

COMMENTARIES

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THEORETICAL BASIS OF THE SOCIAL DIRECTION OF CIVIL LEGAL REGULATION¹

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Abstract: The constitutional reform carried out in our country, the new look of several dozen articles of the fundamental law indicate that the main vector of Russia's development over the coming decades is the implementation of the idea of a social state. The social orientation of constitutional norms obliges the branch sciences to also reflect on the problem of target regulation in the selected vector of social orientation. Thus, the social orientation of civil law regulation becomes an urgent task of civil science.

The article analyzes the origins of the ideas of the social orientation of legal norms contained in the works of the great humanists (T. More, T. Campanella). Even back then, it was clear that the satisfaction of human needs directly depends on a specially created and effective mechanism of legal regulation.

The author dwells on the analysis of the norms of the constitutions of several dozen countries of the world in order to create a collective image of a modern social state. Taking into account the experience of social policy of the leading countries of the world, the author was able to draw the necessary conclusions, which are important to consider when targeting the modernization of civil law norms.

In conclusion, the author notes that the goal of the sectoral civil legislation is to create a socially oriented economy, which implies equal opportunities for par-

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ticipants in civil life and allows for the welfare of individuals. The importance of giving a social function to the right of ownership is proved, the content of which must be ensured by the totality of property law norms.

Key words: civil law, justice, common benefits, equality, welfare state, the goals of civil regulation, property, property relations

Love for our own good produces in us
love for our Fatherland.

*N. M. Karamzin*¹

The origins of the teachings in the writings of the great humanists

Historically, over the course of a century, the best people of different times have secretly and confidentially thought about the just structure of the state for their people. Five centuries ago, in 1516, the English lawyer and politician T. More wrote the “golden” pages of a science fiction story called “Nowhere” or “Utopia”². In the form of a story about unusual adventures in exotic countries, T. More described an ideal political system based on the principle of justice, where equality reigns and virtue has a special price. Since all posts are elective in a utopian society, all people work and complete democracy reigns. Social conditions of life in an ideal state, believed T. More, should create the conditions for the development of the human personality, its high moral qualities, while individual interests should be optimally combined with socially significant ones. According to T. More, it is mainly important for a well-arranged state to have highly educated and cultured people who know how to work and love to work, combining physical labor and mental labor. More was an extraordinary person who knew both the ups (he occupied the post of Lord Chancellor) and the downs (He was accused of treason and executed). His “Utopia” remains eternal, as a triumph of humanistic thought, which brought the author worldwide fame.

After 100 years, the experience of thinking about an ideal state was continued by Tomaso Campanella – a philosopher, poet and religious thinker. The son of the shoemaker T. Campanella dreamed of liberating Calabria from the yoke of the Spanish monarchy. In his homeland, he led an uprising with the aim of carrying out radical social transformations and creating a free state. In prison T. Campanella wrote his famous work “The City of the Sun”, outlining

¹ Karamzin N. Encyclopedia of Wisdom, 2007. P. 600. [Карамзин Н.М. Энциклопедия мудрости. М.: РОССКА, 2007. С. 600.]

² More T., Campanella T. Utopia, The City of the Sun [Мор Т., Кампанелла Т. Утопия, Город Солнца. М.: Алгоритм, 2014. 256 с.]

in it the author's social program¹. In his work, the image of a sailor who visited the island of Taproban (now Sri Lanka) was created. The main character talks about a completely unusual state in its structure. Labor is well organized in it, so its inhabitants labor with joy. They are not bound by the cult of things, and things simply satisfy their necessary needs. The social order in the city of the Sun is characterized by social homogeneity, and people who are not exhausted by harassing labor retain their individuality. At the heart of government is "wisdom and love." Change of managers is carried out at a national meeting, which is convened twice a month. The activities of the top four managers (metaphysics and its three assistants) are also subordinated to democratic principles. They undertake to give up their leadership positions if people see these are superior to their abilities and knowledge. The main characteristic in a well-organized society, according to T. Campanella, is people who do not need anything. This refers to people who are modest in their needs. What is most important for them is having free time for the development of both their abilities and occupations in various sciences. Having flipped through the pages of the works of the great humanists of his time, you come to the understanding that the "little man" in his state, namely, the so-called participants in civil law relations – citizens of pre-revolutionary civilists, really need the specially created law to be effective and scientifically based by the mechanism of accepted norms created the best conditions for satisfying his their needs, both material and spiritual. And here a special role cannot but be assigned to civil law, quite rightly called the law of realized needs.

The constitutional foundations of the social orientation of civil law regulation

Constitutions of different countries of the world are distinguished by the uniqueness of norms dedicated to the concept and features of a social state. Some of them have a centuries-old history, while others, although recently adopted, have original approaches. Therefore, their scientific analysis will obviously be fruitful. In the Republic of Azerbaijan in Art. 16 of the 1995 Constitution, sociality is correlated with an increase in the well-being of the people. And the main task of economic development is seen by the state (Article 15) in the development of a socially oriented economy. Thus, in this state at the constitutional level, the task of the social orientation of civil regulation is formulated.

The 1995 Constitution of the Republic of Armenia draws attention to Art. 84, in which the right of citizens to a dignified existence is explicitly noted². The legisla-

¹ Мор Т., Кампанелла Т. Утопия, Город Солнца. М.: Алгоритм, 2014. 256 с.

