

HOW THE RIGHT TO A DECENT LIFE TURNED AMERICA INTO A WELFARE STATE

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Abstract

The welfare state, which we often find in legal literature, includes a complex system of relations. This activity aimed at ensuring human satisfaction and happiness is the highest goal of most developed countries in modern times. It seems possible to achieve this goal by raising the standard of decent living and ensuring the everyday rights included in the system of decent life rights. However, it should be taken into account that the right to a decent life is a system of norms that does not have a single consensus and has a relative character. That is why the analysis of this right by individual regions is considered necessary.

The right to a decent life, which was extensively analyzed by the author in previous research materials, is examined this time in the regional context - in the American region, where the foundations of the formation of the welfare state are determined. Increase of the role of the state in the regulation of the socio-economic sphere and the formation of strong state control is especially emphasized as the most important reason for the transformation of the Americas into a land of prosperity which is considered a characteristic feature of the last decades. In the article, the acts determining the standard of decent living in the American region were examined, the organizational mechanisms in this field were analyzed, a comparative analysis was made from the aspect of decent life among the countries located on the continent, and suggestions were made.

Keywords: *right to a decent life, decent standard of living, adequate standards, international agreement, social reforms, welfare state.*

Introduction

Studies show that the right to a decent life, which has its own specific place in the human rights system, has a relative character. We can conclude that its relativity has a significant impact on regional legal systems. So, when examining this specific right, we witness that the decent standard of living is manifested in different forms, carrying an individual character for each region. Forming a subgroup within the group of social rights, these rights are mainly aimed at the implementation of social protection of the population in order to eliminate social tension in society. [1, p.119]

When this right, which is not defined by a single consensus, is also affected by relativity, we see that different adequate standards are adopted for each region. The highest indicator of ensuring the right to a decent life is observed in the Euroregion. This region has a priority to ensure adequate standards at the highest level from a human rights perspective. Employment and healthcare opportunities are realized here at the maximum level compared to other regions. The level of well-being of the population in the American region, which competes with Europe in every way, is highly valued. In this region, the issue of guaranteeing the right to a decent life is characterized by the guarantee of separate rights included in this context.

According to most researchers, the most important reason for the transformation of the American region into a welfare zone is the increasing role of the state in the regulation of the socio-economic sphere and the formation of strong state control, as a characteristic feature of the last decades. [9]

However, it should be noted that despite the hegemony of this region in the international arena, we are witnessing the existence of certain gaps in the field of ensuring a decent standard of living. Thus, the imperativeness of the social state is not recognized at the constitutional level in most of the states located in the American region. However,

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the legislation makes maximum use of all its possibilities to ensure a decent standard of living of the population. [12, p.4-5]

The first attempts to create a welfare state

Measures to raise the decent standard of living in the American region have been started since the 60s of the 20th century. Thus, in the 20th century, the Economic Opportunity Act of 1964, the Civil Rights Act of 1964, and the Personal Responsibility and Work Opportunity Acts of 1996 were adopted in this region. Although these acts mainly addressed other areas, aspects of the right to a decent life were found in their text, albeit implicitly.

The American Declaration of the Rights and Duties of 1948, which aims to achieve moral and material progress and happiness, also includes important provisions in the field of realization of the right to a decent life. Thus, this document was the first international human rights document of a general nature. Article 7 of the Declaration enshrines the right of all women and children to special protection, care and assistance during pregnancy and nursing period, Article 9 - the right of every person to the inviolability of his home, Article 10 - the right of everyone to the inviolability and transmission of their correspondence, Article 11 - the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources, Article 12 - the right to an education, which should be based on the principles of freedom, morality and human solidarity, Article 14 - the right to work, under proper conditions as far as the existing working conditions permit, Article 15 - the right to leisure time, to effectively use free time, and to the opportunity for use of his free time to his spiritual, cultural and physical interests, Article 16 - the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control, Article 17 - the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights, Article 24 - the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon. The right to education enshrined in the Declaration includes the right of every person to receive an education that prepares him to lead a decent life, improve his standard of living and become a useful member of society. It is valued in each case as a right to equal opportunities according to natural talents, merit and willingness to use the resources that the state or society can provide. The right to work establishes the right of every working person to receive remuneration that will ensure an adequate standard of living for himself and his family, according to his abilities and skills. Article 35 of the second chapter of the Declaration, which is called duties, is called duties related to social security and welfare, where it is indicated that it is the duty of every person to cooperate with the state and the community according to his ability and existing circumstances related to social security and welfare, as if the guarantee of the right to a decent life of the person A is burdened on B, C and other persons as a duty. [4]

