

**Doc. JUDr. Milena Barinková, CSc.**

**Právnická fakulta**

**JUDr. Vladimíra Žofčinová, PhD.**

**Fakulta verejnej spravy**

**Univerzita Pavla Jozefa Šafárika v Košiciach**

## **Social Status of an Employee in the Context of Social Legislation<sup>1</sup>**

### ***Abstract***

*The sustained social instability, decline of the moral values and disrespect for the natural and economic regularities in the human activity have a very adverse impact on the social conditions of people. The states, seeking for redress, extend to the measures that multiply insecurity, disturb social ties in the society, and lower the existing guarantees of the humanly dignified life. The paper aims at naming and analysing basic facts which adversely affect relations between economic and social development of the society. The Authors warn against the ignorance of respecting the reached standards of the social rights, the departure from keeping social cohesion and absolute preference for economic goals without any respect for the social needs. On the ground of labour relations of nowadays the article points on a new face of social problems based on the opinion of its Authors. They point out the hidden forms of exploitation of an employed man in the modern society, in which the elements of disrespect for the uniqueness of the human being, its education and needs occur due to the intensification of economic and financial crisis. At last the paper also analyses the balance of the principle of solidarity and merit at setting the pension scheme within the scope of the social policy implementation and points on possible impacts of it in the future. The Authors invite to a discussion on their thoughts on the social function of the social security law presented in this paper.*

**Key words:** *social problem, solidarity in social system, human dignity, social needs, working conditions, public resources, social justice, social security law, social function.*

---

<sup>1</sup> The paper was elaborated at the University of P. J. Šafárik in Košice, at the Faculty of Law and the Faculty of Public Administration with the financial support from the VEGA agency, within the grant project No. 1/0805/13 „Optimalization of Setting the Employment Relationships Model in the Labour Market in the Slovak“.

## **Status społeczny pracownika w kontekście ustawodawstwa socjalnego**

### ***Streszczenie***

*Utrzymująca się niestabilność społeczna, upadek wartości moralnych i brak poszanowania dla naturalnych i gospodarczych prawidłowości w ludzkiej działalności mają bardzo niekorzystny wpływ na warunki socjalne ludzi. Państwa dążą do zadośćuczynienia przy zastosowaniu środków, które zwiększają niepewność, naruszają więzi społeczne i obniżają istniejące gwarancje ludzkiego godnego życia. Opracowanie ma na celu określenie i analizę podstawowych czynników, które negatywnie wpływają na relacje pomiędzy gospodarczym i socjalnym rozwojem. Autorki wskazują na potrzebę respektowania standardów osiągniętych w zakresie praw społecznych, zachowania jedności społecznej i przestrzegają przed tendencją preferowania celów gospodarczych kosztem potrzeb socjalnych. Autorki artykułu prezentują swoją opinię na temat nowego wymiaru problemów socjalnych na gruncie obecnych stosunków pracowniczych. Wskazują one na ukryte formy wykorzystywania pracownika w nowoczesnym społeczeństwie, w którym z powodu rosnącego kryzysu gospodarczego i finansowego pojawia się brak szacunku dla wyjątkowości człowieka, jego wykształcenia i potrzeb. Wreszcie artykuł omawia również problem zachowania równowagi w polityce społecznej, zwłaszcza pomiędzy stosowaniem zasady solidarności a wypracowanej wartości przy ustalaniu wysokości emerytur. Autorki zachęcają do dyskusji na temat funkcji społecznej, jaką w Ich przekonaniu pełni prawo zabezpieczeń społecznych.*

***Słowa kluczowe:*** *problem socjalny, solidarność w systemie socjalnym, godność człowieka, potrzeby społeczne, warunki pracy, zasoby publiczne, sprawiedliwość społeczna, prawo zabezpieczenia społecznego, funkcja socjalna.*

### **Introduction**

The state, its functions, institutions, economy constantly evolves the same way the world does. All moves and changes affect the life of the society, lives of the individuals as well as the formalized or non-formalized groups and other persons involved in the labour market and capital. Nowadays, the world brings new and old or other social risks that endanger not only the population without participation in creating the new values and in production, but they also gradually endanger the people with the full employment

relationships. Slowly, but significantly the middle class is vanishing; the class which historically has always been the draught-horse and carrier of the economic progress of the state. At present, the members of the middle class rang among the working poor who are exposed to the social risks at an increased level, despite the qualification attainment.

