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TYPES OF LEGAL INSTRUMENTS FOR ENSURING THE SOCIAL FUNCTION OF THE STATE AND THEIR FEATURES

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Abstract. The article provides a thorough general theoretical analysis of the types of legal instruments for ensuring the social function of the state, in particular prohibitions, obligations and guarantees, which are considered key legal elements of the implementation of social policy in the context of modern complex social challenges, in particular taking into account martial law. It is substantiated that the above-mentioned legal instruments form the boundaries of permitted behavior and determine specific zones of state intervention in the social sphere, contributing to the stability of the social environment in the context of ensuring social legal standards.

Prohibitions are characterized as a tool of preventive influence that prevents violations of social rights by establishing clear legal restrictions. Obligations are interpreted as an active form of implementing a social function, designed to ensure the effective fulfillment by the state of its social obligations to various segments of the population. The article draws attention to the need for a clear normative formulation of obligations to ensure unambiguous application of law and avoid value judgments.

A separate analysis is devoted to guarantees that determine the mandatory nature of state actions to ensure social rights, in particular in crisis or non-standard situations. Guarantees are considered as a tool that accumulates obligations and prohibitions, and also ensures the unconditional implementation of the social function of the state. The specifics of each of the features of legal instruments for ensuring the social function of the state are formulated and analyzed. It is proven that legal instruments operate systematically in interaction, complementing each other depending on the scope of application.

Key words: social function of the state, legal instruments, prohibitions, obligations, guarantees, social rights, legal mechanism, social legislation.

Introduction. The modern development of the state is largely determined by its ability to effectively implement the social function, which ensures the protection of the rights and legitimate interests of the population in the social sphere. In conditions of economic instability and martial law, which leads to an aggravation of social risks, the issue of the effective functioning of legal mechanisms aimed at implementing the social function of the state becomes particularly relevant. In this context, the use of effective legal instruments that are able to ensure compliance with social rights and promote their dynamic implementation in accordance with the needs of society in the current difficult conditions is of key importance. The definition and study of such legal instruments as prohibitions, obligations and guarantees is an urgent task of social security law, which allows us to clarify their essential characteristics. These legal instruments serve as legal means of regulating social relations and determine the limits of state intervention, ensure the necessary level of protection of social rights and create conditions for preventing violations in this area. In view of the above, a comprehensive analysis of legal instruments for ensuring the social function of the state allows for the optimization of existing legal mechanisms, which contributes to a more effective implementation of the social rights of citizens and the strengthening of social stability in society.

Research status. The issue of determining legal instruments for ensuring the social function of the state has been studied to one degree or another in the works of various scientists, among whom it is first of all appropriate to highlight the following: I.V. Aristova, A.Yu. Badyda, O.F. Vakulenko, V.V. Vashkovich, N.V. Galitsyna, O.F. Danych, O.M. Ilyushyk, M.I. Inshin, R.I. Kovalenko, G.V. Kravets, O.Z. Pankevych, V.E. Safonova, D.I. Sirokha, D.M. Skovronsky, O.V. Skrypnyuk, A.V. Stukalov, L.V. Tereshchenko, I.M. Tkachenko, N.M. Khoma, P.O. Shorsky, I.V. Yakovyuk, O.M. Yaroshenko and many other scientists. However, it is worth noting that due attention was not paid directly to the systematic analysis of the types of legal instruments for ensuring the social function of the state and their features, which determines the relevance of our study.

The purpose of the article is an analysis and general theoretical characteristic of the types of legal instruments for ensuring the social function of the state.

Presentation of the main material. Security tools are used to influence the behavior of all participants in relations to implement the social function of the state in order to establish permissible limits of activity, prevent unlawful actions and encourage compliance with the rules of law. N. I. Buryatynska notes that security tools are legal means, as actions and their combinations, carried out by subjects depending on the degree of permissibility for the purpose of achieving socially useful goals. At the same time, such actions are modeled and secured in the rules of law (Buryatynska N.I., 2016:190). The level of permissibility also determines the diversity of actions of the participants in the relationship and their freedom when making certain decisions. It is clear that it is impossible to foresee in the norms of law all situations and behavior of the participants, therefore it is important that the instruments of provision are universal and adapted to the areas of social security or even specific social rights. Accordingly, it is possible to distinguish the following instruments of provision of the social function of the state:

1. Prohibitions as tools for ensuring the social function of the state;
2. Obligations as tools for ensuring the social function of the state;
3. Guarantees as tools for ensuring the social function of the state.

