

A Decent Living Standard as a Social Security Aspect for the Constitutional Order

Anna M. Zhornik, Marina V. Markhgeym and Alevtina E. Novikova
Street 5 Pobedy, the Belgorod Region, 308015 Belgorod, Russia

Abstract: The study deals with the international legal aspect of the concept of a decent living standard. Attention was paid to its most important components as well as the experience of different countries on their constitutional formalization. Arguments have been offered in favor of that a decent living standard is a legal instrument to provide security of social foundations of the constitutional order.

Key words: Decent living standard, adequate living standard, constitutional order, social welfare state

INTRODUCTION

The constitutional order is the basic principles of society and state life arrangement that have the highest legal force and pre-judge the nature of the entire legal system of a state. Its security is primarily associated with a political or territorial aspect whereas modern risks have the most destructive influence on the social sphere: the global financial and economic crisis, the economic sanctions. These phenomena do not simply reduce the life quality and living standard but also put a part of the population on the edge of starvation.

One of the constitutional i.e., higher social protection human rights is the duty of a state to ensure a decent standard of human life or create all the necessary conditions to ensure decent living standards. The concepts of decent and adequate living standard are estimative ideas to date, although some aspects have been formalized in international and national acts. It appears that a reference to an international experience, the practice of various states and theoretical developments will make it possible to determine the provisional potential for the category “a decent (enough) living standard” to provide security of the constitutional order.

MATERIALS AND METHODS

We have used a variety of general scientific methods and techniques of logical knowledge analysis and synthesis, abstraction, system-structural, functional and formal-logical approach. The use of formal legal and comparative legal methods promoted to achievement of the stated purpose.

RESULTS AND DISCUSSION

The Universal Declaration of Human Rights adopted by the UN in 1948 has proclaimed that “everyone has the right to a living standard including food, clothing, housing, medical care and necessary social services that is adequate for the health and well-being of him/herself and of his/her family and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances arisen for reason beyond his/her control” (Art. 25) (2016). The regulation of the cited article is rightly interpreted as the right to an adequate living standard (Volostnova, 2014).

Another important international instrument for human and citizens’ rights and freedoms protection is the international covenant on economic, social and cultural rights it proclaimed in Art. 11 the right of everyone to an adequate living standard, limited, however, the scope of elements providing it with adequate food, clothing and housing (2016). The committee on economic, social and cultural rights has issued several general comments explaining the components of this right. It includes the right to adequate housing (General Comments 4 and 7), the right to food (General Comment No. 12), the right to water (General Comment 15) as well as the right to social security (General Comment 19). With these general comments, the committee clarifies what criteria must be met in order to implement at a decent level the rights to housing, food and water and provides the most complete unified interpretation of these rights in accordance with international law.

In accordance with Art. 14 of the convention “on the elimination of all forms of discrimination against women”

“participating member states shall take all appropriate measures to eliminate discrimination against women in rural areas to guarantee the right to possession of the appropriate living conditions, particularly with respect to housing, sanitation, electricity and water supply, transport and communications”. The committee on the elimination of racial discrimination recognizes the right of everyone, without distinction as to race, skin color, national or ethnic origin to enjoy in particular, the right to housing and the right to social security and social services.

In addition, some of the documents aimed at protecting people in certain circumstances also contain provisions relating to adequate living standard. This is the case, for example with the convention on the status of refugees and the Geneva conventions. The refugee convention provides for the right to housing (Art. 21), public relief and assistance (Art. 23) and social protection of refugees (Art. 23). The right to an adequate living standard is also provided for in the additional protocol No. 1 to the Geneva conventions relating to the protection of victims of international armed conflicts. According to its Article 54, starvation of civilians as a method of warfare is prohibited. Article 54 prohibited the attack, destroying, removing or rendering useless the objects indispensable to the survival of the civilian population, such as food, water installations and supplies for irrigation works for the specific purpose of destroying livelihood relevant to the civilian population, regardless the goals and motives. Protocol No. 2 on non-international armed conflicts has a similar provision in its Art. 2. Although, these conditions are not formulated as a human right in fact they are aimed at ensuring people or groups who do not or no longer taking part in hostilities to ensure the right to their decent conditions.