The paper aims at naming and analysing basic facts which adversely affect relations between economic and social development of the society, warning against the ignorance of respecting the reached standards of the social rights, the departure from keeping social cohesion and absolute preference for economic goals without any respect for the social needs. On the ground of labour relations of nowadays there can be seen a new face of social problems.

It seems that a new form of the social problem today (except unemployment) is the progressive *threat to quality of social status of the employed people*, affecting not only the people with a lower level of education attainment, but also with higher qualification levels (e.g. in category of the helping professions – social services, some health professions, teachers as well as technicians and engineers). Thus, those who are the “health core” of the middle class are affected. Many of them are not able to fairly satisfy their basic needs as well as those of their families; many of them do not establish their own families due to the low earnings, run into debts for decades to get the decent housing; banks lend money to many of them under unfavourable conditions, because they may not provide the loan repayment guarantees especially in case of atypical jobs. The man is not the end, but, unfortunately, the mean of profit maximization and the mean of budgetary resources creation, without regard and respect for his values, humanly and legally legitimate demands, without respect for his human dignity.

In this context, the issue of the fair and satisfactory working conditions as well as the financial conditions of the families is the important theme, whether in terms of economy, politics or sociology. At present, the legal science examines the justice of the social system. If an employed man (irrespective of the level of education attainment) is daily exposed to risk of losing his job; if an economically active man is concerned about whether he will have sufficient resources for life after retirement; if a young man leaves his homeland and migrates to find a job, because there is no one at home, it is reasonable to deal with the issue, what kind of the social system we actually have.

## **1. Principle of Solidarity, Merit and Pension Scheme**

The socially advanced society agrees in the opinion that the state in implementing the function of the social welfare shall ensure at least the minimum social conditions for life of everyone, to ensure the proper performance of health and social services. The logical question that rises in that connection is how this system should be set and which principle should be a dominant one – that of solidarity, merit, directness? The principle of merit, which has been dominating since the introduction of the Act no. 461/2003 Coll. on Social Insurance as amended, is still applicable in the legal conditions in the Slovak Republic; however, it does not gain the confidence of the people after the latest legislative changes.

A sample of the population with lower income appreciates the idea of strengthening the principle of solidarity in the social system. It seems that people are afraid to be entirely dependent on themselves, or their family. They live with a particular kind of conviction that the society should help where a man cannot help himself. The state redistributes the resources with the aim to help, but some people abuse it. To ensure the balance between the directness and fair solidarity requires the real and effective interest of the relevant authorities and institutions in enforcing the social system in which the values of equality, justice freedom and solidarity, focusing on the good and respect for human dignity are promoted.

Nowadays, the principle of solidarity versus the principle of merit is solved especially within the issue of the pension insurance and old-age pension savings, thus in the multi-pillar pension scheme. If the pensions are considered the social benefits given based on the participation of a man in the pension security, the discussion on the solidarity presence seems to be correct. Until the year 2004, there was established, even in the Slovak Republic, the scheme of the pension security providing the high level of solidarity, with limits set for a maximum amount of the old-age pension and limits set for the sum of the pensions received in concurrence. Such system was always supported by the people with low incomes and is disadvantageous for the people with high incomes. At the high level of solidarity, the social tension occurs associated with the efforts of the poorer people to achieve as highest pensions as possible, irrespective of the low contribution to the system and with the efforts of the richer people to escape from the system. It is the task of the state to set the solidary pension scheme so that the rich are not interested in circumventing the participation in the compulsory pension system, what they often do illegally. In the pension insurance schemes, the fundamental requirement of the benefit policy is the dependency of the pension on the premium paid. That is the feature of each insurance scheme. However, if the social insurance scheme is set so that

the premiums reflect also the social aspect, then the direct link of the pension to the premiums (principle of merit) contradicts the requirement of solidarity as the imperative of the social systems.