² Конституция Республики Армении // URL: <https://www.president.am/ru/constitution-2015>. [Constitution of the Republic of Armenia // URL: <https://www.president.am/ru/constitution-2015>.]

tor emphasized that every person in need and a person of advanced age has the right to receive support from the state. Thus, in this country, a special emphasis is placed on state care for the elderly, as the most important manifestation of the essence of a social state.

The Constitution of Argentina in 1853, as amended in 1860, 1866 and in 1898, despite its centuries-old history, compares favorably with the goals of the welfare state. Among them are highlighted, namely: strengthening justice, ensuring the protection of its citizens and promoting general prosperity¹.

In the Republic of Belarus, the 1994 Constitution in Art. 47 speaks of the special care of the state in relation to certain categories of citizens, namely: veterans of war and labor, as well as persons who have lost their health while protecting state and public interests². It is important to note that the Belarusian state takes care of the development of the state housing stock and establishes as a state obligation to assist citizens in acquiring housing. Thus, at the level of the constitutional norm, the civil law aspect of the manifestation of the sociality of the Belarusian state is traced.

In Brazil, the main law of 1988 sets the goal of building a solidarity society that is presumed free and fair (art. 3). Thus, the idea of solidarity, which assumes the unity of people, the achievement of their mutual understanding, is put at the forefront. This can be achieved, according to the legislator of Brazil, by eliminating poverty and reducing social and regional inequalities. Among the social components (Article 6) are also called security, health care, work, leisure and assistance to the poor. The constitution of this country guarantees a decent standard of living and sets a ban on wage cuts.

The Bulgarian Constitution of 1991, as emphasized in its preamble, expressing the will of the Bulgarian people, sets the task of building a social state³. The basic law of this country draws attention to article 47, which refers to the need for the state to create special guarantees of protection for women who are mothers. In addition, the uniform development of certain regions of the country seems significant, which ultimately should ensure, according to the legislator, the preservation of national and state unity.

¹ Конституция Аргентины // URL: <https://worldconstitutions.ru/?p=358> [Constitution of Argentina // URL: <https://worldconstitutions.ru/?p=358>.]

² Конституция Республики Беларусь // URL: <http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus>. [Constitution of the Republic of Belarus // URL: <http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus>.]

³ Конституция Болгарии // URL: <https://legalns.com/download/books/cons/bulgaria.pdf>. [Bulgarian Constitution // URL: <https://legalns.com/download/books/cons/bulgaria.pdf>.]

Venezuela (Bolivarian Republic of Venezuela) in the 1999 constitution proclaims that it is a social state based on the principles of law and justice. The highest value here is recognized as social responsibility and moral principles. In this case, social responsibility is associated with the need for citizens to comply with the rules, requirements and principles of joint dormitory, which is the opposite of chaos, self-will and arbitrariness.

In Georgia, at Art. 5 of the 1995 Constitution, the three principles of the social state are specifically designated – social justice, social equality and social solidarity¹. Sociality in this country is seen, inter alia, in the uniformity of socio-economic and demographic development throughout the territory, including high-altitude regions. The state of Georgia sets the task of providing not only a living wage, but also a decent home for a person. The creation of guarantees for decent housing obviously requires a social orientation of civil regulation in Georgia. It is also important in Georgia such a function of the social state as protecting the welfare of the family. Point 3 of Art. 27, enshrines the need for the state to ensure academic freedom and autonomy of higher educational institutions.

The state of Guinea also proclaims itself a social republic (Article 1 of the Guinean Constitution of 1990)². Interestingly, this normative act establishes the right for the people to fight oppression in order to preserve their dignity, culture and environment.

The fundamental law of Germany in 1949 in Art. 28 sees the importance of not only following the principles of a social legal state, but also observing its spirit³. In this country, basic importance is attached to the right of the people to elections, which must be universal, direct, free, equal and secret. Thus, at the constitutional level it is emphasized the importance of the universality of the democratic foundations of the functioning of the state.

Art. 1 of the Spanish Constitution of 1978 states that the state is legal, democratic and social⁴. The highest values of public policy proclaim justice, equality and political pluralism. Accordingly, justice can be considered as a requirement that fully extends to civil law relations.

¹ Конституция Грузии // URL: <https://matsne.gov.ge/ru/document/view/30346>. [Georgian Constitution // URL: <https://matsne.gov.ge/ru/document/view/30346>.]

² Конституция Гвинеи // URL: <https://worldconstitutions.ru/?p=239> [Guinean Constitution // URL: <https://worldconstitutions.ru/?p=239>.]

³ Основной закон ФРГ // URL: https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&l=ru&object=translation. [The basic law of Germany // URL: https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&l=ru&object=translation.]

⁴ Конституция Королевства Испания // URL: <https://legalns.com/download/books/cons/spain.pdf>. [Constitution of the Kingdom of Spain // URL: <https://legalns.com/download/books/cons/spain.pdf>.]

The principles of social policy are laid out in great detail in the Irish constitution, despite the fact that it was adopted back in 1937. These principles are established in Art. 45 of the constitution¹. According to the legislator of this country, everything should be based on two essential components – justice and charity. It is these moral requirements, emphasized in the constitution, that should inspire all other institutions of state life. The Irish Constitution details the objectives of social policy as follows: 1) the creation of such economic conditions by the state that citizens can, through their studies, provide for the maximum possible household needs; 2) the distribution of property between classes and persons, so that it contributes to the common good; 3) the inadmissibility of concentration of ownership and control in the hands of a few individuals; 4) the use of loans solely for the purpose of increasing the well-being of the people; 5) the protection of citizens from unfair exploitation, consisting in the need to do what is not suitable for their gender, age and strength; 6) finally, the final task of the Irish state is to ensure the economic well-being of as many families as possible, support for the weak, widows, orphans and the elderly.

