

# opción

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# **Current legal issues: The phenomenon of social rights in the constitutional law in the countries of Central and Eastern Europe**

**Victor Yu. Melnikov<sup>1</sup>**

<sup>1</sup>Department of Criminal Procedure and Criminalistics Rostov Institute (branch) VGUYUA (RPA of the Ministry of Justice of Russia), Russian Federation.

**Anna V. Aleksandrova<sup>2</sup>**

<sup>2</sup>Penza State University, Penza, Russia

**Alena L. Guseva<sup>3</sup>**

<sup>3</sup>Penza State University, Penza, Russia

**Valeriya A. Danilova<sup>4</sup>**

<sup>4</sup>Penza State University, Penza, Russia

**Andrei V. Seregin<sup>5</sup>**

<sup>5</sup>Department of theory and history of state and law, Southern Federal University, Russian Federation.

## **Abstract**

The study includes an assessment of the effectiveness of state regulation of public relations in the countries of Central and Eastern Europe (CEE). The authors proceed from the traditional interpretation of social rights as a set of individual rights in the sphere of labor, social security, medical care, education, etc. The Phenomenon of social rights is studied by historical and comparative methods. Nevertheless, it was the socialist constitutions that put social rights at the top of the list of individual rights and reinforced them with a wide range of guarantees that allowed them to be realized. After the "velvet revolutions" of the late twentieth century, many CEE countries tried to preserve social rights in their new constitutions.

**Keywords.** Constitution; social rights; personality; state; evolution; security

## Cuestiones legales actuales: el fenómeno de los derechos sociales en el derecho constitucional en los países de Europa Central y Oriental

### Resumen

El estudio incluye una evaluación de la efectividad de la regulación estatal de las relaciones públicas en los países de Europa Central y del Este (CEE). Los autores proceden de la interpretación tradicional de los derechos sociales como un conjunto de derechos individuales en la esfera del trabajo, la seguridad social, la atención médica, la educación, etc. El fenómeno de los derechos sociales se estudia por métodos históricos y comparativos. Sin embargo, fueron las constituciones socialistas las que colocaron los derechos sociales en la parte superior de la lista de derechos individuales y los reforzaron con una amplia gama de garantías que les permitieron hacerse realidad. Después de las "revoluciones de terciopelo" de finales del siglo XX, muchos países de ECO trataron de preservar los derechos sociales en sus nuevas constituciones.

**Palabras clave:** Constitución; derechos sociales; personalidad; estado; evolución; seguridad

### 1. INTRODUCTION

This article assumes consideration of the phenomenon of social rights in the constitutional law in the countries of Central and Eastern Europe (CEE countries). The subject of the research is social rights

enshrined in the constitutions of Poland, Bulgaria, the Czech Republic and Russia. The authors proceed from the traditional interpretation of constitutional human rights and freedoms: 1) personal, 2) political, 3) economic, social and cultural. Social rights are considered in a broad sense (as a set of rights in the sphere of social security, labor, education, ecology, etc.).

## **2. METHOD**

Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

## **3. RESULTS**

The study uses such methods as comparative legal, historical legal, formal legal. In presenting the material, we are guided by the

chronological principle, that is, we consider the evolution of the constitutional regulation of social rights within certain stages.

I. The First (pre-revolutionary) stage. (Before the October Revolution of 1917).

According to Professor A. Nussberger, social rights only at first glance seem to be an invention of constitutionalism of the twentieth century. In fact, in the XVIII century they received a theoretical development (“the state is obliged to provide its citizens with a shelter, food and clothing” – Montesquieu claims in his work “On the Spirit of Laws”). The first attempts to include them in the text of the constitution were made (France, the Declaration of the Rights of Man and the Citizen of 1793, which did not enter into force: the society is obliged to "support the existence of poor citizens either by providing them with work or by providing means for living to those who are not able work" [art. 21]).

In general, the obligation of the state to take care of poor citizens is enshrined in the constitutional documents of the XVIII-XIX centuries, but there is no corresponding right of citizens to support or social security.