*Social function* of the social security law is reflected also in the reform process that provides the social security and the result of which is the latest amendment of the act on social insurance<sup>2</sup>. Among many changes, the newly adopted measures in the field of the pension insurance may be presented. There is the change in the first, pay-as-you-go pillar of the pension scheme into which the higher level of solidarity has been introduced. The method of the pension indexation has changes as well. The citizens can temporarily see an increase in the pensions. During the years 2014 -2017, the **pension benefits** will be increased by the fixed amount; and the measure of the year-to-year increase in the consumer prices (of the products and services bought by the pensioners) and the year-to-year growth of the average wage in Slovakia will change in favour of the growth of the consumer prices in the transition period, until 2017. From 2018, the pensions will be increased by the so-called pension inflation that more accurately expresses the pensioners' costs of living.

In the transition period, the differences between the high and low pensions as well as the unjustified differences in the amounts of the pensions granted under the various laws will be partially mitigated. From 2014, there will be another change in calculation. The growth of the average wage will gradually lower in favour of the increase in the customer prices in the existing, the so-called Swiss model. In such a model, the change in the inflation rate and growth of the average wage are taken into account in the same proportion. Such process shall be completed in 2017, when the benefits are valorised only by a pensioner inflation. From 2018, the increase in the pension benefits in percentage will be introduced, depending on the average year-to-year growth of the consumer prices for the households of the pensioners. The government of the Slovak Republic justifies the need for changes by *the increase in solidarity in the pay-as-you-go scheme*, whereas the *principle of merit should apply for the second and third pension pillars*. According to the new system, the more solidarity will be required from the persons with the monthly income exceeding EUR 1000 in favour of the persons with the wage below the average level, i.e. below an amount of EUR 786.

---

<sup>2</sup> Act No. 252/2012 Coll. amending and supplementing the Act No. 461/2003 Coll. on Social Insurance as amended.

In the second pillar, in the old-age pension savings, the several significant changes also apply reduction in contributions<sup>3</sup>, and in case of the funds at least one remains guaranteed and the other one unguaranteed. The establishment of other funds will depend on the decisions of the pension fund management companies.

The given examples of the changes in the field of social insurance are closely connected to the search for the level of solidarity and its relation to keeping the principle of merit. The state can make a man, who does not want to help anybody, to pay. It can take from the rich and give to the person in need, it can force to the “solidarity”. In the minds of some people who “based on the principle of merit” contributed to the insurance funds to get the fairly higher income, such solidarity is perceived to be unfair. Dealing with the values of justice and social justice, E. Barány states, “the problem itself is who and what may be evaluated or at least makes sense to evaluate as (un)fair.” He adds that the enumeration of the opinions looking for the response to the question where the justice is brings the non-traditional views causing many uncertainties<sup>4</sup>.

Solidarity shall be understood not only as the mutual understanding and assistance, but also as the responsibility, i.e. as the acceptance of the positive and potential negative consequences of its application, including understanding the price of such social solidarity<sup>5</sup>.

That is why we move from the zero solidarity on one hand to the merit levelling on the other hand within the social insurance. The latest amendment of the social insurance act should, inter alia, have moved the Slovak pension scheme towards the greater solidarity. However, the form in which it was adopted raises doubts about meeting its intention.

By stating this, we do not cry because of the merit weakening. The principle of merit is also a feature of the pay-as-you-go pension insurance scheme; however, it shall not be satisfied in the *one employed man to one pensioner* kind of situation. The social system should be solidary and fair. It is obvious that it is difficult to reach the social consensus in the form of the fair and, at the same time, solidary pension security. We stress out “the security”, for the requirements of justice and solidarity are in the same way contradictory.

---

<sup>3</sup> Change in contribution from the current 9 to 4 per cent. The insured persons may contribute to such sum by any amount upon their discretion. The amount is not limited; the tax-favoured will be only 2 per cent over.

<sup>4</sup> See: E. Barány, *Pojmy dobrého práva (Terms of the Good Law)*, [in:] *Eurokodex. Poradca podnikateľa*, Žilina 2007, p. 85.

<sup>5</sup> Z. Macková, *Princíp solidarity v práve sociálneho zabezpečenia Slovenskej republiky (Principle of Solidarity in the Social Security Law in the Slovak Republic)*, Bratislava 2001, p. 46.

## 2. Position of the Social Function in the Theory of Social Security Law

Contentual and semantic message of *the social function* in the social security law is to create the legal platform for provision of the appropriate social status of each natural person. One of the partial objectives of the legal regulation of the social relations of the social security is to reach such social status of a man that allows him to maintain the human dignity, honour, and abilities to satisfy his basic needs with respect to his objective possibilities.

