

UDC 349.3(477)

**Mykola I. Bodnaruk** –

doctor of juridical sciences, associate professor,  
Head of the Department of Private Law,  
Yuriy Fedkovych Chernivtsi National University  
(2 Kotsyubynsky St. Chernivtsi 58012 Ukraine)

## The Formation of the Basics of Social Insurance During the 17<sup>th</sup> – 19<sup>th</sup> Centuries

*Залежно від рівня забезпеченості соціально незахищених верств населення, можна судити про рівень розвитку суспільства зокрема та держави загалом. У даній статті автором було піддано детальному юридичному аналізу відповідні соціальні процеси, які мали місце на українських теренах у XVII-XIX століттях та у підсумку призвели до формування та розвитку інституту соціальної допомоги населенню, а також його відповідного нормативного закріплення завдяки формуванню системи соціального страхування населення в Україні.*

**Ключові слова:** взаємодопомога, соціальне страхування, право соціального забезпечення, страхування, історія права.

*В зависимости от уровня обеспеченности социально незащищенных слоев населения, можно судить об уровне развития общества в частности и государства в целом. В данной статье автором было подвергнуто детальному юридическому анализу соответствующие социальные процессы, которые имели место на украинских территориях в XVII-XIX веках и в итоге привели к формированию и развитию института социальной помощи населению, а также его соответствующего нормативного закрепления благодаря формированию системы социального страхования населения в Украине.*

**Ключевые слова:** взаимопомощь, социальное страхование, право социального обеспечения, страхование, история права.

*The issue of social protection of the population and providing it with social assistance, combined with the introduction of social insurance, is very capacious and prolific. However, in spite of its broad scope, we should admit considerable social significance of the field of social insurance and providing necessary social assistance to the population. After all, the “indicators” of this system’s prosperity and flexibility enable us to make certain judgments concerning the level of the country’s social-economic well-being, concerning the functioning of the respective social institutions, concerning the level of society’s openness, and, finally, concerning the ability to maintain the interaction between the authorities and the society.*

*The degree of well-being of the unprotected layers of society lets us judge about the level of its development. History is full of cases, when society performed the functions of the state in the field of providing social assistance to the population, establishing different mutual assistance funds, collecting donations, etc. The above phenomenon also finds its way in the modern life of our country, when volunteers help not only the Ukrainian Armed Forces (the latter opposing to Russian aggression in the east of the country), but also the population of the areas, where the military conflict takes place. This fact is unique and requires further scientific investigation. It is worth mentioning that Ukrainian state does not neglect its citizens living in the conflict zone, but keeps paying them out pensions, social allowances, etc. We suppose, it proves that both Ukrainian society and the Ukrainian state possess an adequate level of development, being able to provide the respective state institutions of our country.*

*As the proverb says: “Nothing can arise of nothing”. Therefore, we had a goal of thorough researching the processes that took place on the territory of Ukraine in the XVII-XIX centuries. The processes that have caused the formation and development of social assistance for the population, as well as its normative-regulatory backing due to the system of social insurance of the Ukrainian population.*

**Keywords:** mutual help, social insurance, Social Security Law, insurance, History of Law.

**Issue.** Social insurance, as well as providing | the unprotected layers of the country’s population

with the necessary social assistance serve as the identifying “markers” of how one may determine the level of social-economic development of any state formation. They also enable to make a substantiated judgment concerning the extent, to which the ideas of humanism and mutual help have been implemented in a society. There is no doubt that the present-day system of social protection in Ukraine has not reached the degree of efficiency that has been in a great social demand for quite a while. However, the introduction of a wide range of reforms in this field lets us hope that very soon it will satisfy the vital needs of the most unprotected layers of our society. Thus, the article under discussion aims at investigating the process of formation of social protection for the population during the XVII-XIX centuries, when its present-day foundation was laid. Besides, this article might facilitate the processes of reforming the system of social protection in our country.