If we turn to the constitutions of the CEE countries adopted in this period, then we should begin, of course, with the Constitution of Poland of May 3, 1791 (this was one of the first constitutions in the world). The text of the Polish Constitution of 1791 does not contain social rights in the modern sense, but there is a rule that can be considered as a declaration of freedom of labor: “any person who arrives or has returned to the Polish-Lithuanian Commonwealth state,

as soon as he sets foot on Polish soil, gets to do his own work, how and wherever he pleases”(art. IV).

On April 16, 1879, the constitution of Bulgaria (Tarnovo Constitution) was adopted. Among its norms, one can single out the provision on the gratuitousness and general obligation of elementary education (art. 78), as well as on the freedom of unions (art. 83), which can be considered as the forerunner of the right to form trade unions.

It is known that in Russia there was no was adopted act, called the constitution until 1918. However, the Basic State Laws of the Russian Empire of April 23, 1906 contained Chapter II, “On the Rights and Responsibilities of Russian Citizens,” which included provisions on the free choice of occupation (clause 34) and freedom of union (clause 38). Some authors believe that the Basic State Laws represented the “granted” Russian constitution [1, p.80-101], although most scientists still disagree [2, p.90-96].

The Second stage. 1917-1944. Constitutions, which contained sections on social rights, appear in the first half of the twentieth century. There are: The Constitution of Mexico in 1917, the Weimar Constitution of Germany in 1919, etc. Social rights are given a special interpretation in the constitutions of the socialist countries, as will be discussed below. First we turn to the constitutions of the CEE countries, which were not socialist at this stage of development.

The Czechoslovak Republic was formed in 1918. The Constitutional Charter of the Czechoslovak Republic, adopted on February 29, 1920, contained a number of rights that we can classify as social. In particular, §108 established the “right to practise one`s

profession within the limits established by law.” §113 proclaimed freedom of unions, and §114 contained special guarantees for the activities of trade unions: “the right of unions to protect and improve the economic conditions and the position of workers and employees is ensured”. The legislative protection of marriage, family, and motherhood was proclaimed in §126. Freedom of education (§§118-120) and the possibility of teaching representatives of national minorities in their native language (§131) were proclaimed.

The Constitution of Poland of March 17, 1921 (March Constitution) contained political, civil and social rights. Article 102 of the March Constitution is devoted to social rights: “Every citizen has the right to the state’s protection for his work.” It proclaims the right of every citizen to public security (within the limits established by law) - in case of unemployment, illness, accident. Art. 103 of the Constitution of 1921 established the right of children without parental care to state assistance; it also banned the labor of children under 15 and the night work of women. The obligatoriness of primary education was proclaimed (Art. 118), free education in state and municipal schools was proclaimed (Art. 119).

The Constitution of the Polish Republic of April 23, 1935 established an authoritarian regime (adopted after the coup d'état of 1926). The section on the rights and freedoms of the individual is missing in it (!). Only art. 8 of the 1935 Constitution establishes that "labor is the basis of the development and power of the republic," and "the state provides labor protection and supervision of its conditions."

The sample of the declarative socialist constitution was the Constitution of the RSFSR of 1918. Article 3 of the Constitution of 1918 proclaimed as the main task “the destruction of all exploitation of man by man, the complete elimination of the division of society into classes”. It was proclaimed that one of the means to achieve this was "the victory of socialism in all countries."

However, the list of social rights in this document is very small. It is indicated that the republic provides assistance to “workers and the poorest peasants” in order to unite them in an organization (art. 16); seeks to provide them with a “complete, comprehensive and free education” (art. 17). Art. 13 enshrines the principle of secular education (separation of school from church). Art. 3 and art. 18 of the Constitution of the RSFSR enshrined the obligation to work (universal labor service). Proclaiming in art. 22 “equal rights for citizens regardless of their race and nationality””, the 1918 Constitution at the same time allowed class-based discrimination. According to art. 23, the RSFSR "deprives individuals and certain groups of rights that they use to the detriment to the interests of the socialist revolution."

Many Russian authors believe that the Constitution of the RSFSR in (of) 1918 played an important role in the constitutional development of other Soviet republics, acted as a model for drafting the constitutions of Latvia, Belarus, Ukraine (1919), Azerbaijan, (1921), Armenia, Georgia (1922 d) and others [3,p.80-216]. Some authors think that it influenced the constitutional development of European states [4, p.44-52].

