in the Constitution of Ukraine (Articles 3,

¹ Verkhovna Rada of Ukraine. (1991). *On Pension Provision* (Law No. 1788-XII). <https://zakon.rada.gov.ua/laws/show/1788-12>.

² Verkhovna Rada of Ukraine. (2003). *On Non-State Pension Provision* (Law No. 1057-IV). <https://zakon.rada.gov.ua/laws/show/1057-15>.

21, 22) (Barabash et al., 2021, pp. 52, 136, 207), the substantive and ontological basis of pension provision is legitimately sought in the system of human rights legitimised, in particular, in the basic constitutional provisions. It should be noted that this approach is legitimate, although the very concept of “pension provision” is used in the Basic Law of Ukraine only once – in the provision on legislative regulation: according to paragraph 6 of part one of Article 92 of the Constitution of Ukraine, the forms and types of pension provision are established exclusively by the laws of Ukraine. This provision means, in particular, that the legislator has *a certain margin of appreciation* in determining the content and individual components of the legal mechanism for regulating pension provision, as well as in adopting laws that change this mechanism.

At the same time, the provisions of Article 46 of the Fundamental Law of the State are systematically linked to the provision enshrined in paragraph 6 of part one of Article 92 of the Constitution of Ukraine, according to which: “1) citizens shall have the right to social protection, including the right to be provided with security in the event of full, partial or temporary disability, loss of the breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided for by law; 2) this right shall be guaranteed by compulsory state social insurance at the expense of insurance contributions of citizens, enterprises, institutions and organisations, as well as budgetary and other sources of social security; 3) pensions, other types of social payments and benefits that are the main source of subsistence should ensure a standard of living not lower than the subsistence minimum established by law”¹. Therefore, pension provision in the substantive and ontological dimension appears, first of all, as one of the key social rights of an individual, which is directly linked to the need to ensure, through a balanced social policy of the State, a standard of living not lower than the subsistence minimum established by law, in particular, in case of full, partial or temporary disability, loss of the breadwinner, as well as in old age and in other cases provided for by law. At the same time, it is clear that the right of an individual to a certain type of financial security is not the only reason for pension provision. Given that it covers a complex conglomerate of legal relations, the central part of which is, of course, the said right of an individual, this right should be accom-

panied by certain obligations of the authorised bodies and guarantees for timely receipt of a pension of the amount due to the person and with the frequency established by law. When it comes to the manner in which the right to pension is exercised, in particular through the derivative rights to receive a pension of the appropriate amount, to recalculate the pension, to choose the method of receiving the pension, etc., it is legitimate to conclude that there is currently a whole “bundle” of rights and opportunities, including pension provision. However, these rights should be matched by the statutory obligations of authorised bodies and officials, as well as “...a number of guarantees that make the right to pension provision real, enforceable, and protected from violations (key among them: 1) guarantee of the right to pension payments; 2) guarantee of retirement age; 3) guarantee of insurance period credit; 4) guarantee of adequate legal protection in case of violation of fundamental rights. legal protection in case of violation of fundamental rights)” (Sokorynskyi, 2019, p. 425).

This approach to pension provision is a qualitative criterion of a social welfare state. It does not just have a pension system (even though the institution of pension provision is also known to states that are not constitutionally nominated as social or that do not de facto pursue a social state policy), but introduces pension provision that should prevent poverty and social exclusion, guarantee a decent existence, at least a standard of living not lower than the subsistence level, covering the provision of key needs in the social environment.

As a result, in the substantive and ontological dimension, pension provision is not only the right (legal possibility) to demand from the state a certain level of pension payments in accordance with certain objective criteria, but also a real opportunity to receive such payments in amounts that allow a person to maintain a decent existence, to meet his/her key needs in life and in the social environment, avoiding poverty and social isolation in the respective society.

