

## **PENSION PROVISION IN UKRAINE IN CONTEMPORARY CONDITIONS**

**Herasymchuk L. V.**

### **INTRODUCTION**

The study focuses on the problems of pension provision in Ukraine today. In this aspect, the issue of legal regulation of long service pensions and special pensions in the context of today's realities, namely, a significant budget deficit, is relevant. Such principles of law as justice, equality, and humanism are important for pension provision. The issues of social justice in setting pension levels have always been, are and will be relevant. Legislative regulation of this area should be in line with the principles of a welfare state, which Ukraine is.

The socio-political and economic reforms that have been taking place in the country continue and in today's realities require changes in the social sphere. The terms “special pensions” and “long service pensions” need to be clarified, and their coexistence with the terms used by the industry needs to be reconsidered.

The necessity arose to distinguish between privileged and so-called professional pension provision, in establishing the place of pensions for length of service. Preferential old-age pensions are associated with the special nature of the labor activity of individuals. The performance of certain jobs directly affect the employee's health and lead to the loss of the ability to perform work in the profession before the age of eligibility for retirement to retirement. The term length of service is appropriate in this context.

However, long-service pensions are also used in relation to other types of labor activity. Thus, prosecutors are also entitled to are also entitled to a long-service pension. Does the health of a prosecutor's employee of the prosecutor's office and lead to the loss of the ability to perform work in the profession before the age of eligibility for retirement? We think so, there can be no unequivocal answer to this question. Application of the of the term “length of service” to prosecutors requires a thorough research.

Pension benefits for length of service are applied to persons discharged from military service and some other persons. In the case of persons discharged from military service, there are no questions, because military service – is a hard job, if that can be equated, especially in today's conditions. As for other persons, we also need to carefully study the question of the appropriateness of applying the provisions of pension provision to them for of the long service pension.

## 1. Retirement pensions on preferential terms and for length of service

On January 1, 2004, two important pension laws came into force: the Law of Ukraine “On Compulsory State Pension Insurance”<sup>1</sup> of July 9, 2003, and the Law of Ukraine “On Non-State Pension Provision”<sup>2</sup> of July 9, 2003.

At the same time, along with these so-called new laws, the Law of Ukraine “On Pension Provision”<sup>3</sup> continues to operate, albeit in a certain part, which leads to an ambiguous understanding of certain provisions.

In addition, the so-called new legislation, unfortunately, does not regulate such a type of pension as long service pensions or pensions on preferential terms.

This type of pension is regulated by the Law “On Pension Provision” for teachers, artists, etc.<sup>4</sup>.

Indeed, in accordance with paragraph 26 of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Law of Ukraine “On Compulsory State Pension Insurance”<sup>5</sup> November 17, 2005, paragraph 15 of Section XV “Final Provisions” of the Law of Ukraine “On Compulsory State Pension Insurance” was supplemented by paragraph 2 as follows: “The provisions of the Law of Ukraine “On Pension Provision” shall be applied in terms of determining the right to an old age pension on preferential terms and for length of service”.

The existence of preferential pension benefits is quite understandable; it means the inability to continue certain types of professional activities due to age-related changes, psychological and emotional overload.

With the entry into force of the Law of Ukraine “On Compulsory State Pension Insurance”, a number of legal acts regulating pension relations before 2004 became invalid, as was the case with the Law of Ukraine “On Pension Provision” of November 5, 1991, with the exception of provisions relating to long-service pensions in certain sectors of the economy and old-age pensions on preferential terms<sup>6</sup>.

One cannot fully agree with the view that the definition of a long-service pension should be enshrined in law, since the absence of a definition in the

---

<sup>1</sup> Про загальнообов’язкове державне пенсійне страхування : Закон України від 09.07.2003 № 1058-IV. URL: <https://zakon.rada.gov.ua/laws/show/1058-15#Text>.

<sup>2</sup> Про недержавне пенсійне забезпечення : Закон України від 09.07.2003 № 1057-IV. URL: <https://zakon.rada.gov.ua/laws/show/1057-15#Text>.

