

THE ESSENCE AND FEATURES OF THE NATIONAL LEGAL MECHANISM FOR IMPLEMENTING THE SOCIAL FUNCTION OF THE STATE

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Annotation. The article provides a thorough analysis of the essence and features of the national legal mechanism for the implementation of the social function of the state. It is established that the national legal mechanism for the implementation of the social function has a multifaceted structure that combines elements of legal regulation, social services, as well as social protection and security.

Various scientific positions on determining the components of the mechanism for the implementation of the social function of the state are analyzed. The importance of a clear distinction between the mechanism for legal security and the mechanism for implementation is emphasized, taking into account the specifics of action in the field of social rights. It is substantiated that the structural elements of the national mechanism must correspond to the specifics of the social sphere.

It is revealed that the most important element of the mechanism is the norms of law that determine the rights, obligations, directions of the state's activity in the field of social policy and responsibility for violation of social standards. The role of the Constitution of Ukraine, the Labor Code, and the Law of Ukraine "On Social Services" in the context of the implementation of the social function is analyzed.

A list of features of the national legal mechanism for the implementation of the social function of the state is outlined, and the specifics and essence of each of them are described in detail. The article emphasizes that ensuring the proper implementation of the social function of the state requires high quality law-making activity of the legislator, effective work of state authorities and local self-government, improvement of social legislation and law enforcement practice in general.

It is concluded that the national mechanism for the implementation of the social function of the state completely depends on the quality of regulatory activity in creating regulatory legal acts and the effectiveness of the selected methods of implementation in meeting the social needs of the individual.

Key words: social function, state, national legislation, social security law, social legislation, social human rights, social policy, social security, civil society, realization mechanism.

1. Statement of the problem.

The state's activities in implementing the social function cannot be described exclusively at the national level and through the analysis of regulatory legal acts. The implementation of the social function is influenced by legal and economic factors directly and by political and cultural factors indirectly. In addition, the implementation of the social function requires dynamism, active changes and at the same time the preservation of previously achieved results. Therefore, to understand how the social function of the state is implemented, it is necessary to analyze both the national and international legal mechanisms of such activities.

Thus, the study of the national legal mechanism for the implementation of the social function should begin with the definition of its components. They should combine the characteristic features of legal regulation, social services, and social protection or provision, because the social function of the state is multifaceted. It is necessary to clarify the relationship with the mechanism of legal provision, because individual elements are common to them, although they perform different roles and tasks. Analysis of each of the structural elements of the national legal mechanism will provide an opportunity to determine their essence and purpose, features of action. It is important to establish the significance of each of the elements for the proper functioning of the implementation mechanism, to find out what the consequences of their absence or excess in its action will be.

2. Research status.

It is worth noting that the issue of the national legal mechanism for the implementation of the social function of the state was covered to one degree or another in the scientific works of the following scientists: O.O. Barabash, K.V. Borychenko, E.I. Borodin, V.V. Homonay, N.M. Gren, I.O. Gumenyuk, M.I. Inshin, I.P. Kinash, A.L. Klymenko, R.I. Kovalenko, U.Z. Koruts, V.L. Kostyuk, O.V. Legka, V.V. Novikov, I.G. Okolko, I.A. Serdyuk, D.I. Sirokha, B.I. Stakhura, N.L. Shevchenko and others. However, a comprehensive and detailed study of the national legal mechanism has not yet been carried out, therefore the relevance is due to the need for a deeper study of this issue precisely in the context of the implementation of the social function of the state.

3. The purpose of the article is to analyze the essence and specifics of the national legal mechanism for implementing the social function of the state.

4. Presentation of the main material.

On this issue, I.G. Okolko notes that the mechanism for implementing social, economic and cultural rights and freedoms of a person and citizen is an organic system consisting of interconnected elements, operates on the basis of the rule of law and influences social relations through its focus on ensuring, implementing, protecting and defending social, economic and cultural rights [1, p. 22]. That is, the mechanism for legal implementation must contain the subjects of implementation and the rule of law in any case. However, its focus is already controversial, because protection or ensuring have independent mechanisms.