Legal prohibitions have a wide range of tools, thanks to which such legal methods of influence directly regulate social relations that arise at different levels and in different spheres of social life (Platonenko O., 2019: 231). The formulation of legal prohibitions as an instrument for ensuring the social function of the state is a manifestation of the preventive and at the same time stabilizing potential of law. In the social sphere, a legal prohibition serves as a way to prevent forms of discrimination, abuse of power, violation of personal dignity and reduction of social risks. When studying prohibitions in the operation of the mechanism for legal ensuring the social function of the state, first of all, their number and conditionality of use should be noted. Thus, the use of prohibitions has a positive effect on security, since from their content it is immediately clear which actions are unacceptable and will lead to legal liability. At the same time, excessive and unjustified use of prohibitions to ensure the social function of the state may mean excessive state intervention, loss of flexibility of legal regulation, emergence of gaps and even insufficiency of social protection. Therefore, the main principle of using prohibitions as a tool for ensuring is proportionality and legal conditionality of establishing restrictions. An example can be Art. 39 of the Law of Ukraine "On Employment of the Population", which stipulates that a business entity is prohibited from sending employees to jobs with an employer who has reduced the staff during the year, does not comply with the regulatory number of employees involved in technological production processes; involves employees in work in harmful, difficult working conditions. That is, a prohibition as a tool for ensuring the social function may apply to the behavior not only of officials of public authorities, but also of any entities that in some way influence the social sphere and the implementation of social rights. Compliance with the prohibition determines the passivity of the actions of the entities to which it applies.

In the explanatory dictionary, an obligation is interpreted as a promise that must be fulfilled, a promise as a voluntarily given obligation to do something (Zagnitko A.P., 2008: 323). That is, an obligation is considered as a legal category and as a moral and ethical imperative that requires mandatory actions. An obligation, on the contrary, as a tool for ensuring requires active activity to comply with a legislative requirement. For example, in Art. 8 of the Law of Ukraine "On Social Services" it is determined that social service providers are obliged: to ensure the best interests of recipients of social services; to assess the needs of an individual or family; to provide training for workers who provide social services. That is, the obligations concern persons who actively contribute to the implementation of the social function of the state, and not to the exercise of their rights, and therefore they extend to public authorities, providers of social services, trade unions and other public organizations that provide protection to certain categories of persons. Another difference between obligations is that their fulfillment may have varying degrees of appropriateness, and the content itself may depend on interpretation. Therefore, it is important to clarify legal liability for failure to comply with a particular obligation, as well as to avoid evaluative concepts when formulating them in legal norms.

As Z.S. Kravtsova correctly notes, legal guarantees in the context of state activity, in particular in ensuring a social function, are determined by the laws of social development and are normatively enshrined in a system of conditions, means and methods that ensure the effective and efficient implementation of the rights assigned to bodies and officials of state power and the proper fulfillment of their duties in the interests of the Ukrainian people, combining international, national and local interests. The key elements of the system of guarantees of state power are the conditions, means and methods that ensure the effective implementation of state power in Ukraine (Kravtsova Z.S., 2019: 84). The above allows us to consider legal guarantees as an instrument for implementing state will and as a mechanism for ensuring the proper functioning of public power in the social dimension, that is, in a manner that meets social legal standards, social expectations and international obligations of Ukraine. Therefore, guarantees in the context of implementing the social function of the state should be understood as a normatively embodied form of responsibility of public authorities to the people, which is the basis of trust, legitimacy, and functional effectiveness of state policy in the field of social security.

In general, it is appropriate to note that guarantees, as tools for ensuring the social function, are already more related to the social rights and interests of the entire population and determine the boundaries and mandatory actions of the state in matters of implementing the social function. For example, in Article 25 of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" it is established that the perpetrator, authorized units of the National Police of Ukraine shall issue an urgent restraining order in the event of an immediate threat to the life and health of the victim in order to immediately stop domestic violence and prevent its continuation or recurrence. Guarantees are characterized by detail and mandatory participation of public authorities. At the same time, such participation can be both active, as in this case, and passive in terms of not creating obstacles, prompt acceptance of applications, and unconditional provision of social assistance. Guarantees are most closely related to social rights and are applied in cases where there are risks in their implementation due to slowness or abuse of power.

