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Social Insurance as a Legal Phenomenon. the Historical-Legal Aspect of Its Formation and Development (from the Ancient Times till the Middle Ages)

У тексті статті зазначається, що лише людині притаманний феномен взаємодопомоги який проявляється між індивідами, які не мають між собою жодного комунікаційного каналу, більше того, навіть не знають про існування один одного. Розглядаючи зазначену проблематику автор приходиться до висновку, що ще на зорі людства виникає феномен взаємодопомоги, який з часом еволюціонував у фактор соціального страхування. Дослідженню зародження та становлення зазначених процесів і присвячується дана стаття.

Ключові слова: взаємодопомога, соціальне страхування, право соціального забезпечення, страхування, історія права.

В тексте статьи отмечается, что только человеку присущ феномен взаимопомощи который проявляется между индивидами, не имеющих между собой каналов совместной коммуникации, более того, даже фактически не знают о существовании друг друга. Рассматривая указанную проблематику автор приходит к выводу, что еще на заре человечества возникает феномен взаимопомощи, который со временем эволюционировал в фактор социального страхования. Исследованию зарождения и становления указанных процессов и посвящается данная статья.

Ключевые слова: взаимопомощь, социальное страхование, право социального обеспечения, страхование, история права.

Mutual assistance, as a universal ontological phenomenon, is typical for almost all living beings possessing some intellect. It also appears in wildlife at the reflex level; however, a synthesizing sign of mutual help is a certain extent of affinity between various fauna representatives. On the other hand, the above-mentioned phenomenon does not occur neither at the level of interspecific communication, nor even at the level of the representatives of different animal groups that directly belong to the same species. We suppose that the phenomenon of mutual help is inherent only to a human being and appears between the individuals, who have no communication channels with each other. Even more, it occurs between the individuals, who do not know of the existence of each other. The phenomenon under discussion is in constant progress. It has acquired various forms, which might be united into a single ontological-legal notion – social insurance. Nevertheless, mutual assistance has undergone a few stages of its own evolution, in the course of which it has worked out certain mechanisms and forms of social insurance. As historical experience shows, mutual help appeared in very ancient times, when Homo sapiens started realizing that his species is doomed to extinction, having no chances for progressive evolution. This understanding has stipulated the fact that capable community members began sharing the results of their labor with other representatives of their social group, the latter having lost, due to some reason, the opportunity to make a living. Mutual help arose not due to the labor tools perfection, which usually caused some “product surplus”, but much earlier, when one human being began sharing his own limited and insufficient means of living with others. Numerous archeological excavations have discovered the remnants of ancient people, which testifies that disabled and injured representatives of a society received the necessary livelihood from others (healed limb fractures, absence of limbs, spine injuries, with which the individuals kept their existence are a good proof of it). That is why, it is possible to make a conclusion that the phenomenon of mutual help appeared very long ago. With the flow of time, it has turned into the factor of social insurance, the latter notion, as well as its formation and development being the focus of the article under discussion.

Keywords: mutual help, social insurance, Social Security Law, insurance, History of Law.

Issue. Social insurance, as a system of social-economic relations, provides social support for the citizens with low income in case of social risks. Its formation and development have their own history in the world on the whole, and in Ukraine – in particular. A stage-by-stage research of social insurance in Ukraine will serve as a good basis for understanding of its present-day state. It will also determine the principal factors preceding its emergence, as well as social-economic and political-cultural conditions, under which people lived in different periods. The genesis of social insurance will point to both positive tendencies and drawbacks in contemporary processes of its implementation, as well as will enable us to make up the ways of its improvement and perfection in future.

The purpose of the article is to determine (by applying historical method in the course of the investigation) the chronological sequence of the formation of social insurance; to determine the laws and peculiarities of its development; to give scientific justification of the phenomenon of social insurance; to find reasonable recommendations on the issue.

Analysis of recent research and publications. The following scientists have studied certain aspects of the genesis of social insurance formation in Ukraine: V. M. Andriyiv, Ya. I. Bezuhla, N. B. Bolotina, N. A. Vidhorchik, N. M. Vnukova, H. V. Hryhorash, I. O. Humeniuk, R. I. Ivanova, Yu. S. Konoplina, O. Ye. Machulska, H. S. Symonenko, N. V. Tkachenko, and others. Without underestimating the contribution of the above-mentioned scientists to the research of social insurance in Ukraine, we would like to emphasize that no complex analysis of all the periods of its development, from the very beginning till now, has ever been carried out. This fact stipulates the necessity for conducting a more detailed and thorough scientific investigation on the issue under discussion.

