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EUROPEAN SOCIAL POLICY: FROM ORIGINS TO THE PRESENT

Abstract. The article analyzes the formation and development of the legal basis for regulating EU social policy, the contribution of the founding treaties of the integration association in this area. The attention is focused on European specialized acts in this field.

The importance of social dialogue is emphasized. The role of Sectoral Dialogue Committees is noted. The significance of social summits are revealed; the emphasis is placed on the activities of states and their partners in the development of social standards.

The role of the EU institutions, in particular the European Commission, which complements the policies of Member States in the field of social integration and social protection by developing strategic acts aimed at improving the social status of individuals; provides recommendations to Member States on modernizing their social security systems.

Keywords: *legal basis, social dialogue, social policy, social standards.*

Relevance of the study. By the end of the XX century the social protection of population has become the main attribute of social policy of any civilized state. The task of most social protection systems is to maintain the stability of people's incomes, provide equal access to health care and necessary social services. As an organized system, it exists in many countries around the world. In economically developed countries, social protection is the most important part of the national economy, spending more than a quarter of gross domestic product. The most developed systems of social protection are the countries of the European Union (hereinafter – the EU, the Union). First social programs were appeared and developed there. Due to social protection systems, modern European economies are called socially oriented. As the experience of Western European countries shows, the existence of a well-designed social protection system that covers all citizens not only improves their well-being, expands and strengthens the country's labor resources, but also contributes to economic growth and stabilization of political and social situation. Thus, social protection has a positive impact on society, contributes to social harmony and ensures a common sense of social security among its members [1].

However, the rapid development of society, the active introduction of digital

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technologies and the emergence and active uncontrolled spread of new threats, such as the new type of corona virus pandemic COVID-19 require the development and implementation of new social policy approaches to bridge the digital skills gap, increase employment, reduce the risk of poverty, etc.

Recent publications review. It should be noted that the issues of EU social policy are in the spotlight at the doctrinal level, in particular, some issues on European social policy were covered in the works of such authors as: M. Hurina, K. Dorenko, M. Mikiievych, O. Shpakovych, O. Formaniuk, V. Blyzniuk and others [1-24].

However, such issues need further study in the light of current challenges and threats.

The purpose of the article: to reveal the genesis of the legal basis of European social policy; to identify the role and importance of social forums and individual EU institutions in the field of social policy; to make the appropriate conclusions.

Discussion. European policy of employment, social affairs and equal opportunities aims to improve living conditions by promoting employment, sustainable development and greater social cohesion. The European Union (hereinafter – the EU, the Union) is a catalyst for social change, with the aim of increasing the employment and mobility of workers, improving the quality of jobs and working conditions, informing and advising the employees, combating poverty and social exclusion, promoting equal opportunities and combating discrimination, as well as modernizing the social protection system [2].

According to Persida Cechin-Crista, Gabriel Ionel Dobrin and others, the EU's role in social policy-making is to ensure national policy or to initiate measures to be applied according to the methods defined by each member state. Social policy and employment are important tasks of society, which have been transformed by the EU institutions into the legal instruments [3, p. 18].

Thus, the development of social policy by EU Member States began with the awareness of European politicians of the need to turn to the social base of integration as a basis for sustainable economic growth. The first agreements on economic cooperation, signed in the 1950s (the Treaties establishing the European Coal and Steel Community in 1951, the European Economic Community (EEC) in 1957 and the European Atomic Energy Community (Euratom) in 1957) contained provisions protecting workers' rights. The inclusion of minimum social guarantees in the texts of treaties provided the basis for the free movement of people within the Communities. Provisions of social guarantees were initially declarative, as they were not supported by a specific program of measures, there was no mechanism for implementing of social guarantees. The adoption of the European Social Charter of the Council of Europe in 1961, which all the Member States of the European Community were accepted, gave an additional impetus to the development of a comprehensive legal framework in the social sphere of the European Communities. Deepening the economic integration and creating a single European market required equal importance for the social and economic aspects of integration, so that they could develop in a balanced way [4].

At the time of drafting the founding treaties establishing the European Communities, the Member States did not aim to pursue social policy coordination alongside with economic integration. Firstly, social policy was a very sensitive area of national sovereignty, and as a result, Member States were not ready to transfer their functions in this area to the European level. Secondly, it was assumed that the success of economic integration would contribute to social development and progress in the Member States, especially in the long run. Therefore, all founding treaties include articles that provide for a number of social measures to minimize the negative consequences of the first steps of integration. However, the declared goals were formulated vaguely and were mostly of declarative nature. This was especially true of the articles on "social harmonization", as this aspect was the most controversial in the drafting of treaties. As for the implementation of specific measures in the social sphere provided for the first period of integration, they were mainly carried out in two directions: the introduction of the principle of free movement of employees and retraining of workers in the coal and steel industry [5, p. 32-33].