<sup>3</sup> Про пенсійне забезпечення : Закон України від 05.11.1991 № 1788-XII. URL: <https://zakon.rada.gov.ua/laws/show/1788-12#Text>.

<sup>4</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 141.

<sup>5</sup> Про внесення змін до деяких законодавчих актів України у зв’язку з прийняттям Закону України “Про загальнообов’язкове державне пенсійне страхування : Закон України від 17.11.2005 № 3108-IV. URL: <https://zakon.rada.gov.ua/laws/show/3108-15#Text>.

<sup>6</sup> Право соціального забезпечення в Україні : підручник / за заг. ред. Занфірової Т.А. та ін. 2-ге вид., переробл. і доповн. Х.: ФІНН, 2012. 640 с. С. 303.

legislation does not allow for the qualitative regulation of this type of pension relationship<sup>7</sup>.

After all, Article 51 of the Law of Ukraine “On Pension Provision” stipulates that long-service pensions are established for certain categories of citizens employed in jobs whose performance leads to loss of professional ability to work or fitness before the age of eligibility for an old-age pension. Based on this, it is possible to say that long service pensions are monthly cash payments established for certain categories of citizens engaged in work that leads to the loss of professional ability to work or eligibility for retirement.

In addition, long service pensions are provided for by the Law of Ukraine “On Pensions for Persons Discharged from Military Service and Some Other Persons”<sup>8</sup> of April 9, 1992 and the Law of Ukraine “On the Prosecutor's Office”<sup>9</sup> of October 14, 2014. These laws state that they refer to long service pensions.

Article 16 of the Law “On the Prosecutor's Office” states that the independence of the prosecutor is ensured by ... proper material, social and pension provision...<sup>10</sup>.

Article 86 of the same Law states that prosecutors are entitled to a pension for length of service... The pension is granted in the amount of 60 percent of their monthly (current) salary, which includes all types of remuneration from which a single contribution to the obligatory state social insurance was paid.... The amount of payments included in earnings for the purpose of calculating a pension is determined at the option of the person applying for a pension for any 60 consecutive calendar months of such work before applying for a pension, regardless of the presence of breaks during this period in this work.”

If we compare these provisions with the provisions of the Law of Ukraine “On Compulsory State Pension Insurance” on the grounds and procedure for calculating pensions, prosecutors have great advantages.

As for the pension provision for judges, the legislator does not specify that it is a long service pension<sup>10</sup>.

The position of the legislator is understandable, since classifying judges as persons receiving a pension for length of service would contradict Article 53 of the Law of Ukraine “On Pension Provision”, since these persons do not acquire the right to a pension until they reach the age of retirement.

Therefore, we cannot agree with the view of some scholars that the legislation distinguishes four categories of employees entitled to a long-

---

<sup>7</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 141.

<sup>8</sup> Про пенсійне забезпечення осіб, звільнених з військової служби, та деяких інших осіб: Закон України від 09.04.1992 № 2262-XII. URL: <https://zakon.rada.gov.ua/laws/show/2262-12#Text>.

<sup>9</sup> Про прокуратуру : Закон України від 14.10.2014 № 1697-VII. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

<sup>10</sup> Про судоустрій і статус суддів: Закон України від 02.06.2016 № 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

service pension: military personnel, officers and employees of internal affairs bodies; civil aviation and flight test personnel; civil servants, judges, prosecutors and customs officers; certain categories of employees and specialists of other sectors of the national economy<sup>11</sup>.

Melnyk K. also did not distinguish between all these categories of persons, pointing to the functioning in Ukraine at the time of the first stage of the pension reform of a mixed multi-pillar pension system, where, along with the general three-pillar pension system, there was a system of pension provision for certain categories of workers (civil servants, prosecutors and investigators, people's deputies, judges, research and teaching staff, military personnel, rank and file and senior officers of the internal affairs bodies of Ukraine, etc.)<sup>12</sup>.

Other scholars talk about special conditions of pension provision based on the peculiarities of a person's professional status, and within the framework of special pension provision they distinguish persons entitled to long service pensions (as mentioned above), and scientific (research and teaching) workers, civil servants, judges, and people's deputies<sup>13</sup>.