**Analysis of recent research and publications.** The issue of forming the basics of social insurance and its further development in Ukraine during the XVII-XIX centuries has not been sufficiently investigated within the field of juridical science today. It was mostly presented as an indirect object of research of the following scholars: N. M. Vnukova, H. V. Hryhorash, Y. S. Konoplina, V. Marchenko, S. H. Melenko, B. Nadtochiy, V. Y. Plisa, V. A. Skurativsky, P. V. Tarkhov, K. Y. Tereshko, S. Y. Trubich, and others. Unfortunately, contemporary juridical literature contains almost no works that would directly study the issue, reflected in the title of the article.

**The purpose** of the article under studies lies in thorough logical research (based on the latest achievements of jurisprudence) of the processes of formation and development of social insurance in the XVII-XIX centuries.

**The Main Body.** The formation and development of social insurance on the territory of Ukraine began in the XVII-XIX centuries. These processes were not autonomous. In other words, they were neither isolated nor independent, since the legal phenomenon of social insurance was borrowed from the experience, acquired in the respective fields by other states. Therefore, the genesis of social insurance in Ukraine is indispensable from the similar processes that took place in the field of law beyond our country.

Ukraine had been in a state of colonial

dependence from the Austrian (later on, Austro-Hungarian) and Russian (later on, Soviet) Empires for quite a long time. Being a part of the tsar Russia and the USSR, it was not capable of pursuing its own social policy. What is more, according to B. O. Nadtochiy, Ukraine practically made no decisions on social insurance and social provision of the population, inhabiting its territories. The central government of the Empire has always held a monopoly position, actually possessing all the existing powers, as well as presenting itself as the only legislator and executor in the above-mentioned field of the state policy [7, p. 32].

To begin with, it should be emphasized that in the XVII century, the present-day territory of Ukraine had considerable achievements within the sphere of medical insurance – an integral segment of social insurance. Paul Zaim (sometimes also known as Paul of Aleppo), travelling to Moscow with the Antiochian Patriarch in 1654, described the attempts of arranging medical insurance for the population of the present-day Ukraine. The latter fact has played a significant role in the further existence of our country, as the respective historic documents testify the following: “Starting with this town, all over the Cossack lands, in every settlement and every village, there have been built the shelters for the poor, retarded and orphans. They are located everywhere: in the outskirts and in the center” [6]. Nevertheless, those were not the prototypes of the renowned “fraternal shelters”. Unfortunately, they did not provide either relevant or necessary medical assistance (in the course of time, they started calling them hospitals – from the Latin “hospitalis” – hospitable). However, the above phenomenon has practically become the very first example of providing the centralized social assistance, which does not only prove the humanistic nature of our people, but also acquires the features of its constancy and certain normativity. The above-described phenomenon was frequently of a professional origin because powerful craft shops maintained their hospitals financially. All of them aimed at introducing the institution of tutelage, i.e. providing the social assistance to the co-workers, who had suffered from accidents at work and, consequently, were not physically able to work anymore. In 1615, there was founded the Kyiv Brotherhood, which was very active in providing social help to certain layers of the society. This union had its own school and hospital “for poor, old, retarded and spiritual, both

ordinary and military people” – that is how the organization has been described in its foundation charter [9, p.109-110]. The latter fact proves the existence of a rather successful evolutionary progress in the field of comprehensive providing the social assistance to the representatives of various social layers of the Ukrainian people of that time.

The Law on Poverty, adopted by Queen Elizabeth II in the early XVII century, has played a significant evolutionary role in the historical-legal aspects of the formation of social insurance (1601). With the flow of time, most European countries applied the fundamental provisions of this normative-regulatory act as the basis for the systems of their social insurance. It is worth mentioning that particular emphasis has been laid in the text of this law upon the classification of the needy citizens. The individual’s material scarcity has been determined by means of comparing the representatives of the society, who COULD receive social assistance with those, who were not worthy to get it. In addition, the decision of providing social assistance was to be made by the church, the latter, through arranging various charity events, stipulating indirectly some new forms of social protection of different layers of the population [3, p. 29-30]. In this way, there has been adopted the first normative-regulatory act in the field of social insurance. It was a substantiated and extraordinarily necessary document, which, indeed, has justified the basics and initial regulatory provisions concerning social help for the population.

