

IMPLEMENTATION OF EUROPEAN STANDARDS OF PROTECTION OF CHILDREN'S RIGHTS IN UKRAINE: PROBLEMS AND PROSPECTS

*Viktor LADYCHENKO**
*Liudmyla GOLOVKO***

Abstract

In Ukraine, despite a number of measures taken in recent years for the protection of children's rights, there are still many problems in this area, and, above all, in monitoring the observance of current legislation. This promotes comparative legal studies aimed at learning trends, patterns and features of legislation which protect child's rights in the world, especially in the EU member states.

The article reveals the shortcomings of legal regulation of children's rights in Ukraine. Suggestions are made for the implementation of the best practices of EU member states in this area.

Special attention is paid to the experience of the Nordic countries (Sweden, Norway, Finland) in the sphere of protection of children's rights. This is due to the fact that legal framework for protection of rights of children and young people in these countries is realized to a larger extent than in other European countries.

Western European countries have long experience and have built up relevant practices in the sphere of protection of children. Among the other countries we selected Germany. In this country considerable attention is paid to strengthening preventive component of combating violations of children's rights.

Public policy, national legislation, best practices of children's rights protection in the activities of state bodies, local authorities and non-governmental institutions are key aspects of the study. Provisions of national action plans that include targeted and effective measures aimed at enhancing protection of children's rights in EU member states were studied. The article also contains proposals concerning improvement of national legislation of Ukraine in the field of children's rights protection.

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

JEL Classification: [K33]

1. Problems of protection of children's rights in Ukraine

In Ukraine, despite a number of measures undertaken for the protection of children's rights in recent years there are still many problems in this area, and, above all, in monitoring the observance of current legislation. Nowadays in Ukraine comprehensive monitoring of implementation of children's rights is not conducted. Ukrainian state bodies, NGOs and international organizations carry out

*Professor, PhD, head of the Department of International Law and Comparative Law, National University of Life and Environmental Sciences, Ukraine.

**Associated Professor, PhD., Department of International Law and Comparative Law, National University of Life and Environmental Sciences, Ukraine.

monitoring only of certain children's rights. Lack of coordination in the conduct of monitoring activity causes fragmentation and overlap of these studies.

Lack of modern ideological approaches to understanding of the role of childhood in full development of personality leads to violations of the principle of ensuring the child's interests and rights to special care and assistance. In Ukraine state institutions cannot always coordinate their activities and procedures in order to ensure the best possible protection of children's rights¹.

The main problems in the sphere of protection of children's rights in Ukraine are as follows: unwillingness of state authorities to intervene, lack of state funding of programs aimed at protection of children's rights, long terms needed to resolve disputes affecting children in court, lack of monitoring of the state of protection of children's rights.

2. National action plans concerning protection of children's rights in Ukraine and the EU

If we compare national action plans on children's rights protection, which were adopted in Ukraine in recent years, with national action plans that were adopted in EU member states, we can conclude that national action plans adopted in the member states of the European Union are more complex and include much broader range of issues that need to be solved. Ukrainian National Action Plan on Implementation of the UN Convention on the Rights of the Child until 2016 did not contain a list of measures necessary for the implementation of the National Action Plan and did not provide the improvement of Ukrainian legislation on the protection of children's rights². Now the work is continuing on the draft National Action Plan on Implementation of the UN Convention on the Rights of the Child for 2017 – 2021³.

The main disadvantage of Ukrainian state plans and programs on realization of rights of children is that their financing is not determined by those plans or programs. Financing is performed from the funds ensuring the functioning of corresponding ministries and agencies or from funds remaining after the satisfaction of more important, according to the Government, needs, i.e. by residual principle. The new National Plan of Ukraine for the period 2017 – 2021 provides that measures for its implementation will be financed by the Government. Recommendations of the UN Committee on the Rights of the Child concerning the determination of the volume and proportion of national budget that are spent on children through public and private institutions or organizations for

¹ M. Bilynska, (2013) Public policy in health care. Kyiv: NAPA. - Part 1 - 396 p., p. 195.

² Law of Ukraine on the National Program National Action Plan on Implementation of Convention on the Rights of the Child for the period until 2016 [Electronic resource]. - Access mode: <http://zakon3.rada.gov.ua/laws/show/1065-17> accessed 6 March 2017.