Interesting, different from all other points of view of scholars, and relevant today is the point of view of Synchuk S. that social benefits provided for by special legislation and traditionally referred to in the industry literature as "special pensions are not pensions.

Additional measures of pension provision provided by special laws in their external form are considered by the researcher to be supplements to the pension to which the person has acquired the right. Pension supplements are considered as a part of the pension added to the pension. They are provided to a legally defined group of people, taking into account the social priorities proclaimed by each state at a certain stage of its development, taking into account its own interests and ability to finance the declared social programs. All pension supplements are provided at the expense of the state budget<sup>14</sup>.

Thus, it is necessary to resolve the issue of the expediency or in expediency of special pension provision at the legislative level, since the absence of a definition of this definition in the legislation leads to ambiguous interpretation by scholars of the issue of pension provision for certain categories of persons.

## **2. Equality of rights of Ukrainian citizens to pensions**

According to Simutina Y., despite the existence of Article 24 of the Constitution of Ukraine<sup>15</sup>, according to which citizens have equal

---

<sup>11</sup> Право соціального забезпечення: навч. посіб. / за заг. ред. В.В. Жернакова. Х.: Нац. ун-т "Юрид. акад. України ім. Ярослава Мудрого", 2013. 126 с. С. 28.

<sup>12</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 81.

<sup>13</sup> Право соціального забезпечення в Україні: підручник / за заг. ред. Т.А. Занфірової та ін. 2-ге вид., переробл. і доповн. Х.: ФІНН, 2012. 640 с. С. 270.

<sup>14</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 30.

<sup>15</sup> Конституція України : Закон України від 28.06.1996 № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4689>.

constitutional rights and freedoms and are equal before the law, there are a number of legislative acts, each of which provides for its own approaches and principles regarding pension provision. The scholar notes that contrary to the requirements of the European Social Charter (revised) of May 3, 1996, ratified by the Verkhovna Rada of Ukraine on September 14, 2006, which imposes an obligation on states to create conditions for the effective exercise of the rights of citizens to social security without discrimination<sup>16</sup>, Ukraine's pension policy is far from the principles of fairness, consistency and the rule of law<sup>17</sup> [4, 40].

Khutoryan N. in 2012, when civil servants were still receiving pensions not in accordance with the Law of Ukraine “On Compulsory State Pension Insurance,” pointed out that the amount of pensions of civil servants is sometimes 10, 20, 40 times higher than the amount of pensions of other pensioners, which is socially unfair. No other highly developed foreign country has such a difference in pension levels. That is, pension legislation does not ensure uniformity of pension conditions for different categories of pensioners<sup>18</sup>.

Silchenko S. also drew attention to this social injustice, emphasizing that while emphasizing the need to restore social justice in pensions, the legislator did not abandon a number of special pensions granted under separate laws. Complicating access to the minimum level of pension provision for the majority of potential pensioners does not comply with the principle of social justice<sup>19</sup>.

As early as 2014, government officials pointed out the need to abolish special pensions, but this process has stopped.

It is worth noting that civil servants, research and teaching staff, and members of parliament are entitled to pensions in accordance with the Law of Ukraine “On Compulsory State Pension Insurance”.

The Law of Ukraine No. 213-VIII of 02.03.2015 “On Amendments to Certain Legislative Acts of Ukraine on Pensions”<sup>20</sup> established that: “The maximum amount of pension (including allowances, increases, additional pension, targeted financial assistance, pension for special services to Ukraine, indexation and other pension supplements established by law, except for supplements to allowances for certain categories of persons who have special services to the Motherland) may not exceed ten subsistence minimums established for persons who have lost their ability to work”.

---

<sup>16</sup> Європейська соціальна хартія (переглянута) від 3 травня 1996 р. : Закон України від 14.09.2006 № 137–V. *Офіційний вісник України*. 2006. № 40. Ст. 2660.

<sup>17</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 40.

<sup>18</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 34.

<sup>19</sup> Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 48.