Republic of Kazakhstan in the art. 1 of the 1995 constitution also proclaims itself a social state². In this regard, the legislator considers it important to achieve a social agreement, ensure economic development for the benefit of the whole people, as well as the establishment of Kazakhstani patriotism. The common good, as the goal of economic development, attracts attention and can be considered as an important idea for the development of national civil legislation.

The Kyrgyz Republic calls itself the social state in Art. 1 of the 2010 Basic Law. In Art. 5 of the constitution of this country emphasizes that state bodies serve the whole society, and not some part of it. The main attention is paid in Kyrgyzstan to social programs that are aimed at creating decent living conditions, free personal development and employment promotion.

The constitution of Mozambique of 1990 is also of interest for research³. The purpose of social organization in this country proclaims the achievement of social justice, where the material and spiritual well-being of citizens is ensured. So, the basic law linked the well-being of citizens with social justice, which also cannot but find the necessary reflection in the national civil law regulation.

¹ Конституция Ирландии // URL: <https://worldconstitutions.ru/?p=151>. [Constitution of Ireland // URL: <https://worldconstitutions.ru/?p=151>.]

² Конституция Республики Казахстан // URL: https://online.zakon.kz/document/?doc_id=1005029. [Constitution of the Republic of Kazakhstan // URL: https://online.zakon.kz/document/?doc_id=1005029.]

³ Конституция Мозамбика // URL: <https://worldconstitutions.ru/?p=69>. [Mozambique Constitution // URL: <https://worldconstitutions.ru/?p=69>.]

In the Principality of Monaco, the 1962 Constitution proclaimed the Monegasque social right to state assistance in case of need¹. Generally, these needs are linked by the constitution to illness, unemployment, disability, old age and motherhood. The conditions and forms of assistance are specified, including in the civil legislation of this country.

The importance of ensuring social progress is stated in Art. 1 of the Constitution of Malta 1964². This neutral state, actively striving for peace and security, sees its economic and political mission in ensuring social progress. It is interesting that in this country, the right to work is not only formally proclaimed, but this right is correlated with the task of the state to create such economic conditions that citizens can effectively realize it. Thus, the importance of the social orientation of the national civil law regulation is obvious here. Noteworthy, Art. 11 of the constitution refers to targeted assistance to students and families of students. Every citizen who is incapable of work and not provided with the necessary funds has the right to support and social assistance of the state in this country.

The state of Senegal calls itself a social republic. The constitution of this country establishes the motto: «One people, one goal, one faith»³. Fundamental values, in accordance with Art. 14 of the constitution of Senegal are considered marriage and family. To strengthen the family, as the natural and moral foundation of the country, the state has a duty to take care of its physical and mental health. The idea of the social orientation of strengthening the family is being developed, respectively, in the norms of the family legislation of this state. Also among the priorities for Senegal is the protection of young people, including from exploitation and moral neglect.

Research articles of social interest in the constitution of the United Arab Emirates are of interest. In particular, Art. 14 of the fundamental law, as development goals, it proclaims not only social justice, but also guaranteed confidence, security, as well as equal opportunities for its citizens⁴. Social principles are co-operation and mutual mercy (Article 14). The constitution calls the basis for

¹ Конституция Княжества Монако // URL: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/monaco/monaco-r.htm. [Constitution of the Principality of Monaco // URL: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/monaco/monaco-r.htm.]

² Конституция Республики Мальта // URL: <https://worldconstitutions.ru/?p=145>. [Constitution of the Republic of Malta // URL: <https://worldconstitutions.ru/?p=145>.]

³ Конституция Сенегала // URL: <https://worldconstitutions.ru/?p=72> [Senegal Constitution // URL: <https://worldconstitutions.ru/?p=72>.]

⁴ Конституция Объединенных Арабских Эмиратов // URL: <https://worldconstitutions.ru/?p=89>. [Constitution of the United Arab Emirates // URL: <https://worldconstitutions.ru/?p=89>.]

the well-being of citizens the natural resources located on the territory of each of the emirates, which are considered the public property of the people (Article 28). Society, in accordance with the norms of the constitution, is responsible for the protection and proper use of natural resources and wealth for the benefit of the national economy. The UAE proclaims that the personal benefit of citizens is clearly related to the common benefit of the whole society. Thus, in this country the connection between the constitutional and civil law regulation of a social orientation is obvious.

The 1997 Constitution of the Republic of Poland proclaims the principle of social justice as a guideline (Art. 2)¹. Interestingly, according to the Constitution of Poland in Art. 20 market economy is called social. It is based in this country on the letter of the basic law on the one hand on private property and free economic activity, on the other hand on solidarity, dialogue and co-operation of social partners. It seems that the idea of creating a social market economy is relevant not only for the civil regulation of Poland, but also for any other country.

1993 Constitution of Peru in Art. 43 declares that in this State any child, adolescent, mother or elderly person is protected.² Marriage and family are recognized as the natural and fundamental institutions of society. Art. 24 of the Constitution of Peru establishes priority over all other obligations of the employer to pay wages. Thus, in this country the need for civil regulation of the mechanism for the implementation of this social obligation is obvious.

In the Constitution of the Republic of Rwanda in 1991, the country is positioned as a social republic, since the principle "Government of the people led by people and for people" is the dominant one³. It seems that this motto can and should be implemented not only constitutionally but also industrially, including the civil law of this country.