It is a paradox that there is no conceptual definition of the social function in the social security law in the literature. According to the several authors, the *basis functions* of the social security law include the *protective function, economic function, stimulatory function or regulatory function*<sup>6</sup>. The psychological function is generally viewed as a specific one<sup>7</sup>. The social security law, by fulfilling its individual tasks – the requirements that it faces, focuses on the provision of protection and social security of the individuals.

The definition and inclusion of the *social function* of the social security law among its function is missing, despite the fact that in our opinion it should be emphasized in such branch of law.

The content of the social function is subsumed in other functions of the social security law based on the tools that are used by the state, when implementing the social welfare as one of its functions. If the aim is to protect the citizens, then the social aspect of the social security law is integrated into the protective function through which the law *avoids* (but does not solve) the difficult social situation or helps to eliminate them. The protective function is expressed mainly in protecting people against the adverse impacts of the risk situations in life. We suppose that it does not cover the full range of the social function of the given branch of law.

It is evident that the protective function covers the protection of the social rights and social security; however, it is not identified with the function that has the *wider lines and range* (the social function). It should help the man to get familiar with the context and to find the direction in perplexity of the complex social system, and to modify by the legal standards the system of the social relations, conditions, processes which are reflected in the activities, behaviour of the subjects, while such changes in behaviour, thinking of the subjects are due to

---

<sup>6</sup> Z. Macková, *Sociálne zabezpečenie a sociálny štát v 3. tisícročí – prežitok alebo nevyhnutnosť?* (Social Security and Social State in the 3rd Millennium – Relic or Inevitability?), [in:] *Priority sociálneho zabezpečenia, Materiály z vedeckej konferencie „Právo a dynamika spoločenského vývoja a jeho teoretické reflexie“*, 8-9.11.2012, Bratislava: Vyd. SAP Bratislava 2012, s. 76.

<sup>7</sup> For example Z. Gregorová and M. Galvas consider the psychological function to be a specific one. See: Z. Gregorová, M. Galvas, *Sociální zabezpečení (Social Security)*, Brno 2000, p. 116.

the impact of the society-wide changes, in concentration on the life conditions, etc. This was aimed to express a broader context than just to protect against the negative social events and their effects. We suppose that the social function in the social security law may be, as to the contentual meaning, severable from the protective function.

Implementation of the social function in the social security law is seen in the fact that the state in execution of its social policy is co-responsible for the social and economic processes that should be left solely to the market forces and civil society according to the strict liberal understanding. If the state power represents the universal ability of the state to enforce within its territory the general will expressed by the law in the scope of the individual branches of law, it is necessary to review such parallel, thus whether the state fulfils the socially oriented function. In this context, we mention that even the authors dealing with the theory of state and law include the social welfare function of the state to its internal functions and analyse it. "In implementing the given function, the task of the state is not to provide the same social level for all, because the equality understood in such way (socially) can not exist. The legal state may and has to ensure the equality of rights, i.e. the principle of equality before the law"<sup>8</sup>. In the social security law, the term "social welfare" was used to denote the predecessor of the social assistance scheme in the Slovak Republic (as well as in Czechoslovakia) under the Act. No. 100/1988 Coll. on Social Security as amended. The social welfare was organized, implemented, funded and controlled exclusively by the state. The modern understanding of the social assistance is characterized by the plurality of the social subjects providing the assistance, however it does not mean that the state performs none of the above-mentioned activities.

If the legal science uses the fixed terms for expressing the basic areas related to the state and law direction (e.g. naming the functions), we think that this does not mean the impossibility to modify them based on the developmental social change. The functions of law, and thus those of the social security law, are permanent in nature; they express the multiple activity of the state and multidimensional operation of law.

We think that it is suitable to be open to the rational examination of whether the social function for the social security law is, in terms of content, a part of the protective or other function, or it should be defined separately. In this examination, the focus and mission of the concerned branch of law shall not be forgotten. As the society develops, the priorities of the state change and the guarantee of social security moves, so we need reflect the

---

<sup>8</sup> A. Bróštl, G. Dobrovičová, I. Kanárik, *Základy štátovedy (Foundations of Political Science)*, Košice: UPJŠ 2000, p. 52-53.

developmental changes and open the elementary attributes of law that will move the social dimension into the new sphere of research.