<sup>20</sup> Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення : Закон України від 02.03.2015 № 213-VIII. URL: <https://zakon.rada.gov.ua/laws/show/213-19#Text>.

“The maximum monthly lifetime allowance of a retired judge (including allowances, raises, additional pensions, targeted financial assistance, pensions for special services to Ukraine, indexation and other pension supplements established by law, except for supplements to allowances for certain categories of persons who have special services to the Motherland) may not exceed ten subsistence minimums established for persons who have lost their ability to work. The lifetime allowance of judges shall be paid by the bodies of the Pension Fund of Ukraine at the expense of the State Budget of Ukraine.”

However, the provisions of clause 5 of Section III regarding the abolition of the rules on the appointment of monthly lifetime allowance in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges” from June 1, 2015, were recognized as inconsistent with the Constitution of Ukraine (unconstitutional), according to the Decision of the Constitutional Court of Ukraine of June 08, 2016. N 4-rp/2016); (the provision of clause 5 of Section III was declared inconsistent with the Constitution of Ukraine (unconstitutional), according to the Decision of the Constitutional Court of Ukraine of 18.06.2020 N 5-p(II)/2020)<sup>21</sup>.

In the Decision of the Constitutional Court of Ukraine dated 08.06.2016 N 4-rp/2016 states:” Recognizing the independence of judges, the state has undertaken to guarantee it, in particular, through material and social protection, including the right to a pension and monthly lifetime allowance for retired judges. This conclusion follows from the analysis of the Constitution of Ukraine and the provisions of Law No. 2453.

The Constitutional Court of Ukraine has repeatedly characterized the legal nature of monthly lifetime financial support and, in fact, distinguished (not identified) it from the nature of pension payments. Its decisions clearly state that monthly life-long financial support is an independent guarantee of judicial independence and a component of the legal status of judges; is a special form of social security for judges, the content of which is a monthly tax-free cash payment guaranteed by the state to ensure their proper financial support, including after dismissal from the duties of a judge; the peculiarity of monthly lifetime allowance lies in the legal regulation, as well as in the sources of its financing... maintenance).

In our opinion, the argumentation that the amount of judges' remuneration is not subject to restriction, like all pension payments to Ukrainian citizens, is questionable, especially in the current conditions, in wartime, in the context

---

<sup>21</sup> Рішення Конституційного Суду України у справі за конституційними поданнями Верховного Суду України щодо відповідності Конституції України (конституційності) положень частини третьої, абзаців першого, другого, четвертого, шостого частини п'ятої статті 141 Закону України «Про судоустрій і статус суддів» та положень пункту 5 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» (справа про щомісячне довічне грошове утримання суддів у відставці) 8 червня 2016 року N 4-пп/2016. URL: [https://ips.ligazakon.net/document/view/ks16023?an=4&ed=2016\\_06\\_08](https://ips.ligazakon.net/document/view/ks16023?an=4&ed=2016_06_08).

of the state budget deficit. The public does not understand why some retired judges of the Constitutional Court of Ukraine receive a monthly allowance of 390 thousand hryvnias, while other retired judges also receive allowances of more than 100 thousand hryvnias.

And this is happening at a time when the rights of citizens to an adequate standard of living and proper social protection are being violated as a result of the failure to apply the actual subsistence minimum calculated in accordance with the Law of Ukraine “On the Subsistence Minimum” of July 15, 1999, No. 966-XIV<sup>22</sup>, as this indicator is used to determine the amount of most social and pension payments.

In the Decision of the Constitutional Court of Ukraine of 18.06.2020 N 5-p(II)/2020<sup>23</sup> provides the following arguments:

“4.1 The Constitution of Ukraine does not provide for “equality of rights (of a person/citizen) before the law”. If we are talking about the provisions of Article 24 of the Constitution, for compliance with which the Applicant requested to check the provision of paragraph 5 of Section III “Final Provisions” of Law No. 213-VIII, they establish rules that apply to citizens or persons: “the principle of equality of citizens before the law”, “the principle of equality of constitutional rights and freedoms enjoyed by citizens” and “the principle of prohibition of discrimination” determine the legal status of a citizen or person in society (on the basis of their equality before the law or on the basis of their equality in rights and freedoms), but not their rights as being “equal before the law”.