The Singapore Constitution of 1963 sees the implementation of a national social security policy as the foundation of the constitutional order. It is based on the formation of funds (Article 145). For each Singaporean citizen, a central reserve fund is being formed; it is forcibly replenished by the citizen and its employer. On average, this is 37% of the monthly wage. Each part of this fund (protecting the family, getting an education, providing old age, medical care) provides a socially

¹ Конституция Республики Польша // URL: <https://legalns.com/download/books/cons/poland.pdf>. [Constitution of the Republic of Poland // URL: <https://legalns.com/download/books/cons/poland.pdf>.]

² Политическая Конституция Перу // URL: <https://worldconstitutions.ru/?p=534> [Political Constitution of Peru // URL: <https://worldconstitutions.ru/?p=534>.]

³ Конституция Руанды // URL: <https://worldconstitutions.ru/?p=266>. [Constitution of Rwanda.]

strategic part of a person's life. Thus, the idea of the social orientation of the constitution of this country is being successfully implemented in practice.

Turkish Constitution of 1982 in Art. 2 states that the state is democratic secular and social¹. The constitution of this country is based on the concept of public peace, which distinguishes the basic law of this country. At the same time, national solidarity and justice are called the principles of state activity. Social cohesion and its significance are referred to in Art. 49 of the constitution of Turkey. The priority direction for this state proclaims the protection of agriculture and livestock, as well as persons employed in these areas. It seems that the priority of agricultural development can be consistently carried out by civil law.

In the Swedish constitution of 1974, the main goal of the state proclaimed the personal economic and cultural well-being of private individuals (Act "On the form of government", art. 2)². The Swedish Constitution is committed to ensuring the right to work, housing and education for all citizens, as well as promoting social security and good living conditions.

Finally, let us focus on the text of the 1999 Federal Constitution of Switzerland, which established in its preamble that the strength of society is measured by the well-being of the weakest of its members.³ These words, it seems, can be the exact motto of any state that is really striving to become social. The provisions of the Swiss constitution speak of the importance of a spirit of solidarity, reciprocity, internal cohesion, openness and responsibility. The state is obligated to ensure equal chances for its citizens (clause 3 of article 2 of the constitution), setting very carefully the principles of its social policy (article 41).

The study of constitutional norms of a social orientation of almost three dozen states allows us to draw an ideal image of a modern social state. Firstly, it is a state that creates equal, including economic, opportunities for its citizens. Secondly, justice is at the heart of his work. Thirdly, the objective reality in this state is the responsible attitude of both the state and citizens to the implementation of their responsibilities. Fourthly, in a social state the satisfaction of the needs of all segments of the population is harmoniously combined. Fifthly, the social state ensures economic growth, since it has established a social market economy based on democratic principles of the interaction of labor and capital. All these characteristics can take on real value, being consistently implemented by the norms of the country's civil legislation.

¹ Конституция Турции // URL: <https://worldconstitutions.ru/?p=84>. [Constitution of Turkey.]

² Конституция Швеции // URL: <https://worldconstitutions.ru/?p=161>. [Constitution of Sweden.]

³ Союзная конституция Швейцарской Конфедерации // URL: <https://worldconstitutions.ru/?p=135>. [Union Constitution of the Swiss Confederation // URL: <https://worldconstitutions.ru/?p=135>.]

Success in the implementation of socially oriented ideas in the countries of the world and the lessons arising from them on improving civil law regulation

The quality of life of people in different countries of the world is evaluated both subjectively and by objective indicators included in scientifically-based methods. Among the indicators usually appear: 1) people's health, which is estimated by life expectancy; 2) family life, the stability of which is manifested in the level of divorces per thousand people; 3) social life, reflected, in particular, in trade union membership; 4) the level of material well-being, directly related to the size of GDP per capita; 5) job guarantees and, accordingly, the unemployment rate; 6) gender equality, which is proved by the ratio of the average wage of men and women. In addition, political stability, political freedom and security are considered important indicators. The twenty countries leading in the quality of life include, in particular, countries such as Austria, Australia, Great Britain, Germany, Denmark, Ireland, Norway, Singapore, Sweden, Switzerland. What is the secret to the success of social programs created in these countries of the world? Let us turn to the indicators of their socio-economic development, which provide a fairly high standard of living for citizens in these countries. So, Austria (the Republic of Austria) is a state located in Central Europe, is an industrial country with a dynamically developing economy. The volume of GDP per capita here is 50 thousand dollars, the economy is stable, and the standard of living, as of 2019–2020, is one of the highest in the world¹. The country has a low unemployment rate (4.3%). It is socially important that kindergartens for children from three to six years are provided for free. The average family income after paying all taxes is 30 thousand euros per year. The percentage of income tax depends directly on wages. Accordingly, the higher the earnings, the higher the amount of taxes, which reaches 55%. At the same time, with earnings below 11 thousand euros per year, citizens are exempted from taxes. A high level of taxes allows the state to provide support to various categories of citizens. In Austria, social benefits are paid to job seekers who take retraining courses. Moreover, additional payments are made for the distance to the place of work, as well as for partial retirement and, if necessary, temporary financial assistance. The country has a good environment, since the state is protected by natural resources, waste is being recycled, and the safety indicator reaches 80%. The minimum pension of an Austrian is 750 euros, and the maximum is 4000 euros. To receive a high pension, the continuous experience must be 15 years.