Constitutional jurisprudence is characterised by consideration of pension provision in the context of social protection of citizens, and 1) the right of citizens to social protection is comprehensive, its content is determined by both the Constitution and laws of Ukraine; 2) according to part one of Article 46 of the Constitution of Ukraine, “a component of *the right of citizens to social protection* is the right to provide them with security in case of: full, partial or temporary disability; loss of the breadwinner; unemployment due to circumstances beyond their control; old

¹ Verkhovna Rada of Ukraine. (1996). *Constitution of Ukraine* (Law No. 254к/96-ВР). <https://zakon.rada.gov.ua/laws/show/254к/96-вр>.

age; in other cases provided for by law, i.e. *the right to pension provision is an element of the broader right to social protection*"; 3) this component of the constitutional right to social protection, as well as its other components, *cannot be cancelled by law*; 4) at the same time, other components of the right to social protection not specified in part one of Article 46 of the Fundamental Law of Ukraine or in other articles thereof are determined by the Verkhovna Rada of Ukraine by adopting laws, so it can change, cancel or renew them in the formation of the state's social policy, subject to constitutional norms and principles¹. In another case, the Constitutional Court of Ukraine also confirmed that *"the right to pension is a component of the constitutional right to social protection"*².

Another element of the substantive and ontological dimension of pension provision is *the close connection between the right to pension provision and the state's obligation to guarantee such provision*. Thus, according to the legal position of the Constitutional Court of Ukraine, which is expressed in its Decision of 4 June 2019 No. 2-p/2019, "the main duties of the state include guaranteeing the constitutional right to social protection. It is one of the necessary conditions for the existence of a person and society. At the same time, the level of social security in the state should meet the needs of citizens, which will promote social stability, ensure social justice and trust in the state"³.

¹ Constitutional Court of Ukraine. (2018). *Resolution in the case on the constitutional petition of 50 MPs of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of provisions of paragraph 7 of Section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine"* (No. 9-p/2018). <https://zakon.rada.gov.ua/laws/show/v009p710-18>.

² Constitutional Court of Ukraine. (2005). *Resolution in the case on constitutional petitions of the Supreme Court of Ukraine and 50 MPs of Ukraine regarding compliance with the Constitution of Ukraine (constitutionality) of provisions of paragraphs three and four of clause 13 of section XV "Final Provisions" of the Law of Ukraine "On Compulsory State Pension Insurance" and official interpretation of provisions of part three of Article 11 of the Law of Ukraine "On Status of Judges" (case on pension level and monthly life-time allowance)* (No. 8-pp/2005). <https://zakon.rada.gov.ua/laws/show/v008p710-05>.

³ Constitutional Court of Ukraine. (2019). *Resolution in the case on constitutional petitions of 45 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine "On Pension Provision" with the Constitution of Ukraine (constitutionality) and of*

Attention should also be paid to the qualitative criterion of pension provision: "The Verkhovna Rada of Ukraine, while formulating the social policy of the state, shall guarantee the effective realisation of the right to respect for human dignity, in particular, by providing pensions"⁴. This means that under any circumstances, "the essence of the right to pension provision as a component of the constitutional right to social protection cannot be violated, and legislative regulation in this area must comply with the principles of the welfare state"⁵. In particular,

48 MPs of Ukraine on the compliance of certain provisions of the Laws of Ukraine "On Pension Provision", "On Status and Social Protection of Citizens Affected by the Chornobyl Disaster", "On Pension Provision for Persons Discharged from Military Service and Certain Other Persons", "On Civil Service", "On Forensic Expertise", "On the National Bank of Ukraine", "On Service in Local Self-Government Bodies", "On the Status of the Member of Parliament of Ukraine", "On Diplomatic Service", "On Compulsory State Pension Insurance", "On the Cabinet of Ministers of Ukraine", "On the Prosecutor's Office", as well as the Regulation on the Assistant Consultant to the Member of Parliament of Ukraine, approved by the Resolution of the Verkhovna Rada of Ukraine No. 379/95-BP dated 13 October 1995 (No. 2-p/2019). <https://zakon.rada.gov.ua/laws/show/va02p710-19>.

⁴ Constitutional Court of Ukraine. (2018). *Resolution in the case on the constitutional petition of 50 MPs of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of provisions of paragraph 7 of Section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine"* (No. 9-p/2018). <https://zakon.rada.gov.ua/laws/show/v009p710-18>.