4.2. It is equally legally erroneous to apply to the institution of the prosecutor and to the institution of the judge – as to the official institutions in the system of state power – the principles established by the provisions of Article 24 of the Constitution of Ukraine (“the principle of equality of citizens before the law”, “the principle of equality of constitutional rights and freedoms enjoyed by citizens”, “the principle of prohibition of discrimination”), given that these legal principles belong to the sphere of human rights (human rights), the essential content of which is based on generally recognized international standards. The national normative system of human rights under the Constitution of Ukraine is based on such generally recognized international standards: based on the fact that “all people are free and equal in their dignity and rights” (first sentence of Article 21 of the Constitution), and “human rights and freedoms are inalienable and inviolable” (second sentence of Article 21 of the Constitution), the Ukrainian

---

<sup>22</sup> Про прожитковий мінімум : Закон України від 15.06.1999 № 966-XIV. URL : <https://zakon.rada.gov.ua/laws/show/966-14#Text>.

<sup>23</sup> Рішення Конституційного Суду України у справі за конституційною скаргою громадянки України Левченко Ольги Миколаївни щодо відповідності Конституції України (конституційності) припису пункту 5 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» від 2 березня 2015 року N 213-VIII від 18 червня 2020 року N 5-p(II)/2020. URL: [https://ips.ligazakon.net/document/view/ks20023?an=3&ed=2020\\_06\\_18](https://ips.ligazakon.net/document/view/ks20023?an=3&ed=2020_06_18).

constitutional draftsman to ensure these two well-known truths (derived from the doctrine of natural law, but in the Ukrainian constitutional legal order have acquired the status of a constitutional imperative), the Ukrainian constitutional drafters additionally established the principles of equality of constitutional rights and freedoms and equality before the law (part one of Article 24 of the Constitution), as well as the prohibition of discrimination (part two of Article 24 of the Constitution). The principle of equality before the law and the prohibition of discrimination as a requirement of the rule of law (Article 8(1) of the Constitution) are maxims of legal protection of human rights.

The principle of equality before the law and the prohibition of discrimination as a requirement of the rule of law (Article 8(1) of the Constitution) are maxims of legal protection of human rights (“inalienable and inviolable”, i.e. those understood as natural or negative, otherwise – as fundamental or basic) within the national legal order. But they, as elements of the universal system of human rights, should be distinguished from those elements that are components of the legal status of a citizen as an official within the national legal order. The issues of the amount of remuneration of prosecutors (as well as judges) and other payments to them as officials are not those addressed by the provisions of Articles 21, 22, 24 of the Constitution as those related to fundamental (basic) human rights and freedoms. The issue of determining the amount of remuneration of a prosecutor or a judge (and other payments to them as officials in the system of state power) is within the competence of the legislator (respectively: part two of Article 131<sup>1</sup> and part two of Article 130 of the Constitution), and there are no restrictions on the legislator in this area of its activity.

The legal status of a person in society and the legal status of an official in the system of functioning of the state are not identical. While the legal status of a person in society does not allow for violation of the principle of equality before the law and discrimination (except for positive discrimination), a differentiated approach may be applied to officials (as well as to individual citizens who are not yet or have not yet, or for other reasons, held positions in the system of public authorities), whereby certain issues that are constituent elements of their legal status (and especially the issue of remuneration and various other types of remuneration) are resolved by the legislator or other rulemaker with the In view of the foregoing, Article 24 of the Constitution of Ukraine is not applicable for the purposes of consideration of the case under this constitutional complaint.”

Thus, the Constitutional Court of Ukraine took the position that judges and prosecutors have a privileged legal status.

Given that the Constitutional Court of Ukraine decides on the compliance of laws and other legal acts with the Constitution of Ukraine and gives official interpretation of the Constitution of Ukraine and laws of Ukraine (part 2 of Article 147 of the Constitution of Ukraine), society will have to accept this rule. Decisions and conclusions of the Constitutional Court of Ukraine are equally binding (Article 69 of the Law of Ukraine “On the Constitutional Court of Ukraine”).