¹ Ease of Doing Business in Austria // URL: <https://www.doingbusiness.org/en/data/exploreconomies/austria>

Australia, being a country occupying the mainland of the same name, also provides its citizens with a decent standard of living, since over the past 23 years it has demonstrated continuous growth in GDP, an average of 3.3% per year¹. The pension system is at a high level here, since when retiring, citizens have the opportunity to receive monthly payments of \$ 2,000. The minimum allowance for retirees in this country is 1,200 Australian dollars per month. The average household income in Australia is \$ 650 a week. Students have the opportunity to receive \$ 300 per week. Since the state is involved in the organization of medical services, the provision of medical services and medicines to citizens is free. The government is adopting special programs to improve the living standards of citizens and reduce the gap between rich and poor. Agriculture is organized at a high level in the country, which is why food prices are affordable for everyone. Good ecology has made it possible to get rid of many diseases, such as asthma and allergies. In this country, the streets are clean, since the wages of garbage collectors equal the wages of ministers. Australia has a very high level of education, and therefore the diploma of an Australian educational institution is recognized worldwide.

Great Britain, an island nation in northwestern Europe, is believed to possess most of the attributes of a welfare state. Here, government spending on social protection of the population and maintaining the necessary level of individual incomes of citizens over the past decade has increased 18 times. The country's social costs account for 64% of the budget. With an unemployment rate of 4% (2020), the UK is considered one of the most prosperous countries in the world. The salary of citizens here is also one of the highest in Europe, the work of employees is paid at the hourly rate, and the minimum rate is 8.72 pounds². The Law on Contributions and Payments, adopted in 1992, established that all Britons, without exception, have the right to a pension, and its average figure is 3,000 pounds per month.

Germany, a state in Western Europe, is one of the most prosperous countries with a developed economy and a high level of social protection. The tax system of this country consists of more than 40 different taxes, ranging in size from 19% to 53% depending on the level of income. Thanks to tax policy, the state has the opportunity to carry out its social activities at a high level. The average income of an

¹ Household Income and Income Distribution, Australia // URL: [https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/32F9145C3C78ABD3CA257617001939E1/\\$File/65230_2007-08.pdf](https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/32F9145C3C78ABD3CA257617001939E1/$File/65230_2007-08.pdf); Ease of doing business in Australia // URL: <https://www.doingbusiness.org/en/data/exploreconomies/australia>

² NLW will rise to £8.72 in April 2020 // URL: <https://app.croneri.co.uk/whats-new/nlw-will-rise-872-april-2020>

ordinary German is 2500 euros per month. The most paid is the work of a doctor who receives up to 15,000 euros, as a result, this country has the highest population health in the world, which does not suffer from many diseases, including tuberculosis and malaria. The high level of development of medicine with clinics equipped with the latest technology facilitates diagnosis and therapy, alleviating the problems inherent in old age. The salaries of teachers who earn about 6,000 euros are also high in Germany. As for pensions, the average pensioner receives 1,441 euros per month. Much attention is paid to families with children, whom the state helps through a system of subsidies, allowances and tax deductions. Consumer goods, including food and clothing, can be found quite cheap here, since the economy is socially oriented. When releasing cheap goods, all necessary production standards are observed¹.

In Denmark, a Scandinavian state located on the Jutland Peninsula, social security financing accounts for a large part of government spending. Medical services are provided to citizens free of charge, significant cash benefits are paid in the country in situations where citizens lose their jobs, fall ill or dissolve marriages. The timing of payment of such cash benefits is not limited, they can be made until the recipient is able to provide for themselves or receive the right to a social pension. Assistance to families with children in Denmark is provided in the form of social services. It is guaranteed to get a place in a children's institution from the very first day of a child's life. During maternity leave, parents are entitled to unemployment benefits. In addition, the child can be placed on temporary or permanent residence in a foster family or boarding school. These measures have led Denmark to take one of the first places in the world in the number of working women. Pensions in this country are divided into pre-term and old-age pensions. They are appointed ahead of schedule when disability is limited due to physical or social reasons. The state gives the elderly people the opportunity to be at home, and not to move to a nursing home, as they are provided with assistance in cleaning the house, renting the necessary household appliances, as well as medical services. If an elderly person is not able to live independently, he is given the opportunity to settle in specially created centers where residents participate together in everyday activities².

Ireland, a state located in Western Europe, also holds a leading position in the standard of living of citizens. The average wage in Ireland is \$ 3,000 per month, the

¹ Earnings and earnings differences // URL: https://www.destatis.de/EN/Themes/Labour/Earnings/Earnings-Earnings-Differences/_node.html

² Report for Selected Countries and Subjects // URL: https://www.imf.org/external/pubs/ft/weo/2018/01/weodata/weorept.aspx?sy=1980&ey=2023&scsm=1&ssd=1&sort=country&ds=.&br=1&c=128&s=NGDP_RPCH%2CPPPGDP%2CPPPPC%2CPCPI%2CLUR%2CGGXWDG_NGDP&grp=0&a=&pr.x=46&pr.y=17

unemployment rate is 13%, and GDP per capita is \$ 78,765,000. Such sectors of the economy as pharmaceuticals, the production of medical equipment, and mechanical engineering are actively developing in the country. The amount of taxes in this country is determined by the level of income, and ranges from 20% to 42%. In the country, the family is protected by law, which is why divorce is prohibited by the constitution. In recent years, a number of regulations have been adopted aimed at equalizing women with men. Ireland has a national revival program, and the regulations adopted in its development are aimed at combating unfair dismissals and preventing labor conflicts. Homeless people are provided with free housing in Ireland.

