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## **ТЕОРЕТИЧНІ ОСНОВИ КОНСТИТУЦІЙНОГО ЗАКРІПЛЕННЯ ПРИНЦИПІВ СОЦІАЛЬНОЇ ДЕРЖАВИ І ПРАВА**

**Анотація.** У статті проаналізовано доктринальні положення, а також українську конституційно-правову практику. Досліджено соціальну складову системи функцій сучасної держави. У цій статті аналізується діяльність держав, де здійснено інтелектуальний, політичний та практичний прорив у вирішенні проблеми функцій держави в контексті соціально-економічних реформ. Звертається увага на специфіку здійснення суспільної діяльності Української держави. Методологічна база даного дослідження включає основні загальнонаукові методи, а саме соціально-економічні методи та прийоми емпіричного рівня пізнання, метод систематичного аналізу численних теоретичних положень з позитивного права, історико-статистичні методи, метод порівнянь та аналогії, методи узагальнення, аналітичний огляд наявних наукових публікацій з досліджуваної тематики. Крім того, застосовувалися наукові методи в галузі юридичної науки, такі як нормативно-логічний, порівняльно-правовий, історико-правовий. Зроблено висновок, що соціальна держава – це держава, політика якої має пріоритетну соціальну спрямованість, що виражається у належному служінні державою громадянському суспільству, створенню необхідних і достатніх умов для реалізації економічної, соціальної та культурної діяльності людини. права, гарантії його соціального захисту та соціального забезпечення, що ґрунтується на соціально-економічних можливостях держави на засадах справедливості, пропорційності та гармонійного поєднання (збалансованості) суспільних і людських інтересів

**Ключові слова:** соціальна держава, конституційні принципи, соціально-економічні права, позитивне право, природне право, соціальний захист

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## **THEORETICAL FOUNDATIONS OF CONSTITUTIONAL CONSOLIDATION OF THE PRINCIPLES OF SOCIAL STATE AND LAW**

**Abstract.** *The authors of this article analysed doctrinal provisions, as well as Ukrainian constitutional legal practice. The social component of the system of functions of the modern state was studied. The present article analyses the activities of states where an intellectual, political, and practical breakthrough was made in solving the problem of state functions in the context of socio-economic reform. Attention is drawn to the specifics of the implementation of social activities of the Ukrainian state. The methodological framework of this study includes the main general scientific methods, namely socio-economic methods and techniques of the empirical level of cognition, the method of systematic analysis of numerous theoretical provisions on positive law, historical and statistical methods, the method of comparisons and analogies, generalisation methods, an analytical review of the available scientific publications on the subject under study. Furthermore, scientific methods in the field of legal science were also employed, such as normative-logical, comparative legal, historical legal. It was concluded that a social state is a state whose policy has a priority social orientation, which is expressed in the appropriate service of civil society by the state, the creation of necessary and sufficient conditions for the realisation of economic, social, and cultural human rights, the guarantee of its social protection and social security, based on the socio-economic capabilities of the state based on the principles of justice, proportionality, and a harmonious combination (balance) of public and human interests*

**Keywords:** *social state, constitutional principles, socio-economic rights, positive law, natural law, social protection*

### **INTRODUCTION**

The current stage of development of the theory and practice of domestic constitutionalism is described by recognition, development, and legal support for the implementation of the fundamental principles of the social rule-of-law state, functionally aimed at the democratic development of all socio-political institutions and the development of a market economy. Therewith, the main purpose of the constitutional construction strategy is to coordinate and direct all actions of subjects of public relations to achieve political, legal, economic, and social goals and values enshrined in the Constitution of Ukraine. At present, law is considered exclusively as an institution of justice, the truth of reflecting various interests of social communities, including as a factor of partnership or confrontation between the state and civil society. It is designed to contain a reasonable balance, that is, a reasonable ratio of state will and the will of citizens who make up the population of the corresponding state, and such a balance can be achieved only in the context of the socio-cultural dimension of positive law [1; 2].

In this context, the study of the principles, role, content of the main areas and forms of regulatory influence of the Constitution of Ukraine as a regulation of the highest legal force in the sphere of establishment, development and reform of the most important public relations, including in the socio-economic sphere, is of particular importance. This is explained by the fact that the development and activity of all institutions of a democratic, legal, and social state is directly dependent on the content of the provisions of the Constitution of Ukraine and the effectiveness of their implementation. According to the Constitution of Ukraine, the people exercise their power directly, as well as through state authorities and local self-government bodies. However, in the context of radical socio-economic and political changes, ideologies, life styles, prestigious assessments are transformed, relations in the coordinate system “state – law – economy” are complicated and change the format; ultimately, there is a change in socio-cultural systems that serve as a formula for legitimising the available socio-economic order and determine the real perception of the activities and effectiveness of implementing the principles of the state by citizens of Ukraine [3-5].

