

LEGAL ASPECTS OF RIGHT FOR A PENSION AS A HUMAN RIGHT

Z. Vorstava, Doctoral candidate
Riga Stradins University, Latvia

The aim of the thesis is to analyze pension rights institution in the context of human rights. Disregarding the pension reform of 1995 and the newly established pension system with several levels, the level of the pensioners living situation today is becoming worse rather than better. The choice of the topic is based on the fact that the existing Latvian pension system is neither efficient nor fair, the evidence of which is found in the fact that constant amendments are made to the law "On state pensions", as well as unfair affiliation of the pensions and subsidies, unequal order for the pension granting and in the fact that the pension amount does not correspond with the living wage which contradicts with the human rights, the principle of justice and the order of the utilization of the social budget.

Keywords: human rights, quality of life, pension.

Conference participant,
National championship inscientific analytics

Article 25, paragraph 1 of the United Nations Universal Declaration of Human Rights provides that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control,"[1] which basically means also a right to receive state's social security, including social risk situations. The right to social security is a basic human right (which pertains to the social, economic and cultural rights – the second generation of human rights).

Thus, the right to a state pension is among the basic human rights and their implementation is one of the fundamental principles of the judicial state. The right to social security is closely linked to the right to life, liberty and security of a person, provided in the Article 3 of United Nations Universal Declaration of Human Rights[1]. Restriction of the social rights, including restriction of rights to the pension, may indirectly affect a person's right to life. The right to life includes the financial security of an individual, which is sufficient for a person to be able to receive the goods and services necessary for his existence. Since person's right to receive the pension is closely related to his material situation and legal confidence to receive state-guaranteed material security, infringement or restriction of this social right may affect realization of functions that are substantial for person's life.

"The government's responsibility to protect the life of each citizen is composed of three parts:

1) in certain circumstances to carry

out all necessary actions to prevent any unreasonable loss of life;

2) responsibility to investigate suspicious deaths;

3) responsibility to restrain its representatives from an unlawful killing."[7]

The pensioner is entitled to rely on material protection by the state, thus also on the possibility to provide such circumstances that would not interfere with his chance to survive. "Principle of the legal confidence states that public authorities in their activities must be consistent with regard to the issued normative acts and to respect the legal confidence that individuals may have in accordance with the particular standard of rights or legal regulations. An individual, in his turn, can rely on invariability and permanence of such standard of rights or legal regulations. In realization of the legal confidence it is also important that person's reliance on the standard of rights or legal regulations would be legitimate, reasonable and justified, as well as that the legal regulation would be sufficiently determined and invariable by its nature so that it could be trusted."[2] The right to receive state pension are also provided by the United Nations Universal Declaration of Human Rights that states that the right to health has to be understood as a right to such conditions, services and goods that are necessary to obtain the highest level of health protection.[1] Czech psychologist V. Henri divides elderly people in 3 groups:

1) elderly people that are active, lively, vigorous; they continue to work and are busy;

2) elderly people that are no longer working, but they enjoy their self-chosen activities, fancy their hobbies and continue to be busy;

3) lowered energy group that primarily focuses on themselves.[10]

From the above mentioned it follows that activity of elderly people or pensioners directly depends on their health, thus also on the material security sufficient for maintenance of good health. The right to health includes a wide range of socio-economic factors that promote conditions in which a person can enjoy a healthy living, and it is not limited to the food, shelter and access to clean water, it includes also civil and political rights, such as prohibition of torture, inhuman or degrading treatment or punishment that essentially protects human dignity. [8] In this case, insufficient material position may cause an adverse environment for a pensioner as well as an inhumane or degrading treatment from the surrounding community, thus restricting civil and political rights of a pensioner. United Nations Universal Declaration of Human Rights states that torture, any cruel or degrading treatment is prohibited. Degrading treatment can make person suffer both physically and morally. Therefore it is very important to secure for persons in social risk situations (in this case – for persons who have entered in their right to receive state pension) such material conditions that would not create a ground for violations of human dignity from part of the surrounding community.

State grants pensions to pensioners for life and they are given to the possession of a person, moreover, they have a system that creates a "property" because a person has made social security contributions his all life to a certain funds where these contributions form a certain (share).[6] Consequently, right to pension is directly linked to the right to own property. One of the most important prerequisites for practical appliance and use of the right to own property guaranteed by the European Convention on Human Rights, is development of this right.

Since the pension has a “property” forming system, the right to receive pension can also be classified as a right to own property which means that state has to comply with all prerequisites that prohibit violation of person’s right to own pension as a property and thus also human rights of a person. Lawyer A. Dimitrov thinks likewise.[4] Thus, an individual has a right to demand certain actions from the state so that his human rights would be protected.[11] From abovementioned it follows that the state must take all reasonable steps to protect person’s right to own property. “The right to own property includes:

1) right to undisturbed ownership, i.e., rights to own a thing, to gain interest from it, to transform it, manage it or dispose of it, to make deals about it. This right also includes an obligation of third parties to refrain from violation of property. In realization of this right the state has a duty not to interfere with undisturbed enjoyment of property rights, as well as to create sufficient property right protection mechanism that would allow the owner to defend himself against unjustified violation of his undisturbed enjoyment of property rights;

2) prohibition to take away property without a warrant. Property may be dispossessed if the means that provide dispossession of property comply with national legislation, if general principles of international rights and expropriation are respected, and if expropriation complies with public interest, that also includes

balancing of public and individual interests, as well as states the conditions of deprivation of property;

The state has a right to restrict the use of property in accordance with the public interest. This follows from the social function of property – each owner is obliged to consider interests of others. For restriction of use of property to be lawful, restrictions must be prescribed by the law, they must pursue a legitimate aim and be proportionate.”[9]

Main objective of the pension system is to ensure its sustainability. United Nations Committee of Economic, Social and Cultural Rights also has stated that the social security scheme has to be sustainable, particularly with regard to pensions, to ensure that both current and future generations could realize this right.[12] Moreover, this system must allow a person to predict his state-guaranteed social security options and its amount, before the social risk case. Sustainability of abovementioned system is based on three principles: adequacy, financial sustainability, and the ability to adapt to change. [5] Consequently, the sustainability of pension system is closely related to the overall economic system of state.[3] However, state economy can not be a basis for restriction of absolute rights of a person. The person must be sure that the system that operates for a long time, will not be changed, thus restricting a person’s right to life and good health.

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Information about author:

Zane Voroslava - Doctoral candidate, Riga Stradins University; address: Latvia, Riga city; e-mail: zane.voroslava@gmail.com