The tasks of social policy were set in the Treaty of Rome. In particular, the need of harmonization of living and working conditions, improving the employment opportunities and living standards were pointed out. For this purpose, the European Social Fund (ESF) was created. However, as recognized in the European Union, the real work in the social sphere began only in the mid-1970s, after the Paris Conference in 1972, which aimed to intensify activities in the social sphere, because it is one of the most important components of economic

and monetary union [6, p. 167-168].

According to Miriam Hartlapp, until the mid-1970s, EU social policy was limited to a few tools. All of them were closely related to the justification of market integration. The regulation sought to coordinate social security systems to maintain the free movement of employees or equal pay for men and women to avoid an unfavorable competitive position for countries that had already followed this principle [7, p. 1].

Thus, a new stage in the development of social policy in the European Communities began in the early 1970s. It was characterized by a change in the approach to this area of EU activity and the practical content of social policy, the expansion of its functions, the reform of old and the introduction of new instruments. At the Community level, it was first recognized that the development of integration in the social sphere lags far behind economic integration and that the success of the latter does not automatically lead to the elimination of most social problems [5, p. 33].

The issue of social policy as an independent area of activity was first discussed at the Paris Summit in 1972, one of the most significant results of which was the emergence of the first large-scale Program of Social Action. Since the mid-1980s, some intensification of the EU's work in the social sphere has been observed. In a draft of the Single European Act prepared by the European Parliament in February 1984, one of the chapters was entirely devoted to social issues. The 1990s were the beginning of a new stage in the development of EU social policy, which moved to a qualitatively new level of development during this period [5, p. 35]. In a number of EU countries in the 1990s, major reforms of social protection systems were carried out, there was a significant reduction in the volume of social services and the introduction of market principles of social security. These tendencies could not help but provoke sharp criticism from trade unions and some political forces, and also led to claims that the welfare state in Europe is being replaced by a system of "individual welfare" [4].

The Single European Act, adopted in 1986, set the task of "forming a single social space within the Community", which meant the desire to create a single area for the protection of social rights within the EU. In fact, the set of social rights specified in the first agreements was not changed, but the range of decision-makers in the social and economic spheres was expanded, and financial institutions were established to provide programs in the social sphere. Particular attention was paid to the creation and strengthening of institutions of social dialogue at the European level [8, p. 100].

It is worth to note that in 1989 the Jacques Delors Commission presented to the Community the Charter of Fundamental Social Rights of Workers, designed to promote a more social Europe in the internal market. The British administration, led by Mrs. Thatcher, opposed the Charter on the grounds that it would restrict free entrepreneurship and negatively affect the free market and slow down the economic growth of the Community and its Member States. The adoption of the Community Charter of the Fundamental Social Rights of Workers in 1989 showed that the EU institutions were aware of the importance of the "social dimension" of integration. The text of the Charter was approved at the European Council in December 1989. Particular attention was paid to the conditions of competition within the European Communities, when the cost of social security began to be taken into account by companies when choosing a country for allocation of capital and production. Trade union representatives said that the market mechanism of competition within the EU undermined the gains in social protection sphere and could lead to a "gradual and indirect process of erosion of social policy". The charter enshrined 12 basic social rights of workers, which EU Member States committed to ensure "at the appropriate level" [8, p. 100].

In 1992, with the signing of the Maastricht Treaty, it was complemented by the Protocol on Social Policy with the Agreement concluded between the Member States of the European Community, with the exception of the United Kingdom of Great Britain and Northern Ireland. Areas of regulation of social policy were: improving the quality of the working environment to protect the health and safety of workers; working conditions; information and advice for workers; equality between men and women in terms of opportunities in the labor market and attitudes at work; the involvement of people excluded from the labor market in economic activities, without prejudice to compliance with Article 127 of the Treaty establishing the European Community [9]. However, until the entry of the Amsterdam Treaty into force, social policy issues remained largely within the national competence of states. At the same time, recognizing the geopolitical, economic, technological, demographic and other global challenges alongside domestic problems, the EU authorities and the governments of the

Member States increasingly coordinated their activities in the social sphere. The increase in the number of Member States (from 15 to 27), the population (up to half a billion people) over two and a half years (May 2004 – January 2007) and the unprecedented deepening of regional socio-economic disparities urgently required changes to the EU's founding treaties [10, p. 203]. Amsterdam Treaty introduced several innovations into the European social model. The main one was that it replaced the Protocol on Social Policy of the Maastricht Treaty with the chapter on employment. Nice Treaty in 2000 did not make a revolutionary or innovative contribution to social policy due to the fact that by the time of signing this Treaty, the Community had already acquired many commitments in the field of social policy. However, it should be noted that the Treaty of Nice allowed the Council to take unanimous decisions on the use of the joint decision-making procedure with Parliament in such policy areas as dismissal of employees, protection of collective interests, etc. Moreover, full recognition of the social rights of workers in the Union was enshrined in the Charter of Fundamental Rights of the European Union. The Charter was proclaimed in Nice on 7. December, 2000 and received full legal force equal to the Treaties of the Union under the Treaty of Lisbon (2009) [9; 11].