Norway, a country located in Northern Europe, is one of the richest countries in terms of per capita income, with a GDP of 36 thousand conventional units. A significant contribution to budget revenues comes from agriculture. The main resource for the redistribution of funds in Norway is the state budget, which provides a fairly high level of social protection of citizens. The Norwegian government spends most of its money on healthcare (about 8%). The size of the pension varies from 800 to 1600 euros. When someone is unemployed, the state fully pays for their housing and communal services, electricity and transport. Unemployment benefits range from 600 to 1,500 euros¹. In total, social spending in Norway is about 40% of the budget. The existing insurance system allows you to pay 100% of the sick leave and to compensate for spa treatment for needy citizens. Thus, the state takes full responsibility for maintaining a high level of social life of citizens, entrusting itself with the provision of a wide range of social services.

Singapore is a city-state in Southeast Asia, a rich country with a high standard of living. A favorable environment for business has been created there. They have all the conditions for testing the latest technologies and business ideas. Interestingly, if a company's income is less than 10 million Singapore dollars, then it is exempt from taxes. There is barely any corruption in the country. Social programs are implemented at the expense of the central reserve fund, replenished by the citizen and its employer. In Singapore, a high level of development of medicine and doctors have achieved success in treating many diseases, including the treatment of diabetes, restoration of vision and hearing and rehabilitation after strokes. The country is characterized by low utility bills, as well as low crime rates².

In Sweden, a country located in Northern Europe, as in other Scandinavian countries, high social standards are set. An effective system of social support for

¹ Норвегия: нефть, вода и всеобщее благоденствие // URL: <https://carnegie.ru/2017/03/27/ru-pub-68404>. [Norway: oil, water and well-being.]

² Экономика Сингапура // URL: https://ru.wikipedia.org/wiki/Экономика_Сингапура. [Singapore Economy.]

citizens in all cases of life has been created in this country. State policy is aimed at ensuring that citizens' incomes are sufficiently homogeneous. It is legislatively established in this country that men in the event of the birth of a child must be on maternity leave for 60 days. This enables women to actively participate in the political life of the country. It is no coincidence that half of the size of the Swedish parliament and the cabinet are women. Swedish citizens are provided with decent housing, as the state purposefully supports housing construction with subsidies and loan guarantees. Private ownership of housing dominates only in rural areas. It is socially important that the law prohibits leasing to private homeowners under contracts a higher rent than in municipal houses. The Swedish state maintains a monopoly on the retail sale of alcohol and prescription drugs. Education is free in the country, including university education. Every Swedish citizen has access to private land, lakes, rivers and forests, regardless of who owns these natural resources. Accessible natural environment allows Swedes to lead a healthy lifestyle¹.

Switzerland, a country located in Central Europe, today is considered a mature and generous social state, which is characterized by a fairly high rate of economic growth. The development of the social welfare system began in this country in the 1970-1980s. A feature of the Swiss system is a wide network of private social non-profit and state-controlled institutions. Non-profit organizations, as part of civil society, come up with initiatives to adopt social programs to solve a particular problem, and subsequently receive funding from public authorities. Switzerland leads in the life expectancy of citizens among European countries, the highest level of development of medicine is here, since the state believes that it is more profitable to invest in medicine than in social payments for disability. Thanks to the developed social system, citizens do not have to endure the need in difficult situations, and social assistance is provided both in cash and in kind. At the same time, the Swiss, based on the local mentality, applies for social assistance only as a last resort, when all the opportunities to earn or get help from family or friends are exhausted².

The success indicators of the selected countries of the world allow us to learn some lessons, including for improving civil law regulation. 1. The state can be social if the economy is progressively developing in it. That is why civil law, the subject of which is normal economic relations, is obliged to take an active part

¹ Экономика Швеции. Основные черты шведской экономики и промышленности // URL: <http://www.ereport.ru/articles/weconomy/sweden.htm>. [The economy of Sweden. The main features of the Swedish economy and industry // URL: <http://www.ereport.ru/articles/weconomy/sweden.htm>.]

² Экономика Швейцарии // URL: <https://rustrade.ch/ekonomika-shvejcarii>. [Swiss Economy // URL: <https://rustrade.ch/ekonomika-shvejcarii>.]

in creating this objectively necessary foundation. 2. For a harmonious society, it is important that the state actively participates in socially significant areas of life: environmental protection, healthcare, and education. The success of the implementation of the social functions of the state in these areas also depends on the quality of civil law that mediates the provision of appropriate services. 3. The social state should orient its citizens to conscientious work and create the opportunity to use its results in case of disability, childbirth or reaching retirement age. 4. In a social state oriented towards the interests of society, including charity, there must be a business. And here, civil law norms governing entrepreneurial activity have certain opportunities for creating appropriate incentives. 5. The manifestation of sociality in practice is the provision of citizens with living quarters, respectively, all the institutions of civil law related to the realization of the right to housing should be necessarily socially oriented. Finally, in a market economy, there must necessarily be a state-controlled sector that ensures the production of goods and the provision of consumer services, which means that it is cheap and affordable for the majority of the population. Thus, for the organization of all of the above socially oriented activities, it is important to create mechanisms or incentives through civil law regulation.

