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**IMPLEMENTATION OF THE PRINCIPLES OF THE WELFARE STATE  
IN THE STRUCTURE OF PENSION SECURITY LEGISLATION OF UKRAINE:  
THEORETICAL AND LEGAL ANALYSIS**

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**Abstract.** The article is devoted to the theoretical and legal study of the peculiarities of the implementation of the legal bases of the social state in the structure of the legislation on pension provision on the actual example of the legal experience of modern Ukraine. It is shown that, traditionally, the development of pension legislation in Ukraine is considered in domestic legal science mostly outside the implementation of the legal foundations of the welfare state, which does not allow to properly assess either the level of systematic changes, their logic, or their compliance with the fundamental concept of the welfare state as the original normative "base" for the construction of the entire system of pension legislation. Such a theoretical and legal omission in practice led to a false and in many ways distorted vision of the patterns of development and modernization of pension legislation of Ukraine, separated from the realization of the concept of the social state and outside the category of ensuring the pension rights of Ukrainian citizens as mutually determined cuts to reveal the evolutionary potential of this branch of national legislation. It has been established that in the theoretical and legal dimension the formation and development of the system of pension legislation reflects a system-wide legal regularity concerning the strengthening of the determining (guiding) influence of key legal concepts and principles of legal regulation on the development of large systemic formations in the field of law (branches of law and legislation, legal and legislative institutions, etc.). The above mentioned regularity is fully implemented in the structuring, reforming and functioning of the system of pension legislation of Ukraine, which objectifies the general social needs of people and society in pension provision and constitutes a normative "section" of the pension system of the state as a whole. The corresponding structuring takes place against the background of active reform of the national pension legislation and represents an expedient and natural process of planned changes with simultaneous attempts to stabilize the normative material included in the structure of this branch of the Ukrainian legislation. The main guiding idea in the structuring of pension legislation in Ukraine is the constitutionally defined concept of the welfare state, the legal foundations of which are embodied in the content and structure of pension legislation. It has been proven that the guidelines for the consistent and systematic implementation of the above concept in the content, direction and structure of pension legislation are the following 1) the Constitution of Ukraine itself, which performs an important legal orientation function in relation to pension legislation in terms of the state's implementation of positive obligations in the social sphere, 2) legal positions of the Constitutional Court of Ukraine and courts of general jurisdiction (primarily the Supreme Court, which performs the function of ensuring the unity and uniformity of judicial practice in the field of pension disputes), which specify the legal meaning of the concept of the social state in such an objectively defined area as the system of pension legislation, as well as 3) international legal social standards in the area of pension provision, which also reflect the main substantive elements of the legal foundations of the concept of the social state. The difficulties of implementation of this concept in the structure and content of national pension legislation are determined by such factors as contradictions in the interpretation of the content of this concept; the combination of tendencies towards unification and differentiation in the structure of pension legislation, which has not yet ended with the establishment of the optimal state of such combination; the uncertainty of strategic guidelines for the development of pension legislation at the level of adoption of regulatory documents of a programmatic nature by subjects of higher state power; instability, inconsistency and a certain imbalance of the state pension policy both at the level of defining strategic guidelines and at the level of their implementation; the weakness of the state's financial and

economic capabilities caused by the prolonged crisis of the country; asynchronization of the state pension policy at the level of defining strategic guidelines and at the level of their implementation; the weakness of the state's financial and economic capabilities caused by the prolonged crisis of the country; and the weakness of the financial and economic capacities of the state caused by the prolonged economic crisis in the country; the asynchronicity of the formation of different levels of the pension system; the existence of a significant "block" of non-constitutional normative material in the structure of pension legislation (which confirms the increased activity of the Constitutional Court of Ukraine in the course of consideration of pension cases); numerous violations of citizens' pension rights in the course of law enforcement, which creates an additional burden on the judicial system of Ukraine (in particular, on administrative proceedings, within which the judicial protection of citizens' pension rights mostly takes place). The comprehensive implementation of the legal foundations of the welfare state in the structure of pension legislation is considered to be on the way to further constitutionalization of this process, rational and scientifically based determination of strategic priorities for the further implementation of pension reform in Ukraine on the paths of unification and adaptation of the best world (primarily European) practices of pension provision and international legal standards, formation and implementation of a socially oriented pension policy. Keywords: pension rights of citizens, pension legislation, welfare state, Constitution of Ukraine, Constitutional Court of Ukraine, Supreme Court, pension reform, international legal norms. The main problems of the pension legislation of Ukraine are: the weakness of the financial and economic capacity of the state caused by the prolonged economic crisis in the country; the asynchronicity of the formation of different levels of the pension system; the existence of a significant "block" of non-constitutional normative material in the structure of pension legislation (which confirms the increased activity of the Constitutional Court of Ukraine in the course of consideration of pension cases); Numerous violations of citizens' pension rights in the course of law enforcement, which puts an additional burden on the judicial system of Ukraine (in particular, on administrative proceedings, where the judicial protection of citizens' pension rights is mostly carried out). The comprehensive implementation of the legal foundations of the welfare state in the structure of pension legislation is considered to be on the way to further constitutionalization of this process, rational and scientifically based determination of strategic priorities for the further implementation of pension reform in Ukraine on the paths of unification and adaptation of the best world (primarily European) practices of pension provision and international legal standards, formation and implementation of socially oriented pension policy.

**Key words:** pension rights of citizens, pension legislation, social state, Constitution of Ukraine, Constitutional Court of Ukraine, Supreme Court, pension reform, international legal standards.

**Justification of the relevance of the study.** As shown in the previous subsections of this study, the welfare state is a multidisciplinary political and legal phenomenon that is projected onto various areas of social relations, gaining its institutional, functional and normative certainty, in particular, in the legislative plane. At the same time, it is the characterization of the Ukrainian state as a social state that is "of great importance in terms of its obligations to a person and society, especially in the context of guaranteeing social rights to citizens" (Klymenko A.L., 2019, p. 61). After all, the main activities of such a state are, in particular, "ensuring the constitutional rights of citizens in the field of education, labor and health protection, pensions, culture, sports; protection of the rights of women and children, youth; organization of effective employment, etc." (Zastavna O.P., 2023, p. 29). The natural trend of its development is the increasing role of legal means of influence on social relations, which is "associated with the main trends in the development of society and the state, the deepening of their civilization, based on the recognition of a person, his or her life, honor and dignity as the highest value" (Skrypniuk O., Batanov O., 2017, p. 40).

In this connection it is necessary to emphasize that the legislation, which mediates the functioning of the social state and the implementation of its legal principles, is not formed arbitrarily, but in accordance with certain legally and socially significant ideas, guidelines and basic principles, which embody the content and direction of the social policy of this state, its regulatory potential and development guidelines. As the famous Ukrainian legal theorist V. Selivanov once noted, these are

the principles that "have gained general recognition and widespread acceptance and should determine the principles of domestic and foreign state legal policy of Ukraine. It is on the basis of this doctrine that theoretical bases for the implementation of legal norms in social reality are created, theories are structured, constitutional and legal modeling and forecasting are carried out. This is what gives the legal doctrine of Ukraine the ability to be the theoretical basis of the state policy in the field of legal regulation" (Selivanov V., 2005, p. 18–19). In our case we are talking about the decisive role of the legal foundations of the social state in the construction of legislation aimed at the implementation of its goals, objectives and essence.

