

*N.V. Kolotova,  
acting chief scientific member of the Institute for State and Law  
of the Russian Academy of Sciences, LL.B.*

## **Social and Economic Rights in Different Civilizations: Constitution Standards**

Nowadays social and economic rights are almost universally acknowledged as a subject to be constitutionally regulated. However, the attitude towards them still varies in different countries, thus influencing the scope and approach to their securing in constitutions. In the course of the 20th century these rights became a constitutional indicator of a social welfare state, and their inclusion into constitutions manifests the aspiration of the countries to follow this path of development. One cannot judge the country's 'social welfariness' by only the presence or absence of socio-economic rights in the constitution. For example, Norway with its traditionally high standards of life abides by the Constitution adopted in the 19th century which contains practically no social rights.

In many cases the analysis of constitutions leads one to recognize the special legal character of socio-economic rights in comparison with personal and political rights that have a natural legal origin and a character of the subjective rights protected by court. However, in a number of constitutions (including that of the Russian Federation) it is not accepted to draw any differences or to rank groups of the common system of human rights. This determines the attitude towards socio-economic rights as to the rights totally similar to the rights of the 1st generation.

Methods and forms of regulation of socio-economic rights differ according to *the civilizational type of a state* which can even be observed in constitution standards.

European countries that belong to a Romano-Germanic legal system traditionally set forth the largest catalogues of social and economic rights in their constitutions. In the Constitution of Portugal (1976) a subject of constitutional regulation is widely outlined in the chapters devoted to economical (articles 58–

62) and social rights and responsibilities (articles 63–72), rights and responsibilities in the sphere of culture (articles 73–79). The Spanish Constitution (1978) is often regarded as one of the world's most progressive in the sphere of socio-economic regulation.\* The corresponding norms are listed in Article 7 'Economy and Finance' and Chapter 3 'The Guidelines of Social and Economic Policy'.

The European countries that were politically formed *after the collapse of the socialist system* pay special attention to the regulation of socio-economic rights. The constitutional experience of the countries with totalitarian socialism was closely connected with the establishment of socio-economic rights that were regarded as a decisive argument in favour of a socialist society. Thus, new constitutions adopted in these countries at the end of the 20th century were aimed at implementation of international legal norms and standards in this sphere, and at the same time at preservation of a high level of labour and social rights protection typical for the socialist legislation.

In some countries of a Romano-Germanic legal system socio-economic rights are formulated implicitly, *through the determination of the country's main social aims*. The Constitution of Ireland declaring the main principles of social policy in Article 45 states directly that observance of these principles is an exclusive right of the Parliament not cognizable to any court. Article 3 of the Spanish Constitution (1978) 'On Guidelines of Social and Economic Policy' lists responsibilities of the state power bodies in the sphere of securing social rights of the citizens. Article 2 of the Maltese Constitution (1964), which prescribes the standards of a worthy life, is also named 'Declaration of Principles'. In Article 21 it is directly stated that 'Guidelines are not rights', i.e. they are not court orders but the basic principles obligatory for the government.

Even when socio-economic rights are definitely fixed, they may be formulated as desires, intentions and aims which the state should pursue along with

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\* *A.M. Osavelyuk*. The Constitutional Right in the Foreign Countries (p. 402). Moscow, UNITY-Diana Publishing House, 2010.

the development of its economic strength. Even the constitutional declaration of certain social rights, e.g. medical or housing entitlement, does not always mean they are considered to be subjective rights of the citizens. For example, right to health protection does not presuppose free medical care in case of illness, which is provided in limited cases only, as it is declared in Article 32 of the Italian Constitution guaranteeing free medical treatment for the poor only. The constitutions of some countries use the terms 'social charity' or social care (Holland, Austria, Denmark) instead of the social security entitlement.\*

In other European countries socio-economic rights are the subject of direct constitutional regulation. The Constitutions of Albania, Macedonia, Poland, Portugal, Slovakia, Turkey, Croatia and the Czech Republic contain special amendments devoted to economic, social and cultural rights and freedoms. They are the countries we mean while writing about 'new formations of economic, social and cultural rights and new perception of state role connected with the responsibility to guarantee these rights'.†

In *Anglo-Saxon countries* socio-economic rights are not completely established as constitutional ones. The constitutional status of socio-economic rights in the USA is not acknowledged yet. The American authors use the term 'positive' rights, implementation of which does not imply their constitutional securing. Another common term is 'acquired rights', i.e. acquired with labour and exchange but not innate. These rights are defined as rights according to statutory legislation or rights by law. If necessary, the matters of judicial protection of socio-economic rights are resolved by the USA Supreme Court addressing the clause on 'equal protection of law' and on 'appropriate legal procedure' from the 5th and 14th Amendments to the Constitution.‡

In Great Britain socio-economic rights are also ranked among the statutory

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\* Constitutional Right in Foreign Countries (p. 138). Ed. by M.V. Baglay, Yu.I. Leybo, L.M. Entin. Moscow, Norm Publishing House, 2009.