⁵ Constitutional Court of Ukraine. (2019). *Resolution in the case on constitutional petitions of 45 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine "On Pension Provision" with the Constitution of Ukraine (constitutionality) and of 48 MPs of Ukraine on the compliance of certain provisions of the Laws of Ukraine "On Pension Provision", "On Status and Social Protection of Citizens Affected by the Chornobyl Disaster", "On Pension Provision for Persons Discharged from Military Service and Certain Other Persons", "On Civil Service", "On Forensic Expertise", "On the National Bank of Ukraine", "On Service in Local Self-Government Bodies", "On the Status of the Member of Parliament of Ukraine", "On Diplomatic Service", "On Compulsory State Pension Insurance", "On the Cabinet of Ministers of Ukraine", "On the Prosecutor's Office", as well as the Regulation on the Assistant Consultant to the Member of Parliament of Ukraine, approved by the Resolution of the Verkhovna Rada of Ukraine No. 379/95-BP dated 13 October*

“the mechanism of legislative regulation of pension provision will comply with constitutional provisions if it ensures the effective functioning of the system of protection of human life, health and dignity and creates a legal basis for the exercise of fundamental rights and freedoms by a person in need of social protection”¹.

The close connection of the welfare state with adequate pension provision is determined by its constitutional principle, features and main tasks. Thus, the constitutional principle of the welfare state (Article 1 of the Constitution of Ukraine) is embodied in constitutional provisions guaranteeing social human rights, including the right to pension provision². This obliges the state to “regulate economic processes, establish and apply fair and effective forms of redistribution of social income in order to ensure the welfare of all citizens”³.

In terms of pension security in a social state:

1) social policy is focused on creating conditions that ensure an adequate standard of living, free and comprehensive development of a person as the highest social value;

2) it is the constitutional duty of the state to define and guarantee social standards of pension provision in legal acts;

3) activities of public authorities should be based on the principles of justice, humanism, supremacy and direct effect of the Constitution of Ukraine, and their powers should be exercised within the limits established by the Basic Law of Ukraine and in accordance with the laws;

4) these constitutional principles, on which the right to pension provision is based, provide for “legal guarantees, legal certainty and related predictability of legislative policy in the field of pension provision according to Articles 1, 3, 6 (part two), 8, 19 (part two), 22, 23, 24 (part one) of the Fundamental Law of Ukraine, are necessary for the subjects of pension legal relations to be able to *foresee the consequences of their actions and be confident in their legitimate expectations*, and the right acquired by them on the basis of the current legislation, its content and scope will be fully realised, i.e. the acquired right cannot be cancelled or narrowed under any circumstances”⁴;

5) in accordance with the provisions of part three of Article 46 of the Constitution of Ukraine, in conjunction with the provisions of Articles 1, 3, 8, 21, 28, 46, 48, the legislator must ensure legal regulation in such a way that “pensions, which are the main source of subsistence, ensure a standard of living not lower than the subsistence minimum determined by law. Pensions for certain categories of people as the main source of subsistence are basic forms of social protection, in particular for vulnerable people, against poverty, i.e. constitutionally guaranteed minimum social protection, which the state is obliged to provide unconditionally”⁵;

1995 (No. 2-p/2019). <https://zakon.rada.gov.ua/laws/show/va02p710-19>.

¹ Constitutional Court of Ukraine. (2022). *Resolution in the case on the constitutional complaint of Mosurchak Vasyl Ivanovych regarding compliance with the Constitution of Ukraine (constitutionality) of subparagraph 1 of paragraph 2 of Section XI “Final and Transitional Provisions” of the Law of Ukraine “On Civil Service” dated 10 December 2015 No. 889-VIII (regarding guarantees of social protection of civil servants)* (No. 3-p/2022). <https://zakon.rada.gov.ua/laws/show/va03p710-22>.

² Constitutional Court of Ukraine. (2022). *Resolution in the case on the constitutional complaint of Serhii Oleksiiovych Polishchuk on the compliance with the Constitution of Ukraine (constitutionality) of Article 163(4) of the Law of Ukraine “On Social and Legal Protection of Servicemen and Members of Their Families” (case on enhanced social protection of servicemen)* (No. 1-p(II)/2022). <https://zakon.rada.gov.ua/laws/show/v001p710-22>.