This general pattern is derived from the main objective of the strategy of legal construction in the state, which is to coordinate and direct all actions of subjects of legal relations "in order to achieve the political, legal, economic and social goals and values enshrined in the Constitution of Ukraine" (Skrypniuk O., Batanov O., 2017, p. 39). Its content can be traced back to a number of strategic regulatory documents, in particular, the Resolution of the Cabinet of Ministers of Ukraine of March 3, 2021, No. 179 "On Approval of the National Economic Strategy for the Period up to 2030" (On approval, 2021). The long-term goal in the formation of an effective social policy, defined in particular by the National Strategy for Sustainable Development of Ukraine, is "to ensure a high level and quality of life of the population of Ukraine, to create favorable conditions for the activities of current and future generations and to stop the degradation of natural ecosystems by introducing a new model of economic growth based on the principles of sustainable development" (Kolomiyets L.V., 2019, p. 79). Meanwhile, the current state of ensuring the pension rights of Ukrainian citizens remains extremely unsatisfactory, "the current pension system operates under maximum financial stress and fails to fulfill its main function – to adequately meet the needs of pensioners" (Skorobagatko A.V., 2015, p. 290), and "pension expenditures do not provide pension payments at the level of minimum guarantees provided by the International Labor Organization Convention on Minimum Social Security Standards No. 102, ratified by the Law of Ukraine of March 16, 2016 No. 1024-VIII" (On approval, 2021). These discrepancies should be eliminated by a well thought-out pension policy of the state, objectified in legal acts, first of all, laws aimed at realization of the constitutionally defined right to pensions.

Therefore, the formation of pension legislation of Ukraine, its systemic, structural and functional features should be subject to the legal principles of the welfare state as the leading guiding ideas that should permeate the legislative activity of the authorized legislative bodies of the state. Only with such an approach can we hope for purposeful, systematic development of pension legislation to establish such forms of its existence that will most adequately and fully reflect the general social and specific legal conditions of formation and modernization, its timely updating in a socially acceptable manner, harmonization of the state pension policy with the key ideas of the welfare state, which will fully ensure a high level of realization of pension rights of Ukrainian citizens within the framework of the strategic course of the state (On Amendments, 2019, p. 50). Thus, having ratified the European Social Charter (Revised) of 1996 by the Law of Ukraine "On Ratification of the European Social Charter (Revised)" of September 14, 2006 No. 137-V (On Ratification, 2006, p. 418), Ukraine has undertaken "to make efforts to gradually raise the social security system to a higher level in order to ensure the effective exercise of the right to social security" (Decision of the Constitutional Court, 1995), which is in accordance with the concept of the welfare state. In the future, the ratification by Ukraine of ILO Conventions No. 117 (On the Ratification, 2015) and No. 102 (On the Ratification, 2016), as well as the signing of the European Social Security Code (European Social Security Code, 1990), will create additional conditions for national legislation, when each further step, on the one hand, will require the state to strictly fulfill the relevant obligations to comply with minimum social standards, and, on the other hand, will create new opportunities for protecting the rights of Ukrainian citizens to pensions and will allow to ensure at least the minimum level of social and legal guarantees in this area required by law (Klymenko A.L., 2019, p. 154).

However, these steps will lead to the desired result only if the financial and economic situation in the country improves dramatically. Without this, and despite the generally high level of legal regulation, pension provision will remain “one of the most problematic social, financial and legal institutions of Ukraine” (Sokorynskyi Y.V., 2018, p. 14), which will develop outside the concept of the welfare state.

The state of research of the problem. In the national legal science, the scientific and legal research of V. Andriyiv, N. Bolotina, S. Vavzhenchuk, V. Venediktov, S. Venediktova, S. Vyshnenko, and S. Vyshnenko was devoted to the structuring and development of the system of national pension legislation in the context of implementation of the State's social policy. Venediktov, S. Vyshnovetska, T. Gerasymiv, I. Zub, I. Zhygalkin, M. Inshyn, V. Kostyuk, S. Lukash, A. Matsiuk, P. Pylypenko, S. Popov, S. Prylypka, O. Protsevskyi, S. Sychuk, Y. Sokorynskyi, B. Stashkiv, O. Tyshchenko, N. Khutorian, H. Chanyшева, M. Shumyl, V. Shcherbyna, O. Yaroshenko, and others. The researchers focused on the processes of unification and differentiation in the development of pension legislation, its systemic legal relations with social security legislation. At the same time, the approach to pension legislation as a sub-branch of social security law is also well established in the scientific literature today (Tyshchenko O.V., 2014, p. 81–82; Kostyuk V.L., 2017, p. 24; Kolotik A.S., 2011). It is from this perspective that its evolution and peculiarities of its structure are mostly considered.

However, in most of these scientific works, the processes of formation and development of pension legislation were interpreted either as a consequence of reforming pension legal relations in accordance with a particular legal doctrine, or as a chaotic process of accumulation of regulatory material without observing the requirements of systematicity. According to Y. Sokorynsky, “one of the main problems of studying this institution is the existence of a large number of legal acts regulating this range of social relations, which, in turn, encourages scholars to study the most problematic legal phenomena” (Sokorynsky Y.V., 2019, p. 90), but their identification is not based on the unity of criteria and approaches. At the same time, scientific research that would reveal the determinants of the development of pension legislation (as well as social security legislation in general) by the implementation of the principles of the welfare state is still rare (Inshin M.I., Sirokha D.I., 2015, p. 17–21). Thus, the multisource, rapid changeability and often mutual contradiction of normative acts in the field of pension legislation, especially their leading form – laws, is a stable trend, which is well confirmed by the law enforcement practice of both courts of general jurisdiction and the Constitutional Court of Ukraine, which in recent years have significantly increased the scope of their activities in terms of judicial protection of citizens' pension rights. This problem is often seen as overcome by the adoption of the Pension Code of Ukraine (Kuchma O.L., 2016, p. 218–224; Skorobagatko A.V., 2020, p. 7–8, 14, 20, 24, 29, 30; Fakas I.B., 2012, p. 667–669; Mitsai M., 2017, p. 98; Kostyuk V.L., Melnyk V.P., 2015, p. 252; Shumylo M.M., 2017, p. 76–87; Melnyk V., 2016; Sokorynskyi Y.V., 2018, p. 13), but the prospects for this legislative step are still rather uncertain.

Traditionally, the development of pension legislation in Ukraine is mostly considered in the national legal science outside the implementation of the legal principles of the welfare state, which does not allow to properly assess either the level of systematic changes, or their logic, or their compliance with the fundamental concept of the welfare state as the initial regulatory “basis” for the construction of the entire system of pension legislation. In practice, this theoretical and legal omission has led to an erroneous and largely distorted vision of the patterns of development and modernization of Ukraine's pension legislation, which is detached from the implementation of the welfare state concept and outside the category of ensuring pension rights of Ukrainian citizens as interrelated sections of the evolutionary potential of this branch of national legislation.

