

Problems of Social State Formation in Ukraine

Problémy vytvárania sociálneho štátu na Ukrajine

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Abstract: The study covers processes inherent in a social welfare state and focuses on the problems of formation of a social welfare state in conditions of globalization.

Key words: social guarantees, social rights, social welfare state, principles of a social welfare state

JEL Classification: F50, F59, H79

Introduction

According to the Constitution, Ukraine is a social welfare state, which is a giant success in the nation building, especially since the absolute majority of countries worldwide would not position themselves as social welfare states. Even the US – the strongest economy in the world that secures remarkably high quality of life of its citizens – does not legally position itself as a social welfare state. This scientific study is more topical, since Ukraine has no model of a social welfare state of its own. Social welfare state as a category was first addressed by a German scientist L. Stein,¹ J. Habermas² and C. Offe³ were the first world-renowned scientists to investigate economic contradictions of a social welfare state. F. Fukuyama and other scientists contributed greatly to the study of social and economic aspects of the social welfare state.⁴

Various aspects of a social welfare state have as well been the focus of several Ukrainian scholars, such as: M. Kozyubra,⁵ V. Kopeychikov,⁶ P. Rabinovych,⁷ O. Skrypnyuk,⁸ V. Shapoval,⁹ etc.

Giving credit to scientific value of the work done by the abovementioned scholars, we would point out that some of the problems of the social welfare state are yet to be studied in Ukraine. With regards to the degree of fragmentation of the agenda at hand, one should still point out that, as far as science is concerned, problems of the social welfare state are far from being studied through and through.

This article focuses on the study of constitutional framework of Ukraine as a social welfare state in light of extremely complex political and economic conditions which Ukraine is facing today.

¹ SHTEYN, L. (1872): The history of the social movement of the front since 1789, 310 p.

² HABERMAS, J. (2005) The welfare state crisis and the exhaustibility of utopian energy, 368 p.

³ OFFE, K. (2001): Democratic Institutions and Moral Resources, p. 204-240.

⁴ FUKUYAMA, F. (2004): Trust. The social virtues and the creation of prosperity.

⁵ KOZYUBRA, M. (2002): The nature of social rights of the people that specialize in the real life, pp. 57-61.

⁶ KOPEYCHIKOV, V. V. (2000): Social state as human value, defender of human rights, pp. 62-65.

⁷ RABINOVYCH, P. M. (1996): Social essence of the state as a component of the subject of theoretical and historical jurisprudence, pp. 90-100.

⁸ SKRYPNYUK, Yu. V. (2000): The social and legal state in Ukraine: problems of theory and practice: the 10th anniversary of the independence of Ukraine, 600 p.

⁹ SHAPOVAL, V. (2004): Constitutional category of social state, pp. 14-19.

1 The Term “Social Welfare State”

One of the main trends in the modern world of nation-building is the humankind gradually moving towards acceptance of progressive political and legal ideas, especially universal human values, such as democracy, human rights and freedoms, humane and just law and order. This process peaked into development and constitutional entrenchment of the concept of democratic social welfare state as a reflection of its universally human purpose.¹⁰

Recognizing Ukraine as a social welfare state on the constitutional level, a state governed by the rule of law; recognizing in the Constitution the citizen and its life and health, honor and dignity, personal immunity and security as Ukraine's highest social value, and including a wide range of social rights and freedoms in Section II of the Constitution resulted in the need to reconsider the notion of the state as a special organization of public power, the law as a universal regulator of social relations and, above all, the notion of the citizen and their rights, freedoms and guarantees thereof, all of which determine the purpose of the State according to the Constitution of Ukraine. It's about the concept that no human being exists for the state but rather the state is responsible before the human being for its performance, and the key responsibility of the state is to secure and to uphold human rights and freedoms (Article 3 of the Constitution of Ukraine).

It should be noted that the term “social welfare state” became more or less widely used in the late 19th or early 20th century when the state evolved to a brand new level of economic development.

The idea of a welfare state and this very term first emerged in socio-political life of Germany in 1880s. In its effort to weaken the influence of the social democrats, Otto Bismarck and his government drafted a number of laws regulating the insurance of industrial workers. In its statement, the government stipulated that treatment of social diseases requires not only punitive actions against social democrats but caring for the “well-being of the workers” as well. This is how Germany made social policy its official doctrine. By the end of the 19th century, other countries launched individual elements of social policy but this process was disrupted by the Great Depression in 1930s.

