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ИЗВЕСТИЯ

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РЕСПУБЛИКИ КАЗАХСТАН

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ
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kusainova-76@bk.ru, wkozlowski@yandex.ru, ip_gerashchenko@gmail.com**THE REVIEW OF SOME FEATURES OF THE FINANCIAL LEGAL
MECHANISM OF OBLIGATORY SOCIAL INSURANCE
IN THE REPUBLIC OF KAZAKHSTAN**

Abstract. The process of the creation of the financial legal mechanism of the obligatory social insurance in the Republic of Kazakhstan was researched. The levels of the system of the social protection of the population and functional tasks were examined. The list of fundamental laws on obligatory social and pension insurance of the Republic of Kazakhstan has been carefully and detailed reviewed. The organizational and legal structure of the activity of JSC Public Foundation of Social Insurance and JSC Uniform Accumulative Pension Fund was presented. The social payments guaranteed by the Constitution of the Republic of Kazakhstan, i.e. payments to all citizens at the identical level without any personal contribution of the citizens for the development of the society are carried out through the republican budget; mechanism of its redistribution through the local budgets was also researched. Expenses of the republican budget on “The social help and social security”, according to the budgetary classification of expenses, are defined by the functional group. Acts as the administrator, generally, fulfills one ministry: The Ministry of health and social development of the Republic of Kazakhstan (earlier), the Ministry of Labor and Social Protection of the population of the Republic of Kazakhstan (now), also depending on the social and economic policy on separate items of expenditure pursued by the state can act as the administrator other ministry.

Keywords: social protection, obligatory social insurance, pension insurance, legislative and legal basis, budgetary classification, social risk, socially oriented state, social payments, basic pension payment, lump sum payments.

The Republic of Kazakhstan is the socially oriented state of market type; respectively achievement of high level social protection of the population is necessary attribute of further development of the state as law-abiding state with civilized civil society.

Mandatory social insurance is the set of measures arranged, controlled and guaranteed by the state for partial compensation of the income due to loss of labor ability and (or) loss of job, as well as the loss of breadwinner, loss of income due to pregnancy and births, adoption of the son, adoption of the new born child (children) and nursing till one year age.

The financial legal mechanism of the social insurance in the Republic of Kazakhstan is constructed, according to the Declaration of the Rights and Freedoms of the Person of 1948 [1]; accounting the Conventions and Recommendations of the ILO [2]; in accordance with the legislative and legal basis of the Republic of Kazakhstan and the Constitution of the Republic of Kazakhstan [3] at the present stage of development it is presented by the three-level system of social protection of the population:

- The first level are the social payments, i.e. payments to all citizens, guaranteed by the Constitution of the Republic of Kazakhstan without the personal contribution of the citizen to the development of the society (basic pension payment, welfare payments, lump sums for birth / care of the child);

- The second level are the pension payments at the expense of obligatory pension contributions and social payments from JSC Public Foundation of Social Insurance, i.e. the additional social security of citizens considering their personal contribution to development of society;

- The third level are the pension payments due to the voluntary insurance [4].

Payer of the social expenditures is the employer or a self-employed person executing calculation and payment of social expenditures to State Social Insurance Fund in accordance with the procedure established by the legislation of the Republic of Kazakhstan. Social expenditures are mandatory payments to State Social Insurance Fund entitling a participant of mandatory social insurance system for which the social expenditures were paid, and in case of the breadwinner loss to the members of his family being dependent on him to receive social payments according to the legislation of the Republic of Kazakhstan. Social risk is occurrence of the event causing the loss of ability to work and (or), loss of the work, as well as the loss of breadwinner, loss of income due to pregnancy and births, adoption of the son, adoption of the new born child (children) and nursing till one year age as a result of which a participant of mandatory social insurance system for whom the social expenditures were paid, or in case of his death the members of his family being dependent on him become entitled for receiving the social payments. Receiver of the social payment is the physical person for whom the social expenditures were paid or who paid them to State Social Insurance Fund as a self-employed person prior to appearance of social risk and in relation to whom the authorized body on social payments takes decision on assignment of social payments, and in case of death of the person being a participant of mandatory social insurance system for whom the social expenditures were paid - family members of the deceased (recognized by a court as missing person or presumed dead) breadwinner being dependent on him.