³ Resolution of the Cabinet of Ministers of Ukraine on approval of National Action Plan on Implementation of the UN Convention on the Rights of the Child for 2017 – 2021 [Electronic resource]. - Access mode: http://search.ligazakon.ua/l_doc2.Nsf/link1/NT2867.html accessed 6 March 2017.

the evaluation of the impact and availability, quality and effectiveness of services for children in different spheres also have not been fulfilled⁴.

In Ukraine, information on the Convention is distributed among the children and among professional groups of adults who work with or for children. However, the total number of such materials is absolutely insufficient for Ukraine. Also there is no state system which would inform all children of school age about the content of the UN Convention on the Rights of the Child in a form which is clear to children. Similarly, in Ukraine there is no effective system of training of specialists working with and for children, especially teachers, doctors, law enforcement officials, lawyers, judges to provide a deep understanding of the content of the Convention and general principles of its implementation. Information about the state of implementation of children's rights in Ukraine is not systematically collected and is not published.

Another advantage of national action plans on children rights protection that have been adopted in the EU member states is that they contain not just common goals, but also detailed phased measures for their implementation; indicate authorities responsible for implementation of each measure; foresee monitoring of implementation of these measures; contain indicators for the assessment of performance of each individual measure. A good example in this respect, in our opinion, is the National Action Plan of Slovakia, which in addition to the bodies responsible for the implementation of certain measures contains the terms of their implementation⁵.

Further drawback of the National Action Plan of Ukraine is the lack of requirement to report annually about its implementation. But this is not surprising, because if in national action plan concrete measures which might be taken are not listed, there is no need to report about the state of their implementation.

3. Combating violence against children

In Ukraine there is not National action plan to combat violence against children. In our view Ukraine should implement the practice of EU member states concerning adoption of National strategies to combat violence against children. In Norway the National strategy to combat violence and sexual abuse against children and youth (2014-2017) was adopted, which is aimed to systematically resolve the problems of child abuse (the National Strategy)⁶. In this document, the Government of Norway has foreseen 42 measures intended to prevent violence

⁴ Alternative report on the implementation of the provisions of the UN Convention on the Rights of the Child in Ukraine [Electronic resource]. <https://www.unicef.org/ukraine/report-ukr.pdf> accessed 6 March 2017.

⁵ The National Action Plan for Children 2013-2017 [Electronic resource]. <http://www.employment.gov.sk/files/slovensky/ministerstvo/poradne-organy/ludske-prava-narodnostne-mensiny-rodovu-rovnost-sr/vybor-deti-mladez/narodny-akcny-plan-pre-deti-na-roky-2013-2017.pdf> accessed 6 March 2017.

⁶ National strategy to combat violence and sexual abuse against children and youth (2014–2017) [Electronic resource]. https://www.regjeringen.no/globalassets/upload/bld/strategi_overgrep_barn_eng_web.pdf accessed 6 March 2017.

against children and youth. The strategy was developed jointly by the Ministry of Youth, Gender Equality and Social Assistance, Ministry of Health, Ministry of Education, Ministry of Justice and Public Security. When developing the Strategy consultations with many state and public organizations that work with children were held, as well as a whole series of studies were made. The main focus of the National Strategy is made on the prevention, early intervention and collaboration between different institutions. Children who are in difficult situation and need help, according to the National Strategy are detected at an early stage of such a situation and they should be provided fast, relevant and comprehensive care. Since preschool and school education play a key role in identifying children who are in difficult situations, teaching staff should be aware of the types of assistance that can be provided to a child who has suffered violence and in which authorities it is possible to seek help. In order to implement this requirement of the National Strategy in practice systematic measures were taken to train teachers, social workers, police officers, doctors and other professionals who have contact with children which had a significant positive effect.

Systematic measures were taken to inform pupils about the issues of violence against children. In schools, other educational institutions and institutions where children spend their free time leaflets with necessary information were distributed. Starting from 2013-2014 school year in educational programs, according to the National Strategy hours for teaching of issues concerning domestic violence and child abuse were stipulated in the second, fourth, seventh and tenth grades of secondary schools. That is, from the first years of education in school, the child gets to know the rules of behavior in situations when he or she is confronted with the facts of violence. The body responsible for the implementation of this requirement of the National Strategy is the Ministry of Education and science of Norway. In our view, teaching problems of child abuse in school is a rewarding experience. Timely informing the child about the rules of conduct helps to reduce cases of child abuse.