† Different Constitutions on Top Values of a State: a Russian approach (p. 27). Workshop materials of a scientific seminar. Issue 4. Moscow, Scientific Expert Publishing House, 2007.

‡ V.N. Safonov. The Constitution of the USA and Socio-Economic Rights of the Population, (pp. 15–16; 23). Moscow, Norm Publishing House, 2007.

legislation rights and are not regulated on the constitutional level. British legislation professes a number of such rights and freedoms subdividing them into the rights attributive to workers and those of employees. The Canadian Charter of Rights and Freedoms (1982) also ignores socio-economic rights although Canada has joined the International Convention on Economic, Social and Cultural Rights. Only the Charter's Paragraph 2 of Article 15 gives an interpretation of securing socio-economic rights, according to which guarantees of equality do not cover pro-poor programs and programs for the population exposed to discrimination. The Parliament has even declined the amendment concerning guarantees of the right of property. The Canadian courts defend these cases using the definitions from the Charter of Rights, for example, the principles of human dignity, equality and prohibition of discrimination in the sphere of social security.\*

In the constitutions of *Islamic states* some socio-economic rights are also declared. Not all of them regulate these matters as explicitly as the Constitution of Turkey (1982), where a separate chapter is devoted to 'Social and Economic Rights and Responsibilities'. Even a theocratic Constitution of Saudi Arabia (1992) guarantees social security, education, medical care and favourable environment entitlements. The statures of socio-economic rights are formulated in the Constitutions of the Sultanate of Oman (1996), Afghanistan (2004), Indonesia, the Islamic Republic of Iran and some other countries.

The majority of Islamic constitutions contain regulations of socio-economic rights which are rather abstract and vague, but their declaration correlates with a factual system of values in a society formed by the Muslim faith. For example, Article 17 of the Main Law of Saudi Arabia explicitly describes a social function of property according to Shariah. Socio-economic rights as well as other rights should be abided by in the same manner as they are set in the Quran and other

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\* See: *M. Bastrash. Socio-economic Rights and Rights of the First Nations of Canada. Constitutional Justice in Action: Experience of Russia and Canada / Collection of Decrees of Constitutional Court of the Russian Federation and the Supreme Court of Canada*, (pp. 208–213). A. Kononov, M. Bastrash. Moscow, New Justice Publishing House, 2008.

sources of the Islamic law. That is why in Islamic countries the following obligatory entitlements are outlined: right to education; property right as the right to security of property obtained with labour; right to work freely mastering any type of activity and profession for securing an honest life; right to social security. Guarantees of social security right include both social assistance for the poor provided by state authorities, and the responsibility of rich Muslims to support the poor country-fellows by paying zakat — a poor-due tax.\* Thus, ‘at modern constitutional legislation level human rights and freedoms in many Islamic countries are limited by the Shariah’.†

*Latin American countries* have their own peculiarities in the constitutional regulation of socio-economic rights. Latin American countries noticeably differ in their socio-economic development; however all of them demonstrate absolute respect to international institutes and human rights at the constitutional level.‡ It is no coincidence that the current Constitution of Mexico (1917) was one of the first to formulate socio-economic rights in detail. In the Constitution of the Dominican Republic freedom of labour, education and property right are stated as ‘undeniable rights’.

Today constitutions of Latin American countries regulate a large number of social and economic rights setting forth in the laws such details as are specified in other countries in codes of laws and separate laws. The Constitution of Brazil (1988) is a vivid example of such a detailed elaboration in the sphere of social and economic relations. For example, Article 7 listing the workers’ rights contains 34 paragraphs, including paragraph 6 titled ‘Irreducibility of salary or wage’, or paragraph 8 guaranteeing the full compensation of the thirteenth salary or the old-age pension. Thus, Article 8 is worked out in detail and it declares freedom of professional or trade union associations (11 paragraphs), as well as

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\* See: *Muhammad Sadik Muhammad Yusuf*. Human Rights in Islam, (pp. 65–104). St. Petersburg, 2008.

