

LEGAL SUPPORT OBLIGATIONS OF THE RUSSIAN FEDERATION TO CREATE THE CONDITIONS FOR DECENT LIFE RIGHTS

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Creating the conditions for a decent human life is one of the fundamental provisions of the Constitution of the Russian Federation contained in Article No. 7. The mentioned position is based on the principles of The Universal Declaration of Human Rights (UDHR) which was adopted in 1948 and The International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted in 1966.

Favourable living conditions are provided by different measures of socio-economic development of the country and state. The constitution of the Russian Federation establishes the priority of individual rights and freedoms. Therefore, public policy in general should be focused on creating the most favourable conditions of people's lives, providing them a decent living and personal development.

Traditionally, the creation of the conditions for a decent life is regarded as a priority of social policy. The Constitution of the Russian Federation immediately after the definition of the Russian Federation as a social state, 'whose policy is aimed at creating conditions for a worthy life and free development of man', states that 'In the Russian Federation the labour and health of people shall be protected, guaranteed minimum wages and salaries shall be established, state support ensured to the family, maternity, paternity and childhood, to disabled persons and the elderly, a system of social services developed, state pensions, allowances and other social security guarantees shall be established'.¹ Therefore, the establishment of state guarantees in regard to wages and social security is considered as the main direction of state social policy. The Russian Federation as a party to the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and would take appropriate steps to ensure the realisation of this right, recognising the essential importance of international cooperation based on free consent.²

Today, Russia is going through a difficult period associated with the reformation of the political, economic, social, cultural, legal and spiritual spheres of life.³ But the government realises the importance of the problems and the degree of responsibility of the authorities for the level of life of citizens. A significant role was played in this by ratification of the European Social Charter. It was necessary to determine the goals and targets which country wants to reach. Russia has demonstrated the desire to come

¹ Constitution of the Russian Federation 1993, art 7.

² The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

³ Shevnina E., 'Crisis in the socio-economical system in the Russian Federation as necessity for change of the funded part of the pension' (2013) 3 Social and pension law 6, 9.

to the planning of a standard of living which should be worthy of a highly developed civilised state.⁴

It is not accidental that the National Security Strategy of the Russian Federation until the year 2020 "national security" is defined as a condition of protection of individuals, society and the state from internal and external threats, which allows the provision of constitutional rights, freedoms, **decent quality and standard of living** of citizens, sovereignty, territorial integrity and sustainable development of Russia, the defence and security of the state.⁵

A decent living condition is a rateable category. It can't be clearly defined or qualified. In the Russian Federation the definition of the lower boundary of qualitative criterion of the standard of living is carried out through the establishment of the minimum wage and living wage, both in the whole country and in each region separately⁶.

The Labour Code of the Russian Federation (hereinafter - the LC RF) (art. 130) specifies minimum wages as basic state guarantees in the sphere of wages. Its value is set for the entire territory of the Russian Federation by federal law. According to pt. 1 art. 133 of the LC RF minimum wage cannot be lower than the subsistence minimum. But today it is the only rule of the LC RF, which still hasn't entered into force. The procedure and terms of its entry into force were delayed by the LC RF (art. 421) before the relevant corresponding federal law. At the beginning of 2014 the minimum wage in the country was 5554 roubles⁷ which is approximately 75% of the subsistence minimum in the country.⁸ This is somewhat lower than the corresponding figure at the beginning of 2013, when the federal minimum wage was approximately 78% of the subsistence minimum. Thus according to the Ministry of Labour and Social Protection of Russia, for the first 9 months of 2013 the average salary in the whole country amounted to 29,044 roubles⁹ which is the equivalent of almost four living wages.

However, the number of employees with a minimum wage is about 1 million people and practically 50 % of them are employed further in their spare time. These official figures don't reflect the real state of affairs. Today, unfortunately, there is widespread practice of "grey salary schemes" (so-called "envelope salaries"), whereby many businesses reduce their costs for mandatory social insurance for employees. Thus, the number of wage earners in the minimum amount may be considerably less. Nevertheless, today Russia is at 23rd place among 27 countries in Europe and in 25th place in terms of purchasing power in the absolute level minimum wage ranking. At the same time this gap is large: in absolute terms the minimum wage in Russia is 10-

⁴ Kartashkin V., 'Ratification of the European Social Charter and Russia's compliance with socio-economic rights' (2004) 2 International Lawyer 2, 5.