It can only be noted that the expectations of society to establish equal principles of pension provision have not been met.

Law cannot become a significant factor in regulating social relations until all branches of law become sensitive to the real problems of ordinary people. Law should act as a measure of justice.

Here it is appropriate to recall the classification of the functions of law proposed by Yevhen Burlai: compromise, organization, social stabilization, social conflict resolution, restorative and compensatory, and social retribution<sup>24</sup>.

Given the realities of the Ukrainian present, it is worth considering whether the state is able to finance these payments at the expense of the State Budget.

It is worth noting that, given the social priorities proclaimed by the State of Ukraine at the current stage of its development, taking into account its own interests, it is understandable to provide pensions in accordance with the Law of Ukraine “On Pensions for Persons Discharged from Military Service and Some Other Persons”, although the list of some other persons, in our opinion, should also be revised.

This Law defines the conditions, norms and procedure for pension provision for Ukrainian citizens who have served in the military, internal affairs, the National Police, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, the Judicial Protection Service, the State Fire Service, the State Service for Special Communications and Information Protection of Ukraine, civil defense agencies and units, the tax police, the Bureau of Economic Security of Ukraine or the State Criminal Executive Service of Ukraine, and some others.

In our opinion, the list of persons entitled to pensions under this legal act, except for persons who have served in the military, should be carefully reviewed.

It is necessary that the resolution of these issues be preceded by certain research, so that the legislator heeds the recommendations of legal science.

Kharytonova L.I. emphasizes the expediency of abolishing the total number of privileged pensions and pensions for length of service, since they are not inherent in the pension insurance system<sup>25</sup>.

Completely agree with the position of Shumylo M.M., who rightly emphasizes that long service pensions have not yet exhausted their potential and promote the principle of unity and differentiation of pensions, but in some cases need to be improved, especially in terms of subject composition, as well as the validity of the special length of service defined by law. However, changes in this area should be sufficiently justified, carried out gradually, cautiously and in a pre-considered manner, based on objective criteria, be proportionate to the purpose of changing legal regulation, ensure a fair balance between the general interests of society and

---

<sup>24</sup> Бурлай Є. До питання про функції права. *Вісник Академії правових наук України*. 2005. №3 (42). С. 31–42.

<sup>25</sup> Харитоновна Л.І. Пенсійне забезпечення за сучасним законодавством України: проблеми вдосконалення. *Актуальні проблеми трудового права і права соціального забезпечення: тези доп. і конф.* Харків, 27-28 вересня 2013 р. / за ред. В.В. Жернакова. Харків: Право, 2013. С. 507 – 509.

the duty to protect human rights, without violating the essence of the right to social protection<sup>26</sup>.

Therefore, the distinction between privileged and occupational pensions is urgent. Preferential old-age pensions are related to the special nature of labor activities of individuals performed in unfavorable conditions for life and health. A decrease in professional ability to work due to employment in harmful and difficult working conditions is an objective basis for preferential old-age pension benefits, since the loss of ability to work occurs for reasons beyond the control of the insured person and is a direct consequence of working in special conditions created by the employer. The performance of such work has a direct impact on the employee's health and leads to the loss of the ability to perform work in the profession before the age of retirement (subway drivers, some circus performers, etc.). Therefore, preferential old-age pensions do not raise any questions. And such a term as length of service is understandable in this context.

Pensions for military personnel, their pensions for length of service, do not raise questions. Military service also, under certain conditions, leads to a loss of professional ability to work or fitness before the age of retirement. After all, military service in today's realities is also a very difficult and dangerous job for life and health.

The issue of pension provision for prosecutors raises questions. After all, the performance of their professional duties by prosecutors is unlikely to lead to a loss of professional ability to work or fitness before the age of retirement. Why are they entitled to a long service pension in accordance with the Law of Ukraine "On the Prosecutor's Office" and not in accordance with the Law of Ukraine "On Compulsory State Pension Insurance", like all ordinary citizens of Ukraine?