Especially illustrative in this context is the experience of the so-called new industrial countries, where the transition to a market economy and its rapid development took place with the most active participation and support of the state [6]. Fundamental changes in the economic legal sphere of modern states clearly raise the question of the need for a radical revision of the role and place of state authorities at various levels in the life support system of society. The relevance for a modern democratic society of the problem of strengthening the socio-economic role of the state is conditioned by the need for the country to get out of the internal social crisis, which has become particularly acute under the influence of global crisis processes, and the importance of transition to sustainable economic development, which ensures the construction of a social state and civil society. The issue of strengthening the social role of the state is primarily related to the implementation of its social and economic interests, its role, and its place in socio-economic development.

In Ukraine, as a result of the reform at the turn of the 20<sup>th</sup>-21<sup>st</sup> centuries of public relations based on the principles of a market economy and, above all, the social orientation of state structures, considerable changes have occurred in the socio-economic conditions of functioning and development of subjects of political, economic, and social systems of society, which is to a certain extent explained by the development of new socio-economic interests of the state. The transition to a market economy based on the principles of pluralism of forms and types of ownership, a variety of forms of economic activity, the broad development of large businesses and small businesses should substantially correct not only the system of interests of the state, introduce numerous fundamentally new points, but also sets new social tasks for the state, the implementation of which is possible only in the conditions of systematic reform of the economy and socio-cultural sphere.

## 1. LITERATURE REVIEW

A social state is “a concept of government where the state plays a key role in protecting and promoting the economic and social welfare of its citizens”. The concept of a social state is based on the principles of equal opportunities, fair distribution of wealth and public responsibility for those who cannot enjoy the minimum conditions for a good life. Researchers adhere to the assumption that the idea of a social state occurred in the late 19<sup>th</sup> – early 20<sup>th</sup> century, as a result of socio-economic processes in society. In the middle of the 19<sup>th</sup> century, a powerful wave of revolutions and crises took place on the territory of many countries. The attitudes of individual freedom and non-interference of the state in the economy ceased to work, which threatened the collapse of the then-existing political regimes. In such a political situation, when there was a danger of a social explosion, the ruling elite had no choice but to make concessions and proclaim a new mission of the state. The term “social state” was coined by the German economist Lorenz von Stein (1815-1890) in 1850. The social state, according to Lorenz von Stein, should consciously serve the interests of its citizens [7].

The ideal social democratic state is based on the principle of universalism, providing access to goods and services based on citizenship. Such a social state provides a relatively high degree of autonomy, limiting dependence on the family and the market. In this context, social policy is perceived as “anti-market policy”. Esping-Andersen in *The Three Worlds of Welfare Capitalism* [8] presents a typology of 18 welfare states of the Organisation for Economic Cooperation and Development (OECD) based on three principles: decommodification (the degree of dependence of human welfare on the market), social stratification (the role of the welfare state in maintaining or ending social stratification) and a combination of private and public (the relative role of the state, the family, the voluntary sector and the market in ensuring welfare).

The author focuses on the way ideas and beliefs about welfare and the role of the state in meeting economic needs have created a form of ensuring welfare. He identifies three main types of social state regime: liberal, conservative, and social-democratic [8]. However, the concept of Esping-Andersen regimes generalises all forms of ensuring the social state, which has led some researchers to doubt the validity of the concept

of regimes itself. Such concept implies that most of the key areas of social policy under the welfare regime will reflect a similar approach to welfare in all respects. In addition, each type of regime itself reflects “a set of principles or values that ensure consistency in the social security package of each country: [9]. Subsequently, a deeper historical and political analysis led to the development of a four-type political typology of social states [10]. The modern state can make numerous social decisions to achieve many goals. However, none of these options is without contradictions. According to the concept of power by Robert A. Dahl, there is a lot of controversy about public choice. There is socialism, capitalism, planning, non-interference, etc. [11].

Any system or public choice will bring good results if the ways of their implementation are seriously and carefully worked out. The basic and key democratic principles are law, freedom, and equality, and every democratic government takes complex administrative and other measures to implement them. There is no disagreement as to their importance. Human rights are one of the most important principles of social justice and comprise the main part of the concept of social security. Social security should be provided to those who need it. Groups of people in need of social security should be identified by each particular state. Social justice is based on the concept that a state is responsible to its citizens and can finance its responsibilities by levying taxes at a level acceptable to members of that society, which, again, varies from country to country.