⁵ PD 537 2009 (RF) 'On the National Security Strategy of the Russian Federation until 2020'.

⁶ FL 134 1997 (RF) 'On the Subsistence Minimum in the Russian Federation'.

⁷ FL 336 2013 (RF) 'On Amending Article 1 of the Federal Law 'On the minimum wage'.

⁸ GO 1173 2013 (RF) 'On establishing the subsistence level per capita and the main socio-demographic groups in the general population of the Russian Federation for the III quarter of 2013'.

⁹ Ministry of Labour and Social Protection of the Russian Federation, 'Wages: Results 2013' <http://www.rosmintrud.ru/labour/salary/48> accessed 15 February 2014.

15 times lower than in developed countries, and 2-3 times lower than in the former eastern bloc countries and the Baltic states.¹⁰

It seems that the increase of the minimum wage in Russia, bringing it to a living wage – is one of the priority tasks in socio-economic, financial and political spheres of life.

In the subjects of the Russian Federation an individual minimum wage may be set through the procedure of social partnership, but it should not be lower than the federal level. Today, in a similar way, 27 regions of Russia determined their own minimum wage¹¹. The SMIC size in each subject of the Russian Federation should be established according to the socio-economic conditions and the subsistence level of the working population in the corresponding subject. For example, in the Tyumen region the minimum wage is set higher than the subsistence level. In regions of Russia such as Bryansk, Kursk, Novgorod, Volgograd and Krasnodar, the minimum wage is set at the subsistence level. The highest minimum wage is set in Moscow and the Moscow region (12,850 and 11,000 roubles, respectively) and in the Magadan region (15 720 roubles).¹²

However, the low ratio of the average wage in the economy with the cost of living of the working population has a negative influence on the formation of future pension rights. The average old-age pension in 2012, according to the Pension Fund of Russia was 9,500 roubles, in 2013 -10 400 roubles for the year 01.02.2014 - 11400 roubles.¹³

It should be noted that in the current Russian legislation the category of "minimum pension" is absent. The ratio of pensions to the subsistence level is the thing that guarantees a minimum standard of living for retirees. Material security of a retiree who doesn't work and lives in the territory of the Russian Federation may not be less than the established minimum subsistence level in the subject of the Russian Federation. In the case if the amount of pension is below the subsistence minimum established in the current region of the Russian Federation, the pensioner is provided with a social supplement to the specified minimum.¹⁴

The pension system should provide a decent standard of living for senior citizens, but in 2002 the ratio of old-age pension to the subsistence level of a pensioner became - 108.4%, in 2007 - 110.4%, in 2012 - 179.8%.¹⁵

By the period of years 2016 – 2020 the average size of old-age pensions according to the Concept of long-term socio-economic development of the Russian

¹⁰ Granik I., 'Above the lower limit' *Moskovskie novosti* (Moscow, 5 March 2013).

¹¹ Ministry of Labour and Social Protection of the Russian Federation, 'About minimum wages' <http://www.rosmintrud.ru/labour/salary/22> accessed 21 December 2011.

¹² Shmelev A., 'Minimum wages in 2014' (21 December 2013) < <http://advocatshmelev.narod.ru/mrot-minimalnyi-razmer-oplatyi-truda.html> > accessed 31 January 2014.

¹³ Pension Fund of the Russian Federation. Official cite < <http://www.pfrf.ru> > accessed 31 January 2014.

¹⁴ FL 178 1999 (RF) 'On State Social Assistance'.

¹⁵ GR 2524-r 2012 (RF) 'On approval of long-term development strategy of the pension system of the Russian Federation'.