³ Constitutional Court of Ukraine. (2005). *Resolution in the case on the constitutional petition of 47 MPs of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of parts one and two of Article 2 of the Law of Ukraine “On the Amount of Contributions to Certain Types of Compulsory State Social Insurance” (case on granting temporary disability benefits)* (No. 1-pn/2005). <https://zakon.rada.gov.ua/laws/show/v001p710-05>.

⁴ Constitutional Court of Ukraine. (2019). *Resolution in the case on constitutional petitions of the Supreme Court of Ukraine and 50 MPs of Ukraine regarding compliance with the Constitution of Ukraine (constitutionality) of provisions of paragraphs three and four of clause 13 of section XV “Final Provisions” of the Law of Ukraine “On Compulsory State Pension Insurance” and official interpretation of provisions of part three of Article 11 of the Law of Ukraine “On Status of Judges” (case on pension level and monthly lifetime allowance)* (No. 8-pn/2005). <https://zakon.rada.gov.ua/laws/show/v008p710-05>.

⁵ Constitutional Court of Ukraine. (2023). *Resolution in the case on the constitutional complaint of Lazurenko Ihor Oleksandrovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs four, five of part two of Article 70 of the Law of Ukraine “On Enforcement Proceedings”, paragraphs three, four of part two of Article 50 of the Law of Ukraine “On Compulsory State Pension Insurance” (regarding the guarantee of a pension, which is the main source of subsistence, not lower than the subsistence level)*

6) “in the field of pension provision, the state cannot renounce its obligations and cancel this type of social security as provided for by the Constitution of Ukraine”¹.

However, it is obvious that the legal regulation of pension provision cannot remain unchanged for a long period of time, given the changing economic conditions, heterogeneous financial capabilities of the state, and the dynamics of social policy and social protection in real life. Therefore, the right to a pension, its amount and benefits may be linked to the economic feasibility, socio-economic context and financial capacity of the state for a particular period of development. This implies, in particular, that changes in the legislative regulation of pensions should meet several mandatory requirements: 1) to be properly justified; 2) to be implemented in stages, carefully and preliminarily reviewed; 3) to be based on objective criteria, meet the purpose of changes in legal regulation, ensure a fair balance between the general interests of society and the duty to protect human rights without violating the essence of the right to social protection; 4) to comply with the principles of proportionality and fairness, and be constitutionally permissible without violating the essence of the right to pension security.

For instance, when determining the amount of pensions, which are the main source of subsistence for a person, legislators should take into account a number of important criteria:

1) in accordance with the provisions of Article 3 of the Constitution of Ukraine, the state must justify its actions regarding the need for legislative regulation of pension provision for the relevant categories of citizens;

2) the amount of pensions should be determined taking into account the needs of a person, his or her dignity and other constitutional values;

3) in the area of pension provision, a fair approach should be considered to be one that ensures a proportional relationship between insurance contributions and pension payments. The insured person should be able to exercise his/her right to a pension in full easily;

4) Ukraine, having ratified the European Social Charter of 1966, undertook to make all necessary efforts to ensure the effective exercise of the right to social security and to gradually raise the social security system to a higher level. This obliges the state to periodically review pension levels with a view to increasing them.

Currently, the key criteria for the adequacy of pension provision in accordance with the principle, features and objectives of the welfare state can be determined with due regard to the requirements of a number of international legal acts: “1) its amount shall be sufficient for the health and well-being of the pensioner personally and of his family, in particular to cover the necessary expenses for food, clothing, housing and medical care, as well as necessary social security and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control (Article 25, paragraph 1, of the Universal Declaration of Human Rights); 2) its amount provides for adequate food, clothing and housing, as well as continuous improvement of living conditions; such amount should make it impossible for a pensioner to suffer from hunger (Article 11, paragraphs 1, 2, of the International Covenant on Economic, Social and Cultural Rights), i.e. be sufficient in amount and duration to enable everyone to exercise their rights to family protection and assistance, an adequate standard of living, and adequate access to medical care; 3) the amount should take into account the basic needs of the pensioner’s family, such as food and its use value, housing, clothing, medical care and education (Article 5(2) of the International Labour Organization’s Social Policy (Fundamental Objectives and Standards) Convention, No. 117 (1962)”².