The Lisbon Treaty, which entered into force at the end of 2009, confirmed the affiliation of social policy to the common competence of the EU and the Member States. The priority issues of social policy were mentioned - these are various aspects of labor relations, the optimization of which can better ensure justice in the distribution of public goods, create conditions for a dignified life for all citizens, regardless of profession, gender, age, ability to work, ethnicity and religion. EU social policy is characterized by a wide range of instruments through which the Union's institutions harmonize the social sphere, promote employment and guarantee social protection of the citizens [10, p. 203].

The preamble to the EU Treaty (hereinafter – TEU) also reaffirms the commitment of states to fundamental social rights, as defined in the European Social Charter signed in Turin on 18. October 1961 and in the Community Charter of the Fundamental Social Rights of Workers in 1989 and readiness to pursue policies that ensure progress both in economic integration and in other areas with a view to promote the economic and social progress of their peoples, taking into account the principle of sustainable development and in the context of completing the internal market. Art. 3 (ex Article 2) of the Treaty stipulates that the Union shall create an internal market; seeks to ensure the sustainable development of Europe on the basis of balanced economic growth and price stability, a highly competitive social market economy that strives for full employment and social progress, and a high level of protection and improvement of the quality of the environment; fights against social marginalization and discrimination, promotes social justice and social protection, equality between women and men, intergenerational solidarity and the protection of the rights of the child; promotes the economic, social and territorial cohesion and solidarity of the Member States [12].

This issue is also reflected in the provisions of the Treaty on the Functioning of the EU (hereinafter – TFEU) [13]. In particular, it provides that the Union may take initiatives to ensure the coordination of the social policies of the Member States (Article 5 (3) (ex Article 2 D)). In addition, in defining and implementing its policies and activities, the Union shall take into account the need to promote a high level of employment, adequate social protection, combating social marginalization and a high level of education, training and human health (Article 9 (ex Article 5-bis)). It should be noted that Section X "Social Policy" is also devoted to this issue. Thus, in particular, in the provisions of this Section, EU Member States have recognized their goals in this area: increasing employment, improving living and working conditions, adequate social protection, social dialogue, human resources development, which allows to achieve high and sustainable employment, combating marginalization. At the same time, the Union and its Member States have recognized the fundamental social rights guaranteed by the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. In order to achieve these objectives, the Union and the Member States have committed themselves to take the measures that take into account the diversity of national practices and the need to maintain the competitiveness of the Union economy, given that such development will serve as a result of both the functioning of the internal market, which will contribute to the harmonization of social systems, and the procedures provided in the Treaties and the approximation of legislative, by-law and administrative provisions (Article 151 (ex Article 136)).

According to Art. 152 (ex Article 136-bis) TFEU the Union recognizes and encourages the role of the social partners at its level, taking into account the diversity of national systems.

It promotes dialogue between the social partners while respecting their autonomy. The Tripartite Social Summit for Growth and Employment contributes to social dialogue (art. 155 (ex Article 139)) [13].

Dialogue between the social partners at Union level may, if they wish so, lead to the establishment of contractual relations, including the conclusion of agreements. The implementation of agreements concluded at Union level shall be carried out either in accordance with the procedures and practices of the social partners and the Member States or, in the areas covered by Article 153, at the joint request of the signatories by decisions of the Council adopted on a proposal from the Commission (Article 155 (ex Article 139)).

Article 152 of the Treaty reaffirms the EU's commitment to support European social dialogue and recognizes the independence of the European social partners [13].