The purpose of the article is to make a theoretical and legal study of the peculiarities of implementation of the legal principles of the welfare state in the structure of pension provision legislation based on the actual example of the legal experience of modern Ukraine.

**The main material is presented.** It is known that the structure of any branch of legislation reflects its static condition – its external structure as a normative system, with the existing elements, their aggregates (subsystems) and legal relations between them. At the same time, it is also known that the structure of legislation at the sectoral level reflects the peculiarities of the system of this legislation, the state of its internal order, harmony of its norms and certainty of its provisions. The more developed the system of the branch, the more stable and solid is its structure.

As the Ukrainian researcher T. Podkovenko noted, "in the current conditions of significant intensification of legislative activity, the improvement of the structure of legislation is becoming increasingly important. This means strengthening the principle of the rule of law and law, increasing the share of laws characterized by increased stability and efficiency among legal acts" (Podkovenko T.O., 2005, p. 40–45). Considering the structure of pension legislation from the point of view of formation of its system, it should be noted that such a system is still in the process of formation: the pension reforms carried out in Ukraine over the past 30 years (Buryachenko O.E., 2017) can hardly be considered as evidence of the opposite conclusion. Moreover, the development of the pension legislation system in Ukraine is characterized by modernization changes driven by social reforms. At the same time, the strategy of development of society and the state for organization and implementation of such reforms should include, first of all, a complex process of creation of a new model of the system of pension legislation based on rethinking the mechanisms of implementation, guarantee and legal protection of pension rights of citizens (Kostiuk V.L., Melnyk O.Y., 2017, p. 532).

The structure of pension legislation is a natural reflection of the formation of its system, with all the complexities of this process. At the same time, it is a natural static section of its internal structure. The starting point is the concept of pension legislation, which has not yet received a clear legal definition. In this case we use the doctrinal interpretation of the term "legislation" proposed by the Constitutional Court of Ukraine already in 1998, which was reduced to "a set of laws and other legal acts regulating a certain area of social relations and being the sources of a certain branch of law" (Decision of the Constitutional Court of Ukraine, 1998). In particular, the Constitution of Ukraine uses this term without defining its content (Articles 9, 19, 118, paragraph 12 of the Transitional Provisions) (Constitution of Ukraine, 1996). Structurally, it includes laws of Ukraine, international treaties of Ukraine in force and ratified by the Verkhovna Rada of Ukraine, as well as resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, decrees and resolutions of the Cabinet of Ministers of Ukraine adopted within the limits of their competence and in accordance with the Constitution of Ukraine and laws of Ukraine. However, the key unit in the structure of pension legislation is undoubtedly regulatory legal acts (Stashkiv B.I., 2016, p. 198). This is, so to speak, the most general section of the normative "design" of the pension legislation of Ukraine.

From the substantive side, we proceed from the fact that pension legislation (or legislation on pension provision) of Ukraine, by virtue of its formalized name, is a clearly expressed social security branch of national legislation, i.e. it is focused on the adoption by authorized bodies of a set of measures to implement the subjective right to a pension of Ukrainian citizens. In general, in legal science, enforcement is understood as a set of procedural actions that guarantee the realization of the desired legal benefit (goal); the legal component of this process; an appropriate set of measures by authorized bodies aimed at achieving the relevant result; a necessary element of realization of this legal benefit, without which its achievement is not possible. In the system of legal relations, security is also understood as "a socially equivalent obligation arising on the basis of a law or contract to compensate a person for the material and non-material consequences of social risk" (Synchuk S.M., 2015, p. 416). With regard to pension rights, such provision means nothing more than "the creation of social conditions necessary for the use of these rights" (Klymenko A.L., 2019, p. 53) by a person.

Due to its focus on institutional and regulatory support for the realization of this right, pension legislation, however, cannot be constructed without taking into account both the basic social needs of citizens who have their own dynamics of development, and without taking into account the financial and economic situation of the state, which depends on the peculiarities of its economic development, which is currently marked by unevenness, growing crisis phenomena, and a number of economic pathologies (Restoration and reconstruction, 2022). Being closely dependent on the economic capabilities of the state, “the right to a pension, its amount, the amount of these payments can be linked to economic feasibility, socio-economic circumstances, financial capabilities of the state in a particular period of its development...” (Decision of the Constitutional Court of Ukraine, 2001; Krusyan A.R., 2012, p. 39). However, “changes in legislation in the social sphere, the difficult financial and economic situation, the need to ensure the balance of the State Budget of Ukraine should not lead to a violation of human dignity, which belongs to the fundamental values protected by the Constitution of Ukraine and forms the basis of the system of constitutional protection of human and civil rights and freedoms” (Decision of the Constitutional Court of Ukraine, 2018).

When analyzing the reform of pension legislation, one cannot ignore the dialectic of the theory of pension provision. Obviously, the achievements of the theory of pension provision in general, as well as the theory of pension legal relations, are of no small importance for the creation of effective and fair pension legislation (Dzhuzha O.M., Tychyna D.M., Sorokina L.V., 2022, p. 8). Thus, pension legislation in Ukraine is being formed and developed on the basis of the general social need to formalize a set of subjective rights to pension provision by a set of legal means. Pension provision is, in the subjective legal dimension, one of the key manifestations of the existence of social rights in a social state, an indicator of their content and a criterion for the scope of positive state obligations in the social sphere. After all, according to the modern legal doctrine of positive obligations of the State, “positive human rights (the right to work, rest, social protection, health care, decent standard of living and other social, economic and certain cultural rights) are guaranteed by positive obligations of the State, since their realization is impossible without appropriate supportive activities of State institutions” (Khrystova H.O., 2013, p. 110).

In its essential dimension, pension legislation is a projection of the objective ability of society to take care of maintaining a decent life for those citizens who, due to age, social or medical reasons, are unable to take proper and independent care of their material well-being or ensure it in full without losing the fundamental right to human dignity and without deteriorating the conditions of social inclusion (inclusion in social and communication processes) due to reasons that are objectively beyond their control.

Since pension provision is an objective social process, like any other social process, it is initiated, implemented and realized through the conscious and purposeful subjective activity of authorized subjects of law. The compliance of this latter activity with the objective needs and patterns of pension provision is a guarantee of stability and efficiency of such provision, which takes on a regulatory and legal form. At the same time, it is quite natural that, as noted by researchers, “pension provision as a fundamental element of social stability does not have the same concept of its content, some scholars define this term as complex organizational and legal measures aimed at meeting the needs of life by making cash payments to citizens who are entitled to receive them, as well as guaranteeing pensioners the exercise of their rights, state protection and protection of their rights” (Didkovska T.O., 2008, p. 12).

From a formal legal point of view, the pension system acquires its formal security, order, sustainability and predictability through the formation and implementation of a comprehensive system of pension legislation. The latter is a component of the system of social legislation (social security legislation) and reflects the state pension policy, which depends on the financial and economic capabilities of the state, the balance of social interests, the motivation of the government, the ideology of the ruling parties and the activity of civil society (Furdychko L.E., 2012, p. 57–61; Sinyova L., 2018,

p. 168). For example, in Ukraine, experts believe that the key factors that should be taken into account when forming the system of pension legislation are such macro factors as the economy, demography, own traditions and political decisions (On the main criteria, 2019).