The 1978 Inter-American Convention on Human Rights (San Jose Pact) (ACHR) includes only the right to property, which is reflected in Article 21, among the rights included in the system of the right to a decent life, where everyone has the right to use his property. The law also mentions the provision of subordinating such use to the interests of the society in appropriate cases. Although the ACHR at the level of the Ameri-

can region deals primarily with civil and political rights, Article 26 of the act includes a general provision on economic, social and cultural rights. In this article, while referring to the obligation of the States Parties to adopt measures to "ensure the full implementation of the rights envisaged in the economic, social, educational, scientific, and cultural standards", the right to a decent standard of living is actually indirectly provided for. According to the same article, participating states are obliged to take appropriate measures through both domestic and international cooperation to achieve the full realization of a decent standard of living through legislation or other appropriate means. [5]

In a number of cases, the Inter-American Commission has jurisdiction to hear complaints about violations of economic, social, and cultural rights set forth in the ACHR Declaration and denounced by individual claims. In the case of *Amilcar Menendez v. Argentina*, the Inter-American Commission (IACHR) considered the mentioned petitions by combining them in accordance with Article 40, paragraph 2 of its Rules of Procedure. [13] Economic, social and cultural rights were also examined in the case of *Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernandez, Reymer Bartra Vásquez and Maximiliano Gamarra Ferreira v. Peru*, and the Inter-American Court's jurisdiction to apply Article 26 of the ACHR in judicial proceedings was determined indirectly. This dispute has created a broad ground for claims of future violations of this right to a decent life. [14]

The San Salvador Protocol of November 16, 1999, adopted as an Additional Protocol to the American Convention on Human Rights in the field of economic, social and cultural rights, occupies an important place in the system of guaranteeing the right to a decent life. The rights included in the system of the right to a decent life are interpreted in the Protocol as follows:

- In Article 1, States that are parties to the Additional Protocol, to the extent that the available resources allow and taking into account the degree of their development, undertake to implement especially economic and technical measures for the full observance of the rights recognized in this Protocol within the country and through international cooperation.

- Article 12 of the Protocol envisages the right to food included in the system of decent life. This article states that everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. In order to promote the realization of this right and to eradicate malnutrition, States Parties to the Convention undertake to improve their methods of food production, supply and distribution, and agree to facilitate wider international cooperation in support of relevant national policies.

- In Article 6, states are required to take measures to ensure the right of people to decent work and to achieve full employment.

- Article 7 provides for fair and satisfactory working conditions. In this article, decent living conditions for workers and their family members; equal wages for workers; change workplace; promotion at work, taking into account the qualification, competence, merit and seniority of employees; in cases of unjustified dismissal, the employee's rights to receive compensation, reinstatement, receive other benefits provided for by domestic legislation; safety and hygiene at the workplace; prohibition of night work, unhealthy, immoral and dangerous working conditions for persons under the age of 18; work regime not to hinder attendance at school and not create restrictions on benefiting from education; reasonable limitation of daily and weekly working hours;

shortening of days in dangerous, unhealthy and night work; rest, leisure time, paid vacations, as well as payments for national holidays, etc. cases were intended.

- The right to social security provided for in Article 9 included appropriate benefits for old age, disability and maternity.

- In Article 10 right to decent health considers universal immunization; prevention and treatment of disease; implementation of education in the field of health care; the provision of primary medical care to high-risk groups and the poor at the expense of the state by states.

- The right to a healthy environment contained in Article 11 includes the right of everyone to live in a healthy environment and to use basic public services; it also combined the responsibilities of the participating states in the field of environmental protection and improvement.

- Article 12 is called the right to food, and it states that everyone has the right to adequate nutrition that ensures their physical, emotional and intellectual development. To promote the realization of this right and to eliminate malnutrition, States Parties undertake to improve methods of food production, supply and distribution, and agree to promote international cooperation in support of national policies.