As for judges, society raises the question of their financial support, which is not limited in size, as we have already mentioned.

According to Article 142 of the Law of Ukraine "On the Judicial System and Status of Judges"

"1. Upon reaching the age of 62 years for men and the retirement age established by Article 26 of the Law of Ukraine "On Compulsory State Pension Insurance", a retired judge shall be paid a pension under the conditions specified in the said Law or, at his/her option, a monthly lifetime allowance. Men born in 1955 and older have the right to an old-age pension or a monthly lifetime allowance upon reaching the following ages

- 1) 61 years of age – born from January 1, 1954 to December 31, 1954;
- 2) 61 years and 6 months – born between January 1, 1955 and December 31, 1955.

2. A retired judge who has not reached the age specified in part one of this Article shall receive a monthly lifetime allowance. When such a judge reaches the age specified in part one of this Article, he/she retains the right to receive a monthly lifetime allowance or, at his/her option, is granted a pension under the

---

<sup>26</sup> Пенсійні правовідносини в Україні: монографія/ Н.М. Хуторян, Я.В. Сімутіна, М.П. Стадник, А.А. Ширант, М.М. Шумило; відп.ред. Н.М. Хуторян, Я.В. Сімутіна. Київ: Вид-во «Юридична думка», 2013. 276 с. С. 92.

conditions determined by the Law of Ukraine “On Compulsory State Pension Insurance”.

3. A monthly lifetime allowance shall be paid to a retired judge in the amount of 50 percent of the judicial remuneration of a judge working in the respective position. For each full year of service as a judge over 20 years, the amount of monthly lifetime allowance shall be increased by two percent of the judge's remuneration.

4. In case of change in the amount of components of judicial remuneration of a judge working in the respective position, the previously appointed monthly lifetime allowance shall be recalculated.

5. The pension or monthly lifetime allowance of a judge shall be paid regardless of the earnings (profit) received by the judge after retirement. The monthly lifetime allowance is paid to judges by the Pension Fund of Ukraine at the expense of the State Budget of Ukraine.”

The Constitutional Court of Ukraine stated that financial support is a special form of social security for judges, the content of which is a monthly tax-free payment guaranteed by the state, which serves to ensure their proper financial support, including after dismissal from the duties of a judge.

## **CONCLUSIONS**

The Universal Declaration of Human Rights in Article 25 states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other case of loss of livelihood due to circumstances beyond their control.

Therefore, the conditions of pension provision should be the same for all citizens. If there are certain exceptions to the general conditions of pension provision for Ukrainian citizens, they should be of Ukrainian citizens, they must be justified, understandable to the public and ensured by the financial capabilities of the of the state at this stage of its development.

## **SUMMARY**

Today, there is such a thing as special pensions in science. Such pensions are often called privileged pensions because they are paid in an increased amount compared to insurance pensions.

There is no single law on special pensions that would unify pensions for certain categories of citizens and define the sources of their payments. Scholars define groups of special pensions in different ways. As a rule, these groups include pensions on preferential terms, for long service, and pensions for judges. In our opinion, in today's reality, special pensions should not exist. The unification of pensions for Ukrainian citizens, which began in 2015, should be completed. Exceptions have the right to exist, but they must be carefully justified.