The social dialogue is an integral part of the European social model and a central component of the EU's concept of "good governance". Social dialogue is enshrined in the TFEU (Articles 151-155) and is reflected in many strategic and practical areas of EU activity. In the EU context, social dialogue includes a number of procedures and arrangements in which European-level organizations representing employers and employees interests hold discussions and negotiations, carry out other joint activities and participate in EU decision-making and policy-making processes. Such social dialogue takes two main forms and takes place at two key levels: bilateral dialogue involving only the social partners (organizations representing employers and employees); tripartite dialogue with the participation of both social partners and Union bodies (EU Council, European Commission). Thus, within the EU, bilateral social dialogue takes place at two main levels: cross-sectoral, when the dialogue fully covers all sectors of the economy and the EU labor market as a whole; and sectoral, when the dialogue covers one or another industry within the EU. The tripartite dialogue – also called coordination – between the social partners and the EU bodies is of great importance. In particular, in 1970, at the request of the social partners, the Council established a Standing Committee on Employment (hereinafter – the SCE) to ensure a continuous dialogue, joint action and consultation on employment policy between EU bodies, governments and social partners. The SCE served as a forum for tripartite dialogue until the early 2000s, and in 1999 was reformed, modernized and integrated into the European Employment Strategy. The TFEU enshrines the important role of the tripartite social summit. Article 152 states that "the Union recognizes and encourages the role of the social partners at its level, taking into account the diversity of national systems. It promotes dialogue between the social partners while respecting their autonomy. The Tripartite Social Summit for Growth and Employment contributes to social dialogue". However, such reforms did not significantly improve the situation, and in 2001 the Tripartite Social Summit for Growth and Employment (which was already operating) took the place of the SCE. The Tripartite Social Summit was formally established by a decision of the Council in 2003 (to replace the SCE). Its role was to ensure a continuous dialogue between the Council, the Commission and the social partners on the EU's economic and social strategy. Tripartite dialogue on specific EU policies also began in the mid-1990s, and today cross-sectoral partners are engaged in structured discussions and consultations with EU bodies and governments of Member States on a range of issues, both political and technical. In particular, they address issues of macroeconomic development, employment policy, social protection and education / training. The Commission organized the first tripartite social forum in 2011 to discuss issues related to its flagship program for new skills and jobs and the Europe 2020 strategy in general [14].

It should be noted that at the sectoral level, a significant development of social dialogue took place in 1998, when the European Commission decided to establish sectoral dialogue committees that promote the dialogue between the social partners at the European level. The document set out precise provisions for the establishment, representation and operation of new sectoral committees designated as central bodies for consultation, joint initiatives and negotiations.

According to this decision, the Sectoral Dialogue Committees create sectors where the social partners jointly request to participate in the dialogue at European level and where organizations representing both sides of the industry meet the following criteria: they must relate to specific sectors or categories and be based at European level; they consist of organizations which themselves are an integral and recognized part of the social partner structures of the Member States and are capable for negotiating agreements, and which represent several Member States; they must have adequate structures to ensure their effective

participation in the work of the committees. Each Committee consults on developments at Community level which have social implications and develops and promotes social dialogue at sectoral level [15]. This Decision provides the basis for the establishment of sectoral social dialogue committees in various areas of EU activity, where representatives of employers and employees (known as "social partners") can meet to discuss policy changes. They are part of the wider European social dialogue, which is an important element of the EU's social model and governance.

Committees are set up in sectors where organizations representing employees and employers in this field jointly state that they wish to engage in dialogue at EU level. They should: address specific sectors of the economy, such as banking and agriculture; consist of organizations that are recognized national social partners; be able to negotiate agreements; and represent the social partners of several EU countries; have the structure and resources to participate effectively at EU level. Each committee: consults on EU development issues with social implications in its field; develops and promotes social dialogue within its competence; establishes, together with the European Commission, its own rules of procedure; meets at least once a year; chaired by either an employer, or a representative of the employees, or an official person of the Commission; regularly checks its activities with the Commission. Sectoral dialogue committees replace previous forms of sectoral cooperation between the social partners. Since 1998, the Commission has set up more than 40 social dialogue committees. They cover about 150 million workers in the EU in sectors such as transport, agriculture, construction, trade, public services, construction of machinery and equipment, hotels and restaurants, and banking. The dialogue has led to an agreement on about 900 texts of different legal status [16].

According to the Report of the Commission on Sectoral Social Dialogue at European level, the Committees work on issues such as health and safety, vocational training, skills, equal opportunities, mobility, corporate social responsibility, working conditions and sustainable development.

EU countries should implement the five Directives as a direct result of legally binding texts agreed by the social partners in the sectoral social dialogue committees: to prevent injuries and infections of medical workers; improve working conditions for around 300,000 seafarers across the EU by incorporating internationally agreed standards into EU law; establish minimum standards for working hours and rest periods for seafarers; establish minimum norms of working hours and rest periods for aircraft crews; provide satisfactory conditions (such as driving time, breaks and daily and weekly rest) for people working in cross-border rail services. In addition to these and other formal arrangements, the social partners take other specific measures at the national or company level to raise awareness, support social dialogue at the national / regional or company level, or influence policy-making. Shared opinions, presentations of best practices or participation in joint projects (seminars, conferences, research, seminars) offer social partners opportunities to learn from each other and build trust. The examples include: a framework agreement to reduce adverse effects on the musculoskeletal system, such as back problems, for agricultural workers; recommendations for avoiding false self-employment in the construction sector; guidelines for promoting gender equality in local government; handbook on accident prevention at sea; recommendations for forecasting and managing the restructuring of the textile industry [17].