It is noteworthy that in determining the amount of pension provision, the Ukrainian state uses a slightly different formal criterion: the minimum amount of payments that everyone should receive as the main source of subsistence

(No. 3-p(II)/2023). <https://zakon.rada.gov.ua/laws/show/v003p710-23>.

¹ Constitutional Court of Ukraine. (2020). *Resolution in the case on the constitutional complaint of Zinchenko Serhii Anatoliiovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 3 of part one of Article 97 of the Law of Ukraine “On the National Police”* (No. 3-p(I)/2020). <https://zakon.rada.gov.ua/laws/show/va03p710-20>.

² Constitutional Court of Ukraine. (2023). *Resolution in the case on the constitutional complaint of Lazurenko Ihor Oleksandrovysh regarding compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs four, five of part two of Article 70 of the Law of Ukraine “On Enforcement Proceedings”, paragraphs three, four of part two of Article 50 of the Law of Ukraine “On Compulsory State Pension Insurance” (regarding guarantee of a pension, which is the main source of subsistence, not lower than the subsistence minimum)* (No. 3-p(II)/2023). <https://zakon.rada.gov.ua/laws/show/v003p710-23>.

to guarantee the constitutional right to an adequate standard of living is the subsistence minimum, the amount of which is determined by the Verkhovna Rada of Ukraine in a relevant law, taking into account its essence and purpose. Therefore, the amount of pensions paid to persons, which is the main source of subsistence, may under no circumstances be lower than the subsistence minimum guaranteed by the state, even if deductions justified by the state are made from these payments to achieve a legitimate (“legal”) purpose.

CONCLUSIONS. Summarising the above legal positions, comments and elements of domestic and foreign legal experience in the field of pension provision in the context of the development of the social welfare state, the following conclusions can be drawn.

Firstly, the establishment and ensuring of the right to pension provision, which would provide opportunities for everyone to continue a decent life, reproduce conditions for a decent existence in a socially heterogeneous social environment, and exclude excesses of poverty and isolation, denial of basic social needs, is one of the important criteria of the social state. Therefore, the implementation of the basic principles and tasks of the welfare state is naturally linked to the implementation of effective and fair, proportional (“reasonable”) and socially determined pension provision.

Secondly, pension provision as a set of legal relations and a real legal phenomenon in the substantive and ontological dimension cannot be identified either with the process of providing an individual with a set of certain social and material services (procedural approach), or with a set of measures taken by the State to meet the needs of an individual for adequate material security upon reaching retirement age or in connection with adverse social circumstances that exclude his/her ability to actively participate in economic and social life. In accordance with the human-centred paradigm, the substantive and ontological essence of pension provision is not only the right (legal possibility) to demand from the state a certain level of pension payments in accordance with certain objective criteria, but also the real possibility to receive such payments in the amount that allows a person to maintain a decent existence, to meet his/her key needs in life and in the social environment, avoiding poverty and social exclusion in the relevant society. The implementation of pension provision depends on the welfare state policy, its directions, priorities, and their legal support.

Thirdly, according to the concept of human centrism, the right to pension cannot be cancelled by the state, nor can it be narrowed or limited. At the same time, it requires the state to guarantee the right to pensions as a component of the constitutional right to social protection. Such a guarantee must be carried out by the state on the basis of the Constitution of Ukraine and in a manner consistent with it. The welfare state pursues a social policy that guarantees not only pension payments, but also their amount, frequency of receipt and indexation in accordance with the established procedure, which would ensure that every person entitled to a pension has an adequate standard of living, the inviolability of the established standards of pension provision, the guarantee of this provision, the predictability of the legislative policy of pension provision (in accordance with the concept of “legitimate expectations”), the corresponding law enforcement policy of pension provision, as well as the impossibility of limiting (narrowing the scope of) or cancelling the fundamental right to pension provision

Fourth, changes in the legal regulation of pension provision should meet a number of mandatory requirements: 1) they must be sufficiently justified; 2) they must be implemented gradually, prudently and in a pre-considered manner; 3) they must be based on objective criteria, be proportionate to the purpose of changing the legal regulation, and ensure a fair balance between the general interests of society and the duty to protect human rights without violating the essence of the right to social protection; 4) they must meet the criteria of proportionality and fairness and be constitutionally permissible to the extent that the very essence of the content of the right to pension security is called into question.