Interesting experience is creation of Bullying Prevention and Intervention Plans by Norwegian schools. Such plans foresee academic and non-academic activities aimed at bullying prevention, policies and procedures for reporting and responding to bullying, collaboration with families⁷.

The positive experience of Norway, worthy implementation in Ukraine, is the practice of continuous monitoring of the children who have mental health problems and children, whose parents use drugs. For this purpose in Norway a pilot program 'Early pregnancy – mental health, intoxication and domestic violence' was launched. Responsible for the implementation of this program is the Ministry of Children, Equality and Social Inclusion in collaboration with the Ministry of Education and the Ministry of health and care services.

⁷ Bullying Prevention & Intervention Plan [Electronic resource]. http://www.franklin.k12.ma.us/pages/franklindistrict_webdocs/Franklin%20Public%20Schools%20Anti-Bully%20Plan.pdf accessed 6 March 2017.

Regional centers for violence prevention develop interdisciplinary curricula for different specialists. In Norway there are 10 assistance centers for children. Some municipalities have municipal psychologists which help children who have undergone violence.

Taking into account experience of Scandinavian countries we consider that Cabinet of Ministers of Ukraine on the Norwegian and Swedish model has to define national strategies and ensure the implementation of policies relating to the protection of children's rights in accordance with international and national law. Ministry of Family, Youth and Sports of Ukraine should create a single national program concerning the protection of rights of families, children and youth. Regional institutions should ensure implementation of this program at the local level.

Positive experience of Sweden is establishment of small centers that advise adolescents - addicts and their parents, which are widespread in this country. Social workers in most municipalities regularly provide information and advice on issues relating to drugs in schools.

In the Scandinavian countries social services organized on a territorial basis play the leading role among the state institutions dealing with the protection of minors, that allows to effectively solve problems of specific child by professionals working in the territory of child's residence.

4. Protection of rights of children with mental and physical disabilities

For Ukraine, the issue of social protection of disabled children is especially important due to the steady upward trend in the proportion of disabled children in the total population. Practice shows that many of the provisions of socioeconomic policy concerning disabled children are outdated, do not meet today's needs, and are not consistent with generally recognized international norms and standards. The legal framework though contains many positive steps towards solving many problems of disabled children, but is mainly declarative, not provided with material resources and management mechanisms of implementation. Thus, the existing system of social protection of disabled children requires changes, additions and modernization.

The experience of highly developed countries showed the ineffectiveness of passive state policy on social protection of citizens with special needs, which is based on compensation costs. Today, Ukraine is trying to move from medical to social model of disability. The latter is the relationship between people with disabilities and society, rather than fixing the variations in its health and development, as is typical for medical model and was characteristic for the soviet system of management⁸.

Providing education for disabled children in Ukraine is at a low level, existing institutions do not allow to realize themselves and have many weaknesses. Ukraine must equip educational institutions in accordance with

⁸ Kravchenko M.V., Actual problems of social protection of invalids in Ukraine [Electronic resource]. <http://www.academy.gov.ua/ej/ej12/txts/10kmvziu.pdf> accessed 6 March 2017.

international standards, i.e. make free from barriers entry to the room, arrange bathrooms, provide access to the upper floors of the school, access to public transport. Noteworthy is the experience of many countries that have introduced integrated education in secondary schools, which involves gaining knowledge of disabled children together with healthy children. This possibility enables disabled children to largely integrate into environment of peers.

It seems appropriate to use the experience of Sweden, where in activities in the field of child protection a number of NGOs are involved. Thus, NGO 'Save the Children' promotes equal access to education for persons with disabilities and communicates with many organizations dealing with children with special needs around the world. The basis of their activity is rehabilitation program involving this category of children in public life.

Also it seems appropriate to use the experience of Sweden concerning the organization for orphaned children with mental and physical disabilities a number of houses that are home for about 30 children. Doctors and specialists-pathologists conduct necessary medical monitoring and appropriate pedagogical work. So, doctors determine methods of rehabilitation (massage, exercise therapy, physiotherapy, medical treatment) and teachers develop individual training programs.