It is rather interesting that in the early XVII century there appeared first joint-stock insurance companies. They performed their activities in the sphere of providing the representatives of certain layers of the population with various types of social assistance. It is also very essential that numerous scholars, who carried out research in different fields of science, took an active part in the process of formation of the complete system of social assistance for the population. In 1650, a French mathematician, physicist and philosopher Blaise Pascal invented the Law of Large Numbers, which has initiated statistic calculations in the field of social insurance. An Englishman Edmund Galway published unique, scientifically justified tables of death rates in 1693. These tables were also widely applied in the field of insuring the population. A German mathematician Gottfried Wilhelm von Leibniz released a book of speculations on all the possible types of financial risks that might provoke the necessity of insurance

service (1697). In 1752, an American Benjamin Franklin founded a mutual insurance company in case of a fire [1, p. 8-9]. Hence, taking into account all the above factors, we might assume that the XVII century has witnessed a rapid formation of the theoretical basics of numerous processes, both directly and indirectly associated with the issue of social insurance.

Taking into consideration European experience, social insurance does not have such a long history as, for example, labor relations. Nevertheless, it appeared long before modern social policy. It goes without saying that social insurance could not appear on its own, without having some minimal relevant basis. That is why there prevails an assumption that the phenomenon of insurance was a kind of an early XX-century supplement to a very ancient and quiet constant social function of charity, the latter having undergone certain evolutionary transformational changes throughout the XIX century. At that time, insurance was regarded as respective social help and support of the citizens. The idea of ensuring the working layers of the population from the risks of profit reduction and loss (these profits obtained due to labor activities, as well as being the only source of individuals’ living) appeared thanks to a range of certain circumstances:

- 1) The industrial development (industrialization), which led to the formation of the working class, i.e. the people, who made their living exceptionally due to their labor activities;
- 2) The decline of the population that made its living due to the income, obtained from the use of property, which, actually, was the source of its social-material welfare;
- 3) The factor of existence of hired labor, which was a social sign of the newly created capitalist production system.

Therefore, one of the consequences of industrialization, which has drastically changed the way of making people’s living, was the evolution of a completely new concept of material provision – the provision due to labor, in labor and by means of labor. However, even though the hired labor preceded the formation of a new provision concept, it was assigned only for the workers in a permanent state of poverty. No matter what might be the reason of terminating the labor activities (illness, accident at work, old age), it made an employee, together with his family, live in misery since he was deprived of his only source of living [7, p. 29]. Taking into

account the above-mentioned factors, we might assume that political-economic conditions of that time indicated the vital importance of the issue of state's providing social assistance and support to the needy and disabled citizens.

At that time, the institution of individual insurance became a widespread and efficient means of struggling against poverty and low income. It was particularly popular in France. The essence of individual insurance lay in the fact that money was paid for the employees' labor in two parts: for current use and for providing their social-material safety in future, by means of saving the money in the so-called "saving boxes". Due to the latter, individual insurance was perceived as the only proper way of providing the family well-being and obtaining other material benefits – a very popular liberal concept of the XIX century. Besides, the aim of individual insurance has entirely met all the requirements of the ideology of that time, which was especially essential for the working-class representatives. They were willing to accumulate finance, thus hoping to buy some property (which was a sign of the highest form of material well-being) and change their social status [7, p. 29]. Hence, it would be expedient to note that individual insurance, being of legal nature, was practically the first state form of the present-day social insurance.

The XIX-century French Revolution had also a considerable impact on the formation of the phenomenon of social insurance. The Revolution has interpreted the notion of charity in such a way that it was deprived of the features of religiosity, having acquired those of publicity instead. Consequently, it was presented as the means of solving the problem of poverty among the representatives of the "lowest" social layers. The legitimacy of state's intrusion was justified, in this case, by the necessity of protecting individuals' and citizens' rights that were violated by not providing the poor with adequate social assistance [2, p. 9]. It becomes clear, under these circumstances, that receiving material help was not stipulated by giving alms in the form of charity any more. On the contrary, it was perceived as an absolute right to get the necessary social assistance from the state. Hereby, this assistance was provided only to the individuals, who were not capable of fulfilling their social duties in the interests of the state – to work and to make living.