## References

1. Бурлай Є. До питання про функції права. *Вісник Академії правових наук України*. 2005. №3 (42). С. 31– 42.
2. Висновки та рекомендації з актуальної теми. *Право України*. 2012. № 2. С. 141.
3. Європейська соціальна хартія (переглянута) від 3 травня 1996 р. : Закон України від 14.09.2006 № 137–V. *Офіційний вісник України*. 2006. № 40. Ст. 2660.
4. Конституція України : Закон України від 28.06.1996 № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4689> (дата звернення 26.02.2025).
5. Пенсійні правовідносини в Україні: монографія/ відп. ред. Н.М. Хуторян, Я.В. Сімутіна. Київ: Вид-во “Юридична думка”, 2013. 276 с.
6. Право соціального забезпечення: навч. посіб. / за заг. ред. В.В. Жернакова. Х.: Нац. ун-т “Юрид. акад. України ім. Ярослава Мудрого”, 2013. 126 с.
7. Право соціального забезпечення в Україні : підручник / за заг. ред. Занфірової Т.А. та ін. 2-ге вид., переробл. і доповн. Х.: ФІНН, 2012. 640 с.
8. Про внесення змін до деяких законодавчих актів України у зв’язку з прийняттям Закону України “Про загальнообов’язкове державне пенсійне страхування : Закон України від 17.11.2005 № 3108-IV. URL: <https://zakon.rada.gov.ua/laws/show/3108-15#Text> (дата звернення 26.02.2025).
9. Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення : Закон України від 02.03.2015 № 213-VIII. URL: <https://zakon.rada.gov.ua/laws/show/213-19#Text> (дата звернення 26.02.2025).
10. Про загальнообов’язкове державне пенсійне страхування : Закон України від 09.07.2003 № 1058-IV. URL: <https://zakon.rada.gov.ua/laws/show/1058-15#Text> (дата звернення 26.02.2025).
11. Про недержавне пенсійне забезпечення : Закон України від 09.07.2003 № 1057-IV. URL: <https://zakon.rada.gov.ua/laws/show/1057-15#Text> (дата звернення 26.02.2025).
12. Про пенсійне забезпечення : Закон України від 05.11.1991 № 1788-XII. URL: <https://zakon.rada.gov.ua/laws/show/1788-12#Text> (дата звернення 26.02.2025).
13. Про пенсійне забезпечення осіб, звільнених з військової служби, та деяких інших осіб: Закон України від 09.04.1992 № 2262-XII. URL: <https://zakon.rada.gov.ua/laws/show/2262-12#Text> (дата звернення 26.02.2025).
14. Про прожитковий мінімум : Закон України від 15.06.1999 № 966-XIV. URL : <https://zakon.rada.gov.ua/laws/show/966-14#Text> (дата звернення 26.02.2025).

15. Про прокуратуру : Закон України від 14.10.2014 № 1697-VII. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text> (дата звернення 26.02.2025).

16. Про судоустрій і статус суддів: Закон України від 02.06.2016 № 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (дата звернення 26.02.2025).

17. Рішення Конституційного Суду України у справі за конституційними поданнями Верховного Суду України щодо відповідності Конституції України (конституційності) положень частини третьої, абзаців першого, другого, четвертого, шостого частини п'ятої статті 141 Закону України «Про судоустрій і статус суддів» та положень пункту 5 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» (справа про щомісячне довічне грошове утримання суддів у відставці) 8 червня 2016 року N 4-рп/2016. URL: [https://ips.ligazakon.net/document/view/ks16023?an=4&ed=2016\\_06\\_08](https://ips.ligazakon.net/document/view/ks16023?an=4&ed=2016_06_08) (дата звернення 26.02.2025).

18. Рішення Конституційного Суду України у справі за конституційною скаргою громадянки України Левченко Ольги Миколаївни щодо відповідності Конституції України (конституційності) припису пункту 5 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» від 2 березня 2015 року N 213-VIII від 18 червня 2020 року N 5-р(П)/2020. URL: [https://ips.ligazakon.net/document/view/ks20023?an=3&ed=2020\\_06\\_18](https://ips.ligazakon.net/document/view/ks20023?an=3&ed=2020_06_18) (дата звернення 26.02.2025).

19. Харитоновна Л.І. Пенсійне забезпечення за сучасним законодавством України: проблеми вдосконалення. *Актуальні проблеми трудового права і права соціального забезпечення: тези доп. і конф.* Харків, 27-28 вересня 2013 р. / за ред. В.В. Жернакова. Харків: Право, 2013. С. 507 – 509.

#### **Information about the author:**

**Herasymchuk Lidiia Viktorivna,**

Candidate of Legal Sciences, Associate Professor,

Professor at the Department of Civil Law

Educational and Scientific Institute of Law and Psychology,

National Academy of Internal Affairs

1, Solomjanska Square, Kyiv, 03035, Ukraine