Ensuring the realization of pension rights of an individual, pension legislation acts as a regulatory element of the implementation of the legal foundations of the welfare state, the concept of which provides for pension provision as a separate element of its essential subjective legal content. Thus, the system of pension legislation is a manifestation of the implementation of the principles of the welfare state in the system of pension relations, which constitute a special system. The official interpretation of the concept of the welfare state is contained in the Decision of the Constitutional Court of Ukraine No. 3-rp/2012 of January 25, 2012, according to which "the main tasks of the welfare state are to create conditions for the realization of social, cultural and economic human rights, to promote the independence and responsibility of each person for his actions, to provide social assistance to those citizens who, for reasons beyond their control, cannot ensure an adequate standard of living for themselves and their families" (Decision of the Constitutional Court of Ukraine, 2012).

In its decision dated October 11, 2005 № 8-r/2005, the Constitutional Court of Ukraine stated that "in Ukraine, as a social, legal state, the policy is aimed at creating conditions that ensure an adequate standard of living, free and full development of a person as the highest social value, his life and health, honor and dignity. The adoption and observance of social norms established by legal acts is a constitutional duty of the state. The activities of its legislative and executive bodies shall be based on the principles of justice, humanism, supremacy and direct effect of the provisions of the Constitution of Ukraine, and the powers shall be exercised within the limits established by the Constitution of Ukraine and in accordance with the laws" (Decision of the Constitutional Court of Ukraine, 2005). Developing this idea, the Constitutional Court of Ukraine pointed out that the above-mentioned constitutional principles on which the right to a pension is based "provide for legal guarantees, legal certainty and the related predictability of legislative policy in the field of pensions within the meaning of Articles 1, 3, 6 (part two), 8, 19 (part two), 22, 23, 24 (part one) of the Constitution of Ukraine, are necessary for the participants of the relevant legal relations to be able to foresee the consequences of their actions and to have confidence in their legitimate expectations that the right acquired by them on the basis of the current legislation, its content and scope will be realized by them, i.e. the acquired right cannot be canceled by the courts. That is, the acquired right cannot be revoked or limited" (Decision of the Constitutional Court of Ukraine, 2005).

The Constitution of Ukraine in the area of pensions is based on the concept of positive obligations of the state, which "consist, in particular, in the proper regulation of relations in this area", while "the amount of pensions, other types of social benefits and assistance, which are the main source of subsistence, should be determined taking into account human needs, human dignity and other constitutional values" (Decision of the Constitutional Court of Ukraine, 2022); the legislator, changing relations in the field of pension provision in order to improve the social policy of the state by redistributing public income, may not in particular, as the Constitutional Court of Ukraine insists, "changes in this area must be sufficiently justified, carried out gradually, prudently and in a pre-considered manner, based on objective criteria, be proportionate to the purpose of changing 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" (Decision of the Constitutional Court of Ukraine, 2019). According to the Basic Law of Ukraine and the legal positions formulated by the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine, in order to develop, specify and detail the provisions of Articles 3, 8, part one of Article 24, Article 46 of the Basic Law of Ukraine, should regulate in laws the grounds, procedure and conditions for indexation and recalculation of all types of pensions for all groups of pensioners (Decision of the Constitutional Court of Ukraine, 2022).

According to O. Kisil, within the framework of the welfare state, its social policy is aimed by legislative means at "ensuring fair calculation of pensions, taking measures to increase pensions to the real subsistence level, introducing a funded pension insurance system and state guarantees for saving funds and receiving pensions in this system, strengthening control over the use of funds by the pension fund and liability for violations in this area" (Kisil O.Y., 2015, p. 316).

Thus, based on the above-mentioned legal positions of the Constitutional Court of Ukraine and doctrinal positions of legal scholars, it is possible to formulate the essence of the legal principles of the social state, which should be embodied in the content and structure of pension legislation. These principles are, in particular 1) creation of conditions ensuring an adequate standard of living, free and full development of a person as the highest social value, his life and health, honor and dignity; 2) justice and humanism; 3) direct effect and supremacy of the Constitution of Ukraine; 4) legal guarantees of the right to a pension, its irrevocability and legal security; 5) legal certainty and related predictability of legislative policy in the sphere of pensions; 6) fair calculation of pensions, implementation of measures for gradual increase of pensions; 7) legal certainty of the grounds, procedure and conditions for indexation and recalculation of all types of pensions for all groups of pensioners.

In our opinion, in addition to the above-mentioned legal principles of the welfare state, which must be implemented in national pension legislation, there are a number of social standards applicable to the pension sphere, which have been developed within the European Union. These are certain minimum standards and norms enshrined in international legal acts at the universal, regional or interstate level, guaranteed by international law and implemented in national legislation as legal guidelines for pension provision (Mitsai M., 2018, p. 253). As is well known, the national pension system includes an extensive network of pension payments, the level and amount of which often do not meet basic social conditions and are far from European standards of a decent life. Therefore, the implementation and practical application of international legal standards of pension provision allow to create a generally accepted, understandable and rationally justified system of priorities in this area and become a solid basis for the formation of a balanced pension policy based on the international traditions of the welfare state and taking into account economically sound positions in the field of pension provision (Klymenko A.L., 2019, p. 74). The researchers include such standards as (b) equality of rights and opportunities, prohibition of discrimination against pensioners; (c) differentiation of the conditions and level of pension provision from the level of wages and contributions to pension (state and non-state) funds; (d) scientific and economic validity of pension standards, their orientation towards ensuring the right to life and an adequate standard of living; (e) immutability of the content and scope of pension payments and services; (f) state guarantee of certain rights of a person in the area of pension (Klymenko A.L., 2019, p. 155).

From the formal legal point of view, it is the combination of national constitutional principles and international legal (primarily European) standards of pension provision that constitutes the conceptual and legal basis for the functioning of the welfare state, which should find its consistent substantive and functional disclosure in the field of pension provision through the formation and implementation of the corresponding pension legislation in Ukraine. At the same time, this combination should be consistent and organic. An example of the opposite practice is, in particular, a certain inconsistency of the Constitutional Court of Ukraine (Decision of the Constitutional Court of Ukraine, 2011; Decision of the Constitutional Court of Ukraine, 2018) and the Supreme Court (Resolution of the Supreme Court, 2018; Ruling of the Supreme Court, 2019) in formulating the possibilities of temporary restriction of pension (and social) rights of citizens in legislation with reference to financial and economic features and difficulties of their provision. For example, the Supreme Court noted the lack of uniformity of judicial practice in the application of legislation in the recalculation of pensions (Resolution of the Supreme Court, 2021), which is a dangerous symptom and a qualitative indicator of its weak effectiveness in the legal protection of pension rights of Ukrainian citizens.