Some scientists suppose that social insurance, in its present-day understanding and

perception, appeared in 1881, when the German Parliament has issued the so-called "Royal Message" containing certain rules for insuring the workers. The above rules covered three different types of social protection: 1) from various illnesses and injuries; 2) from complete disability; 3) from deterioration of financial well-being in old age. Social insurance played a significant role in the process of formation and development of private insurance, as the state had to take care exceptionally of those, who needed such protection for ensuring the proper living conditions. However, mandatory state social insurance was able to protect only a limited segment of the population. Private insurance organizations took social care of its much more numerous part. In the course of time, the number of citizens that belonged to the former group has increased significantly, and a much wider range of the population began receiving the state-provided social assistance. Consequently, the financial abilities of the state have caused the expansion of insurance liabilities, as well as the increase of the amounts of social allowances, pensions and other payouts [8, p. 334-337].

Otto von Bismarck and William Beveridge have also administered considerable influence on the development of the system of social insurance. Bismarck, German Councilor in 1883-1889, was first to introduce the system of social insurance at the legislative level. This system presupposed insurance in case of illness, accidents at work, old age, and disability. It was based on the following principles:

1) Social assistance depends directly on labor, so it is available only for those, who have deserved it by their labor activities;

2) Mandatory social assistance is assigned for only those hired employees, whose wages are lower than the minimal amount, envisaged by law; in other words, for those, who cannot afford individual insurance;

3) Social assistance is based on the method of insurance, which determines the equal ratio between the contributions of the hired employees and employers, as well as between the payouts and contributions;

4) Social assistance is managed by the employers and employees;

5) Social insurance is mandatory [7, p. 22].

From here, follow the basic peculiarities of social insurance of that time:

1) Imperativity, i.e. non-resistance;

2) Dependence – an individual, who did not work, had no right to social assistance in future;

3) Correlativity – there existed a correlation between the contributions of the hired employees and employers, as well as between the contributions and payouts;

4) Individuality – social assistance was managed by the employers and employees.

Insurance has been also developing in the area of Ukraine that belonged to the Russian Empire. In the 90-s of the XIX century, some entrepreneurs from the Kherson Gubernia started insuring their employees from death, invalidity, and disability in private insurance societies. This type of insurance was particularly popular in Odesa (the employees of 22 enterprises were insured in 1894), Mykolaiv, Kherson, and some other cities of the Gubernia. In 1899, the manufacturers' and craftsmen's association of mutual insurance from accidents began its activities in Odesa. In three years, it numbered more than 3 thousand insured members. In 1905, there was founded a similar Black Sea shipowners' association of mutual insurance from accidents, together with their employees and clerks". The latter company performed its activities in all ports of the Black Sea and the Sea of Azov, as well as in numerous river ports. In the early XX century, Eastern Galicia (which was a part of the Austro-Hungarian Empire) also began being engaged in the issues of social insurance. In Lviv, there were Pension Funds, founded according to the professional and territorial principles [12, p.113-114].

In the early XX century, many European countries adopted the laws on ensuring the employees from illnesses, disability, old age, and unemployment [4]. Insurance funds were founded at the expense of workers', entrepreneurs', and manufacturers' contributions, as well as due to state subsidies and grants. Austria, Belgium, Norway, Portugal, Switzerland and Sweden were willing to improve the regulation of social-economic relations as profoundly as possible. In the 1920's, all the industrially developed countries of Europe and Northern America worked out an extended system of social insurance for different professions, which had

to ensure financing of social payouts. In the late XIX – early XX centuries, England, France, Germany, Sweden, Czechoslovakia, and Romania implemented a solidary pension system. The similar systems were introduced in Chile, Argentina, and Uruguay in the 1920's [10, p.14-15].