It should be noted that in 2017, European heads of states and governments met in Gothenburg with EU institutions, social partners, civil society, students and leading experts at the Social Summit on Fair Jobs and Growth, organized by the Swedish Government and the European Commission. The summit provided an extraordinary opportunity for leaders and stakeholders to discuss topics related to the daily lives of citizens, which contributed to the debate on the future of the EU. The Social Summit on Fair Jobs and Growth focused on how to stimulate inclusive growth, create fair jobs and promote equal opportunities for all men and women, recognizing the common challenges and diversity of experience in Europe. Discussions took place in a unique, open and interactive format, which led to the hearing of different points of view and discussion of different solutions, taking into account common problems and features of the national context and priorities. Live broadcasts allowed citizens across Europe to follow the discussions in real time. The summit was an occasion to reaffirm the shared responsibility to address the challenges that labour markets face at all levels. It was emphasized at the Summit that employment and social progress are primarily created locally. The rich exchange of experiences has provided inspiration to governments and stakeholders on

how to design and implement policies in the future. The need to promote the convergence of economies and societies must correspond with efforts at all levels, including the social partners and, taking into account the diversity of social traditions in Europe, promote further steps to improve access to labor markets, fair employment and working conditions [18].

Within the 2017 Summit, the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights at the Gothenburg Summit. The Pillar sets out 20 key principles that represent a beacon aimed at creating a strong social Europe that is just, inclusive and full of opportunities in the 21st century. The twenty principles of the Pillar help to build fairer and more efficient labor markets, as well as social security systems for the benefit of all Europeans, including: education, training and lifelong learning; gender equality; equal opportunities; active employment support; safe and adapted employment; salary; information on employment conditions and protection in case of dismissal; social dialogue and employee involvement; work and life balance; healthy, safe and well-adapted work environment and data protection; child care and support; Social Protection; unemployment benefits; minimum income; income and old-age pensions; health care; inclusion of people with disabilities; long-term care; housing and assistance for the homeless; access to basic services [19, 20].

The European Pillar of Social Rights adds new principles that address the challenges posed by social, technological and economic development. For their legal support, principles and rights first require the adoption of special measures or legislation at the appropriate level. The principles enshrined in the European Pillar of Social Rights apply to citizens of the Union and to third-country nationals residing legally. If the principle applies to employees, it applies to all employed persons, regardless of their employment status. The European Pillar of Social Rights must not prevent Member States or their social partners from setting more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be construed to limit or adversely affect rights and principles recognized in the relevant fields of application by Union law or international law and international agreements to which the Union or all Member State are parties to, including the European Social Charter and relevant conventions and recommendations of the International Labor Organization. The implementation of the European Pillar of Social Rights is a shared political commitment and responsibility, involving the implementation of appropriate measures at both Union and Member State level within their respective spheres of responsibility, taking into account different socio-economic conditions and national systems, including the role of social partners. At the same time, the social dialogue plays a key role in strengthening social rights and sustainable and inclusive growth. Thus, the social partners at all levels must play a crucial role in the implementation and realization of the European Pillar of Social Rights in accordance with their autonomy in negotiating and concluding agreements and the right to collective negotiations and collective actions [20].

It should be noted that the Social Summit in Porto held 7-8. May 7-8, 2021 and organized under the chairmanship of the Portuguese Council, was confirmed the desire and ambition to put people on the first place in the reconstruction of Europe. The social commitment between the Portuguese Presidency of the Council of the EU, the European Commission, the European Parliament and the social partners as part of a joint effort to strengthen the commitment was signed at the summit. The parties reaffirmed their commitment to the implementation of the European Pillar of Social Rights and to join efforts for an inclusive, sustainable and equitable recovery with a large number of workplaces based on a competitive economy. The parties also noted the significant impact of COVID-19 on health care systems, which resulted in further far-reaching changes in the workplace, education, economy, social security and social life systems in Europe and the emergence of a deep economic and social crisis. They noted that in the face of rising unemployment and inequality due to the pandemic, it is important to direct resources to where they are most needed to strengthen the economy, and focus political efforts on equal opportunities, access to quality services, quality jobs, entrepreneurship, retraining and reduction of poverty and alienation. In view of the above mentioned, they concluded that was the right time to collectively endorse and support an ambitious program of strong, sustainable, comprehensive economic and social recovery and modernization, which goes hand in hand with strengthening the European social model so that everyone could benefit from the transition to "green" and digital technologies. The parties also emphasized that the 20 principles remain a compass that leads to a strong, sustainable, comprehensive recovery and to the growth of economic and social convergence. In

their Strategic Agenda for 2019-2024, EU leaders also stressed that the Pillar should be implemented by transforming its principles into action at the level of the Union and the Member States with the relevant competences involved. In its resolutions "A Strong Social Europe for Just Transitions" and "The Child Guarantee", the European Parliament also strongly reaffirmed the need for a strong shared commitment to the realization of the rights and principles of the Pillar. In this context, the parties welcomed The European Pillar of Social Rights Action Plan presented by the European Commission [21].

The above-mentioned Action Plan, presented by the European Commission, proposed a number of initiatives and identified three main goals to be achieved across Europe by 2030: keeping the employment rates of at least 78% in the European Union; at least 60% of adults attending training courses each year; reducing the number of people at risk of social exclusion or poverty by at least 15 million people, including 5 million children [22].