Taking into account the above, including the provisions of the Constitution of Ukraine and the legal positions of the Constitutional Court of Ukraine, it can be concluded that citizens have a constitutional right to a pension, the content of which is determined both by the Constitution of Ukraine and by laws. The Verkhovna Rada of Ukraine "shall carry out legislative regulation in the sphere of pension policy of the State, observing the constitutional norms and principles" (Decision of the Constitutional Court of Ukraine, 2023) of the welfare state, which are the starting point for the formation and implementation of a balanced and promising pension policy of the State, consistent with the main directions of socio-economic development of the country and the general approach to strengthening the realization and protection of human rights.

The Verkhovna Rada of Ukraine, as the only legislative body (Article 75 of the Constitution of Ukraine) authorized to adopt laws (Article 85(3)(1) of the Constitution of Ukraine) (Constitution of Ukraine, 1996), is certainly obliged to implement these legal positions in its practical legislative activity. At the same time, both the Parliament of Ukraine and the Ukrainian state as a whole "cannot ignore social rights not only because it degrades the authority of the state, which is called the social state, but also because the inaction of the state in ensuring social rights is unconstitutional" (Kozyubra M., 2002, p. 60). Thus, "the transfer of the State's obligation to ensure that all persons who have reached retirement age have a standard of living not lower than the subsistence minimum established by law to the solidarity and savings system contradicts the principles of compulsory State pension insurance and the foundations of social protection" (Collection of legal positions, 2020, p. 26). Thus, the failure of the state to provide an adequate legislative basis for the functioning of an effective legal mechanism of pension provision will indicate the illusory nature of constitutional guarantees of the right to social protection and the violation of a number of constitutional norms and principles (Decision of the Constitutional Court of Ukraine, 2022).

Predictability and predictability of pension legislation are closely related to such qualities as stability and consistency. In particular, legal scholars have already expressed the opinion that "in order to ensure the efficiency and stability of the pension system, it is important to take into account the need for systemic pension legislation" (Drozach L.V., 2023, p. 36). After all, the proper realization of the right to pensions is objectively complicated by "the lack of systemic legislative regulation, since the basic laws on these issues are mostly contradictory and inconsistent" (Mitsai M., 2017, p. 96). We also agree with the opinion of a well-known expert in the field of pension law M. Shumyl that only "a properly chosen economic approach to the regulation of pension provision contributes to social stability" (Shumilo M.M., 2016, p. 122). And vice versa: "giving legal form to economic schemes in the field of pension provision that either do not meet market conditions or pursue populist goals can lead to the collapse of the social sphere in general, social tension and have extremely negative consequences in particular" (Shumilo M.M., 2016, p. 124). Thus, a well-known Ukrainian constitutional scholar A. Krusian rightly emphasizes the urgency of improving pension (as well as the entire body of social) legislation, in particular, improving the quality of laws and their enforceability: meanwhile, "the adoption of laws whose provisions are not implemented and their gradual increase may lead to a kind of 'legal inflation' – the depreciation of normative legal acts due to their non-implementation, which is unacceptable in a democratic, legal, social state" (Krusyan A.R., 2012, p. 38). It is the lack of a high-quality system of pension legislation that "always acts against citizens and makes it impossible to realize their social rights enshrined in the Constitution of Ukraine" (Skorobahayko A.V., 2020, p. 26), including the right to adequate pension provision.

One of the strategically important areas of the state's social policy in Ukraine is defined by law as raising the level of pension provision (On approval, 2021). The ways to achieve this goal are as follows: 1) raising the level of pension provision, in particular through annual indexation of pensions, additional social benefits for pensioners over 75 years of age; 2) introduction of legislative changes to increase the amount of pension payments, taking into account the recommendations of the ILO Social

Security (Minimum Standards) Convention No. 102; 3) development and adoption of legislation on the funded pension system (On approval, 2021). However, the implementation of these strategic approaches in the “substance” of pension legislation is still problematic. This is due to the lack of unified approaches to the legislative understanding of the essence, features, directions of legislative policy in the pension sphere, incompleteness of the pension system reform, imperfection of legally defined sources of pension funding, poor accessibility of the population to mechanisms of legal protection of their pension rights, complexity of legal mechanisms for the implementation, guarantee and legal protection of these rights, complexity (sometimes confusion), contradictions and imperfection of pension legislation (Mitsai M., 2017, p. 95).

At present, the structure of pension legislation lacks certainty at the regulatory level. For example, part one of Article 4 of the Law of Ukraine “On Compulsory State Pension Insurance” states that pension legislation is based on the Constitution of Ukraine and consists of the Fundamentals of Legislation of Ukraine on Compulsory State Social Insurance, this Law, the Laws of Ukraine “On Private Pension Provision”, “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster”, “On Pension Provision for Persons Discharged from Military Service and Some Other Laws of Ukraine” (On Compulsory State Pension Insurance, 2003). In fact, by defining the five laws directly in this Law, the legislator gave them the meaning of starting, basic laws, but this was not reflected in any way in the subsequent adjustment of their norms. The rule on the conformity of these laws with other pension laws also did not stand up to criticism, since giving certain laws higher legal force than others is not based on the provisions of the Constitution of Ukraine and is ignored in law enforcement practice.

Subsequently, these problems were formalized in the structuring of pension legislation, for example, the Laws of Ukraine “On Private Pension Provision” (On non-state pension provision, 2003), “On Compulsory State Pension Insurance” (On Compulsory State Pension Insurance, 2003), “On Measures to Legislatively Ensure Reform of the Pension System” (On measures to ensure legislative support, 2011), “On Amendments to Certain Laws of Ukraine on the Appointment and Indexation of Pensions” (On Amendments to Certain Laws of Ukraine, 2013), “On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine” (On Prevention, 2014), “On Amendments to Certain Legislative Acts of Ukraine” (On Amendments, 2015), “On the Unfortunately, none of them was analyzed during its consideration and adoption by the Verkhovna Rada of Ukraine for compliance with the legal principles of the welfare state, which led to numerous legal defects in them. Meanwhile, such an analysis would be useful at least for the reason that as a result of the emergence and implementation of these laws, the pension legislation of Ukraine began to lose its ethical character, opened the way for the formation and development of non-state pension legal relations, which put on the agenda the need to guarantee the pension rights of citizens in the context of the functioning of the non-state pension provision segment.

The Law of Ukraine “On Compulsory State Pension Insurance” defined the basic principles of compulsory state pension insurance (part one of Article 7) (On Compulsory State Pension Insurance, 2003), the analysis of which shows that they only partially covered the entire body of pension legislation with their regulatory effect and partially corresponded to the principles of the welfare state. In addition, the proclaimed principles of pension legislation, even if they formally coincided with the principles of the welfare state, were often not systematically implemented in the content of this Law and other pension laws (such as the principles of equality of insured persons in receiving pension benefits and fulfilling obligations to pay insurance contributions to the obligatory state pension insurance, solidarity and subsidization in the PAYG system, publicity, transparency and accessibility of the Pension Fund).

The existence of legal defects and conflicts in the pension laws was soon confirmed by the subsequent practice of reviewing the constitutionality of these laws by the Constitutional Court of Ukraine

and the growing volume of court practice in the administrative justice system in 2005–2014. In particular, as a result of such ill-considered steps, maximum pension amounts were limited by law and taxation of pension payments was established depending on their size. Both legislative innovations were criticized as gross violations of the legal foundations of the welfare state and were subsequently declared unconstitutional (Decision of the Constitutional Court of Ukraine, 2018; Decision of the Constitutional Court of Ukraine, 2016; Decision of the Constitutional Court of Ukraine, 2022; Decision of the Constitutional Court of Ukraine, 2024).