State Social Insurance Fund is the legal entity which accumulates social expenditures and payments to participants of mandatory social insurance system in relation to whom the event of social risk occurred including the members of dependent families in case of loss of breadwinner - participant of mandatory social insurance system. Object of social expenditures calculation - employer's expenses paid to employee in the form of incomes for the fulfilled works and rendered services. For self-employed persons the income gained by him is the object of social expenditures calculation. Total record of participation in the mandatory social insurance system - total number of months for which the social expenditures were entered. Pension is the aggregate amount of pension payments from the authorized organization, unified pension saving fund, voluntary pension saving fund.

Pension payments from the authorized organization - state base pension payment and payments to physical persons having length of work being not less than six months as of January 1, 1998, executed proportionally to the length of work. State base pension payment is monthly monetary payment provided to citizens of the Republic of Kazakhstan upon reaching the pension age. Pension payments from unified pension saving fund and (or) voluntary pension saving fund - payments of pension savings to receivers of the pension payments. Receiver of pension payments – physical person to whom pension payments are assigned from authorized organization and (or) having the right to receive pension payments from unified pension saving fund and (or) voluntary pension saving fund. Pension savings - money of depositor (receiver of pension payments) kept on his individual pension account and including mandatory pension contributions, mandatory professional pension contributions and voluntary pension contributions, investment income, fines and other receivables in accordance with the agreements and legislation of the Republic of Kazakhstan.

There are the following normative and legal acts in the field of the social security in the Republic of Kazakhstan:

1. Law of the Republic of Kazakhstan, April 25, 2003 No. 405-II “About obligatory social insurance” [5];
2. Law of the Republic of Kazakhstan, June 21, 2013 No. 105-V “About provision of pensions” [6];
3. Law of the Republic of Kazakhstan, June 28, 2005 No. 63 “About welfare payments to the families with the children” [7];
4. Law of the Republic of Kazakhstan, November 16, 2015 No. 405-V “About obligatory social medical insurance” [8];

5. Labor Code of the Republic of Kazakhstan, November 23, 2015 No. 414-V [9].

Citizens of the Republic of Kazakhstan shall be entitled to pension provision under the conditions of legislation of the Republic of Kazakhstan. Foreign citizens and individuals with no citizenship living on the territory of the Republic of Kazakhstan shall have equal with Kazakhstan citizens' rights to pension provision if other is not provided by the laws and international agreements.

Mandatory pension contributions shall be paid by: 1) legal and physical entities involved into entrepreneur and other activities without establishment of a legal entity to the Center at the rates determined by the law on the Republican Budget for the corresponding year based on the principle of their decrease; 2) individuals to accumulative pension funds at the rate of 10% of income, which is taken into account as contributions but not less than 10% of the guaranteed minimum amount of salary established by the legislative act within the procedure defined by the Government of the Republic of Kazakhstan. Individuals and legal entities shall pay voluntary pension contributions to non-state accumulative funds in accordance with the pension contract. Mandatory pension contributions to the Center and to accumulative pension funds, which are not paid in time under the condition of factual payment and receiving of income shall be charged with penalty in the amount of 1,2 times refinancing rate established by the National Bank of the Republic of Kazakhstan for the day of payment of these amounts for each day of default (including payment day) to the Center and to the corresponding accumulative pension funds within the procedure defined by the RK Government. Tax bodies shall be responsible for full and timely control of transfer of mandatory pension contributions to the Center and accumulative pension funds in accordance with tax legislation.

Deductions of mandatory pension contributions from legal entities and individuals involved in entrepreneur and other activities without the establishment of a legal entity and deductions of mandatory pension contributions shall be made from the income payment source within the procedure defined by the Government of the Republic of Kazakhstan. Legal entities and individuals involved in entrepreneur and other activities without the establishment of a legal entity keeping mandatory pension contributions at the payment source, must transfer pension contributions to accumulative pension funds and pay income simultaneously. The contributor shall make transfer of voluntary pension contributions. Voluntary pension contributions may be transferred in favor of third persons. Mandatory pension contributions to accumulative pension funds may not be transferred in the favor of third persons. In the event of absence of the relevant contributor's order to transfer mandatory pension contribution, persons mentioned in item 2 of the current article must transfer deducted amount of mandatory pension contributions to the state accumulative pension fund.