To achieve the first goal, Europe must strive to: reducing the gender gap in employment by at least half compared to 2019, which is crucial for progress towards gender equality and the employment target for the working age population; increasing the provision of formal education and care for young children, thus promoting better work-life balance and supporting more active participation of women in the labor market; reducing the share of young people aged 15-29 who are not involved into employment, education or training (NEET), from 12.6% (2019) to 9%, namely by improving their employment prospects.

Regarding the achievement of the second goal, it is noted that in the context of increasing adult participation in education to 60%, it is of paramount importance to improve employment opportunities, stimulate innovation, ensure social justice and bridge the digital skills gap. However, by 2016, only 37% of adults participated in training activities annually. For low-skilled adults, this figure reached only 18%. A key success factor in ensuring that adults can participate in skills development and retraining at a later age is a solid foundation of basic and cross-cutting skills acquired in primary education and training, particularly among vulnerable groups. In view of this, it is necessary to intensify efforts to increase adult participation in learning and increase the level of success in primary education and training, in particular: at least 80% of people aged 16 to 74 must have basic digital skills, which is a prerequisite for inclusion and participation in the labor market and society in Europe with digital transformation; early school leaving should be further reduced and participation in higher secondary education increased. This is based on the objectives set out in the European Training Program, the Council Recommendation on Vocational Education and Training and the Council Resolution on the European Education Area.

With regard to the third goal, it is noted that focusing on children will not only give them access to new opportunities, but will also help break the cycle of poverty passed down from generation to generation, preventing them from becoming a risk group for poverty or social exclusion in adulthood and thus causing long-term systemic effects.

These three main goals for the period up to 2030 are considered ambitious and realistic at the same time. Although the level of uncertainty associated with the pandemic and its implications for societies and economies does not fully predict the progress expected in the coming years, the proposed targets reflect recent economic forecasts as well as the impact of the COVID-19 crisis. The desire to achieve them is necessary for Europe to maintain its leadership in improving the well-being of people [22].

In order to achieve these goals, the Action Plan set out in the Porto Social Summit called for a concerted effort to: mobilize all the necessary resources – investment and reform – to overcome the economic and social crisis, increase Europe's resilience to future crises and increase the competitiveness of European economy based on sustainable and inclusive growth; maintaining fair and sustainable competition in the internal market through innovation, quality jobs, decent salaries, adequate working conditions, safe and healthy jobs and the environment, equal treatment and fair mobility; taking measures to improve the functioning of labor markets so that they contribute to sustainable economic growth, international competitiveness, the creation of decent working conditions and the integration of women, youth and vulnerable groups into the labor market; taking measures to strengthen national social protection systems to ensure a dignified life for all while maintaining their resilience; drawing attention to the communities and people most affected by the COVID-19 crisis and its short-, medium- and long-term effects; promoting social dialogue as a structural component of the European social model and strengthening it at the European, national, regional, sectoral and corporate levels; promoting gender equality, including by bridging the gender pay gap and guaranteeing the

right to equal pay for work of equal value, etc. [21].

The issue of EU social policy was also addressed in Regulation (EU) № 883/2004 on the coordination of social security systems, which sets out general rules for the protection of social security rights when moving within the EU (as well as Iceland, Liechtenstein, Norway and Switzerland). The Regulation on the coordination of social security systems does not replace national systems with a single European system, but covers all traditional areas of social security, namely sickness, maternity and paternity, old-age pensions, invalidity pensions, survivors' and death benefits, unemployment, large families allowance, accidents at work and occupational diseases [23].

It should be emphasized that significant support in this area is provided by the European Commission, which complements the policies of Member States in the field of social integration and social protection. The Europe 2020 strategy for smart, sustainable and inclusive growth aims to lift at least 20 million people out of poverty and social exclusion and increase employment of population aged from 20 to 75%. The flagship initiatives of the Europe 2020 strategy, including the Platform against Poverty and Social Exclusion and the Agenda for New Skills and Jobs, support efforts to achieve these goals. Through its social investment package, the Commission makes recommendations to Member States on modernizing their social security systems for social investment. The package complements: the Employment Package, which sets the way forward for recovery, the White Paper on Pensions, which presents a strategy for adequate, sustainable and secure pensions, and the Youth Employment Support Package, which specifically addresses the situation of young people. As social policy is an integral part of the Europe 2020 Strategy, the Commission also supports the efforts of EU countries to address their social problems through the actions provided for in the Platform against Poverty and Social Exclusion and the Social Investment Package, as well as EU funds, including the European social fund. The Commission works with EU countries through the Social Protection Committee, using the open method of coordination in the field of social inclusion, health and long-term care and pensions, which is a voluntary process of political cooperation based on agreeing common goals and assessing progress towards these goals using common indicators. This process also involves close cooperation with stakeholders, including the social partners and civil society [24].

