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WAGES: CONCEPT AND CONTENT. CONSTITUTIONAL AND LEGAL ASPECT

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Abstract

Purpose. The purpose of this paper is to study wages as the right to earn a living, as well as the constitutional and legal guarantees of the state for a fair remuneration to a person to ensure the right to a dignified existence and a decent standard of living. The subject of this study is wages. The latter is analyzed in terms of mutual understanding with the concept of salary, the differentiation of which is based on a historical analysis of the use of these terms. The category of state guarantees to ensure the right to a minimum wage can be traced in the interrelation with international guarantees of the right to a fair remuneration and a dignified existence. **Methods.** The methodological basis of the study is, in particular, the dialectical method, which revealed the essence and content of the concept of wages as a legal phenomenon that is constantly evolving and interrelated with such legal categories as fair remuneration and decent living. The comparative legal method made it possible to identify the peculiarities of the legislation in the field of establishing the minimum wage to ensure a decent standard of living based on the analysis of the Basic Law of the leading European states. The formal legal method contributed to the formulation of proposals for the improvement of national legal norms aimed at the realization of fundamental human rights, namely, the right to a fair remuneration for a dignified existence.

Results. The results of the research show that the Labour Code of Ukraine and the Law of Ukraine “On Remuneration of Labour” enshrine the minimum wage as a state social guarantee for the remuneration of workers without emphasis on its justice and ensuring for himself and his family an existence worthy of human dignity, while the very definition of the minimum wage is not identical to the right to a favourable remuneration. Accordingly, it should be concluded that the

minimum wage guaranteed by the state is not decent, but only the minimum allowable. **Conclusions.** In conclusion, we assume that the Ukrainian legislator should improve the rule on the right to wages, not lower than defined by law through fair wages without discrimination of any kind, ensuring for himself and his family an existence worthy of human dignity by amending to Part 4 of Article 43 of the Constitution of Ukraine.

Key words: wages; salary; favourable remuneration; decent living standard; minimum wages.

1. INTRODUCTION.

With the adoption of the Constitution of Ukraine (Art. 3, 1996), which proclaimed Ukraine as a social and legal state, the Verkhovna Rada defined and enshrined in the Basic Law, as the main **duty of the state, the establishment and provision of human rights and freedoms**, including those which belong to the social economic sphere, one of which is the employee's right to wages. The first mention of the concept of "welfare state" began to appear in the first half of the 19th century. At the present stage, the scientific community considers the welfare state in several forms: as a form of constitutional system, as a type of organization of state life, as a state that performs a social function and as a characteristic of the rule of law. Recently, the issues of social economic rights of a person and citizen have again become the focus of politicians and scholars, and this is not accidental (Shapoval, 2004; Babenko, 2004). Most domestic scholars believe that the welfare state, whose highest value is a human being, should create conditions for its material support at the level of modern standards to meet its social economic needs (Tytarenko, 2006¹).

Non-governmental human rights organizations and human rights experts claim that in Ukraine, especially after 2004, there has been a significant improvement in the implementation and observance of classical rights and freedoms. At the same time, attention is drawn to the lack of significant changes in the provision of social economic rights, as well as to the fact that economic growth did not significantly affect the growth of incomes of many citizens, but only revealed an even greater income gap between the rich and the poor (Selivanov, 2006²). According to the study by the Institute of Demography of the National Academy of Sciences of Ukraine, **by the end of 2020 the poverty rate in Ukraine will increase to 45% (Romanyuk, 2020).**

Hence, a component of the social economic duty of the state is to provide public authorities with the social orientation of the domestic economy, to create conditions and guarantee opportunities provided by international acts and the constitution for a person and citizen to earn a living by work (Decision of the Con-

¹ Tytarenko, 2010, p. 8.

² Selivanov, 2006, p. 16.

stitutional Court of Ukraine in the case on the constitutional appeal of the citizen Prysyzhnyuk Lyudmyla Mykhailivna, 2013) and *receive a remuneration for the work performed*.

2. CONCEPTUAL APPARATUS AND THE CORRELATION BETWEEN THE INSTITUTE OF WAGES AND SALARY

The Universal Declaration of Human Rights, proclaimed by Resolution 217 A (III) at the solemn session of the UN General Assembly on December 10, 1948, became the first document to establish basic civil, political, social, economic and cultural rights at the international level and thus set their standards. The scope of human rights was later enshrined in other international instruments on human rights, acting as a model which all peoples and nations should strive to. International human rights standards have become the basis for interstate cooperation on their implementation, for the activities of special international bodies for monitoring the observance and protection of human rights (Mironov, 2009¹). Ukraine has implemented all the main provisions of international human rights law, which was an important step towards our country's entry into the world and European political and legal space, where Ukraine, like most countries, has committed itself to human rights and fundamental freedoms. According to Article 9 of the Constitution of Ukraine (1996), "valid international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine".

