

SOME ASPECTS OF LEGAL REGULATION OF CHILDREN'S RIGHTS IN UKRAINE

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Abstract

Supporting the international community in the sphere of human rights, Ukraine has undertaken a major commitment in the field of human rights. Where the process of formation of human development, namely the desire to live, work in harmony with their values, society and nature started. In particular, the issue of human rights also involves such significant issues as protection of children.

Today in Ukraine there are a large number of regulations that protect the rights of children, but the problem of socio-economic development, institutional system of protection and principles of distribution of resources, directly or indirectly affect the situation of children. At the same time representative is the development and formation of the institute of the Commissioner of the President of Ukraine for Children's Rights, formation of legal framework that aims to ensure the implementation of children's rights to life, health, education, social protection and comprehensive development.

Much effort has been also made by NGOs working in the field of child protection so that each child felt like full member of society. In particular, the UN Children's Fund (UNICEF) and Rinat Akhmetov's Foundation "Development of Ukraine" in the project "Children's Rights in Ukraine: realities and challenges after 20 years of independence".

However, the said cannot fully ensure real improvements, because for now the main problem for Ukraine remains implementation of the adopted normative legal documents. These documents today are mostly declarative. They cover a wide range of activities in various fields, which often duplicate one another. Monitoring of their implementation although is carried out, but often it is formal, because it does not include specific indicators of performance of all assigned tasks. In addition, for implementation of most strategies and programs targeted funding is not foreseen.

Key Words: *children's rights, protection of children's children rights, legislation, state policy*

JEL Classification: [K33]

1. Legal regulation of protection of children's rights in Ukraine

Supporting the international community in the field of human rights, Ukraine has undertaken a major commitment in the field of human rights. The process of human development, namely the desire to live, work in harmony with European values, society and nature started. In particular, the issue of human rights protection has also involved significant issues such as the protection of children's rights. After all, on whether the children are born healthy, in what conditions they are educated and which opportunities for development they have, ultimately depends their future.

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Ukrainian policy, which provides for the protection of children's rights is a component of the holistic concept of society, as reflected in the current Constitution of Ukraine, the Family Code of Ukraine, Laws of Ukraine "On Education", "On Protection of Childhood" and other normative documents, is successful and effective.

In particular, Article 2 of the Law of Ukraine "On Protection of Childhood" indicates that the legislation on childhood protection is based on the Constitution of Ukraine, the Convention on the Rights of the Child, international treaties ratified by the Verkhovna Rada of Ukraine, and consists of this Law and of other normative legal acts regulating social relations in this area^{1, 2}. Consequently, these regulations are the legal framework regulating social relations in this area. A key objective of the law "On Protection of Childhood" is an extension of social and legal guarantees of the rights of children with physical, intellectual and cultural development of the younger generation, stimulation of socio-economic and legal institutions aimed at protecting the rights and interests of children in Ukraine. It should be stressed that the law of Ukraine "On Protection of Childhood" defines the area of activity of the state as a strategic, national, and its main goal is to ensure children's rights to life, health, education, social protection and comprehensive development³.

Analysis of legal practice in this area confirms that basic legislative acts and documents concerning children have not yet become state priority, since Main attention of the government is now focused on the economy as the basis for solving all other social problems. At the same time, Ukraine has joined the UN Convention "On the Rights of the Child", the system of welfare and survival of humanity has determined that the priority of interests of children and the importance of the younger generation is a priority⁴. Fulfillment of the conditions of the Convention and the Universal Declaration on the Rights of the Child concerning the creation of favorable conditions for the development of children requires targeted actions of the Ukrainian state⁵. Norms of UN Convention "On the Rights of the Child" fixed generic set of international legal standards for the protection and proper conditions for raising children⁶.

Unfortunately, these important changes in the legislation of the state only gradually perform the role of defender of children's rights, because today in Ukraine there are still problems in this area. Thus, violations of children's rights in the form of neglect and criminal acts in relation to minors, such as coercion to

¹On Protection of Childhood: Law of Ukraine of 26.04.2001 no. 2402-III // [electronic resource]. - Access mode: <http://zakon2.rada.gov.ua/laws/show/2402-14> accessed 8 March 2017.