Conclusions. In view of the above mentioned, we conclude that: EU policy is based on generally accepted international norms, integration legislation and the national legislation of the Member States, including the European Social Charter and the relevant conventions and recommendations of the International Labor Organization; this policy is based on the principles of equality, non-discrimination and equal opportunities; EU social policy aims to increase the well-being of all categories of Union citizens and third-country nationals who have a legal place of residence, regardless of their employment status; the social policy standards developed by the Union are a model to be pursued by the Member States, which can and should be a springboard for setting more ambitious social standards; It should be noted that the EU seeks to improve the rules in this area in the light of current realities, taking into account the adjustments made by the COVID-19 pandemic.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

References

1. Antropov V. V. Ekonomicheskiye modeli sotsial'noy zashchity naseleniya v gosudarstvakh YES. : avtoref. diss. ... doktora ekonomicheskikh nauk : 08.00.14 [Economic models of social protection of the population in the EU states. : autoref. diss. ...]. – Mirovaya ekonomika. M., 2007. URL: <https://www.econ.msu.ru/cmt2/lib/a/886/File/antropov.pdf> [in Russ.].
2. EU Employment and social policy. URL: https://eur-lex.europa.eu/summary/chapter/employment_and_social_policy.html?root_default=SUM_1_CODED=17.
3. Persida Cechin-Crist, Aurel Mihaş, Gabriel Ionel Dobri, Sorin Blaj. The Social Policy of the European Union. International Journal of Business and Social Science. 2013. Vol. 4, No. 10. P. 16-25. URL: https://ijbssnet.com/journals/Vol_4_No_10_Special_Issue_August_2013/2.pdf.
4. Deriglazova L.V. Sotsial'naya Yevropa i sotsial'naya politika Yevropeyskogo soyuza. Ucheb.-metod. materialy № 5/2017 [Social Europe and the social policy of the European Union. Teaching method. materials No. 5/2017] / L.V. Deriglazova. Rossiyskiy sovet po mezhdunarodnym delam (RSMD). M.: NP RSMD, 2017. 56 p. [in Russ.].
5. Gurina M.V. Etapy formirovaniya sotsial'noy politiki Yevropeyskogo Soyuz [Stages of formation of the social policy of the European Union]. Vesnik BDU. 2010. Ser. 3, № 1. S. 32-36. URL:

<https://core.ac.uk/download/pdf/290213881.pdf> [in Russ.].

6. Dorenko K. S. Sovremennaya sotsial'naya politika stran Yevropeyskogo Soyuz: problemy i perspektivy razvitiya [Modern social policy of the countries of the European Union: problems and development prospects]. *Yuridicheskaya nauka*. 2017. № 3. Pp. 166-172. [in Russ.].

7. Miriam Hartlap. European Union Social Policy – facing deepening economic integration and demand for a more social Europe with continuity and cautiousness. URL: https://www.polsoz.fu-berlin.de/polwiss/forschung/international/de-fr/Datenbanken/SozPol-Datenbank/European-Union-Social-Policy_-_facing-deepening-economic-integration-and-demand-for-a-more-social-Europe-with-continuity-and-cautiousness.pdf.

8. Sergeyev A. Ye. Sotsial'naya politika Yevropeyskogo Soyuz na sovremennom etape: stanovleniye i razvitiye [Social policy of the European Union at the present stage: formation and development]. *Izvestiya RGPU im. A. I. Gertsena*. 2009. № 93. Pp. 99-102. [in Russ.].

9. Dodo Mahamat K. Historical Evolution of the Social Dimension of the European Integration: Issues and Future Prospects of the European Social Model. *L'Europe en Formation*. 2014. Vol. 372, No. 2. Pp. 51-66.

10. Yevropeiskii Soyuz v XXI veke: vremya ispytaniy [The European Union in the 21st century: a time of testing] / Pod red. O.YU. Potemkinoy (otv. red.), N.YU. Kaveshnikova, N.B. Kondrat'yevoy. M.: Izdatel'stvo «Ves' Mir», 2012. 656 p. [in Russ.].

11. Charter of Fundamental Rights of the European Union. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>.

12. Consolidated version of the Treaty on European Union. URL: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

13. Consolidated version of the Treaty on the Functioning of the European Union. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

14. Natsional'nyy trekhstoronniy sotsial'nyy dialog. Rukovodstvo MOT po effektivnomu upravleniyu / Grupa tekhnicheskoy podderzhki po voprosam dostoy'nogo truda i Byuro MOT dlya stran Voctochnoy Yevropy i Tsentral'noy Azii [National tripartite social dialogue. ILO Guide to Good Governance / Decent Work Technical Support Unit and ILO Office for Eastern Europe and Central Asia]. Moskva: MOT, 2014. URL: https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--dialogue/documents/publication/wcms_247973.pdf [in Russ.].