Pension assets of accumulative pension funds shall be formed at the expense of: pension contributions and investment income formed from investment activity with the deduction of commissions to accumulative pension funds and to company on management of pension assets of non-state accumulative funds; other sources specified by legislation. Pension assets of non-state accumulative funds shall be not included to liquidation amount or to contested liquidation amount of a liquidated fund or a fund subject to bankruptcy. Recipient's pension accumulations in whose favor pension contributions to accumulative pension funds are made shall be inherited within the procedure established by legislation in case of his death. In case of the recipient's death pension accumulations made in his favor to accumulative pension funds shall be inherited within the procedure established by legislation. In case of the recipient's death, his family or the person who provided burial of the recipient shall be paid a lump sum amounted to 15 monthly calculation rates but not exceeding the amount of accumulation on the personified pension account.

The difference between allowances and benefits is in the source of payment. Allowances are paid from the budget to persons who are not participating and participating in the system of obligatory social insurance benefits are paid from the State fund of social insurance and relate strictly to those who are participating in the system of obligatory social insurance.

According to the article 8 of the Law of the Republic of Kazakhstan "On obligatory social insurance" self-employed persons including foreign citizens and stateless persons permanently residing in the

Republic of Kazakhstan and carrying out activity which benefits the Republic of Kazakhstan, excluding persons attaining years prescribed by p.1 Article 11 of the Law of the Republic of Kazakhstan “On pension benefits in the Republic of Kazakhstan” are liable to social insurance. Consequently participant of the system of social insurance is an individual whose employer pays social expenditures and who has a right to receive social payments when social risks are raised [10].

Social payment for loss of income in connection with pregnancy and childbirth, adoption of a newborn child (children) is assigned to a participant in the compulsory social insurance system entitled to receive social payments from the State Social Insurance Fund starting from January 1, 2008. The amount of social payment for loss of income in connection with pregnancy and childbirth, the adoption of a newborn child (children) is determined by multiplying the average monthly income, recorded as the object of calculating social contributions, by the corresponding number of days of incapacity for work. **The average monthly amount of income** recorded as an object of calculation of social contributions is determined by dividing the amount of income from which social contributions were made for the last 12 months (regardless of whether there were any breaks in social contributions during this period) preceding the month in which the right to social payment has come into force by 12.

The factor of the number of days of incapacity for work is determined by dividing the number of days for which a temporary disability card has been issued for thirty calendar days (each working woman has the right to paid maternity leave of 126 days in accordance with Article 99 of the Labor Code of the Republic of Kazakhstan and use it at will during pregnancy and after childbirth). Social payment for loss of income in connection with pregnancy and childbirth, adoption of a newborn child (children) is appointed for the entire period indicated in the temporary disability card issued in accordance with the procedure established by the authorized state body in the field of health.

Citizens of the Republic of Kazakhstan, oralmans, refugees, foreigners and stateless persons permanently residing in the Republic of Kazakhstan, with an average per capita income not exceeding the poverty line established in regions, cities of republican importance, the capital, in the form of unconditional and conditional financial assistance. Single and/or lonely low-income people with limited opportunities to participate in employment promotion measures in connection with: achievement of retirement age; disability of the first or second group; the presence of a disease in which the term of temporary incapacity for work can be established for more than two months [11]. Low-income families, all able-bodied family members of whom are invalids of the first or second group and/or have diseases in which the term of temporary incapacity for work can be established for more than two months, and/or care for: a child under the age of seven; a disabled child; a disabled of first or second group; the elderly; needing outside care and help.

According to the Law “On State Targeted Social Assistance”, the size of targeted social assistance for a person or a family is calculated by the authorized body in the form of a difference between the per capita income and the poverty line established in regions per family member. In the event of a change in family composition and income, the amount of targeted social assistance is recalculated. The applicant must also report on the circumstances that may serve as the basis for changing the size of targeted social assistance to the authorized body within 10 working days.