The author divides the elements of the legal implementation mechanism into the following: organizational and legal (legal norms, a set of legislative acts, state authorities), special (system of legal guarantees, activities of subjects of legal relations regulated by the norms of law, the principle of legality, legal consciousness, stages of implementation) [1, p. 23]. It should be noted that legal guarantees cannot be part of the legal implementation mechanism, since they perform a security function. Also, the question arises about the difference in the norms of law as elements of law and the actual regulatory and legal acts that contain them in the context of action in the implementation mechanism. Analyzing such a list, it is generally impossible to notice its significant differences for the social function of the state or the social sphere in general from the implementation of other natural human rights. It is worth emphasizing that the structural elements of the mechanism of legal implementation of the social function of the state should reproduce its features, and not repeat general theoretical provisions.

According to K.V. Borychenko, the mechanism for implementing the right to social protection consists of the Laws of Ukraine "On Compulsory State Social Insurance", "Compulsory State Pension Insurance", "On Social Services", "Fundamentals of Legislation on Compulsory Social Insurance" and the Resolution of the Cabinet of Ministers of Ukraine "On Additional Social Guarantees for Low-income Families with Sick Children" and other acts [2, p. 35]. We agree with the scientist on the mandatory inclusion of social legislation in the mechanism for implementing the norms of law. It is not limited

only to laws, but must also include subordinate and local regulatory legal acts. At the same time, the mechanism for legal implementation is impossible without methods for implementing the above norms of law, and without entities that will be engaged in implementation.

Yu.S. Razmetaeva notes that the mechanism of legal implementation is a set of objective and subjective factors. Objective factors are the compliance of the legislative framework, law enforcement practice, state authorities and local self-government bodies. The author considers subjective factors to be: perception of law as a value, respect, awareness of the person as the owner of his rights [3, p. 61]. The mechanism of legal implementation of the social function of the state cannot be a set, since it has a single goal and objective, and without the presence of at least one component element, such a mechanism will not operate. For example, the removal of legal norms will lead to chaotic actions of the subjects of implementation. The inclusion of subjective factors in the mechanism is debatable. Indeed, legal consciousness determines the perception of legislative acts by subjects of law. At the same time, their enforcement and the possibility of bringing them to legal responsibility are tools for deterring illegal behavior. It should also be noted that the state implements certain social rights regardless of their awareness by a specific person, for example, to free education or a minimum wage.

The most important structural element of the national legal mechanism for the implementation of the social function of the state are the norms of law. It is the norms of law that enshrine the basic social rights of the population and the ways in which the state can help in their implementation. The norms of law determine the variability of the ways of implementing social rights, regulate the activities of all participants in relations for their implementation and, in particular, establish responsibility for violating the social order. First of all, social rights are enshrined in the Constitution of Ukraine, in particular: in Art. 42 the right to entrepreneurial activity is provided; in Art. 43 the right to freely chosen and freely agreed work; in Art. 45 the right to strike for employees is established; in Art. 46 the right to social protection is enshrined and especially provision in the event of full, partial or temporary disability, loss of breadwinner or unemployment, which is guaranteed through social insurance and budgetary and other sources of social security; in Art. 47 the right to housing is defined; in Art. 48 provides for the right to an adequate standard of living for oneself and one's family, including food, clothing and housing [4]. A feature of the consolidation of social rights at the constitutional level is the increased detailing of the role of the state in their implementation. For example, the right to social protection indicates the availability of budget revenues and social insurance, and the right to work also provides for the right to strike. However, the formulations used in constitutional norms of rights often have an excessively general level and do not coincide with legislative formulations. For example, this applies to the right to an adequate standard of living, while in other legislative acts and international standards the formulation of the right to a decent life is acceptable.

When considering laws, it is worth paying attention to the Labor Code [5], which enshrines the basic labor rights and obligations of participants in labor and related relations. This regulatory legal act defines the role of the state in labor relations, establishes which entities on its behalf regulate, control or otherwise influence labor relations. Thus, in Art. 259 of the Labor Code it is determined that state control over compliance with labor legislation is carried out by the central executive body that implements state policy on supervision and control over compliance with labor legislation and its territorial bodies (State Labor Service); in Art. 49-2 it is provided for the notification and participation of the State Employment Service in the process of dismissing employees [5]. That is, the social function of the state is implemented not through direct participation in labor relations, but through guaranteeing proper working conditions, their safety, as well as assistance in the implementation of labor rights. Thanks to the state's establishment of a minimum wage, a subsistence minimum, free labor or wages that are insufficient to maintain a minimum acceptable standard of living are made impossible.

Another legislative act is the Law of Ukraine "On Social Services", which establishes the basic types of assistance to persons who have suffered negative consequences of the occurrence of social risk from the state. Thus, in Art. 16 of this Law contains a list of social services depending on their focus, type, place and term of provision, basicity [6]. The variability of social services also determines the

variability of the directions of implementation of the social function of the state. However, even in such a legislative act, not all such vectors can be described.