Fifth, in the context of the social state concept, the problem of legislative fixation of the optimal model of pension provision (which would include the determination of the amount of pension provision, their ranking in different (including special) laws, methods and pace of indexation of pensions, etc.), taking into account the economic situation of the State and the compliance of such provision with the task of realisation of basic human needs for decent living conditions, needs to be considered carefully (in accordance with the concept of “space for reflection”). Adherence to the constitutional principles of the welfare state requires legislative regulation of pension provision on the basis of fairness and proportionality, taking into account the state’s obligation to ensure decent living conditions for every citizen of Ukraine.

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СЕРГІЙ СЕРГІЙОВИЧ ПОЛЕСОВ,

Харківський національний університет внутрішніх справ;

ORCID: <https://orcid.org/0009-0009-2936-1030>,

e-mail: pfpolesov@ukr.net

МЕХАНІЗМ СОЦІАЛЬНОЇ ДЕРЖАВИ ТА МІСЦЕ В НЬОМУ СИСТЕМИ ПЕНСІЙНОГО ЗАБЕЗПЕЧЕННЯ: ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ

Статтю присвячено теоретико-правовому дослідженню ролі та місця системи пенсійного забезпечення в механізмі соціальної держави на прикладі правового досвіду сучасної України. На основі аналізу законодавства, доктринальних позицій і практики Конституційного Суду України сформульовано авторське бачення субстантивно-онтологічного осердя пенсійного забезпечення. Показано, що пенсійне забезпечення як комплекс правовідносин і реальний правовий феномен у субстантивно-онтологічному вимірі не може бути ототожнене ані з процесом надання індивідові комплексу певних соціальних і матеріальних послуг (процесуальний підхід), ані з сукупністю заходів, що їх здійснює держава для задоволення потреб індивіда в належному матеріальному забезпеченні по досягненні ним пенсійного віку чи у зв'язку з несприятливими соціальними обставинами, що виключають його можливості для активної участі в економічному та соціальному житті (діяльнісний підхід). Відповідно до парадигми людиноцентризму субстантивно-онтологічна сутність пенсійного забезпечення виявляється не лише правом (юридичною можливістю) вимагати від держави певного рівня пенсійних виплат відповідно до певних об'єктивних критеріїв, але і реальною змогою такі виплати отримувати в розмірі, який дозволяє людині підтримувати гідне існування, забезпечувати свої ключові потреби в житті та соціальному середовищі, уникаючи бідності і соціальної ізоляції.

Обґрунтовано важливість гарантування державою права на пенсійне забезпечення як складової конституційного права на соціальний захист. Виявлено, що соціальна держава здійснює таку соціальну політику, яка гарантує не просто пенсійні виплати, а такий їх розмір, періодичність отримання та індексацію в установленому порядку, що забезпечують кожній людині, яка має право на пенсію, достатній життєвий рівень, сталість установлених стандартів пенсійного забезпечення, гарантованість цього забезпечення, передбачуваність законодавчої політики пенсійного забезпечення (відповідно до концепції правомірних очікувань), відповідну правозастосовну політику пенсійного забезпечення. Доведено, що в контексті концепції соціальної держави потребує зваженого обмірковування (відповідно до концепту «простору обдумування») проблема законодавчої фіксації оптимальної моделі пенсійного забезпечення (що враховувала б вирішення питань визначення розмірів пенсійного забезпечення, їх ранжування в різних, зокрема спеціальних, законах, способів і темпів проведення індексації розмірів пенсій тощо) з урахуванням економічного стану держави та відповідності такого забезпечення завданню реалізації базових потреб людини щодо гідних умов існування. Наголошено, що додержання конституційних принципів соціальної держави обумовлює здійснення законодавчого регулювання пенсійного забезпечення на засадах справедливості та розмірності з урахуванням обов'язку держави забезпечувати гідні умови життя кожному громадянину України.

Ключові слова: права людини, людиноцентризм, гідні умови життя, пенсійне забезпечення, соціальна держава, соціальна політика, справедливість, пропорційність.

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