International instruments for protection of children's rights also do not disregard a child's right to an adequate living standard, even though they lack the phrase “decent living standard”. For example, the provisions of Ch. 1, Art. 27 of the convention on the rights of the child every child assigned the right to a living standard that is necessary for children's physical, mental, spiritual, moral and social development.

Article 28 of the convention on the rights of disabled persons is also devoted to adequate living standard. Participating member states to this convention recognize the right of persons with disabilities to an adequate living standard not only for themselves but also for their families. The convention reveals the concept of decent living standards, it includes adequate food, clothing and housing as well as the continual improvement of living conditions. States shall take appropriate measures to

safeguard and promote the realization of the rights without any kind of discrimination on grounds of disability.

The European social charter also uses the concept of “decent living standard.” Thus, in order to ensure the effective exercise of the right to a fair remuneration in para. 1, Art. 4, parties of the charter “undertake to recognize the right of workers to a remuneration such as will give them and their families a decent living standard”. However, in the document, this concept is not disclosed.

The committee on social rights which analyzes and collects data on the implementation of the charter by states, noted that the concept of “decent life” itself is quite illusory, relative and differentiated in different countries. In the fifth supervisory cycle, the committee has established a “worthiness limit”. So, it was determined that any earnings which are significantly less than the average wage in the country will not be sufficient, since it cannot guarantee a decent living standard in the society. The committee determined that the minimum allowable wage should be 68% of average earnings in the country. If the amount of income falls below this percentage, the committee takes into account availability of social, family and educational benefits and tax measures for the people receiving wages which are lower than the prevailing in the state.

As for the inter-American level, although the American convention “on human rights” deals primarily with civil and political rights, it includes Art. 26 on general provisions on economic, social and cultural rights. American convention “on human rights” refers indirectly to the right to an adequate living standard, when in Art. 26 there are formalized obligations of participating member states to take measures to ensure the full realization of the rights in the economic, social, educational, scientific and cultural standards set forth in the charter. According to Art. 26, participating member states undertake to adopt measures, both internally and through international cooperation, especially economic and technical to achieve the progressive realization of the right to a decent life.

The principle of progressive realization is not unique to this convention, it is also stipulated in the international covenant “on the economic, social and cultural rights”. While compliance with the principle of progressive realization is dependent on resource availability, it also requires the provision of a particular behavior which is mandatory for all member states, regardless of their level of development. In this respect, Art. 26 of the American convention “on human rights” imposes an obligation continuously to improve conditions and a ban on the adoption of deliberately regressing measures. This

interpretation is supported by the recent practice of the inter-American commission on human rights (for example, the case of *Miranda Cortez et al., v. El Salvador*). In addition, the protocol of San Salvador contains Art. 12 on the right to adequate living standard. Article 12 provides that everyone has the right to adequate food that guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.

States also agreed to the implementation of the right to adequate living standard in several international documents such as the declaration "on the right to development" (Art. 8); the universal declaration on the eradication of Hunger and Malnutrition (Art. 1) Rome declaration of the world food Summit; habitat program (for example, paragraphs 36 and 116), Alma-Ata declaration on primary care the program of actions of the fourth world conference on women's rights; the declaration on protection of women and children in emergency and Armed conflict; rules on minimum standards for the treatment of prisoners; declaration on the rights of mentally retarded people and the UN declaration on the rights of indigenous peoples.

Within the framework of the specialized UN agencies, the International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO) dealt with the rights associated with the appropriate level of life. Structure of these organizations have a number of tools aimed at protection of the appropriate life level. There have been adopted such documents as ILO No. 117 on social policy and No. 169 on local and tribal peoples. UN guidelines on refugees and IDPs require the competent authorities to guarantee safe access to essential products and drinking water housing appropriate clothing essential medical services and sanitation.

The UN committee on economic, social and cultural rights is the foundation which has provided the most comprehensive review of the right to adequate living standard. For a more complete "picture" of how the category "decent living standard" is taken into account in the various states, we have carried out the analysis of the constitutional experience on formalization of the rules governing this category. The constitutions of Germany, Estonia, Azerbaijan, Ukraine, Russian Federation, Japan and some Arab countries were chosen as the focus group. Scientific interest to the constitutions of these countries was due to the fact that their development and establishment of legal systems is manifested in different ways and therefore differences are more evident.