Significant changes in the structure of pension legislation were introduced by Laws No. 1058-IV and No. 1057-IV, which established a three-tier pension insurance system, with the first tier being a solidarity pension insurance system based on the principles of solidarity and subsidization and payment of pensions and social benefits at the expense of the Pension Fund; the second tier being a funded pension insurance system based on the principles of accumulation of funds of insured persons in the Accumulation Fund or in relevant non-governmental pension funds (Sokorynskyi Y.V., 2018, p. 11). This system was based on the idea of transition from a pension provision system to a pension insurance system based on the dependence of the pension amount on income and contributions to the pension insurance system. This approach attempted to resolve long-standing political and ideological contradictions between different conceptual approaches to pension reform in Ukraine (Legal problems of pension provision in Ukraine: monograph, 2012, p. 109).

At the same time, the introduced pension insurance system was assessed as generally consistent with the principles of the welfare state and based on the best practices of developed foreign countries (Bila-Tiunova L.R., 2022, p. 58–61). Thus, it implemented one of the key principles of the welfare state – the principle of solidarity, according to which "some citizens are provided for not at the expense of their own financial savings, but at the expense of funds received in the form of social contributions from the activities of the able-bodied population. In this way, this part of the citizenry solidarizes with those citizens who, due to various circumstances, are totally or partially deprived of the possibility of self-sufficiency. Thus, each individual (generation) makes a certain (solidarity) contribution to the general welfare of the future through his or her work, so that society will always be able to provide social support to a particular individual when the conditions for his or her retirement are met (Legal problems of pension provision in Ukraine: monograph, 2012, p. 51; Yakoviuk I.V., 2000, p. 104–105).

Nevertheless, despite high expectations from the implementation of these laws, their potential has not been fully realized, as the second pillar of the pension system has not been introduced, and only the first and partially the third pillar, the non-state pension system, are actually in operation (Skorobahatko A.V., 2023, p. 48; Furdak M.M., 2021, p. 176–183). The draft law of Ukraine "On Accumulative Pension Provision" (Reg. No. 9212 dated 17.04.2023) was aimed at solving this problem, but for various reasons it was not supported by the Verkhovna Rada of Ukraine (On Accumulative Pension Provision, 2023), so the problem remains unresolved.

As it can be seen, unlike some other areas of national legislation, structuring pension legislation into regulations depending on their legal force will not have the desired cognitive effect (or rather, such an effect will have limited cognitive capabilities), given that, despite the significant share of laws, this area is still dominated both quantitatively and qualitatively by subordinate legislation issued by various public authorities within their competence. On the other hand, the Constitution of Ukraine itself formulates a vague approach to pension issues, which should be covered exclusively by a legal act of higher legal force: 1) "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" (part three of Article 46 of the Constitution of Ukraine) (Constitution of Ukraine, 1996); 2) "forms and types of pension provision" are determined exclusively by laws (paragraph 6 of part one of Article 92 of the Basic Law of Ukraine) (Constitution of Ukraine, 1996). This legal

approach, in our opinion, loses the substantive certainty of the distinction between laws and bylaws in the field of pension provision.

For example, the provision of pensions for persons discharged from military service and certain other persons is carried out in accordance with the Law of Ukraine "On Provision of Pensions for Persons Discharged from Military Service and Certain Other Persons" (hereinafter – Law No. 2262), which establishes the conditions, norms and procedure for provision of pensions for military personnel (On Pension Provision, 1992). Article 63 of Law No. 2262 (as amended in 2017) stipulates that all pensions granted under this Law are subject to recalculation in connection with the increase of financial support for the relevant categories of military personnel entitled to pensions under this Law, under the conditions, in the manner and in the amount provided by the Cabinet of Ministers of Ukraine (On Pension Provision, 1992). On February 21, 2018, the Cabinet of Ministers of Ukraine adopted Resolution No. 103 "On Recalculation of Pensions for Persons Discharged from Military Service and Certain Other Categories of Persons" (hereinafter – Resolution No. 103) (On recalculation of pensions, 2018), which led to a systematic violation of the rights of the above-mentioned category of pensioners. Former police officers have been paid the recalculated pension in full since January 1, 2018 and are entitled to the payment of the recalculated pension for the period from January 1, 2016 to December 31, 2017 in accordance with the procedure established by Resolution No. 103, while former military personnel will be paid in stages from 2018 to 2019 (the period of gradual recalculation of pensions in the amount of 50 and 75 percent), and the corresponding additional payment of underpaid amounts of the recalculated pension for the period from January 1, 2018 is not provided for by Resolution No. 103 at all. In addition, Resolution No. 103 actually introduced a legislative imbalance in the amount of pensions for former military personnel and police officers (Clarification on problematic issues).

The way to resolve the conflict between laws and bylaws in the structure of pension legislation is either a doctrinal interpretation of the range of issues that should be regulated at the level of laws, or the establishment of an exclusive subject matter area for their regulation in the laws themselves. Thus, according to researchers, "only laws on pension provision determine: types of pension provision; conditions of participation in the pension system or its levels; retirement age for men and women, upon reaching which a person is entitled to pension payments; sources of funds allocated for pension provision; conditions, norms and procedure for pension provision; organization and procedure for management in the pension system" (Andriyiv V.M., Kuchma O.L., Sinyova L.M., 2018, p. 214; Humeniuk V.E., 2021, p. 43).

A slightly different approach is found in pension legislation. Thus, according to part three of Article 4 of the Law of Ukraine "On Compulsory State Pension Insurance", it is established that only laws on pension provision determine: types of pension provision; conditions of participation in the pension system or its levels; retirement age for men and women at which a person is entitled to receive pension payments; sources of funds allocated for pension provision; conditions, norms and procedure for pension provision; organization and procedure for management in the pension system (On Compulsory State Pension Insurance, 2003). However, the Law itself contradicts the above wording. Its Article 5 defines the range of issues regulated exclusively by this Law, namely: the principles and structure of the system of compulsory state pension insurance; the range of persons subject to compulsory state pension insurance; types of pension payments; conditions for acquiring the right and the procedure for determining the amount of pension payments; retirement age for men and women, upon reaching which a person is entitled to an old-age pension; the minimum amount of an old-age pension; the procedure for making pension payments under the compulsory state pension insurance (On Compulsory State Pension Insurance, 2003). Comparing the content of Articles 4 and 5 of this Law, one can see diametrically opposite approaches applied in the same law, each of which covers a different range of pension legal relations that should be regulated exclusively by laws.

We believe that both proposed approaches are not ideal and do not rely on clearly defined formalized criteria. Therefore, the issue of criterion-based differentiation of legal acts according to their legal force in the system of pension legislation is of crucial importance. Without solving this problem, it is impossible to clearly define the substantive limits of regulation of pension relations at the legislative level, which may be subject to arbitrary revision by the legislator at any time. The vagueness of the distinction between legislative and regulatory "blocks" in the pension legislation of Ukraine does not contribute to the proper realization and guarantee of protection of pension rights of an individual: it is all too common that regulatory acts de facto dominate the process of law enforcement, despite the obvious inconsistency of their provisions with legal norms of higher legal force.