The ideas of social justice are aimed at meeting the interests of the community in general and the interests of social cohesion. These ideas are also the basis of social policy (the establishment of the level of social justice, the rules of legal justice do not occur “naturally”, but are established within the framework of the political order). The theory of social policy includes the application of the principles of justice to the main political institutions, as well as the constitutional order of society. Critics of social justice argue that it frequently operates at the expense of individual rights, and it is necessary to curtail certain individual freedoms to achieve a certain model of results [12].

Summarising the existing opinions of researchers and generalising the experience of implementing the principles of sociality of public administration, it can be stated that a social state is a legal democratic state, the highest value of which is a person. A state that creates and guarantees the necessary conditions for a decent life and free development of a person, comprehensive self-fulfilment of everyone's creative potential. Researchers contemplate not only the attributes, but also the criteria of the social state. As a rule, the level of guarantee of social human rights and freedoms is represented as such criteria.

Economic and social rights are human rights to a full life in society, including the right to employment, social security, healthcare and education, as well as the right to fair pay; the right to adequate protection of income in case of unemployment, illness, or old age; and the right to an adequate standard of living. The fundamental document defining the fundamental rights of everyone is the Universal Declaration of Human Rights. The document was adopted by the General Assembly of the United Nations (UN) on December 10, 1949. In 1966, the UN adopted two pacts: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) [13].

Social law (social security law) is often referred to as “positive law”. Unlike natural law, which is given to a person from birth, regardless of their will, positive law is established by state institutions of legislative power through regulations. The protection of human rights is ensured not only by state measures, but also by the individual capabilities of each citizen, who has the right to protect their rights and freedoms in all ways not prohibited by law (the right to self-defence - Part 5, Article 55 of the Constitution of Ukraine [14]). Civil society institutions, including human rights associations, play an important role in protecting human rights and legitimate interests.

International mechanisms for the protection of human rights form special bodies that exercise international control over the activities of states in the field of ensuring and protecting human rights. Such control is implemented at two levels: within the UN framework (the so-called universal level) and at the regional level, for example, within the framework of the Council of Europe. The UN has a Human Rights Commission that considers any humanitarian issues. The Human Rights Centre has been established as part of the UN Secretariat, and the post of UN High Commissioner for Human Rights was established in 1993. Decisions of international bodies are not binding on a state whose actions violate human rights, but create a negative public opinion of the world community around it [15]. As the analysis of constitutional support and the real functioning of the modern social state demonstrates, it is determined not only by the existence of a corresponding principle in the Constitution, a well-thought-out strategy of social policy and considerable achievements in its implementation, but also by numerous other constitutional provisions that elaborate on the principles of the social state and ensure their implementation, as well as special features of both social and all other spheres of public life.

The fundamental scientific substantiation of the theoretical foundations of the constitutional consolidation of the social state and law in different periods of society's development is described in the studies

of W. Beveridge [16], D. Bell [17], E. Giddens [18], L. Erhard [19], G. Myrdal [20], N.M. Onishchenko, R.P. Lutskyi [21] J. Rawls [22], R. Titmuss [23], F.A. Hayek [24], J. Strasser [25] and other authors. Modern foreign researchers of the social state, in particular G. Esping-Andersen [8], P. Pierson [26], G. Bonoli [27], P. Koslowski [28], M. Castells [29], identify the main models of the social state that represent different ideological trends, but each of these models is based on the ideas of social and political justice, combining the institution of the state and civil society.

In Ukrainian academia, this issue is considered in an evolutionary perspective with the coverage of economic aspects of the social state establishment in the context of economic reform, globalisation and the development of civil society [30-32], the analysis of implementation mechanisms for its main provisions and functions [33; 34]; the investigation of the main contradictions of the social policy development and coverage of the methodology for choosing priorities and prerequisites for the development of a new model of social policy [35-37], as well as the establishment and development of modern models of social state [38-40]; the features of foreign models of social state with an emphasis on their modernisation processes are given, the typologisation of modern models of social state in the context of globalisation challenges [5]; examination of the features of the establishment and development of social protection systems, the nature of relations between the social state and civil society, the specifics of public legal awareness, national and cultural differences in modern European social states [41]; a comparative analysis of the available economic models of the social state, coverage of the institutional prerequisites for their implementation and highlights of socio-economic factors that complicate the application of these models in Ukraine [42]; substantiation of the development features of Ukraine, which prevent a positive perception of the ideas of a social state [33]; coverage of the vision of the future of the social state in the implementation of measures for the accumulation and use of human capital as the key to successful use of social factors of economic growth [43; 44].