In our opinion, the inclusion of social rights into the German Constitution of 1919, the Polish Constitution of 1921, was due not so much to the influence of Soviet Russia as to the progressive development of the constitutional law of the respective countries, the evolution of political and legal science, which had developed in the XIX century the conceptual foundations of social rights.

This conclusion is confirmed by, in particular, the fact that the Constitution of the RSFSR of 1918 did not contain the right to social security (insurance), while the constitution of the "bourgeois" countries (Germany 1919, Poland 1921) already provided it; and they did not contain such "extremes", as universal labor service. So, in the sphere of regulation of social rights, these constitutions have made a step forward compared to the constitutions of the socialist countries.

The first Constitution of the USSR, adopted in 1924, regulated only the creation of the Union and the organization of power in the new state and did not contain any provisions on the rights, freedoms and duties of the individual.

The Constitution of the RSFSR of 1925, adopted a year later, included a list of rights and freedoms, repeating, mainly, the norms of the Constitution of 1918 (only the terms "workers and poor peasants" are used instead of the words «working people», "workers and peasants").

Then it is necessary to consider the Constitution of the USSR of 1936, the norms of which are recognized as one of the most progressive for their time (as opposed to the practice of their implementation in the conditions of a totalitarian state). According to

Professor A. Nussberger, “the fact that a part of the 1936 USSR Constitution was devoted to social rights was a decisive fact for further development, as well as for an ideological understanding of social rights” [5, p.306]. Foreign researchers, who studied the essence of social rights, “experienced the significant influence of the ideas of Soviet legal science and the practice of legislative consolidation of socio-economic rights” [6, p.99].

Art. 12 of the Constitution of the USSR of 1936 proclaimed the obligation to work and consolidated the principles "A person who does not work, does not eat"; "From everyone – according to his ability, to everyone – according to his work."

Chapter X of the Constitution contained a wide range of rights and freedoms, in the first place among which were precisely social. Art. 118 enshrined the right of citizens to work as follows: it is “the right to receive guaranteed work with remuneration in accordance with its quantity and quality.” The socialist organization of the national economy, the steady growth of productive forces, the elimination of economic crises and the liquidation of unemployment were mentioned as guarantees of this right.

It should be noted that in relation to EVERY social right mentioned in the 1936 Constitution, a list of guarantees (means of security) was established, which we, unfortunately, cannot consider in detail in this report.

Also the Constitution of 1936 proclaims the right to rest (Art.119), the right to material security in old age, in case of illness and disability (Art. 120), the right to education (Art. 121), the right to

associate in public organizations, including in trade unions (Art. 126). Art. 122 of the Constitution of 1936 established the principle of equality of men and women in all spheres of life, which was ensured, among other things, "by the state protection of the interests of mother and child, by giving women during pregnancy vacations with maintenance, wide network of maternity homes, nurseries and Kindergartens".

Thus, the Constitution of the USSR in 1936 secured a very wide range of social rights of citizens, many of whom were proclaimed at the constitutional level for the first time. A similar list of social rights was included in the Constitution of the RSFSR, adopted in 1937.

In contrast to political rights that, were in many respects, declarative in nature in the USSR, social rights were supported by a number of guarantees and were practically realized.

#### **4. DISCUSSION**

The III-d stage. 1945-1989. The Second World War was a turning point for the constitutional development of many European countries. After the liberation from the fascist occupation, most of the states of CEE were proclaimed socialist republics. They adopted constitutions following the model of the USSR Constitution of 1936: Constitution of the People's Republic of Bulgaria of December 4, 1947, Constitution of the Czechoslovak Republic of May 9, 1948, Constitution of the Polish People's Republic of July 22, 1952. The

provisions of these documents on social rights were in many ways similar.

In most of them, economic, social and cultural rights were put in the first place in the list of individual rights and freedoms. Labor was proclaimed “duty and honor” (Article 19 of the Polish Constitution of 1952, Article 73 of the Constitution of Bulgaria of 1947, Article III of the Constitution of Czechoslovakia).