It should also be noted that pension legislation is structured as an objectification of the process of realizing the right to a pension, which, unlike natural human rights, is not given at birth; a person must perform certain actions provided for by law in order to secure this right – to participate in pension insurance (Shumylo M.M., 2016, p. 242). Therefore, this legislation is more characterized by such a phenomenon as proceduralism, which indicates the presence of certain logically and legally separate stages in the course of realization of pension legal relations, or rather their system. In connection with the above, we propose to choose the stage criterion as a criterion for structuring the system of pension legislation, distinguishing pension and insurance, procedural and organizational, pension and security, procedural and protective regulations in this area, which to some extent will correspond to the types of pension legal relations structured by M. Shumyl (Shumylo M.M., 2016, p. 241–242).

The structure of the pension legislation of Ukraine has significant features, which consist, first of all, in the absence of a single codifying legal act (such as a code or a law), which would be created by systematizing the rules of pension law, would contain certain general principles on the basis of which pension relations would be comprehensively regulated, ensuring the stability of legal regulation in the field of pension provision (Part One of Article 11 of the Law of Ukraine "On Legislation") (On lawmaking activity, 2023). Thus, such a structure today is not monocentric, but rather polycentric, unlike the civil and civil procedural, budgetary and tax, criminal and criminal procedural, economic and economic procedural legislation of Ukraine, where single-sector legislative acts are centered around one code.

For a certain period of time the Law of Ukraine "On Pensions" No. 1788-XII (On Pension Provision, 1992) "claimed" to be the systemic codifying legislative act in the field of pensions, which formulated the general principles of pensions, defined the types of state pensions (labor and social pensions), the basic requirements for the calculation of the length of service, pensions, their accrual, payment and recalculation, etc. However, it did not have time to be adopted. However, it did not have time to acquire such a role due to the gradual differentiation of the legal regulation of pension relations, which was marked by the adoption of the Laws of Ukraine "On Pension Provision for Persons Discharged from Military Service and Some Other Persons" (On Pension Provision, 1992), "On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster" (On the Status and Social Protection, 1991), "On Compulsory State Pension Insurance" (On Compulsory State Pension Insurance, 2003), "On Measures for Legislative Securing of the Reform of the Pension System" (On measures to ensure legislative support, 2011), etc. As the above analysis has shown, the Law of Ukraine "On obligatory state pension insurance" (On Compulsory State Pension Insurance, 2003) began to claim this role, although due to numerous amendments it soon became a conglomerate of multidirectional legal regulations, often contradicting pension relations. From a doctrinal point of view, this law cannot play the role of a systemic act in the system of pension legislation, and in view of its subject matter limitations, as reflected in its title.

In fact, gradually the unity of legal regulation of pension relations was lost. Instead, the tendency to deepen the differentiation of legislative regulation began to dominate. As T. Didkovska notes, "the unity of pension provision consists in a single content, a single essence, a single purpose, and common principles of pension provision. With the help of unity, the vector in the direction and within

which pension provision should be carried out is determined; the purpose of pension provision is achieved – to meet the vital needs of employees entitled to receive pensions, guaranteeing them the exercise of this right, state protection and protection of the rights of pensioners, fulfillment of the relevant obligation of the state to the citizen for participation in the social and production process” (Didkovska T.O., 2008, p. 319). However, we cannot agree with the researcher's conclusion that “unity gives rise to differentiation” (Didkovska T.O., 2008, p. 319). On the contrary, differentiation is not so much a “specification and individualization of general prescriptions and norms” (Didkovska T.O., 2008, p. 319), but rather – in the context of pension legislation – an attempt to create autonomous models of legislative regulation of pension provision for certain groups of persons according to certain criteria (peculiarities of social status, age, gender, nature and complexity of work, significance of their contribution to the development of the economy or socio-cultural sector, etc.)

In practice, the differentiation of pension provision soon began to take place through the inclusion of special pension provisions in certain status laws, such as the Law on the Status and Social Protection of Citizens Affected by the Chernobyl Disaster (On the Status and Social Protection, 1991), the Law on Pensions (On Pension Provision, 1991), the Law on Pensions for Persons Discharged from Military Service and Some Other Persons (On Pension Provision for Persons Discharged, 1992), the Law on the Status of a Member of Parliament of Ukraine (On the Status of the People's Deputy of Ukraine, 1993), the Law on the Status of War Veterans, Guarantees of Their Social Protection” (On the Status of War Veterans, 1993), ‘On Civil Service’ (On Civil Service, 1993), ‘On Forensic Examination’ (On Forensic Expertise, 1994), ‘On the National Bank of Ukraine’ (On the National Bank of Ukraine, 1999), ‘On Pensions for Special Services to Ukraine’ (On Pensions for Special Services to Ukraine, 2000), ‘On Service in Local Self-Government Bodies’ (On Service in Local Self-Government Bodies, 2001), “On Diplomatic Service” (On Diplomatic Service, 2002), ‘On Compulsory State Pension Insurance’ (On Compulsory State Pension Insurance, 2003), ‘On Increasing the Prestige of Mining Labor’ (On raising the prestige of mining labor, 2008), ‘On the Cabinet of Ministers of Ukraine’ (On the Cabinet of Ministers of Ukraine, 2014), ‘On the Prosecutor's Office’ (On the Prosecutor's Office, 2015), etc.

In the national legal science, attempts have been made to substantiate the in-depth differentiation of legislative regulation of pension provision for certain groups of persons by both objective and subjective factors (Kolesnik-Omelchenko T.V., 2012, p. 126–130; Skorobahatko A.V., 2014, p. 409–412). However, over time, a purely subjective approach began to dominate in the practice of legislative activity, which resulted in a deepened and, in our opinion, excessive differentiation of legislative regulation of pension provision for certain social groups, which were singled out by the legislator on the basis of its “discretion and expediency in the implementation of social policy” (Dissenting opinion of Judge of the Constitutional Court of Ukraine Slidenko I.D.). Obviously, such a differentiated approach was applied by the legislator taking into account the following approaches: 1) the respective social groups have a special status; 2) the application of general norms of the Constitution of Ukraine is inadmissible in relation to them; 3) their special social status is nothing more than a benefit provided by the state for certain reasons (for example, harmful working conditions) (Dissenting opinion of Judge of the Constitutional Court of Ukraine Slidenko I.D.). These reasons have led to excessive dispersion of legislative regulation of pension provision for certain groups of persons, which not only complicated the understanding of the pension system for ordinary citizens (M. Shumylo called this phenomenon “inflation of pension legislation”) (Sokorynskyi Y.V., 2018, p. 12), but also led to additional conflicts in the course of law enforcement.