## 2. MATERIALS AND METHODS

To analyse doctrinal approaches to the functions of the modern state, several search strategies were used. The first step was to investigate articles relating to the subject under study. The following studies are analysed in this paper: A. Lutskyi, M. Lutskyi, R. Lutskyi [2]; A.O. Silenko [3]; V. Shapoval [1]. The selected articles were carefully reviewed and analysed. The second step was to search for studies relating to the subject area of the papers reviewed. To get the most recent publications, the strategy was to find reviews that cited any of the three articles. The third step was to search for keywords in English and was based on the fact that the reviews were published no earlier than 2000. The initial search was performed by looking at the headings, after which excerpts from the relevant articles were studied. The first line of the search combined terms related to the welfare regime (social state, social society, social system) and resulted in 182 citations. The second line of the search combined terms relating to human rights (socio-economic rights, positive law) – 48 citations. After studying the relevant passages, several studies were reviewed. The third line of the search was based on words in Ukrainian and combined terms relating to the constitutional provision (Constitution of Ukraine, constitutional principles). Thus, some other studies were found and selected for consideration.

The fourth and final step was to investigate the lists of references in the papers selected. The papers selected for this review were supposed to be empirical studies published in English in international journals. The study should concern the doctrinal provisions of the social component of the system of functions of the modern state. Studies containing a comparative analysis of data on the activities of states were considered, where an intellectual, political, and practical breakthrough was made towards solving the issue of state functions in the context of socio-economic reform.

The methodological framework of this study includes the main general scientific methods, namely socio-economic methods and techniques of the empirical level of cognition, the method of systematic analysis of numerous theoretical provisions on positive law, historical and statistical methods, the method of comparisons and analogies, generalisation methods, an analytical review of the available scientific publications on the subject under study. Furthermore, scientific methods in the field of legal science were also employed, such as normative-logical, comparative legal, historical legal.

The theoretical framework of the present study included the articles of Ukrainian and foreign researchers and practitioners, scientific articles, reviews and publications on the Internet (see References below). Most analyses of welfare state models require high-quality data for interethnic and historical perspectives. However, such analysis is often complicated due to insufficient qualitative data of a particular society. It is essential to use a detailed comparative interethnic analysis, which contains standardised data for countries and time periods. As a rule, qualitative research does not go beyond defining the concept of the welfare state and applying it to several cases simultaneously, which does not allow directing the study towards comparable

systematic data gathering. Thus, this study is no exception, with the subject under study requiring additional, more thorough analysis.

### 3. RESULTS AND DISCUSSION

The social component of the entire system of functions of the modern state is designed to ensure the social security of the individual, normal living conditions for all members of society, regardless of their personal participation in the production of goods. In the activities of the state, the implementation of social policy occupies one of the leading places. With its help, firstly, decent living conditions are created for each person, and social harmony is ensured; secondly, social protection of the unemployed, elderly, disabled, large families, orphans, children in single-parent families, and in conditions of interethnic conflicts-refugees and internally displaced persons; thirdly, social justice and solidarity in society are strengthened, as well as the democratic system that protects the individual. Successful activity of the state in the social sphere is one of the conditions for the effective implementation of economic, political, and other state functions. Social activity of the state is its activity in the field of ensuring decent living conditions for each person, creating equal and just opportunities for personal development. The content of state functions in the context of socio-economic reform is determined by the new tasks of the modern state in the social sphere, which are conditioned by the proclamation of a social state.

One of the first countries to make an intellectual, political, and practical breakthrough in solving this problem was post-war Germany. It was here that the term “social market economy” was first introduced into wide circulation in 1949. A thorough analysis of the conceptual provisions in the opinions of A. Müller-Armack, W. Eucken, L. Erhard on the nature of the social market economy, according to which the pragmatic core of the philosophy of this management model lies in the interaction of the market mechanism and the socially concerned state based on combining the principle of market freedom with social balance, where freedom is correlated with the opposite principle – public duty, which allows some researchers to draw certain conclusions.

1) the philosophy of social market economy testifies to its indissoluble connection with the concept of liberalism, since it proceeds from the need to observe such a fundamental principle of coordination of economic processes as competition;

2) the economic policy of the “competitive order” in the conditions of a social market economy allows rationally combining the components of economic progress into a single whole under the conditions of free activity of market entities, while limiting only one type of freedom: the freedom to arbitrarily determine the rules of the game;

3) the free activity of one individual is limited to the sphere of freedom of another, as a result of which the spheres of freedom of people are brought into a state of equilibrium;

4) the adoption of a general decision relating to the implementation of economic policy should consider the historically determined situation of the country and precede the implementation of individual political and economic measures;

5) the essence and purpose of a social market economy, which is only an organisational principle open to various changes, and not some final form, is to combine a society built on competition, private initiative, with social progress provided precisely by the productivity of a market economy.