On this issue, I.O. Gumeniuk notes the need to create the foundations of social legislation as a regulatory legal act that will reflect the complex structure of state bodies, list the basic rights and obligations of the subjects involved, and establish a mechanism for ensuring them. The codification itself should be carried out in accordance with the principles of scientific validity, priority of rights and freedoms, complexity and harmonization [7, p. 135]. Social legislation is characterized by its ramifications, which results in insufficient orderliness and problems with compliance and proper implementation of legal norms. On the one hand, this indicates insufficient fulfillment by the state of its obligation to legally regulate the social sphere, and on the other hand, it confirms the impossibility of fully covering all relations in the social sphere within the framework of one legislative act.

Thus, the essence of the norms of law, as elements of the national legal mechanism for the implementation of the social function of the state, is to define the role, responsibilities, directions of the state's activity in the social sphere, to clearly and unambiguously explain the permitted methods of activity for the state and the options for lawful and secured behavior of the population for the implementation of social rights. The norms of law are necessary to consolidate unified behavior options, equality and consistency in the implementation of the social function of the state. It is the norms of law that affect the further functioning of not only the implementation mechanism, but also provision and protection.

Therefore, it can be stated on the basis of the analysis carried out that the specificity of the national legal mechanism for the implementation of the social function of the state is manifested through the following features: 1) systematicity and multi-component nature of the elements of the mechanism - the national legal mechanism for the implementation of the social function of the state is characterized by systematicity and inclusion of elements that are heterogeneous in nature – legal norms, subjects of implementation, organizational structures and procedural forms. The corresponding multi-component nature is due to the complexity of the social sphere and the multifaceted needs of citizens, which requires a comprehensive approach to the regulation, provision and implementation of social rights; 2) the priority of legal norms as the basic basis for implementation – legal norms play a key role in the mechanism for the implementation of the social function of the state, enshrining social rights, obligations of the state and subjects, as well as guarantees for their implementation. It is through the legal norm that the standardization of the behavior of the state and citizens in the sphere of social relations occurs. In addition to the provisions of the Constitution of Ukraine and the laws of Ukraine, subordinate and local regulatory legal acts play an important role in the mechanism for the implementation of the social function. They specify the provisions of laws, detail the mechanisms for their application, determine the procedure for providing social services, procedures for ensuring social guarantees; 3) interdependence of objective and subjective factors of implementation – a feature of the mechanism is the organic combination of objective factors (for example, regulatory and legal framework, institutional structure, law enforcement practice) with subjective factors (legal awareness, level of legal culture, value attitude of a person to law). The full implementation of a social function requires not only the presence of legal mechanisms, but also their conscious use by citizens, which ensures a deeper integration of social standards into the real life of society; 4) institutionalization of implementation subjects – the national mechanism provides for a clear definition of the subject composition of the implementation of a social function, which includes state authorities, local self-government bodies, state services (for example, the State Labor Service of Ukraine), as well as subjects of social dialogue. Institutionalization of subjects guarantees the distribution of powers, accountability and specialization in the process of implementing social rights, which allows to ensure a systematic and controlled process of performing a social function; 5) variability of methods of implementing social rights - the implementation mechanism involves the use of multiple methods of ensuring social rights, starting from direct budget transfers and ending with social insurance to the provision of social services and institutional support for vulnerable groups; 6) dependence of the effectiveness of the mechanism on the quality of legal regulation – the presence of gaps, contradictions or excessive complexity of social legislation negatively affects the level of implementation of social rights. At the same time, orderliness, The logicity and accessibility of social legislation contribute to the effective protection of citizens' rights and increase trust in state

institutions; 7) the presence of legal liability as a tool for ensuring implementation – legal liability for violation of social rights or improper implementation of state duties is an important guarantee of the functioning of the mechanism. It applies to officials of state authorities and other entities involved in the implementation of social rights.

5. Conclusions.

Thus, the conducted research shows that the national mechanism for implementing the social function of the state completely depends on the quality of regulatory activity in creating regulatory legal acts and the effectiveness of the chosen methods of implementation in meeting the social needs of the individual. At the same time, the tool that ensures the functioning of the national mechanism for implementing the social function of the state is legal responsibility, which applies to both officials of state authorities and the subject of relations for the implementation of social rights and interests.

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