²UN Convention on the Rights of the Child of November 20, 1989 (with amendments approved by the Resolution 50/155 of the UN General Assembly on 21 December 1995).

³Gorbunova O.G., Levchenko K.B., Savych L.L. (2001) Prevention of trafficking: Teach method. guidances. Kcharkiv: Publishing house of the National University of Internal Affairs, 2001. - 176 p.

⁴Ibid (n 2).

⁵General principles of child rights protection [electronic resource]. - Access mode: <http://shpargalka.org.ua/r/1/1281.html>. accessed 8 March 2017.

⁶Ibid (n 2).

hard physical labor and child trafficking occur. To reduce violations of children's rights requires centralization of efforts of society. In this regard, the legislation of Ukraine guarantees a number of benefits and assistance to orphans and children deprived of parental care. At the same at the present stage of development of the Ukrainian state, a new phenomenon – a social orphan hood appeared. Social orphan – is a child who has parents but are living without parental care, grandparents take care of them, while parents are working in another countries. In addition, we should note, that there are certain difficulties in adoption of children living in the boarding schools in Ukraine. Not all Ukrainian citizens, due to low financial support, can do it. Ensuring optimal living conditions for orphans and children deprived of parental care – these are the tasks that have priority in children's social and educational institutions⁷. Administration of children's institutions must rely on "sponsorship funds" to ensure material condition of children. As positive moment we should consider that the state started to pay increased attention to children's rights, but the danger of declarative character of normative legal acts remained. After all, the modern state declaring systemic changes does not pay attention to implementation of basic tasks and cooperates with the public with difficulties.

2. Protection of disabled children in Ukraine

Also to date there is the problem of disabled children's, which in Ukraine is partly regulated by the Law of Ukraine "On the basis of social protection of invalids in Ukraine"⁸. Various scientists are exploring these issues and submit their proposals for consideration by the appropriate authorities⁹. Thus, V. Kuzminskyi identified the main problems of child protection and suggested ways of solving them¹⁰: reduce the inflow of children in residential institutions; develop so-called gatekeeping (Gatekeeping – support biological families, prevention of removal of children from the family environment); introduce a mechanism of social order to improve the quality of social services by NGOs; change tolerance in society towards violence against children (this can lead to violence against children in foster care); create the majority of family homes for orphans; focus on the problems of refugee children and systematically solve them¹¹.

⁷Kondratiuk N. A., Tyulchenko I.K., (2010) Children's Rights in Ukraine: problems and ways of their solution. Proceedings of the regional interuniversity scientific conference of teachers and students of May 14, 2010. - Donetsk National Technical University. - p. 192-194.

⁸On the basis of social protection of invalids in Ukraine: the Law of Ukraine of 21.03.1991 no.875 -XII//[electronic resource].- Access mode:<http://zakon2.rada.gov.ua/laws/show/875-12>accessed 8 March 2017.

⁹Kolodiy A.M. OliynykA.Y. (2008) The rights, freedoms and duties of man and citizen in Ukraine. - Kyiv: Legal unity. - 288 p., p. 238.

¹⁰Yuzikova N.(1998) Children need protection. Law of Ukraine, no. 6.- p.7.

¹¹Kravchuk M.V.(2010) Theory of law (reference notes): teaching Manual for students of higher teaching institutions. - Kyiv: Atika. - 288 p., p. 110.

Children are a special category, status and welfare of which depends not only on the available resources and investment in their development, but also directly from the actions and decisions of families, society and the choice of priorities of the state policy regarding the distribution of resources. Eliminating different types of child deprivation, providing full conditions for the development of each child is possible thanks to more efficient and transparent policy instruments and the creation of full institutional environment¹².

Ensuring children's rights requires consolidation of efforts of state and local government, public society, as well as raising awareness of children and adults on existing mechanisms and possibilities for protection of constitutional rights and freedoms of the child; introducing a single national program for education of the younger generation; development and implementation of supervised child care available to every child; providing support of children's organizations; increase of responsibility for violations of children's rights. The main directions of state policy in the field of children's rights are: health promotion and healthy lifestyles for children; providing quality education and training; improvement of the economic conditions of life of children; enhancement of efficiency of the state support system for children in difficult situations.