In our country, the norm on the social state appeared in 1993 with the adoption of the current Constitution. Art. 7 called the Russian Federation a social state, since its policy is aimed at ensuring a decent life and free human development. In the same article of the Constitution, paragraph 2 focuses on: Firstly, the importance of labor protection and people's health. Secondly, guarantees of maintaining a minimum wage. Thirdly, state support for the most vulnerable segments of the population. Finally, the development of the system social services of the country. An analysis of this norm was reflected in the writings of leading experts in constitutional law. In their works, we find important ideas related both to the achievements of Russia in the construction of a social state, and to the identification of some shortcomings and the setting of promising tasks in the further development of the social characteristics of Russian statehood. So, the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin in his works emphasizes that the social state is called upon to help the weak, to influence the distribution of economic goods in order to ensure a worthy existence for every person. It is no coincidence that the Constitution of the Russian Federation speaks of the desire of the Russian state to maximize the possible and uniform promotion of the welfare of all citizens, which is the desire to provide every citizen with a decent person a living wage. At the same time, the scientist emphasizes that building a social state for Russia is only a goal, for our country is at the very beginning of the path to achieving it. What has not yet been created, according to V.D. Zorkin? Firstly, the necessary mechanisms of a market

economy have not been created. Secondly, new forms of social protection of citizens in the changed conditions were not found. As a result, the problem of poverty is acute in the country, the stratification of the population by income is increasing, and the problem of employment is becoming more complicated. It is important to note that V.D. Zorkin named the main reason for the inefficiency of Art. 7 of the Constitution. It consists, in his opinion, in the “complete absence of the social orientation of economic reform”¹.

An interesting analysis of constitutional norms on a social state can be found in the works of S. A. Avakyan. The scientist emphasizes that any state can be social, regardless of its economic and ideological essence. It is important to distinguish between a socialist state and a social state. The socialist state is paternalistic, that is, taking care of all citizens in their entirety. The modern state in Russia abandoned paternalism as its main function, and it is impossible in the conditions of dominance of private property and the predominance of the private sector of the economy. At the same time, the modern state, according to S. A. Avakyan, should actively influence the creation of new jobs and help reduce unemployment. In other words, it should purposefully promote the development of the economy. To achieve these goals, it is necessary to make very serious efforts. This is why in relation to the category of the social state, in the opinion of S. A. Avakyan, one can speak from the point of view of the due and the existing. The social policy in Russia, which includes to create a decent human life, is carried out. However, the difficulties of the economic situation, from the point of view of a scientist, distance our country from building a real social state. That is why Art. 7 of the Constitution, Professor S. A. Avakyan considered, is rather a strategic task for the next decade of state development².

A significant contribution to the development of the theory of the social state was made by M. V. Baglai. He emphasized that the social state is obliged to take care of the social justice, well-being, and social protection of its citizens. It is obliged to provide help, he believed, to people who are not entrepreneurial and people who are poor. At the same time, the social state is obliged to create conditions for providing citizens with care, redistribute income through the state budget, provide people with a living wage, help increase the number of small and medium-sized owners, and protect wage labor. The conclusion made by M. V. Baglai is

¹ Зорькин В.Д., Андриченко Л.В., Боголюбов С.А., Бондарь Н.С. и др. Комментарий к Конституции Российской Федерации (постатейный). 2-е изд., пересмот. М.: Норма, Инфра-М, 2011. С. 146. [Zorkin V., Andrichenko L., Bogolyubov S., Bondar N. and others. Commentary on the Constitution of the Russian Federation (itemized). 2nd ed., Revised. M.: Norma, Infra-M, 2011.P. 146.]

² Авакьян С.А. Конституционное право России: в 2 т. Т. 1. М.: Норма; Инфра-М, 2014. С. 383–384. [Avakyan S. Constitutional law of Russia: in 2 vols. T. 1. M.: NORM; INFRA-M, 2014.P. 383-384]

very important, which consists in the fact that the social state not only pursues a social assistance policy, it must make social the entire economic policy of its government. Moreover, according to M. V. Baglai, the structure of the state's social activity should be stable and not subject to change when changing governments. The scientist considered it insufficient to decipher the concept of “decent life” in the constitutional norm by listing the responsibilities of the state. The most important drawback of Article 7 of the Constitution of the Russian Federation, M. V. Baglay believed, was the lack of a formula for a socially oriented market economy. This led to the conclusion about the importance of finalizing the provisions of the domestic Constitution, which determine the social characteristics of the state from the point of view of the generally accepted theory and practice of developed countries¹.

The year 2020 was a turning point in the constitutional development of our country. At the initiative of the President of the Russian Federation, it was decided to introduce significant amendments to the Basic Law of the State. In general, the amendments are a significant contribution to the development of Russian statehood, since they affected about 40 articles of the Basic Law. A number of articles appeared new, including Art. 67.1, 75.1, 79.1, 92.1, 103.1. It is important to note that a significant number of amendments are related to the construction of the social state that we are studying. The directly new and qualitatively important characteristics of the social state are covered by five articles of the updated Constitution. The central place among the short stories can be attributed to Art. 75.1, which proclaims two very important principles: social partnership and social solidarity. At the same time, it is emphasized that conditions are being created in the Russian Federation for the economic growth of the country and increasing the level of well-being of citizens. The appeal of the constitutional norm to the need to create an atmosphere of mutual trust between the state and society is noteworthy. In addition to these general additions, the new provisions of the Constitution directly addressed the institution of the family, childhood, social assistance, pensions, remuneration, as well as education and health systems. So, Art. 72 (paragraph “ж”) proclaims the direction of state policy to protect the family and marriage, as a union of men and women. The Constitution also attaches great importance to the creation of mutual, based on caring for each other, relations of parents and children. In paragraph 4 of Art. 67.1 of the Constitution of the Russian Federation it is incumbent on the state to create the conditions for the comprehensive development of children and educate them in the spirit of patriotism. In paragraph 7 of Art. 75 the importance of targeted social support for citizens, indexation of social benefits and other social benefits is