Main principles of compulsory social insurance are: 1) generality of compliance and fulfillment of the legislation of the Republic of Kazakhstan on compulsory social insurance; 2) guaranteeing of measures by the state applied for ensuring of social payments; 3) obligatoriness of participating in compulsory social insurance payment; 4) use of social expenditures for social payments in accordance with this Law; 5) obligatoriness of social payments on conditions provided by this Law; 6) differentiation of amounts of social payments; 7) publicity in activity of state bodies ensuring compulsory social insurance.

The state shall guarantee safety and intended use of social expenditures in the Fund. Safety of social expenditures shall be ensured by: 1) regulation of the activity of Fund by establishment of the relevant regulations and limits ensuring its financial strength determined by the Government of the Republic of Kazakhstan; 2) carrying out of investment activity through the National Bank of the Republic of

Kazakhstan;3) consideration of all operations on investment assets management of the Fund in the National Bank of the Republic of Kazakhstan;4) keep separate accounting of own funds and assets of the Fund;5) introduction of restrictions of expenses for ensuring of activity of the Fund;6) obligatoriness of conducting annual audit;7) regular financial accountability of the Fund in the manner established by the legislation of the Republic of Kazakhstan;8) determination of the list of financial tools for investment of assets of the Fund by the Government of the Republic of Kazakhstan.

Social modernization, first of all, is implemented by means of creation of balanced principles of social justice and individual responsibility of everyone considering interests, employers and the state. The Republic of Kazakhstan has introduced obligatory social insurance since 2005 as an additional form of social protection of the working population. According to the Law of the Republic of Kazakhstan "On Obligatory Social Insurance" responsibilities of the state, employer, citizen and State Social Insurance Fund JSC - GFSS) have been separated. Social charges are the source of formation of financial resources in the system of obligatory social insurance. These are obligatory payments paid to GFSS by employers for the hired workers or by self-employed individuals on their own. Relative to the Law, the self-employed individuals are the individual entrepreneurs, lawyers, private notaries, private bailiffs and professional mediators.

At the same time, obligatory social insurance involves the citizens of the Republic of Kazakhstan, foreigners and persons without citizenship who are constantly living in the territory of our country and gaining income.

It should be noted that employers pay social charges for all workers, except for persons of the retirement age as provided by paragraph 1 of article 11 of the Law of the Republic of Kazakhstan "On Provision of Pensions in the Republic of Kazakhstan", i.e. the man - 63 years of age, the woman - 58 years of age (since 01.01.2018 with annual addition of 6 months to 63 years). Employment agreement should necessarily be concluded for all workers, because this makes the employer responsible of timely and full-sized payment of social contributions for hired workers to GFSS.

The amount of social charges is established as 5% of the salary of the worker or of the gained income of self-employed individual in the form of the salary. It should be noted that if monthly obligatory pension contributions are held from the income of the worker, then monthly social charges are paid at the account of employers. But social charges are not paid from the whole amount of income. For example, social charges are not paid from obligatory pension contributions. The list of income types which do not require social charges is established by the Rules of calculation and transfer of social charges approved by the resolution of the government of the Republic of Kazakhstan of 21.06.2004 No. 683[12, P.89].

Social charges are paid monthly no later than the 25th of every reporting month. At the same time, the limit and upper limit of a subject to calculation of social charges from which social charges are paid is set. In case subject to calculation of social charges for calendar month makes less than one minimum wage, established by the law on the Republican budget, then social charges are paid from one minimum wage.

In the conclusion, summing up the results of the review on some features of the financial legal mechanism of obligatory and voluntary insurance it is possible to draw the following conclusions:

1. The financial legal mechanism regulating the system of obligatory social insurance - is realized, has positive results, is improved, but shortcomings still take place;

2. Obligatory social insurance has a big separation in development from voluntary social insurance in creation of a financial legal mechanism.

3. There is no motivation for development of voluntary social insurance in all participants - insurance companies, the called funds, able-bodied population, and employers.