Consequently, with the ratification of the Universal Declaration of Human Rights (1948), Ukraine undertook the obligation of social orientation of the economy, in order to provide appropriate conditions for citizens to earn a living by work and *receive wages*. Article 23 of the Declaration enshrines the right of everyone to work, without any discrimination, **to equal pay for equal work**, where every worker has the right to **just** and favorable **remuneration** ensuring for himself and his family **an existence worthy of human dignity**. Article 7 of the International Covenant on Economic, Social and Cultural Rights (1966) recognizes the right of States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a) remuneration which provides all workers, as a minimum, with:
 - i) fair wages and equal remuneration for work of equal value without distinction of any kind...;
 - (ii) a decent living of themselves and their families in accordance with the provisions of the present Covenant. The norms of this Covenant also specify the

¹ Mironov, 2009, p. 14.

concept of “decent life” for every person. Article 11 enshrines the legal definition of the term “decent life”, which means “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (Abbasova, 2017²). Therefore, an integral part of decent life of a person and citizen is the right of everyone to just and favorable working conditions, including, inter alia: remuneration for work of equal value without distinction of any kind that includes adequate food, clothing and housing, and the continuous improvement of living conditions (International Covenant on Economic, Social and Cultural Rights, 1966³).

The ILO Convention №100 “On Equal Remuneration for Men and Women Workers for Work of Equal Value” (1951) contains a definition of the term “remuneration” which includes regular basic or minimum wage or regular, basic or minimum wage and any other remuneration, provided directly or indirectly, in cash or in kind by the entrepreneur to an employee as a result of the latter performing some work. As we observe, the term “wages” is used in this definition, it being also applied in the ILO Convention № 95 “On Wage Protection” (1949).

According to O. Stasiv (2014), it would be more correct to use either the term “wage”, as defined in the ILO Convention, or at the legislative level, to define and distinguish these terms, as it is in the science of labour law. After all, the use of such terms as synonyms leads to confusion in legislation and practice. In his research, he concludes that salary is a broader concept and includes “wages”. Wages is a salary determined by the employment contract, which is provided to an employee for the work performed by him. While the payment of labour, in addition to wages, also includes the payment of surcharges, allowances, bonuses, guarantee payments, etc. to an employee.

Ukrainian legislation uses two terms: “salary” and “wages”. As the Constitutional Court of Ukraine (2013) states in its decision: analyzing the provisions of labour legislation in the context of the constitutional appeal, the Constitutional Court of Ukraine assumes that the concepts of “wages” and “salary” used in the laws governing labour relations are equivalent in terms of the parties who are in an employment relationship, the rights and obligations to pay, the conditions of their implementation and the consequences that would occur in the event of failure to fulfill these obligations.

The legislative definition of wages is given in Part 1 of Article 94 of the Labour Code of Ukraine (1971) where the term “wages” is defined as remuneration, calculated, as a rule, in monetary terms, which the owner or his authorized body pays an employee for his work. A similar definition of wages is contained

² Abbasova, 2017. p. 24.

³ International Covenant on Economic, Social and Cultural Rights, 1966. art. 7, 11.

in Article 1 of the Law of Ukraine “On Wages”, except for the phrase “under an employment contract”. In the draft Labour Code, the concept of wages has a slightly different definition, namely: “wages is a payment, calculated in monetary terms and established under an employment contract, which the employer pays an employee for his work”. (Hordenyuk, 2012¹).

However, the first definition of the right to work and *wages* was given by the French philosopher Gracchus Babeuf (*Gracchus Babeuf*) in the second half of the 18th century. In his writings, he stated that “society must provide all its members with work and determine wages so that these wages are sufficient to purchase food and to meet all the needs of each family”. (Mironov, 2009²). Subsequently, this philosophical definition was first enshrined in law in the Constitution of France in 1848. The right to work and *wages* under the French Constitution was protected along with the right to property. From the above right to work and wages, enshrined in the Constitution of France, we can identify the following legally significant circumstances. First, provision of all members of society with work. Second, each employee is guaranteed a salary. Third, getting payment to buy food and to meet all other needs of each family (Mironov, 2009³).

3. DIGNIFIED EXISTENCE: CONSTITUTIONAL EXPERIENCE OF EUROPEAN COUNTRIES

Since international law is the source of national law, the recognition of human rights by states by enshrining them in constitutions is seen only as a first step towards their adoption and implementation. (Slyusar, 2017⁴). Most of the constitutions of European countries in their norms, which are designed to guarantee the social and economic rights of a person and citizen, to some extent tried to take into account Article 23 of the Universal Declaration of Human Rights in their national constitutions. In our opinion, the most complete guarantee of the constitutional right to remuneration is enshrined in: the **Constitution of the Portuguese Republic (1974)**, namely Article 59 deals with the right of all employees regardless of age, gender, race, citizenship, place of origin, religion, political or ideological convictions *for remuneration* corresponding to the quantity, nature and quality of work, while adhering to *the principle of equal pay for equal work* in order to *ensure every worker a dignified existence*.