The list of social rights and their guarantees is similar to the list contained in the Constitution of the USSR of 1936. This is the right to work (Article 68 of the Constitution of Poland 1952, Article 73 of the Constitution of Bulgaria 1947, § 26 of the Constitution of Czechoslovakia 1948), the right to rest (Article 69 of the Constitution of Poland 1952, Article 74 of the Constitution of Bulgaria 1947, § 28 of the Constitution of Czechoslovakia 1948), to fair pay (Article 68 of the Constitution of Poland, Article 73 of the Constitution of Bulgaria, § 27 of the Constitution of Czechoslovakia ), to unionize (Art. 84-85 of the Constitution of Poland, § 25 of the Constitution of Czechoslovakia), the right to health protection and assistance in case of illness and disability (Article 70 of the Constitution of Poland 75 and 81 of the Constitution of Bulgaria, § 29 of the Constitution of Czechoslovakia), the right to education (article 72 of the Constitution of Poland, article 79-80 of the Constitution of Bulgaria, § 12-14 of the Constitution of Czechoslovakia). Also, socialist constitutions proclaimed state support for the family, motherhood and childhood (Art. 79 of the Polish Constitution, Art. 72 and 76 of the Bulgarian Constitution, § 10-11 of the Czechoslovak Constitution).

It should be noted that the Constitution of Poland contains the right of citizens to enjoy the benefits of the natural environment and the obligation to protect it (Article 71 of the Polish Constitution of 1952), whereas there is no such a right in the constitutions of other countries adopted during this period considered by us. Environmental rights were consolidated mainly at the end of the twentieth century, and Poland was one of the first countries to include them in its Constitution.

In some countries, in 1945-1989, not one but two constitutions were adopted. For example, in Czechoslovakia, the Constitution of 1960 replaced the Constitution of 1948, and in Bulgaria the Constitution of 1971 replaced the Constitution of 1947.

After analyzing the Constitution of Czechoslovakia of 1960, Bulgaria of 1971 and the USSR of 1977, we conclude that there are common features in the regulation of social rights (the norms of the Constitution of the RSFSR of 1978 in the field of regulation of individual rights repeated the union constitution, therefore in our study they are not considered).

The role of trade unions and labor collectives in state and public life was enshrined (Articles 7, 8 of the USSR Constitution of 1977; Article 24 of the Bulgarian Constitution of 1971, Article 5 of the Czechoslovak Constitution of 1960).

Labor was proclaimed the basis of social wealth (Art. 14 of the Constitution of the USSR of 1977, Art. 32 of the Constitution of Bulgaria of 1971, Art. 7 of the Constitution of Czechoslovakia of 1960).

In the 1977 Constitution of the USSR, the range of social rights (each supported by guarantees) became even broader than the 1936 Constitution. In particular, in this list there appeared the right to housing (Art. 44 of the USSR Constitution of 1977) and the right to health protection (Art. 42 of the Constitution of 1977), a norm on remuneration not lower than the minimum (Art. 40). It should be noted that the right to health protection had already been proclaimed in the constitutions of Czechoslovakia in 1948 and Poland in 1952. It can also be noted that in the Constitution of the USSR of 1977 and the Constitution of Bulgaria of 1971, the wording of social rights became more extensive.

The end of this stage is connected with the crisis of the socialist system in the USSR and the CEE countries. Since 1985, the USSR began the process of political and socio-economic reforms (“perestroika”). In 1989–1990, the so-called velvet revolutions took place in the CEE countries, which signified a change in political regimes.

## **5. CONCLUSION**

The IV-th stage. 1990-2020. This stage is characterized by the collapse of the socialist system, the emergence of a number of new independent states on the CEE territory. Constitutions adopted in these states have many common features. The term “postsocialist constitutions” has even been established in the science of

constitutional law [7, p.49]. Characteristic features of these constitutions are: on the one hand, the preservation of a certain legacy of socialist statehood (for example, an extensive list of social rights), and, on the other hand, the inclusion in the text of democratic provisions adopted in developed countries (separation of powers, constitutional control, etc.).