In Germany, in cases of child abuse social services and educational support are often offered. The procedure of social services actions in the case of signs of child abuse are regulated in Article 8a of Social Code, Book VIII⁹. The main means of primary prevention activities in Germany are as follows: educational and informational support¹⁰, namely information campaigns aimed at public awareness of the problem of violence against children; educational programs to promote parenting and child development; functioning of 'hot' telephone line; consulting in community centers, etc. To the means of secondary prevention of child abuse in Germany belong: appropriate (reaction) monitoring and detection of violence; only service information and advice to children, youth and families; work with families, teenagers under the individual plan; family group conferences, etc. Means of tertiary prevention of violence - a package of social, educational, and medical and psychological activities and services aimed at rehabilitation of personal and social status of people, including a child who has suffered violence¹¹.

In recent years the Federal Government has developed a number of national action plans and programs relating to early prevention; government intervention in the case of violence against a child or if the child does not receive

⁹ German Social Code 26th of June, 1990, Book VIII, Section 8a (Protective Assignment in Case of Threat of the Child's Welfare [Electronic resource]. <http://eige.europa.eu/content/german-social-code-26th-of-june-1990-book-viii-section-8a-protective-assignment-in-case-of-taccessed> 6 March 2017.

¹⁰ Gorishna N. M., (2013) Social and educational support of youth initiatives in Western Europe// Scientific Bulletin of the Uzhgorod National University. Series of 'Pedagogy, social work*. - Issue 27. - P. 34 - 37.

¹¹ Zymivets N.V., Maliyenko Y.M, Tsyuman T. P. (2009) Implementation of a pilot model of structural prevention of violence against children, summarizing the experience of the project. Information and training materials. Kyiv: Child welfare fund. - 64 p.

the necessary care; protection of children and adolescents from sexual violence; aimed to help adolescents to obtain education¹².

The positive experience of Germany worth following is the existence of educational programs on early childhood. The goal of educational programs for children and young people is to create a positive atmosphere in families, support parents in the upbringing of children, support children and adolescents in their individual and social development, develop parenting skills, and enhance interaction between parents and children. There is a practice of sending letters to parents, development of family manuals, family consultations, and workshops on parenting issues.

5. Conclusions

Ukraine needs fundamental changes in the sphere of protection of children's rights. Normative legal acts should contain concrete obligations of concrete subjects and not just declarations to which we aspire. This concerns also the draft National Action Plan on Implementation of the UN Convention on the Rights of the Child for 2017-2021. It requires changes concerning detailed phased measures aimed at protection of children's rights, timetable of their implementation, responsibilities of concrete subjects, monitoring of implementation of aforementioned measures, indicators for the assessment of performance of each individual measure. Following the example of European countries Ukraine should practice continuous monitoring of the children, who have mental health problems and children, whose parents use drugs. Small centers that advise adolescents – addicts and their parents should be established.

Noteworthy is the experience of many European countries that have introduced integrated education in secondary schools, which involves gaining knowledge of disabled children together with healthy children. This possibility enables disabled children to largely integrate into environment of peers. Ukraine must equip educational institutions in accordance with international standards, i.e. make free from barriers entry to the room, arrange bathrooms, provide access to the upper floors of the school, access to public transport. National action plans and programs relating to early prevention of violence against children should be developed.

Bibliography

1. Bilynska M., (2013) *Public policy in health care*. Kyiv: NAPA. - Part 1.
2. Zymivets N.V., Maliyenko Y.M., Tsyuman T. P. (2009) *Implementation of a pilot model of structural prevention of violence against children, summarizing the experience of the project. Information and training materials*. Kyiv: Child welfare fund.

¹² Smetanskoho M. I., (2008) Organization of profile education in Western Europe. Vinnytsia: VSPU. - 339 p.

3. Gorishna N. M., (2013) *Social and educational support of youth initiatives in Western Europe*. Scientific Bulletin of the Uzhgorod National University. Series of 'Pedagogy, social work' .27.
4. Smetanskoho M. I., (2008) *Organization of profile education in Western Europe*. Vinnytsia: VSPU.