Medical insurance [11, p. 314] and insurance medicine [5, p. 14-19] appeared in the late XIX century in Germany and gradually expanded to the territories of many countries of the world, mostly in Europe. In the Russian Empire, they were recognized legislatively in 1890, almost simultaneously with England, the Netherlands, Norway, Serbia, and Romania. Insurance medicine existed in the Soviet Union until 1933.

In the XIX century, the first national insurance companies appeared in Western Ukraine. What is more, in 1891, the association of mutual insurance "Dniester" was founded in Lviv. A year later, it started performing various insurance operations. In 1911, another association of mutual insurance "Carpathia" was founded in Chernivtsi.

**Conclusions.** Thus, in the early XX century, social insurance appeared in the legislature of most leading countries of the world. It was established in different forms, depending on the stage of its development. Each state had its own peculiarities of the system of social insurance, which enabled to solve the problem of providing its citizens with social assistance. The above factors prove that the growth of productive forces and production relations in any country stipulates the issue of social protection of the population. We suppose that it is bound not only to the increase of profits of both entrepreneurs and the state, but also to their humanistic nature, as well as to their desire of reducing the risks of social explosions and population's discontent with employers or the government.

#### References:

1. N. M. Vnukova, Insurance: Theory and Practice : Tutorial / N. M. Vnukova, V. I. Uspalenko, L. V. Veremenko, and others; Edited by Prof. N. M. Vnukova – Kharkiv: Burun Knyha, 2004. – 376 p.

2. H. V. Hryhorash, *The System of Social Insurance in Foreign Countries* / H. V. Hryhorash, T. P. Hryhorash, V. Y. Oliynyk, I. T. Subachov. – Kyiv, 2008. – 144 p.
3. Y. S. Konoplina, *Social Insurance: Tutorial* / Y. S. Konoplina. – Sumy : Universytet. Knyha, 2008. – 224 p.
4. *Lecture Notes in Social Insurance*. – Dnipropetrovsk : DUEP, 2006. – [Online Resource]. – Access : <http://www.twirpx.com/file/722665/>.
5. V. Marchenko, *Medical Insurance Cannot Ensure Efficient Treatment. Rather Vice Versa* / V. Marchenko // *Fakty*. – 2000. – No. 117. – July, 1. – Pp. 14-19.
6. S. H. Melenko, *The Ancient Greek Sources of Ukrainian Philosophy and Law : Monograph* / S. H. Melenko. – Chernivtsi : Tekhnodruk, 2013. – 432 p.
7. B. Nadtochiy, *Social Insurance in the Context of History* / B. Nadtochiy // *Social Protection*. – 2003. – No. 3. – Pp. 29-33.
8. V. Y. Plysa, *Insurance: Tutorial for the Students of the Institutions of Higher Education* / V. Y. Plysa. – 2-nd Edition. – Kyiv : Karavela, 2008. – 392 p.
9. V. A. Skurativsky, *Social Policy* / V. A. Skurativsky, O. M. Paliy, E. M. Libanova. – 2-nd Edition, supplemented and revised – Kyiv : Publishing House UADU, 2003. – 365 p.
10. P. V. Tarkhov, *Lecture Notes in Social Insurance* / P. V. Tarkhov, V. M. Boronos, Y. H. Kozin. – Sumy : SumDU, 2006. – 192 p.
11. K. Y. Tereshko, *The Historical-Legal Regulations of Medical Insurance in Ukraine: Some Aspects* / K. Y. Tereshko // *Medical Law of Ukraine: the Issue of Formation and Development. From the Materials of the I-st All-Ukrainian Scientific-Practical Conference (April, 19-20, 2007, Lviv)*. – Lviv : LOBF “Medicine and Law”, 2007. – Pp. 312-317.
12. S. Y. Trubich, *The Formation of the System of Social Insurance* / S. Y. Trubych, V. Y. Shvets // *Ukrainian Finance*. – 2000. – No. 2. – Pp. 110-115.