The main body. There are many unique classifications of the periods of formation and development of social insurance in scientific juridical books. N. V. Tkachenko considers the development of social insurance according to its type – commercial or non-commercial. The scientist believes that insurance has a very long history, throughout which it has turned from a non-commercial into a commercial type. The former, which appeared spontaneously in the XIV century,

has turned, later on, into a well-organized commercial insurance. Relying on the literary sources of those times, we might confirm the existence of the two periods of non-commercial insurance. The first one had to do with a slave-based society, whereas the second – with a feudal one. The historical documents of that period let us state that primary forms of non-commercial insurance have been reflected in the laws of the Babylonian ruler Hammurabi (nearly XVIII century B.C.) and in the treaties of the merchants, who owned the ships on the coasts of Ancient Greece [8], India, Egypt and Rome. By the way, the non-commercial type of social insurance is marked with the fact that temporary or permanent alliances of insurers did not presuppose a partial expropriation of profit from the insurance deal, as well as its distribution between all the participants of such alliances. As to the commercial type of insurance, it differed from the non-commercial type in the fact that insurance companies aimed at withdrawing the profit and distributing it between the founders of such organizations. Insurance became commercial in the XIV century owing to the introduction of the capitalist manufacturing. N. V. Tkachenko differentiates three stages of commercial insurance formation and development in Europe: stage I (XIV - XVII c.) has a direct connection with primary capital accumulation; stage II (late XVII - XIX c.) is marked with the development of free entrepreneurship and the formation of free competition; stage III (late XIX - mid XX c.) is associated with monopolization of entrepreneurship. Later, insurance developed in the order, envisaged by the national legislatures and international treaties [13, p.18-20]. Even though N. V. Tkachenko has presented one of the best classifications of social insurance ever, it has a few drawbacks. 1) There are no distinct periods of social insurance formation and development on the whole, and in Ukraine – in particular; 2) The stages after mid XX century have not been covered at all; 3) None of the mentioned stages has been described in detail.

N. M. Vnukova and N. V. Kuzmynchuk have suggested another unique periodization. They distinguish the following stages of social insurance formation and development in Ukraine:

1). Stage I (1991-1998) – Ukrainian Parliament adopted the law “The Fundamentals of Ukraine’s Legislature on the Universal Mandatory State Social Insurance”;

2). Stage II (199-2000) – Ukrainian

Parliament adopted a range of laws in compliance with the above-mentioned “Fundamentals”. These were: “On the Universal Mandatory State Social Insurance in Case of an Accident at Work and Professional Illness That Have Caused Disability” [9], “On the Universal Mandatory State Social Insurance in Case of Unemployment” [10], “On the Universal Mandatory State Social Insurance in Case of Temporary Disability and Expenditures on Birth or Death” [11];

3). Stage III (2000-2001) is marked with the introduction of the state social insurance. According to the adopted laws, three types of the universal mandatory state social insurance were introduced in 2001: 1) in case of unemployment; 2) in case of temporary disability and expenditures on birth or death; 3) in case of an accident at work and professional illness that have caused disability;

4). Stage 4 (from 2002 – till now) is marked with constant improvement of the regulatory framework in the field of the universal mandatory state social insurance, as well as with the introduction of pension and medical social insurance [3, p.47-48]. This periodization of the stages of social insurance formation and development in Ukraine is rather disputable. First, it should be emphasized that social insurance has much longer history in Ukraine than it has been reflected in the periodization. Besides, the authors were not quite right when differentiating the third stage, as the second one, together with the adoption of all laws in the field of social insurance, has automatically meant a direct introduction of different types of the universal mandatory state social insurance. Therefore, the above-mentioned classification of social insurance formation and development in Ukraine covers a too short period and, consequently, is hardly able to highlight adequately the peculiarities or to reveal certain factors that had impact on the tendencies of social insurance formation in the world and in Ukraine.

Taking into account the ambiguity of scientists’ views on the periodization of social insurance formation and development, we believe it would be expedient to suggest another, more reasonable classification of the periods of social insurance, which would be as complete as possible and would cover all the factors and preconditions influencing social insurance from the ancient times till present day. Before reviewing the formation and development of social insurance in Ukraine, it is

necessary to analyze the genesis of its evolution in the world. This will make up for a better understanding of the historical peculiarities of this legal phenomenon. In addition, the historical development of social insurance in Ukraine cannot be considered separately from the genesis of social insurance abroad. It has always been subject to the influence of certain legal, economic, social, cultural, and political factors.

The first period of social insurance formation and development (about III millennium B.C. – IX c.) is marked with the upraise of modern social insurance. In some literary sources, it has been mentioned that in Sumer (about III millennium B.C.) the merchants were given money from a “joint cash register” in a form of a loan to protect their interests in case of losing the merchandize during the voyage [12, p.15]. We believe this is the very first reference to the existence of a primitive form of social insurance in history.

Insurance is regarded as the most ancient category of economic cooperation between people, which constitutes an inseparable part of industrial relations. The initial meaning of the term “insurance” derived from the word “sure”. In other words, it pointed to the necessity of ensuring one’s property from the consequences of natural calamities, fires, robberies, etc. The necessity of preserving one’s property has led to the idea of compensating for material losses by means of equally sharing the risks with other owners. The first primitive type of insurance was its “natural form”, which appeared at the times of a primitive-communal system, when the tribes started gradually accumulating the product surplus. In case one family found itself in materially unfavorable situation, other families did their best to help, thus expecting to receive mutual assistance when they needed it [2, p.8-9].