Legislation with respect to fulfilment of the social function defines the subsistence minimum as a minimum income level of a natural person, below which the person is considered to be in material need<sup>9</sup>. The question that is most frequently asked in relation with the subsistence minimum is what kind of the standard of living it actually expresses; whether the sum of subsistence minimum is sufficient to cover only the “bare life” (in sense of e.g. one meal daily) or what standard of living can be covered by the sum of subsistence minimum. Therefore, the real, objective content of this “definition”, which derives from the current amounts of the subsistence minimum, is the interesting issue.

The subsistence minimum has to guarantee the socially recognized minimum level of incomes, minimum standard accepted, threshold of minimum income, or minimum basket of the products and services that are necessary for integration into the ordinary life, albeit at the very modest level. Criticism of the adjustment of the current view on subsistence minimum is emphasized in the fact that it deviates from the original “human and legal sense” of the subsistence minimum. *It is necessary to perceive the correlation of the subsistence minimum and social protection of a man that, for example, based on the fulfilment of the recommendation of the European Council 92/441/EEC has to recognise the basic right of a man to resources which are sufficient to make him live in the manner compatible with human dignity.*

On the other side, if the individuals are guaranteed the threshold of income without the significant limitations, it may cause lack or no motivation. As a result, the inefficient use of public resources occurs. For people who are unable to secure their own income (although their ability to work is not threaten), such minimum income is insufficient, while the people who have preconditions to “use the system”, lack the motivation to work enough.

In this context, the connection of the *social and economic function* of the social security law is irreplaceable, with regard to the fact based on the need to ensure the means for life, if a man finds himself in a difficult situation to which the law connects the legal consequences of fulfilment by the means of the benefits legal relations.

The social security is not only the issue of the income redistribution among the various categories of the citizens. First of all it is a system whose task is to provide a certain level of social justice and to help a man who has become, without his fault, the victim of any social

---

<sup>9</sup> Material need is within the scope of the legal order of the Slovak Republic regulated by the Act. No. 599/2003 Coll. on Assistance in Material Need as amended.

risk, to maintain the humanly dignified living conditions. The social justice, in the words of E. Barány “with securing the certain standard connects the parts of the goods (the good) for each members of the society. Distribution of the goods and burdens is a kind or expression of an impact of the behaviour, acting on others. It always assumes the distributor and someone who gets, while they can not be the same person”<sup>10</sup>. Society, in the words of Z. Macková “[...] provides the social justice only when it creates the conditions allowing the individuals and associations to achieve what they are entitled to in accordance with their nature and their profession”<sup>11</sup>.

### Conclusions

The social policy and implementation of the objectives of the social state in the period of globalized economy cease to be the process of the autonomous decision-making of the individual countries. The global interconnection of capital together with the accompanying phenomena affect the individual areas of the social policy, having the same or similar character in the countries, irrespective of the boundaries of the states. Unemployment, disillusionment, limitation of the already achieved standards in the working conditions (wage cuts, extension of working time), serious changes in the pension schemes, decrease in social benefits and other measures aimed to reduce the standard of living, are the factors giving the rise to the expressions of dissatisfaction, rejection, strikes and unrest. Together with Z. Macková we ask: “Do we realise that such inequality may undermine the legitimacy of existing democracies?”<sup>12</sup>

We are witnessing the age in which the discussions on the further direction of the social protection systems are expressed as mathematical and statistical calculations, tables, pure figures without any slightest hesitation over the fact that we are talking about a man, a human being, about awareness of his natural human and social needs. Settings of the social security systems and new models of flexible employment relationships adapt to the requirements of market, the goals having the form of the set economic objectives and virtual financial numeric parameters as the idols of globalized market era.

The social satisfaction vanishes from the society and the social disparities deepen. The European states, including Slovakia, deal with the social exclusion and poverty. The more and

---

<sup>10</sup> E. Barány, *Pojmy dobrého práva (Terms of the Good Law)*, [in:] *Eurokodex. Poradca podnikateľa*, Žilina 2007, p. 86.

<sup>11</sup> Z. Macková, *Sociálne zabezpečenie ...*, p. 76.

<sup>12</sup> *Ibidem*.

more employees whose earned incomes fail to correspond to qualification attainment and work experience approach to this boundary. It may be assumed that the longer such negative trends will persist the more social stability of the society will be endangering.