According to V. Korniyenko, the term “social welfare state” was first introduced in 1850 by Lorenz von Stein. However, active theoretic development of the terms only started in the first half of the 20th century, mostly in German literature.¹¹

The ideas of liberal social statehood based on the rule of overall freedom first found their way into the Constitution of the Weimar Republic in 1918. However, the understanding that one needs to guarantee social security along with legal security only came after the Second World War when profound social transformation started in the majority of the countries around the world bolstered by the increasingly social-oriented policies.

In the second half of the 20th century, the term “social welfare state” became increasingly popular in constitutions and statutory regulations. Germany, France, Italy, Portugal, Turkey, Spain, Greece, the Netherlands, Denmark, Sweden and the majority of the C.I.S. states declared themselves to be social welfare states, directly or indirectly, in their respective constitutions.

Allegedly, ideologists and practitioners built their concept of social welfare state on the ideas of humanity, social justice, the rule of solidarity binding every social group, rejection of inequality, supremacy of social equality, and social and economic rights recognized and guaranteed by the state.

¹⁰ TATSIY, V. Ya., TODYKA, Yu. M., DANYLYAN, O. G. (2003): Constitutional and legal principles of the formation of Ukrainian statehood, p. 55.

¹¹ KORNIYENKO, V. (2001): Implementation of the ideal of a social and legal state in Ukrainian society, p. 48.

However, as it is correctly stated in the scholar papers, “social welfare state” as a category “cannot be treated as axiomatic and unconditional characteristic of statehood. One of the biggest obstacles here is ambiguity in construction of the term “social welfare state”. Even though over a dozen countries of continental Europe define it as fundamental principle of constitutional system in their constitutions, scholars still argue about the construction of this term, its principles and functions, and its correlation with such traditional fundamental principles of statehood as “the democratic state governed by the rule of law”.¹²

As a guarantor of rights and freedoms of its citizens, the social welfare state becomes the subject of legal relations that differ from traditional public and administrative relations. Social focus of such relationship is based primarily on protection of personal interests of each member of the public rather than the interests of the public as in the classic common law.¹³

In this context, our study of the social welfare state should focus on the purpose of its functioning, i.e. securing decent living conditions for the people or, in other words, sufficient quality of life for each and every member of its community. Therefore, we believe that social welfare only works in a state that aims to create comfortable living conditions for every human being and every member of the community.

It would also be safe to maintain that there is a number of other ways to define the essence and the substance of category known as “the social welfare state”. For example, O.G. Kushnirenko and T.M. Slinko use the term “social welfare state” in the context of the state that primarily aims to attain social progress that is based on the statutory principles of social equality, common solidarity and shared responsibility.¹⁴ Y. Todyka sees it rather as a kind of statehood and a principle of constitutional order.¹⁵ P. Rabinovych believes the social welfare state to be the kind of state that performs its social function.¹⁶

V. Gladkikh defines the social focus of the modern state through the social policy: “The social welfare state is aiming to attain common welfare, to secure social advancement, and its efforts are manifested through social policy. In order to achieve all of the above, this kind of state shall make its priority to serve the public rather than care for its own interests, and its ultimate goal is to minimize the unreasonable social divisions”.¹⁷

As it happens, any attempt to define a social welfare state by its social policy is somewhat flawed. However, in our opinion, social policy that comprises of all measures taken by the state and its bodies and executives, as well as divisions and executives of local self-government bodies, is the manifestation of social nature of the state. We further believe that social welfare state and its social policy are correlated as the essence and substance of the same phenomenon of the state and public life. Every political misjudgment, every political error ultimately affects the entire society. Politicians in Ukraine and elsewhere in the world are capable of improving or compromising their own careers at the cost of whole strata of society, especially today when the world is going through globalization and cyclic economic meltdowns.

The approaches suggested herein concern social justice as an element of public governance rather than interaction between the people. Freedom as the ultimate social value is based on the existing obligations of the state in the context of an individual, i.e. the state shall

¹² TATSIY, V. Ya., TODYKA, Yu. M., DANYLYAN, O.G. (2003): Constitutional and legal principles of the formation of Ukrainian statehood, p. 56.

¹³ PYLYPENKO, P. (2004): The right to social security in the social law system.

¹⁴ KUSHNIRENKO, O. G., SLINKO, T.M. (2013): Constitutional law of Ukraine in questions and responses, pp. 61-62.

¹⁵ TODYKA, Yu. M. (1999): Fundamentals of the constitutional system of Ukraine, p. 15, 42.