15. Consolidated text: Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (notified under document number C(1998) 2334) (Text with EEA relevance) (98/500/EC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01998D0500-20130701>.

16. Decision 98/500/EC on promoting dialogue between the social partners at European level. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3Aem0022>.

17. MEMO/10/354 Brussels, 23 July 2010 Social affairs: Commission report on the sectoral social dialogue at European level. URL: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_10_354.

18. Concluding report. Social Summit for Fair Jobs and Growth, Gothenburg, Sweden, 17 November 2017. URL: https://ec.europa.eu/info/sites/default/files/concluding-report-social-summit_en.pdf.

19. European Pillar of Social Rights. Building a fairer and more inclusive European Union. URL: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights_en.

20. European Pillar of Social Rights. URL: https://ec.europa.eu/info/sites/default/files/social-summit-european-pillar-social-rights-booklet_en.pdf.

21. Porto Social Commitment. URL: <https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment/>.

22. The European Pillar of Social Rights Action Plan. URL: <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>.

23. Regulation (EC) № 883/2004 – on the coordination of social security systems. URL: [https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32004R0883R\(01\)](https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32004R0883R(01)).

24. Social protection & social inclusion. URL: <https://ec.europa.eu/social/main.jsp?langId=en&catId=750>.

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Тетяна СИРОЇД, Ліна ФОМІНА
ЄВРОПЕЙСЬКА СОЦІАЛЬНА ПОЛІТИКА: ВІД ВИТОКІВ ДО СУЧАСНОСТІ

Анотація. У статті проаналізовано становлення та розвиток правової основи регулювання питань соціальної політики ЄС, зазначено внесок установчих договорів інтеграційного об'єднання у цій царині, зокрема: Договору про заснування Європейського об'єднання вугілля і сталі 1951 р., Договору про заснування Європейського економічного Співтовариства 1957 р. і Договору про заснування Європейського співтовариства з атомної енергії (Євратом) 1957 г., Римського 1992 р. ,

Амстердамського 1999 р., Ніщського 2000 р. договорів, Договору про ЄС і Договору про функціонування ЄС в редакції Лісабонського договору 2007 р. у сфері соціальної політики Союзу. Зосереджено увагу на європейських спеціалізованих актах у цій царині, зокрема означено вплив Європейської соціальної хартії 1961 р., прийнятої в межах Ради Європи, на розвиток всеосяжної правової основи в соціальній сфері Європейських співтовариств; розкрито сутність і значення Хартії основних соціальних прав трудящих Співтовариства 1989 р.

Підкреслено значення соціального діалогу, як невід'ємної складової Європейської соціальної моделі. Зазначено роль Комітетів галузевого діалогу, що сприяють діалогу між соціальними партнерами на європейському рівні. Розкрито значення соціальних самітів та ролі прийнятих ними рішень у сфері соціальної політики; акцентовано увагу на діяльності держав та їхніх партнерів у розробці соціальних стандартів.

Означено роль інституцій ЄС, зокрема Європейської Комісії, яка доповнює політику держав-членів в галузі соціальної інтеграції та соціального захисту шляхом розробки стратегічних актів (напр., Стратегія «Європа-2020»), спрямованих на покращення соціального статусу осіб; надає рекомендації державам-членам щодо модернізації їхніх систем соціального забезпечення з метою соціальних інвестицій тощо. Зроблено відповідні висновки.

Ключові слова: *правова основа, соціальний діалог, соціальна політика, соціальні стандарти.*

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CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO PROFESSIONAL LEGAL AID IN UKRAINE AND THE COUNTRIES OF CONTINENTAL EUROPE: COMPARATIVE ANALYSIS

Abstract. The article examines the constitutional practice of normative regulation of the right to professional legal assistance, enshrined in Art. 59 of the Constitution of Ukraine and in similar norms of the constitutions of the states of continental Europe. The necessity of presenting the mentioned article in the new edition is substantiated. It is determined that the right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine, is one of the inalienable human rights, which provides a state-guaranteed opportunity for any person to receive assistance in legal matters in the amount and forms which is needed. It is noted that the right to professional legal assistance in various formulations and volumes is reflected in the constitutions of Andorra, Azerbaijan, Belarus, Belgium, Armenia, the Netherlands, Serbia, Slovakia, the Czech Republic, Montenegro and Switzerland. In other European countries such right is regulated at the level of sectoral legislation. The expediency of separating the provisions on the free choice of each defender of their rights and freedoms in an independent part of Art. 59 of the Constitution of Ukraine and supplement it with provisions on the prohibition to influence a person in any way when choosing a lawyer, as well as the prohibition to interfere with the lawyer in his / her activities to provide the legal assistance, is substantiated.

Keywords: *constitution, assistance, professional legal assistance, right to professional legal assistance, free of charge.*

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