For a long time, it was believed that “the practice of legislative preferences is generally consistent with democratic governance and the principles of a liberal economy” (Dissenting opinion of Judge of the Constitutional Court of Ukraine Slidenko I.D.). It is worth noting that in the course of the pension reform, the Law of Ukraine “On Amendments to Certain Legislative Acts on Increasing Pensions” of October 3, 2017, No. 2148-VIII (On Amendments, 2017) was adopted, which “significantly

affected the further restriction of special pensions and further narrowing of differentiation in pensions” (Skorobahatko A.V., 2023, p. 49). In fact, it showed a reverse trend in the structuring of pension legislation – toward unification. This Law had a positive impact on further limiting special pensions and restricting differentiation in pensions, established a new formula for annual indexation (recalculation) of pensions to protect them from inflation, abolished restrictions on the amount of pensions for working pensioners, and canceled the reduction of pensions for those women who had exercised the right to early retirement before January 1, 2015 (Skorobahatko A.V., 2023, p. 48). At the same time, certain social groups still retained separate legal regimes of pension provision, i.e. pension unification did not become complete, but only more balanced and less similar to the “distribution of privileges” (Skorobahatko A.V., 2023, p. 49), which obviously does not fully correlate with the legal principles of the welfare state. Therefore, according to scholars, “the adoption of the new basic law did not resolve the issue of unification of pension legislation and did not solve the problem of unfair differentiation in pension provision” (Skorobahatko A.V., 2023, p. 48). Therefore, as before, pensions are granted according to the norms of more than 20 special laws (Skorobahatko A.V., 2023, p. 48), which does not contribute to their adequate perception and proper enforcement. For example, it is unacceptable and socially harmful that every fifth pensioner does not know on what basis their pension is calculated, whether they are entitled to a pension supplement, etc. (Legal problems of pension provision in Ukraine: monograph, 2012, p. 115). In recent decades, pension legislation in Ukraine has “turned into a complex labyrinth of legal matter, from which even employees of the Pension Fund and judges who resolve pension disputes of citizens sometimes cannot find a way out” (Legal problems of pension provision in Ukraine: monograph, 2012, p. 118).

In our opinion, when addressing the issue of differentiated legal regulation of general and special pensions at the level of laws, one should be guided exclusively by the constitutional prerequisites for the introduction of special legal regulation. In this sense, the legal position formulated by the Constitutional Court of Ukraine in its decision of July 17, 2018, No. 6-R/2018, is doctrinally important: "Taking into account the essence of Article 16 of the Constitution of Ukraine, ... the enshrinement of the State's obligation under it in Section I 'General Principles' of the Constitution of Ukraine indicates the fundamental nature of this obligation and the need to distinguish the category of Ukrainian citizens who suffered as a result of the Chernobyl disaster and, due to the extraordinary scale of its impact, require additional guarantees of social protection (Decision of the Constitutional Court of Ukraine, 2018). Constitutional peculiarities of the social and legal status of certain categories of Ukrainian citizens may serve as sufficient and necessary legal grounds for the introduction of special legislative regulation of their pensions. All other cases require a moderate legislative approach that would not violate the principles of social justice as one of the key features of the welfare state proclaimed by Ukraine.

Finally, we would like to draw attention to another important circumstance that is of paramount importance for the further structuring of pension legislation in Ukraine. Such structuring is currently taking place outside strategically defined, socially acceptable legal guidelines, such as those set forth in the 2005 Pension System Development Strategy (On Approval of the Pension System Development Strategy, 2005) and the 2009 Concept for Further Pension Reform (On Approval of the Concept of Further Pension Reform, 2009). Meanwhile, the modernization and effectiveness of the pension system and pension legislation cannot be carried out chaotically without an appropriate strategy (Legal problems of pension provision in Ukraine: monograph, 2012, p. 122), and “pension reform itself should be part of a strategy to support the population in the face of economic challenges and war” (Drozach L.V., 2023, p. 37).

On the contrary, prolonged strategic uncertainty hinders the development of unified legal approaches to complete the structuring of the modern system of pension legislation and its internal structure on the basis of the welfare state. Excessive expectations from legislative changes and a

certain "pension legal idealism" (although the legislation is incapable of filling the state budget and increasing revenues to the Pension Fund of Ukraine), unfair differentiation of general and "special" pensions (the latter are currently ten times higher than the average old-age pension), which are often perceived as unjustified social privileges of certain groups of the population, and the delay in restoring justice in determining pension payments are acutely perceived, blocking the development of a unified legal framework for the pension system.

**Conclusions.** In the theoretical and legal dimension, the formation and development of the system of pension legislation reflects the system-wide legal regularity of strengthening the determining (guiding) influence of key legal concepts and principles of legal regulation on the development of large systemic formations in the field of law (branches of law and legislation, institutions of law and legislation, etc.).

This pattern is fully realized in the structuring, reform and functioning of the system of pension legislation of Ukraine, which objectifies the general social needs of an individual and society for pension provision and constitutes a regulatory "cross section" of the state pension system as a whole.

This structuring takes place against the background of active reform of the national pension legislation and represents an appropriate and natural process of systematic changes with simultaneous attempts to stabilize the regulatory material that is part of the structure of this branch of Ukrainian legislation.

The main guiding principle of pension legislation in Ukraine is the constitutionally defined concept of the welfare state, the legal principles of which are embodied in the content and structure of pension legislation.

The consistent and systematic implementation of this concept in the content, orientation and structure of pension legislation is guided by the following legislative acts 1) the Constitution of Ukraine itself, which performs an important legal orientation function in relation to pension legislation in terms of the state's implementation of positive obligations in the social sphere, 2) legal positions of the Constitutional Court of Ukraine and courts of general jurisdiction (primarily the Supreme Court, which performs the function of ensuring the unity and uniformity of judicial practice in the field of pension disputes), which specify the legal significance of the concept of the welfare state in such a subject area as the system of pension legislation, as well as

The main legal principles of the social state embodied in the structure and content of the pension legislation of Ukraine are 1) creation of conditions ensuring an adequate standard of living, free and full development of a person as the highest social value, his life and health, honor and dignity; 2) justice and humanism; 3) direct effect and supremacy of the Constitution of Ukraine; 4) legal guarantees of the right to a pension, its irrevocability and legal protection; 5) legal certainty and related predictability of legislative policy in the sphere of pensions; 6) fair calculation of pensions, implementation of measures for gradual increase of pensions; 7) legal certainty of the grounds, procedure and conditions for indexation and recalculation of all types of pensions for all groups of pensioners.

Difficulties in the implementation of these principles of the above legal concept in the structure and content of pension legislation are determined by the following factors: contradictions in the interpretation of the content of this concept; a combination of trends towards unification and differentiation in the structure of pension legislation, which has not yet resulted in the establishment of the optimal state of such combination; uncertainty of strategic guidelines for the development of pension legislation at the level of adoption of programmatic normative documents by the subjects of higher state power; instability, inconsistency and lack of consistency in the implementation of pension legislation.

Taking into account the analyzed state of structuring and development of pension legislation, the further implementation of the legal foundations of the social state in the structure of this branch of national legislation is seen on the way to further constitutionalization of this process, the rational and scientifically based determination of strategic priorities for the further implementation of pension



reform in Ukraine on the paths of unification and adaptation of the best world (primarily European) practices of pension provision and relevant international legal standards, formation and implementation of socially oriented pension policy.

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