The national policy of social welfare in the 1950-1960s included programmes to achieve a high standard of living of the population through the creation of a state system of education, healthcare, housing construction, as well as social security programmes, regulation of the minimum wage. Later they were supplemented with demographic and environmental programmes for the protection of national culture, etc. It was after the Second World War that the term “social state” appeared in the programme documents of many political parties, as well as in the constitutions of three Western European states (in the Fundamental Law for the Federal Republic of Germany [45], Constitution of the Fifth Republic [46] and Spanish Constitution [47]). Definitively, the term “social state” was introduced into scientific discourse by L. von Stein in 1850, but active theoretical development of this problem began in the first half of the 20th century. The ideological basis of the “social state” comprised the opinions of the English economist J. Keynes, who justified the need for state intervention in the socio-economic sphere to prevent economic crises, unemployment, and improve the welfare of the population through the redistribution of income between different social groups [26].

From a present-day standpoint, the term “social state” means that a state that has declared itself as such in the Constitution considers improving the welfare of all its citizens as the main and priority objective. The establishment and development of social states in these and other democratic countries has led to a considerable expansion of constitutional regulation of the fundamental principles of social life and social

policy. Thus, most modern democratic constitutions establish the right to social security and to provide assistance and protection to weak social groups. Thus, the Constitution of the Italian Republic [48] states that the Republic protects health as a fundamental right of the individual and the main public interest and guarantees free treatment for the poor (Article 32).

The Constitution of Ukraine, proclaiming Ukraine a social state, establishes that everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, and housing. Everyone has the right to healthcare, medical assistance, and health insurance. The state creates conditions for effective and accessible medical care for all citizens. The state promotes the development of medical institutions of all forms of ownership (Articles 48-49 of the Constitution of Ukraine). In the social state, the material goods are also distributed outside the free equivalent exchange between producers and consumers. The social policy of the rule of law makes provision for the division of social benefits regardless of labour contribution, so as to ensure a decent standard of living for everyone. The state allocates the necessary funds for healthcare, cultural recreation, education, housing construction, and clear operation of transport and communications. This ensures the proper implementation of social rights, which should be enjoyed to the maximum extent by all citizens of the state.

One can also distinguish another area of implementation of social activities of the state, the development of which has become a certain reflection on the negative consequences of technological advance, especially in such new areas as genetics and medical biology. In fact, a new scientific area is being formed – bioethics, which is associated with human organ transplantation, sex reassignment, artificial insemination, problems of abortion and euthanasia. These phenomena cannot remain aloof from controlling and regulating (including at the constitutional level) state intervention in this area. This leads to a radical revision of the very concept of relations between the state and the individual, since instead of prioritising public and state interests over private ones, they are based on the concept of priority of the interests of the individual, their mutual responsibility. The constitutional practice of most post-Soviet states at the present stage has largely removed the opposition of natural-legal and positivist approaches to human rights based on the constitutional consolidation of fundamental rights and freedoms, which excludes oppression and violence of the state against the individual, defending its autonomy and the priority of human rights relating to the state.

## CONCLUSIONS

Thus, a modern democratic state cannot fail to perform a social mission (in all aspects and types of social activities), and this is associated with such actions that are inherently paternalistic. In this sense, sociality or a kind of civilised and balanced paternalism is essentially an integral feature of a developed social state. The existence of a state only makes sense when it contributes to the achievement of those goals that individuals cannot or are unable to achieve for reasons beyond their control. World experience shows that a social state is a feature of a modern state, in the sense of which state activities should pursue real standards of material welfare, education, healthcare, etc. and ensuring such standards for all citizens (individuals), as well as minimising actual social inequality with its economic consequences and creating a system of social support (protection) for those in need. Thus, the concept of a social state is combined with the corresponding interpreted ideas of social justice and social protection.

The social state in most developed countries became possible not only due to the changes that occurred in the system of its internal functions and the nature of material production in the era of transition from industrial to post-industrial society and which were primarily associated with the change in the role of the personal (human) factor in modern production. The social state also became possible due to the idiosyncratic balance of power of various social groups represented in society, which was established in the middle of the 20th century, which, using forms of representative democracy, acquired the opportunity to put forward and defend their interests.

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