Federation for the year 2020 should increase to the value that ensures the minimum reproductive consumer budget of a pensioner.¹⁶

However, the Constitutional Court of the Russian Federation in its decision of 15 February, 2005 No. 17-O pointed out that retirement pension by its legal nature and purpose is aimed at filling losses on the objective impossibility of continued employment. The legislator should determine the minimum size of old-age pension which provides such a standard of living which wouldn't put the possibility of a decent life for a citizen as a pensioner into question as well as the implementation of other Federation rights and freedoms of the individual enshrined in the Constitution of the Russian Federation, and thus his human dignity would not be detracted.¹⁷

In addition to providing a minimum level of life (protection from poverty) the pension pursues another goal – compensation of income (compensation for lost earnings).¹⁸ In this regard, the permissible level of social pension is defined by the relation between pension and earnings of the insured citizen which is otherwise known as the "replacement rate". Calculation of the replacement rate as the ratio of a typical pension recipient and his previous income is defined by ILO Convention No. 102 'Minimum Standards of Social Security' adopted in 1952 and the European Code of Social Security adopted in 1964.

According to ILO Convention No. 102 'Minimum Standards of Social Security,' the replacement rate for typical recipients is set at a level of 40% with thirty years of contribution or employment¹⁹, and the European Code of Social Security - 45%.²⁰ So these international acts work as international standards defining an adequate, satisfactory and fair level of pension.²¹

Only the European Social Charter (revised), with commitments in the respect of provisions of pt. 12 s. 1, in which the parties undertake to establish or maintain a system of social security was ratified by the Russian Federation from the list of international acts establishing standards for social security. At the same time norms 2 and 3 of pt. 12 of the European Social Charter for the maintenance of the social security system at a satisfactory level and its continuous improvement'were not taken into the ratification process.

Ratification of the European Code of Social Security, ILO Convention No. 102 "Minimum Standards of Social Security" is constrained by the inability to secure the international set replacement rate - 40%. In late 2009, the solidarity value in the replacement rate average old-age pension in Russia was 35.6%. As a result of the

¹⁶ GR 1662-r 2008 (RF) 'On Approval of the Concept of long-term socio-economic development of the Russian Federation for the period up to 2020'.

¹⁷ The Constitutional Court of the Russian Federation 17-O 2005 'On the complaint of a citizen Enborisova P.F. a violation of her constitutional rights s. 8 art. 14 of the Federal Law "On Pensions in the Russian Federation'.

¹⁸ Gruat J.-V. Principles and the adequacy of social security, *Social security: Principles and pragmatism* (2011) 12.

¹⁹ ILO Convention 102 "Minimum Standards of Social Security"(1952).

²⁰ European Code of Social Security (1964).

²¹ See for details: Zakharov M., 'International standards and the Russian pension system' (2012) 10 Journal of Russian law.

pension reform carried out in 2010 the replacement rate increased to 38.4%, but in later years its decline will resume and by 2050 it may reach 22%.²²

In addition, important reasons for a negative impact on reducing pensions are demographic problems. The necessity of carrying out pension reform both in Russia and in developed countries of the world community is caused by the demographic crisis, which increases the pension burden on the working population and poses a serious threat to the financial security of public pension liabilities. In this regard, optimisation of the pension system is due to its conversion to a mandatory insurance system. A system of compulsory pension insurance should be adequate for modern economic development, consider both macroeconomic factors (structure of employment, inflation, wages, etc.) and demographic factors (life expectancy, increase in the number of pensioners and the decline in employment, etc.) and at the same time comply with international standards.

From the foregoing it can easily be seen that in the Russian Federation a paradoxical situation has formed. The minimum wage established by the federal law is not only below the subsistence minimum, but is also below the minimum social security of pensioners. The growth of pensions in the country and their indexing, even during the financial crisis, not only outpaced the growth of the minimum, but also the average salary in the country. However, the growth of pensions didn't increase the replacement rate for lost earnings and the ratio of the magnitude of the average pension to the subsistence level. On the one hand the attention paid to raising the minimum income of the most vulnerable unemployed people shows a certain priority of state social policy. But, on the other hand, the increase of incomes of the unemployed part of population which is disproportionate to the opportunities of the real economy, outstripping revenue growth of the working population, is a powerful stimulus for the growth of inflation and other negative economic phenomena. That is why the law-making process in the social sphere should be based on strong economic studies and forecasts.

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