- Article 13 provided for the right to decent education. Here the right to education; direction of education to the comprehensive development of human personality and human dignity; the importance of strengthening respect for human rights, ideological pluralism, fundamental freedoms, justice and peace were emphasized. Establishment of institutions in the field of free compulsory primary education, accessible secondary and higher education and providing the needs of the population in the field of education are required from States Parties. The most important idea contained in the article was: education should enable everyone to participate effectively in a democratic and pluralistic society, to achieve a decent existence, to promote understanding, tolerance and friendship among all nations, racial, ethnic and religious groups, to encourage activities to promote peace.

- Article 15 is called the right to establish and protect families, where it is stated that everyone has the right to establish a family and that it is implemented in accordance with the provisions of the relevant domestic legislation, and that the participating states also ensure adequate protection of the family unit; to provide special care and assistance to mothers before and during a reasonable period after childbirth; to ensure adequate nutrition of babies; they undertook to take special measures for the physical, mental and moral protection of teenagers. This article also defined the formation of families, the right to marriage, the protection of the mother's health, the adequate nutrition of the child, the development of adolescents, the implementation of family support measures, the protection of children, the protection of their parents and the right to education.

- In Article 17 decent standard of living of the elderly; their right to special protection; provision of appropriate housing, care, work, food, specialized medical services and allowances are envisaged.

- In order to ensure a decent standard of living for disabled persons in Article 18, implementation of programs aimed at providing them with the necessary resources and environment for the participating states; conducting special trainings for the disabled; consideration of solutions to specific requirements arising from the needs of this group;

considering their comfort as a priority component of urban development plans, etc. tasks were defined. [2]

However, it should be noted that the Protocol of San Salvador had many shortcomings. Thus, the Protocol - 1) did not include any provisions on the right to adequate housing, clothing, and water; 2) the right to education is restricted in accordance with Article 13 of the Protocol; 3) the individual complaint procedure was limited, instead it was defined as the obligation to join in trade unions. [2]

In the case of the *Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Commission on Human Rights alleged that the Paraguayan government had violated the rights of the Yakye Axa Indigenous Community to food, water and health services and the right to life under Article 4 of the Convention by failing to respect their ancestral property rights. The Court also found that the refusal to grant legal status to the Commonwealth against Paraguay was a violation of its rights. The court thus ordered Paraguay to grant the Community - "especially children, the elderly and pregnant women" reparations, including compensation, food and water, sanitation, access to medical care and legal title to their traditional territory - i.e. the right to a decent standard of living. [6]

The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities of September 14, 2001 was adopted by the OAS General Assembly at its 29th regular session in Guatemala City. The goals of this document are to prevent all forms of discrimination against persons with disabilities, as well as to promote the full integration of these persons into society and to achieve a decent standard of living for them. The Committee on the Elimination of All Forms of Discrimination against Persons with Disabilities, consisting of one representative appointed by each state party, was also established to monitor compliance with the obligations under the Convention. [15]

Elements of the right to a decent life in the Americas can also be found in the Declarations of the Inter-American Commission.

The NAFTA Agreement of 1994, which had a limited impact on improving business conditions in the Americas, gained a higher profile after being enriched with important aspects included in the SDG development goals. NAFTA is essentially an inter-governmental trade agreement based on an intergovernmental logic that depends on consensus among the governments of the three member countries located in the region - the United States, Mexico, and Canada. However, we must note that ratification by the United States Congress was possible only after the inclusion of two complementary agreements to NAFTA: 1) Each NAALC Agreement, which stipulates obligations for the three governments to help improve labor, living and working conditions, as well as to ensure compliance with labor laws, 2) North American Agreement on Environmental Cooperation - NAAEC. [6]

The main goal of NAFTA's adoption was to improve existing structural rules for solving labor issues, including promoting the ratification of International Labor Organization (ILO) Conventions, guaranteeing aspects consistent with the concept of decent work. Admittedly, over 25 years of implementation, NAFTA has effectively created a strong interdependence between the economies of the three countries. [6]

Organizational Mechanisms for the right to a decent life in the Americas

The Organization of American States (OAS) operates in order to effectively organize existing interstate coordination in the American region. The main legal document of the organization is the American Convention on Human Rights of 1969.