¹⁶ RABINOVYCH, P. M. (1996): Social state. In: Small encyclopedia of ethno-state studies, p. 374.

¹⁷ GLADKIKH, V. (2005): Social rights of citizens in the aspect of the formation of Ukraine as a social, legal state, p. 5.

do everything within its power to facilitate the development of each individual: issue the laws, open the relevant institutions and promote favorable environment for all of the above, since the social welfare state is about care for a human being, honor, dignity and freedom of each citizen and person.¹⁸

Despite certain differences, almost every definition mentioned hereinabove specifically mentions that the social welfare state shall inure to the benefit of social security, justice, welfare, collaboration, etc. In other words, the nature of a social welfare state is manifested through activities of the state and its government in social sphere, otherwise known as the social policy of the state.

According to the common understanding, the social welfare state qualifies to be as such if it is committed to provide decent living conditions and social security to its citizens, encouraging them to participate in industrial management and, ideally, to maximize their equality in terms of opportunities to build one's life and to personal fulfillment.¹⁹

However, social policy is not the only method employed by a social welfare state to reach its goals and targets – many aspects of social policy may vanish with each resigning cabinet or undergo profound revision by each new government. In fact, it happens all the time. So it is not about social policy per se but rather about establishing the irreversible legislative and administrative structure of social activities of the state, thereby making sure that social welfare state remains as such regardless of whoever runs the cabinet.

So far, there is no unequivocal approach to the problem of the essence of a social welfare state and its role in modern society. There is a certain polarization of opinion regarding whether or not the state is expected at the time of establishment of market economy to smooth down social inequality, which is inevitable in free market conditions, by way of social programs, fair tax system and organization of distribution of benefits.²⁰

P. Rabinovych and Y. Loboda appear to be correct, saying that the essence of a social welfare state is characterized by the two components: overall social (ability of the state to satisfy the needs of the entire society, primarily securing its preservation, survival as an integral “social organism”) and special social component (ability of the state to satisfy the needs of the dominant – governing – part of its population).

Correlation between the two components comprising the essence of the social welfare state can be summarized as follows:

1. Any state gives priority to satisfaction of the common social needs and promotion of interests of the society which it represents as a form of political organization.

2. Depending on specific background, the state also inevitably represents, one way or another, personal interests of certain (dominant) part of the society, no matter how it may differ from the universal interests of the society, as long as it is not contrary or detrimental to satisfaction of the said interests.

3. Each state usually optimizes its performance with due consideration to the existing conditions to combine universal social interests and special interests of individual social communities, groups or persons; the objective criterion of optimality here is preservation of integrity and overall safety of the community as a single “social organism” that retains the ability to reproduce and to keep developing.

4. Gradual elimination (or at least mitigation) or the conflict between personal and universal social interests appears to be the common trend in the development of the states.²¹

¹⁸ TESLENKO, M. (2004): Right as an instrument of social justice.

¹⁹ KORNIYENKO, V. (2001): Implementation of the ideal of a social and legal state in Ukrainian society, p. 48.

²⁰ KONDRATYEV, R. (2005): Social state in theoretical, legal and philosophical research, p. 81.

²¹ RABINOVYCH, P. M., LOBODA, Yu. P. (2001): Social essence of the state: theoretical and methodological principles of research, p. 43.

Therefore, the essence of social welfare state lies in the ability of the state to function and develop while satisfying the fundamental needs of the entire society and creating the conditions for satisfaction of the needs and interests of individual groups and communities to the extent possible in the existing conditions.²²

Modern scientific literature dealing with political studies and laws classifies the contemporary democratic states on the basis of the extent of involvement of the government in the exercise of social and economic rights of each individual: “positive state”, “social security state” and “social welfare state”.

Political approach prevails in the “positive state” where priority is given to protection of the able-bodied, so to say, citizens who prove themselves in a positive manner. In secure environment they are capable of taking care of themselves and generating their own wealth. As far as social sphere is concerned, the state only undertakes to maintain law and order and to create safe economic environment for doing business and facilitating the professional activity. The social security state guarantees the minimum wealth standards and, therefore, undertakes to secure the attainment thereof. Considerable social disbursements imply high taxes that are detrimental to entrepreneurial activities.

According to some Russian political experts, many if not the overwhelming majority of people would swap their freedom, especially political, for wealth, safety and order without a moment’s hesitation.