† *L.R. Syukiyaynen*. Islamic View of Freedom and Equality: Statutory Expression and Religious-Ethical Scope. The Universal Declaration of Human Rights: Universalism and Diversity of Experiences. (p. 82). Moscow, 2009.

‡ See: Power of Right vs. Right of Power: International Security (Latin American Perspective). Edited by B.F. Martynov. Moscow, 2004.

other Articles of the Constitution.

*The countries of the Eastern civilization* provide constitutional regulation of socio-economic rights that mainly depends on the type of socio-political system of the country. As a rule, in the constitutions of socialist countries the guarantees of social rights are set forth but at the same time the inequitable regulation of different types of property is assigned. For example, Article 12 of the Constitution of China declares that socialist public property is 'sacrosanct'.

Citing China as an example one understands that the concept of human rights as 'part of the borrowed spiritual culture of the West' is interpreted in the Eastern civilizations according to the national, historical, economic and socio-cultural features of the country. Human rights are looked upon 'through the prism of collective centralism', and socio-economic rights are regarded as group and positive rights.\* The Constitution of China (1982) sets forth a wide range of socio-economic rights subdividing them into the rights of citizens and the rights of workers: every citizen is entitled to work, but only workers are entitled to leisure and education. But the real situation with the protection of socio-economic rights is far from the one declared. The experts believe that 'the economic miracle' of China is based on the absence of the three fundamental principles that are intrinsic to any developed, socio-balanced economic system: 'In China there are no pension benefits, no state medical care, and no obligatory secondary education'.† Besides that, 'Chinese mentality' is often an obstacle for the realization of work rights, as it sets prevalence of responsibilities over rights; it extends paternalistic ideas over hierarchical relations at enterprises, where the junior are expected to respect the senior.‡

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\*See: *M.L. Titarenko*. China: Progress in the Development of Political System. On the Sinicized Concept of Human Rights; *V.D. Borodich*. On Politics Assessment in the Sphere of Human Rights in Modern China. Universalism of the Universal Declaration of Human Rights and Diversity of Experiences, pp. 70–73, 196–197. Moscow, 2009.

† *G.A. Tomchin*. Why Is Russia Not China? The Conflict of the 21st Century. Dialogue of Cultures and Partnership of Civilizations: The 8th International Likhachov Scientific Conference (p. 280). St. Petersburg, 2008.

‡ *E. Zang*. Personal Freedoms in the Sphere of Labour Relations and Their Implementation in the Modern World (Review of the Materials of the International Seminar on Comparative Social Right), (p. 102). State and Rights. 2009, Issue 1.

The Constitution of Japan (1947) with its different structure and contents, despite being rather short sets forth a wide range of rights and freedoms. Both the citizens of the country and foreigners may enjoy their rights. But in this case the Japanese legal culture influences the extent to which these constitutional regulations are implemented; it is characterized by the domination of the traditional values of agreement and harmony. An employee criticizing an employer in public or claiming to defend his rights is considered to break the harmony and amity at work and thus is believed to deserve blame and even punishment. Thus, judicial practice and legal doctrine in Japan keep to the established order that these guarantees aim only at the protection of people from arbitrary treatment of the state and are not applicable in case of personal claims including individual relations at workplace.\*

An overall analysis of social and economic rights in the constitutions of different countries leads one to the conclusion that their incorporation in constitutional acts was implemented to a different extent. The majority of the constitutions contain concise wordings thus allowing current legislation to regulate them in general. As Article 23 of the Constitution of Belgium runs, 'a law, a decree, or a norm guarantee economic, social and cultural rights and define the conditions of their implementation taking into account corresponding liabilities'. Thus, the procedure of implementation of constitutionally set socio-economic rights is defined by the relevant laws, and this is repeatedly stated in the constitutions. However, there exist constitutional acts where socio-economic rights are set forth with the help of norms that may formally be related to the level of the current legislation (the constitutions of Latin American countries, post-socialist countries, and partly the constitutions of Portugal and Spain).

One can say that in general the world community has reached consensus in acknowledging the value of socio-economic rights and the need to secure these rights in current constitutions. Broadly speaking, they are not only far from be-

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\* *M. Ivamura*. Personal Freedoms in the Sphere of the Labour Relations and Their Implementation in the Modern World (Review of the Materials of the International Seminar on Comparative Social Right) (p. 106). State and Rights. 2009, Issue 1.

ing of 'minor' importance, but together with civil and political rights present a unified complex of human rights and human legal status based on the interdependence and protection of all rights.