As the principal and autonomous human rights body of the OAS, the Inter-American Commission on Human Rights was established to uphold and promote human rights in the Americas. Its Statute was approved on May 25, 1960, and its first members were elected by the OAS on June 29, 1960. In 1961, the IACHR began to visit a number of countries to observe the human rights situation on the spot. In 1965, the IACHR was empowered to investigate complaints or petitions regarding specific human rights violations. Thus, the IACHR was established as the principal organ of the OAS with the adoption of the Buenos Aires Protocol signed in 1967, the first reform of the OAS Statute [15]. With more than fifty years of involvement in the protection and promotion of human rights in the Americas, the Commission covers the continent's thirty-five independent countries and covers a wide range of human rights issues facing them.

In the American region, the Inter-American Court of Human Rights was established in accordance with the American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978. The functions and procedures of the court are determined by the OAS. Functions include the following:

- At the request of OAS Member States, the Court has the power to issue advisory opinions on the interpretation of the ACHR and other treaties on the protection of human rights in the Americas, as well as on any matter within the jurisdiction of OAS bodies;

- Has jurisdiction to hear disputes over alleged violations of the ACHR;

- Monitors States' implementation of the Convention;

- If the court determines that a right or freedom protected by the ACHR has been violated, it issues a decision on "ensuring the injured party's use" of the violated right or freedom;

- Compensation can be paid to the injured party by court decisions. International human rights mechanisms rarely provide such an opportunity. [16]

Various programs and reforms have been implemented in order to ensure decent life rights in the continent. Welfare reform was among the steps taken in the right direction by President Clinton's reforms aimed at restoring welfare, dignity and decent opportunities for the vulnerable population. He believed that the main factors affecting poverty in the region are mental illness, drug and psychotropic substances, alcohol abuse, and limited educational opportunities. [7, p.29]

U.S. District Court Judge Clyde Atkins ordered the creation of two "safe zones" in the city, citing that Miami's homeless have a constitutional right to eat, sleep and bathe on public property. As part of this activity, homeless people in America were offered food and shelter. There are many speeches of Reagan in the field of providing a decent life for the homeless.

A comprehensive study conducted by Tufts University's Center for Hunger, Poverty, and Nutrition Policy in late 1992, among the studies on the right to a decent life in the Americas, found that approximately 30 million Americans are undernourished, 6 million people living in poverty do not receive food stamps, and 10 million people living in poverty and receiving food stamps often go hungry, additional federal

programs do not meet the nutritional needs of these people, and these programs do not reach people who do not live a decent life.

The problem of drug addiction, which is legal in the relevant places of the region, is approached here from the aspect of public health law [8, p.131-132]. However, research materials also note that there are inmates who may be allowed and encouraged to use substances under certain conditions and restrictions and under medical prescriptions to protect the right to health [8, p.137-138]. In order to combat this health problem, measures to dignify and humanize punishments for persons deprived of liberty, which is the goal of the reform of Article 18 of the 2008 Constitution, have been initiated. Section 16 of Article 33 of the aforementioned Law (LNEP) states that a currently non-existent protocol on "drug addiction treatment" should be adopted. This, of course, should begin with procedures for systematically exposing human rights violations for people who have been deprived of their freedom.

Conclusion

Issues such as adequate work, health, education, protection, inequality and economic growth, which are included in the rights to a decent life, are the main topics of discussion in national-political agendas, but in regional discussions, especially in America, this activity has a marginal impact. The problems of most modern states consists in eliminating the consequences of globalization in the social and labor spheres. Global economic processes lead to a weakening of state control over the national economy, and these states face the risk that the market economy will grow to dangerous levels that will lead to social inequality. [11, p.7]

However, most researchers believe that a few of the countries included in the American region - especially the United States - are almost completely consistent with the legal category of the welfare state. In our opinion, it is not about socio-economic rights of citizens, individual opportunities obtained depending on their social status, but independent, official recognition of them as inalienable rights. However, it should be noted that this goal is not yet among the priorities of the American government. However, in this region, the activities of reforming education and health systems are being carried out, fighting the consequences of cuts due to absolute unemployment and the crisis in the economy. In general, we can say that the idea of creating a welfare state in America has become a priority area of social policy. Of course, in this direction, both America and the other regions that we are researching, should be aimed at solving the social, economic, demographic and other problems of raising a decent standard of living.

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