Today in Ukraine there are a large number of regulations that protect the rights of children, but the problem of socio-economic development, institutional system and protection of principles of resource distribution, directly or indirectly affect the situation of children. Exploring public-management activities in the field of social and legal protection of children, many scholars argue that its effectiveness depends on how the mechanisms of the law on the rights of children and their social and legal protection and the level of professional competence of civil servants who work in this area.

3. Institute of the Commissioner of the President of Ukraine for Children's Rights

At the same time development and formation of the institute of the Commissioner of the President of Ukraine for Children's Rights, the formation of the legal framework that aims to ensure the implementation of children's rights to life, health, education, social protection and comprehensive development is representative.

In order to ensure appropriate conditions for the realization of civil, economic, social and cultural rights of children in Ukraine, taking into account the need for special care of the child pursuant to Ukraine's international commitments in the field of children's rights by the President of Ukraine the institution of Commissioner of the President of Ukraine for Children's Rights was introduced. The corresponding decrees of the President of Ukraine "On Commissioner of the

¹² Libanova E.M., Cherenko L. M., Polyakova S.V., Reut A.H.(2009) Poverty and unequal opportunities for children in Ukraine. - Kyiv: Institute of Demography and Social Studies of NAS of Ukraine, Children Fund (UNICEF), Ukrainian center of social reforms. - 288 p., p. 33.

President of Ukraine for Children's Rights" and "On issues of Commissioner of the President of Ukraine for Children's Rights " were issued on August 11, 2011.

Nowadays the institute of Commissioner of the President of Ukraine for Children's Rights is headed by Nikolai Kuleba, who was appointed by the President of Ukraine on December 18, 2014.

The introduction of institute of Commissioner of the President of Ukraine for Children's Rights meets the requirements of the Convention on the Rights of the Child and the recommendations of the Committee on the Rights of the Child. At the same time the very position of Commissioner of the President of Ukraine for Children's Rights is an important step in the protection of children's rights in Ukraine.

Commissioner of the President of Ukraine for Children's Rights – ensures the implementation of by the President of Ukraine constitutional powers on ensuring observance of children's rights, implementation of Ukraine's international obligations in this area¹³.

The main tasks of Commissioner of the President of Ukraine for Children's Rights are as follows:

- continuous monitoring of compliance in Ukraine of the constitutional rights of the child, implementation international obligations in this area in Ukraine and making in the established order proposals to stop and prevent the recurrence of violations of the rights and legitimate interests of the child to the President of Ukraine;
- introducing the President of Ukraine proposals on the drafting of laws, acts of the President of Ukraine on the rights and legitimate interests of the child;
- measures aimed at protecting and restoring the violated rights and legal interests of the child, inform the public of these activities and their results;
- preparation of activities attended by the President Ukraine, including international, on issues relating to children;
- implementation of measures on establishment of cooperation between executive bodies and bodies of local self-government on the protection of rights and legal interests of the child [11].

Much effort is also making by NGOs working in the field of child protection so that each child felt full member of society. In particular, the UN Children's Fund (UNICEF) and Rinat Akhmetov's Foundation "Development of Ukraine" in the project "Children's Rights in Ukraine: realities and challenges after 20 years of independence".

4. Conclusions

However, the said cannot fully guarantee the real improvement because until now in Ukraine almost the main problem remains the implementation of

¹³ On issues of Commissioner of the President of Ukraine for Children's Rights: Decree of the President of Ukraine of 11.08.2011 no. 811/2011 [electronic resource]. - Access mode: <http://zakon3.rada.gov.ua/laws/show/811/2011> accessed 8 March 2017.

adopted normative legal acts. These documents today are mostly declarative. They cover a wide range of activities in various fields, which often duplicate one another. Monitoring of their implementation although is carried out, but often it is formal because it excludes specific indicators of performance of all the tasks. In addition, for the implementation of most strategies and programs targeted funding is not provided.

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