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**ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МІНДЕТТІ
ӘЛЕУМЕТТІК САҚТАНДЫРУДЫҢ ҚАРЖЫЛЫҚ-ҚҰҚЫҚТЫҚ
ТЕТІКТЕРІНІҢ ЕРЕКШЕЛІКТЕРІ**

Аннотация. Қазақстан Республикасындағы міндетті әлеуметтік сақтандырудың қаржылық-құқықтық тетіктерінің құрылуы қарастырылған. Халықты әлеуметтік қорғау жүйесінің деңгейі және олардың функционалдық міндеттері сипатталған. Қазақстан Республикасында міндетті әлеуметтік және зейнетақымен сақтандыру туралы негізгі заңдар тізімі берілген. «Мемлекеттік әлеуметтік сақтандыру қоры» АҚ және «Бірыңғай жинақтаушы зейнетақы қоры» АҚ қызметінің ұйымдастырушылық-құқықтық құрылымы ұсынылған. ҚР Конституциясымен кепілдендірілген әлеуметтік төлемдер, оның ішінде, азаматтардың қоғам дамуына қосқан жеке үлесін есепке алмай, бір деңгейде барлық азаматтарға төлемдер республикалық бюджет арқылы жүзеге асырылады, олардың кейбірі жергілікті бюджеттер арқылы қайта бөлінеді. «Әлеуметтік көмек және әлеуметтік қамсыздандыру» республикалық бюджетінің шығындары шығыстардың бюджеттік сыныптамасына сәйкес функционалдық топпен анықталады. Әкімшілік негізінен бір министрлікке жүктеледі: Қазақстан Республикасы Денсаулық сақтау және әлеуметтік даму министрлігі (бұрынғы), Қазақстан Республикасы Еңбек және халықты әлеуметтік қорғау министрлігі (қазіргі уақытта), сондай-ақ, мемлекеттің әлеуметтік-экономикалық саясатына қарай белгілі бір шығындар баптары бойынша әкімші басқа министрлік болуы мүмкін.

Түйін сөздер: әлеуметтік қорғау, міндетті әлеуметтік сақтандыру, зейнетақыны сақтандыру, заңнамалық-құқықтық база, бюджеттік сыныптау, әлеуметтік тәуекел, әлеуметтік бағдарланған мемлекет, әлеуметтік төлемдер, базалық зейнетақы төлемі, біржолғы төлемдер.

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А.А.Кусайнова¹, Вальдемар Козловски², И.П. Геращенко³¹Кокшетауский государственный университет имени Ш.Уалиханова, Кокшетау, Казахстан;² Университет Вармия и Мазуру, Польша;³ Омский государственный педагогический университет им. Ф.М. Достоевского, Омск, Россия**ОБЗОР НЕКОТОРЫХ ОСОБЕННОСТЕЙ ФИНАНСОВО-ПРАВОВОГО МЕХАНИЗМА ОБЯЗАТЕЛЬНОГО СОЦИАЛЬНОГО СТРАХОВАНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН**

Аннотация. Рассмотрено построение финансово-правового механизма обязательного социального страхования в Республике Казахстан. Описаны уровни системы социальной защиты населения и присущие им функциональные задачи. Приведен перечень основополагающих законов по обязательному социальному и пенсионному страхованию в Республике Казахстан. Представлена организационно-правовая структура деятельности АО «Государственный фонд социального страхования» и АО «Единый накопительный пенсионный фонд». Гарантированные Конституцией РК социальные выплаты, т.е. выплаты всем гражданам на одинаковом уровне без учета персонального вклада гражданина в развитие общества, осуществляются через республиканский бюджет, часть которых перераспределяется через местные бюджеты. Расходы республиканского бюджета на «Социальную помощь и социальное обеспечение», согласно бюджетной классификации затрат, определяются функциональной группой. Администратором выступает, в основном, одно министерство: Министерство здравоохранения и социального развития РК (ранее), Министерство труда и социальной защиты населения РК (сейчас), также в зависимости от проводимой государством социально-экономической политики по отдельным статьям расходов администратором может выступать иное министерство.

Ключевые слова: социальная защита, обязательное социальное страхование, пенсионное страхование, законодательно-правовая база, бюджетная классификация, социальный риск, социально-ориентированное государство, социальные выплаты, базовая пенсионная выплата, единовременные выплаты.

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