The basic law of Germany has no words "decent living standard", "adequate living standard". Upon articles of the German constitution contain provisions

indicating the social orientation of the state. For example, Art. 6 lists some of the state guarantees to a family, a child, a mother. Similar is the situation with the basic law in Estonia which in Art. 27 and 28 only lists some aspects of state responsibility for support of parents, children, people in need of additional protection because of old age, disability, poverty, etc.

Unlike the constitutions of Estonia and Germany, the Constitution of Ukraine in the article 48 has proclaimed the right of everyone to an adequate living standard for citizens and their families what includes adequate food, clothing and housing. Constitutions of Azerbaijan and the Russian Federation have similarities in this respect with the Ukrainian Constitution, using, however, a category of worthiness but not adequacy. The 1, Art. 7 of the Russian Constitution contains a provision on sociality of the state that means its appropriate policy to ensure a decent human life while Ch. 1, Art. 16 of the basic law of Azerbaijan has established the state obligation to take care on social protection and adequate living standard.

In 1946, Japan has adopted the constitution, Art. 25 of which contained a provision on the right to ensure a minimum level of healthy and cultured social life. The Japanese state should make efforts in all spheres of life to rise and subsequently develop public welfare, social security and health of the nation. Kuwait basic law also establishes in its Art. 20 the right of everyone to an adequate living standard, however without clearing what is necessary to maintain a living standard. Interestingly, that by contrast the constitutions of Egypt and Morocco do not contain any general provisions on standards of living but reinforce those laws which provide an adequate living standard: adequate housing (Art. 31 of the Constitution of Morocco), the right to water, health and adequate food (Art. 79 of the Egyptian Constitution).

In science, there have developed some opinions differing among themselves about what is meant by a sufficient level of human life. Some scholars put the emphasis on a minimum income and on the fiscal policy of a state which must take into account personal needs of various categories of the population (Deeming, 2000). The head of the All-Russian center of living standards V.N. Bobkov believes that "the living standard is a monetary estimate of the resources needed to ensure the quality of life of an individual, social groups and society as a whole" that is living standard is reduced here to a monetary evaluation of resources with which we cannot agree. It is necessary to accede to the statement that a monetary evaluation of goods and services actually consumed by an average household for a certain period of time and corresponding to a certain level of satisfaction of the needs is a cost of living and this is another category.

Scientists agree that the minimum amounts of payment of labor established by a state do not allow a person to fully meet the needs for food, housing, medical services, even if a subject of a federation established minimum standards for the payment of labor higher than the general federal ones (with respect to the federated states) (Kotval *et al.*, 2012). Other scientists pay more attention to the right to adequate food and food products noting that the special problems of accessibility of these rights are present in women (Bellows *et al.*, 2015).

With regard to social security of needy person categories (disabled, unemployed, with single parents and others.), the adequacy of welfare payments is defined as the ability of payments to support basic acceptable living standard which is consistent with the standards prevailing in the society (Saunders and Wong, 2011). Interesting position is according to which an adequate living standard means not only a set of minimum social and economic rights and guarantees regarding income, labor and leisure, health and education but also a set of political rights and the non-discrimination principle (Horrell, 2000).

CONCLUSION

As an analysis of the norms of international acts as well as the constitutions of some countries has shown, the categories "decent living standard" and "adequate living standard" in its content are used identically. At the same time, we believe that although the differences in the meaning of these categories is minimal, the concept of worthiness has more idealizing character which manifests itself, in particular, in the constant pursuit of it while the adequacy is more material category.

A decent living standard involves the social responsibilities of a state, social human rights and guarantees, social security of vulnerable and highly needy categories of people (disabled, children, pensioners, single parents, etc), i.e., it covers so many aspects that it is unquestionably the centerpiece of the whole social system of a state. It is this quality of the category "decent living" allows us to speak of it as a legal

instrument of social basis security for the constitutional order. Due to the lack of legal regulation of this category at the state level and in order to minimize security risks of social basis security for the constitutional order, it is necessary at the constitutional level to confirm the right of everyone to an adequate living standard which includes:

- The right to sufficient, safe and available water
- The right to sufficient, safe and available food
- The right to adequate clothing which provides safety and comfort
- The presence of each suitable and safe housing with the area not lower than the minimum defined at the state level
- The ability to ensure with the above rights not only themselves, but also their family members
- Really enabled opportunity for everyone to have an income not lower than the average established in the country
- Accounting the needs of each person in relation to his/her status, physical and other features

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