At that time, collective mutual help was considered to be an ordinary form of insurance. Later, the Babylonian ruler Hammurabi’s laws (1792-1750 B.C.) required deals between the participants of trade caravans, which would ensure a joint cover of losses in case of some emergencies [4, p.8-9]. Hence, we might presume that certain processes, characteristic for social insurance, became rather common at the time under discussion.

In the I millennium B.C. (about 970-931 B.C.), the stonecutters, who were erecting Egyptian Pyramids, founded the so-called “funds of mutual

assistance and support” for all the workmates and their families in case of mutilation or death in an accident. In 916 B.C., on the Rhodes Island, there was adopted a special law - “ordinance” -, which provided the system of loss compensation in case of a shipwreck. The principles, mentioned in this ordinance, have been applied till present days [5, p.8]. In Germany (900 B.C.), there were founded first firefighters’ guilds that have initiated the system of insuring from burns [4, p.8-9]. Thus, the I millennium B.C. has witnessed the birth of the prototype of the universal mandatory state social insurance in case of an accident at work and professional illness that have caused disability (Ancient Egypt), as well as the prototype of the present-day ordinary insurance (civil-legal relations – the Rhodes Island, Germany).

In Ancient Rome, there existed various citizens’ unions, based on professional, material, and personal interests in case of losing working capability or the necessity to conduct a burial [7]. That is why we might claim that Ancient Rome had unreliable prototypes of both the universal mandatory state social insurance from accidents at work and professional illnesses that caused disability, and the universal mandatory state social insurance in case of temporary disability and expenses on birth or burial. However, taking into consideration that those were the citizens’ unions, based on personal interests, such social insurance was not obligatory. To put it differently, this type of insurance was of dispositive legal nature, but not imperative. Besides, it was rather public than state-based.

Although all the above-mentioned peculiarities of social insurance formation in different countries of the world are quite fragmentary, their combination has exercised a significant affect on the development of social insurance on the territory of Ukraine.

The second period of the formation and development of social insurance (X – XVI centuries) begins with the traditions of charity in Ukraine. Since ancient times the Orthodox Church has affiliated different institutions like hospitals, asylums, and schools. Monasteries also contributed considerably to charity. Apart from religious and educational activities, they promoted different crafts (for instance, gardening) and, which is still more important, sheltered and helped the elderly people, orphans and those, who had become victims of

disasters (including the people, who got crippled in the course of their labor activities) [6, p.5].

In 996, Prince Volodymyr issued a decree, which commissioned the Orthodox Church to take care of its flock at the level of the patriarch and his subordinates. The decree has determined the principal spheres of care, which remain up-to-date at present times: to feed the poor, the orphans, the widows and the insane. In addition, the Church was supposed not only to feed the above-mentioned categories of citizens, but also to cure them. In 1092, in Pereyaslav, Bishop Ephraim built a few hospitals and supplied them with professional personnel. The aim of those institutions was to cure anyone, who wanted and needed help. Later on, in 1096, Prince Yaroslav founded a specialized school, where more than 300 young men from the poor families lived and studied. Besides, they were socially cared for and materially maintained there [1, p.47-48].

The Insurance Chamber, which performed the operations on the protection of property interests of the merchant and craft guilds, was founded in the city of Bruges in 1310. On July 18, 1583, the first life insurance agreement was signed in London. It has given a start to real legal relations with the insurance of the highest social value – human life. A Mr. Waban was insured for 383 pounds [4, p.9]. Practically, the latter event has stipulated the insurance of man’s life and health as the greatest social value. It also had a direct connection with employee’s temporary disability because of an accident or a professional illness, which have caused this disability.

Conclusions. Thus, the first period of the formation and development of social insurance, despite its legal primitivism, has been closely bound to the fear of unknown future problems, as well as to the awareness of the possibility of avoiding them by means of combining the joint funds and restricting the existing risks to the lowest possible degree. There also existed certain elementary prototypes of the universal mandatory state social insurance in case of an accident at work and professional illness that caused disability (Ancient Egypt and Rome), together with the universal mandatory state social insurance in case of temporary disability and expenditures on burial (Ancient Rome).

We may also claim that throughout the X–XII centuries, medical insurance (as a part of social insurance), as well as social insurance in case of an accident at work and professional illness that have

caused temporary disability, had been developing rapidly both on the territory of Ukraine and in Europe. Besides, we should not underestimate the importance of clergy of that time, which not only provided quality assistance to those, who really needed it, but also (due to the religious beliefs of the population) acquired certain features of socialization, having covered practically all the population of European state formations. The clergy has thus ensured the penetration of various ethical and moral postulates into every sphere of social

being. It is worth mentioning that the consequences of the above-mentioned processes are topical nowadays in every field of the present-day society, including the trends of lawmaking in Ukraine.

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