Many of these constitutions proclaim anyway the principle of a social state (Preamble of the Bulgarian Constitution of 1991; Article 7 of the Russian Constitution of 1993; Article 2 of the Constitution of Poland of 1997). Only the Constitution of the Czech Republic of 1992 does not contain it (of which the Charter of Fundamental Rights and Freedoms is an integral part).

The list of social rights is voluminous. Firstly, these are rights and freedoms in the sphere of labor (the right to work, to its fair remuneration not less than the minimum, the right to healthy and safe working conditions, the freedom of labor, the right to rest, the right to protection against unemployment, the right to unionize, the right to labor disputes, including the strike (Art. 48-50 of the Bulgarian Constitution, Art. 26-29 of the Czech Charter of Fundamental Rights and Freedoms, Art. 37 of the Constitution of the Russian Federation, Art. 65 of the Constitution of Poland). The current Constitution of the Russian Federation does not have the right to work as such.

Secondly, rights in the field of social protection: support for the family, motherhood and childhood; special care of the state for the elderly, children, pregnant women, the disabled (Art. 14, 47, 51 of the Bulgarian Constitution, Art. 32 of the Czech Charter, Art. 7, 38 of the

Constitution of Russia, Art. 18, 68.71, 72 of the Constitution of Poland), the right to social security (Article 39 of the Constitution of Russia, Article 67 of the Constitution of Poland, Article 30 of the Czech Charter) or social assistance and public insurance (Article 51 of the Constitution of Bulgaria) . It is interesting that the Constitution of Russia mentions the right of every person to social security, and the constitutions of other considered countries - only the right of a citizen to social security.

All the constitutions under consideration contain the right to health protection and medical care (Article 52 of the Constitution of Bulgaria, Article 31 of the Czech Charter, Article 41 of the Constitution of Russia, Article 68 of the Constitution of Poland), the right to education (Article 53 of the Constitution Bulgaria, Article 33 of the Czech Charter, Article 43 of the Constitution of Russia, Article 70 of the Constitution of Poland).

The right to housing is stated only by the Constitution of Russia (art. 40). Constitutions of other countries do not contain a such law (although art. 75 of the Constitution of Poland establishes that "public authorities pursue policies conducive to meeting the housing needs of citizens, in particular, counteract homelessness").

The Constitutions of Russia (Art. 42), Bulgaria (Art. 55) and the Czech Republic (Art. 35 of the Charter) contain the right to a healthy environment, the Constitution of Poland (Art. 74) regards environmental protection as an obligation of public authorities.

To sum up consideration of the evolution of constitutional regulation of social rights in Russia, Poland, the Czech Republic and Bulgaria, the following conclusions can be made.

The constitutional regulation of social rights in these countries has undergone a long way of development, within which there has been a gradual expansion of the list of these rights and the improvement of wording. The socialist statehood, of course, introduced a number of innovations.

In particular, the achievement of the socialist era is the constitutional recognition of the right to social security, the right to housing, the right to health protection and medical care, and the right to fair wages not less than the minimum. At the same time, such rights and freedoms as the right to work, to unionize, the right to education, freedom of work, as well as the principle of state support for motherhood and childhood were consolidated at the earlier stages of the constitutional development of the countries under consideration.

Change of political regimes in the CEE countries 1990-s did not lead to the rejection of social rights as such. They were preserved in new constitutions adopted after the "velvet revolutions". Today they are considered as "an element of continuity in a completely changed legal context" [8, p.109].

Socialist constitutions provided a detailed list of guarantees for each of the social rights. It should be recognized that most of these guarantees were implemented (for example, the provision of universal employment, the organization of free medical care and sanatorium-

resort treatment, the realization of the right to free education, the payment of scholarships to students, etc.).

Modern constitutions do not contain such a list of guarantees. At present, the full realization of social rights depends on the level of economic development of a particular country. Nevertheless, citizens of CEE states have new opportunities to protect these rights: these are guarantees not only political (democratism) and legal (right to protection), but also mechanisms of constitutional justice, as well as international legal guarantees (international documents and organizations).

### **Conflict of interest**

The author confirms that the data do not contain any conflict of interest.

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