¹ Баглай М. В. Конституционное право Российской Федерации. М.: Норма, 2007. С. 136–138. [Baglai M. Constitutional Law of the Russian Federation. M.: Norma, 2007. P. 136–138.]

emphasized. A novelty of the Constitution (Clause 6, Article 75) is the proclaimed principles of the functioning of the pension system, which include the requirements of universality, justice and solidarity of generations. The government sees its task in establishing the effective functioning of the pension system, including indexing pensions at least once a year. An important statement is in paragraph 5 of Art. 75, which refers to the protection of the labor rights of citizens. The Russian state assumes the obligation to create guarantees of a minimum wage, which should not be lower than the living wage of the country's able-bodied population. It is mentioned in the Constitution (paragraphs "с" of article 71) about the importance of creating and functioning a unified and continuous system of education and training, in other words the need for youth policy (paragraphs "ж" of article 72). Finally, the special words of the Basic Law relate to the domestic health care system (paragraphs "е", article 72). They proclaim the need for the state to provide affordable and quality medical care for their citizens. The jurisdiction of the Russian Federation includes the establishment of a unified legal framework for the functioning of the healthcare system. The Constitution proclaims a guideline for citizens to form a responsible attitude to their health and maintain a healthy lifestyle. Measures to strengthen the health system have been proactive and in fact have helped ensure the provision of quality medical care to citizens in the context of a coronavirus pandemic.

Ideas of a social orientation for their successful implementation should be reflected in the industry legislation of our country. And here, the leading position, it seems, should be with civil law. The well-being of Russian citizens directly depends on the quality of the civil law. Today, the subject of the industry is defined in the Civil Code of the Russian Federation, but the promising tasks of developing its public relations are not formulated. Meanwhile, it is well known that the development of any branch of law depends precisely on the statement of the problem. In our opinion, it is necessary to single out the fundamental goal of developing relations included in the subject of civil law and formulate the more specific tasks arising from it. By the way, there is experience in setting goals in the history of the development of civil legislation in our country. The preceding modern codification of Russian civil law differed favorably in this regard. It is enough to recall the preamble of the Civil Code of the RSFSR of 1964. It is thanks to the expanded text of the preamble in this codified civil law that Art. 1, entitled "Tasks of the Civil Code of the RSFSR." The leading civilists of our country, creating a civil code in the 20th century, tried in its preamble to answer many questions objectively, which was necessary for setting specific tasks of civil law regulation. Of course, now on the 21st century the new look of our country, in the conditions of market relations and the dominance of private property, implies the need for a significant update of the wording of the Civil Code in terms of setting goals. Nevertheless, it does not indicate their uselessness. How can the fundamental goal

Nevertheless, it does not indicate their uselessness. How can the fundamental goal of regulating property relations in our country be formulated? It is believed that, taking into account the world experience in legal regulation and the practice of its implementation, such a goal should be the creation of a social economy that creates equal economic and social opportunities for citizens of the country. First of all, the material and technical base must be created, which allows to ensure the welfare of individuals seeking a common good. The reservation for the pursuit of the common good will have a social connotation, since it presupposes the maintenance of a decent standard of living for the “weakest” members of society. It can be argued that modern civil law cannot be a haven of egoistic comfort for a few members of society. On the contrary, it must serve the fullest satisfaction of the needs of each and every citizen of Russia. Building a socially oriented economy also involves recognizing the social function of property. Thus, the entire system of corpus legal regulation, including the rules on the acquisition and termination of property rights and the content and burden of subjective property rights, should be a consequence of this central function of fundamental subjective civil law. A socially oriented economy will also presuppose the emergence of a new socially significant characteristic for entrepreneurial activity. In our opinion, charity should be such a qualitative characteristic. In order to develop comfortably in their own country, a business must have a socially comfortable environment, which is why not only the state, but also all business entities should be interested in solving social problems.

The general setting of the goal of civil regulation does not exclude the need for formulations of more specific tasks. Among these tasks it is worth highlighting: a) government leadership and support for socially oriented industries of production and provision of services; b) the uniform development of all forms of ownership; c) strengthening contractual discipline; d) improving the quality of products and services; e) state participation in providing citizens with housing. These and other tasks of a social orientation will have a promising impact on the entire set of civil law norms in modern Russia.

The great historian N. M. Karamzin at one time noted that love for our own good produces in us love for our Fatherland. It seems that the social orientation of civil regulation is a natural consequence of this aphoristically formulated wisdom.

References

- Avakyan S. Constitutional law of Russia: in 2 vols. T. 1. M.: NORM; INFRA-M, 2014.
- Baglai M. Constitutional Law of the Russian Federation. M.: Norma, 2007.
- Karamzin N. Encyclopedia of Wisdom, M. 2007.
- More T., Campanella T. Utopia, The City of the Sun. M. 2014.

Zorkin V., Andrichenko L., Bogolyubov S., Bondar N. and others. Commentary on the Constitution of the Russian Federation (itemized). 2nd ed., Revised. M.: Norma, Infra-M, 2011.

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