Some constitutions reflected only certain aspects of Article 23 of the Declaration. For example, Article 36 of **the Constitution of the Italian Republic**

¹ Hordenyuk, 2012. p. 200.

² Mironov, 2009. p. 14.

³ Mironov, 2009. p. 14.

⁴ Slyusar, 2017. p. 234.

(1947) states that an employee *is entitled to remuneration* corresponding to the quantity and quality of his work and sufficient in any case to ensure that he and his family live freely and *with dignity*. Article 35 of **the Constitution of the Kingdom of Spain** (1978) guarantees Spaniards the right to remuneration sufficient to meet their own needs and those of their family, and provided that there can be no discrimination on grounds of gender. **The Constitution of the Czech Republic** (1992) guarantees everyone *the right to fair remuneration* for their work and to favourable working conditions. Article 36 of **the Constitution of the Slovak Republic** (1992) stipulates that workers have the right to fair and favourable working conditions. The law, in particular, guarantees: a) the right to *remuneration* for the performed work which is sufficient to ensure *a decent standard of living*. The **Constitution of Hungary** (Art. 70/B, 1949) enshrines the rule that *everyone has the right to equal pay* for equal work, without distinctions of any kind. *Every citizen has the right to such income, which corresponds to the quantity and quality of work performed by him*. **The Greek Constitution** (Art. 22, 1975) stipulates that all workers, regardless of gender or other differences, have the right to equal pay for equal work.

Provisions on remuneration contained in international acts are not reflected in Part 4 of Article 43 of the Constitution of Ukraine. This rule guarantees everyone the right to a salary not lower than that prescribed by law. The implementation of the constitutional guarantee on wages is primarily entrusted to the Labour Code of Ukraine and the Law of Ukraine “On Remuneration of Labour”. Article 95 of the Labour Code of Ukraine (1971) states that the minimum wage is *a state social guarantee*, mandatory throughout Ukraine and *is included in the system of basic state guarantees for wages*. In turn, the amount of the minimum wage is set and revised in accordance with Articles 9 and 10 of the Law of Ukraine “On Remuneration of Labour” and may not be lower than the subsistence level for able-bodied persons. The legislator enshrined guarantees for the employee’s salary in Article 3¹ of the Law of Ukraine “On Remuneration of Labour” (1995), which states that an employee’s salary for a fully performed monthly (hourly) work rate may not be lower than the minimum wage.

It should be noted that the Labour Code of Ukraine and the Law of Ukraine “On Remuneration of Labour” establish the minimum wage as a state social guarantee for remuneration of workers without emphasis on its fairness and ensuring for himself and his family an existence worthy of human dignity, and the very definition of the minimum wage is not identical to the right to a favourable remuneration. Accordingly, it should be concluded that the minimum wage guaranteed by the state is not decent, but only the minimum allowable.

For example, in some foreign countries this issue is also ambiguous. Article 65 of **the Constitution of the Republic of Poland** (1997) guarantees only the minimum amount of remuneration for work, but the method of establishing this amount is determined by law. A similar rule is enshrined in Article 37 of **the Constitution**

of the Russian Federation (1993), which states that everyone has the right to remuneration not lower than the minimum wage established by federal law. The Basic Law of the Federal Republic of Germany, as well as the US and British constitutions, do not stipulate what the remuneration should be, but in these countries the trade union traditionally plays a significant role in remuneration, as well as collective and labour agreements are of great importance (Abbasova, 2017¹).

4. CONCLUSIONS.

Some scholars are of the opinion that it is necessary to enshrine at the constitutional level the right to remuneration for work that would ensure a human existence. In their view, this wording (rather than a link to the minimum wage and subsistence level) would allow citizens to challenge the size of the subsistence level itself (Gevorkyan, 2011). We consider such an assumption disputable. According to E. Abbasov (2017), the use of the term “existence” in this context belongs to the philosophical category, synonymous with the existence of matter and consciousness – would hardly contribute to its solution. It is unfortunate to state, but today the standard of living of most citizens gives reason to say that they do not live, but exist. The main question is whether the remuneration received by an employee for work ensures for himself and his family an existence worthy of human dignity. In our opinion, the legislator in Part 4 of Article 43 of the Constitution of Ukraine should improve the rule on the right to wages, not lower than defined by law through fair wages without discrimination of any kind, that ensures for himself and his family an existence worthy of human dignity.

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