Thus, the features of the instruments of ensuring the legal mechanism for ensuring the social function of the state can include:

1) normative specification – each instrument must be clearly enshrined in the norms of law with a definition of the content, form, grounds for application, subjects of implementation and consequences of law enforcement. The absence of such specification causes risks for legal certainty, creates gaps in the protection of social rights. The specification of legal instruments allows to ensure the same

application of law regardless of the individual assessments of officials. What we have mentioned makes it impossible to arbitrary interpretation of provisions and contributes to the establishment of the principle of the rule of law in the social sphere. In addition, such a feature is critically important in transitional societies, where the role of the social function of the state is strengthened, and the law itself serves as an instrument for stabilizing legal relations;

2) variability and adaptability – this is the ability of legal instruments for ensuring social functions to take on different forms depending on the scope of application. This feature allows the state to take into account dynamic changes in society, to flexibly respond to new challenges in the field of social protection, employment, health care, combating poverty, etc. Variability is ensured by the fact that the legislation defines the types of instruments, but their specific implementation may vary in by-laws, instructions, standards for the provision of social services. Adaptability provides for the ability of the legislator to respond promptly to social risks or crisis situations. For example, during times of war, state bodies must be able to quickly activate special guarantees or strengthen obligations for social security entities;

3) functional focus on effectiveness – that is, it means the effectiveness of legal influence, which is measured by the level of social needs, minimization of social risks, reduction of inequality and improvement of the quality of life of the population. Prohibitions, obligations and guarantees act as elements of a single system, where each of the instruments plays a certain role in achieving a holistic social result. Efficiency is achieved under the condition of systematic and proportional use of legal instruments. For example, prohibitions reduce the number of illegal actions through a deterrent mechanism, obligations stimulate the active participation of bodies in solving social issues, and guarantees ensure the sustainability and irreversibility of the provision of social benefits;

4) systemicity – means that legal instruments function in a systemic relationship, creating a coordinated legal structure. Prohibitions, obligations and guarantees interact with each other in a single legal field, complementing and balancing each other. For example, guarantees cannot be implemented without the existence of corresponding obligations, and the effectiveness of obligations often depends on the presence of prohibitions on alternative actions. Such an interrelationship contributes to the legal integrity and consistency of law enforcement practice. At the horizontal level of legal regulation, the instruments cover all areas of social security (healthcare, pension insurance, social services, assistance to the poor). At the vertical level, legal instruments are implemented at all levels of government: central, regional and local.

Conclusions. Thus, we can summarize that legal instruments for ensuring the social function of the state, in particular prohibitions, obligations and guarantees, are key mechanisms for influencing the social behavior of participants in the legal relations under study. Their correct and proportionate application ensures the effective implementation of social rights, while preventing potential abuses and violations. Prohibitions, as a tool for ensuring, should be applied carefully and reasonably in order to avoid excessive state intervention and ensure a balance between state control and the freedom of citizens to exercise their social rights.

Obligations, in turn, are characterized by active assistance from state and other entities in the implementation of the social function. However, their effectiveness largely depends on the specific formulation of legal norms, which eliminates the possibility of ambiguous interpretations and, accordingly, prevents a decrease in the quality of social security.

Guarantees play a crucial role in protecting the social rights of the population, ensuring the binding nature of actions by state bodies in cases where there are risks of violations of these rights due to abuse of power. It is thanks to the latter as a legal instrument that the state unconditionally fulfills its obligations in the field of social security.

References:

1. Buryatynska N. I. (2016) Pravovi zasoby: ponyattya ta vydy [Legal means: concepts and types]. Barsky Humanitarian and Pedagogical College named after M. Hrushevsky. P. 190–192 [in Ukraine].
2. Platonenko O. (2019) Pravovi zaborony ta obmezheniya, yikh zv'yazok iz ponyattamy «derohatsiya», «abrohatsiya», «nulifikatsiya» [Legal prohibitions and restrictions, their connection with the concepts of "derogation", "abrogation", "nullification"]. Entrepreneurship, economy and law. No. 3. P. 231–235. [in Ukraine].
3. On employment of the population [Pro zaynyatist' naseleennya] 05.07.2012 No. 5067-VI. Bulletin of the Verkhovna Rada of Ukraine. 2013. No. 24. P. 1284.
4. Zagnitko A. P. (2008) Velykyy tлумachnyy slovnyk. Suchasna ukrayins'ka mova : 100 000: vid A do YA [Large explanatory dictionary. Modern Ukrainian language: 100,000: from A to Z]. Donetsk: BAO, 704 p. [in Ukraine].
5. On social services [Pro sotsial'ni posluhy] 17.01.2019 No. 2671-VIII. Bulletin of the Verkhovna Rada of Ukraine. 2019. No. 18. P. 5.
6. Kravtsova Z.S. (2019) Kласyfikatsiya harantiy zdiysnennya derzhavnoyi vlady v Ukrayini [Classification of guarantees of the exercise of state power in Ukraine]. Constitutional and legal academic studies. Issue 1. P. 80–86. [in Ukraine].
7. On prevention and counteraction to domestic violence [Pro zapobihannya ta protydiyu domashn'omu nasyt'stvu] 07.12.2017 No. 2229-VIII. Bulletin of the Verkhovna Rada of Ukraine. 2017. No. 5. P. 32.