F. Hayek, a renowned political philosopher, focused exactly on this feature of a socially oriented state while elucidating on the concept of freedom, drawing a straight line between the principle of freedom and the principle of social justice. According to the philosopher, “the state that pursues social justice tends to treat a person as an object of administration” and “whenever there is a choice between the guaranteed minimum wealth and freedom, the latter is invariably sacrificed.”²³ And concludes that any attempt to build the ideal socially just state will inevitably give birth to a despotic regime.²⁴

Therefore, any state wanting to become social faces the problem of limiting democracy. It is all about the “golden mean” where the state attains the status of “social” while retaining the status “democratic”.

2 Problems of Social State Formation in Ukraine

Article 1 of the Constitution of Ukraine lays down statutory foundation for building of the social welfare state in Ukraine. Naturally, this constitutional provision today only sets the standard goals, outlining the program for the development of Ukrainian society. However, being one of fundamental principles of constitutional system, it contributes to statutory regulation of the national body of laws in many aspects.

Article 3 of the Constitution is likewise important for the establishment of social welfare state in Ukraine, as it: (i) declares human being and its life, health, honor, dignity, sanctity and safety to be the highest social value in this country; (ii) stipulates that human rights and freedoms and guarantees thereof define the essence and focus of the efforts applied by the state; (iii) makes the state liable before the human being for its performance; and (iv) makes the securing of human rights and freedoms the priority task of the state.

Whereas human being is the ultimate social value, the state, its bodies and executives shall create all necessary conditions for the bringing out the best in each member of the society and to provide decent standards of living to every citizen. Without a doubt, this constitutional

²² RABINOVYCH, P. M., LOBODA, Yu. P. (2001): Social essence of the state: theoretical and methodological principles of research, p. 41.

²³ HAYEK, F. A. (1999): Law, legislation and freedom. Rules and order, p. 88.

²⁴ HAYEK, F. A. (1999): Law, legislation and freedom. Mirage of social justice, p. 120.

provision is decisive for the establishment of framework of the really social welfare state in Ukraine.

In our opinion, functional aspect of declaring Ukraine as a social welfare state is represented by Article 8 of the Constitution of Ukraine which guarantees the ability of each subject of social interactions to seek protection of its constitutional rights and freedoms in a court of law as a person and a citizen based on provisions of the Constitution of Ukraine. It means that any person who believes their rights or freedoms have been infringed or it is being prevented from proper exercise of their rights, is not required to seek relevant statutory regulations but may rather seek protection of their rights in a court of law, referring to the relevant provision in the Constitution of Ukraine. And no judge may reject any such petition.

Article 13 of the Constitution of Ukraine represents yet another aspect important for the building of a social welfare state in Ukraine, establishing the social nature of the Ukrainian economy on the highest statutory level. On the one hand, it means that all relationships arising in the sphere of economy shall factor in the mandatory social security coverage for the people and citizens, promoting social justice in the society, while on the other hand it obliges the state to perform its social functions in a proper manner.

Following the study of Section II of the Constitution of Ukraine, one may safely conclude that the building of a social welfare state in Ukraine is greatly influenced by the Constitution of this country which outlines the extensive personal and civil rights and freedoms, such as: the right free personal development (Article 23); equality of personal and civil rights and freedoms; no privileges or reservations based on one's social background and wealth status (Article 24); the state to care for and to protect its citizens abroad (Article 25); property rights (Article 41); the right to conduct entrepreneurial activities (Article 42); the right to work (Article 43); the right to rest (Article 44); the right to social security (Article 46); the right to shelter (Article 47); the right to sufficient quality of life (Article 48); and the right to health protection (Article 49).

Conclusion

Indeed, the state may be classified as social, if it clearly and properly recognizes, asserts and guarantees socially oriented economy, policy and laws; basic human rights and freedoms; mechanisms of social solidarity and social justice; adequate standards of living and freedom of personal development; arrangements to prevent and/or to smooth out social inequality; adequate social support, assistance and protection; and special arrangements for the provision of assistance to socially vulnerable groups.

Therefore, on the one hand, "social welfare state: is a principle intrinsic in constitutional system of Ukraine, while, on the other hand, "social nature" of the Ukrainian state is based on a number of personal and civil rights and freedoms protected by the Constitution of Ukraine. Social welfare state is capable of providing the adequate level of subsistence and development to each member of the society, and creating the conditions necessary for the exercise and protection of rights and freedoms of every human being.²⁵

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²⁵ YAKOVYUK, I. V. (2000): Social state: questions of the theory and ways of its formation: Author's abstract. dis Cand. lawyer sciences, p. 10-11.

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