

MODERN STATE OF LEGAL REGULATION OF SOCIAL PROTECTION OF A CHILD UNDER CONDITIONS OF THE MILITARY AND ARMED CONFLICTS IN UKRAINE

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Summary

In the article an author researches the problems of modern state of legal regulation of social protection of a child under conditions of the military and armed conflicts in Ukraine. It was concluded that children are the most vulnerable category of population whose rights are constantly violated during the military and armed conflicts. Thus, in connection with the events which happened on our territory and which paid the world's attention to Ukraine, the majority of children can not realize their social interests, preserve or improve their social status. The author defines that legislation of Ukraine on social protection of children under conditions of the military and armed conflicts needs significant improvements, since their status is outlined in general terms, without real content and clear mechanisms for their implementation. A problem of social protection of a child intensifies under conditions of crisis situations, in particular during the armed conflicts in Ukraine. This is especially about children suffered in the result of the military actions and armed conflicts. So, first of all, it is necessary to define a nowadays state of legal regulation of this sphere of relations in order to define a state of social protection of children under conditions of the armed conflicts in Ukraine.

Key words: social protection, status of a child suffered in the result of the military actions and armed conflicts, targeted benefits and guarantees, social support, legal ensuring.

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1. Introduction

Article 52 of the Constitution of Ukraine states that any abuse and exploitation of a child are strictly prosecuted by the law (*Konstytutsiia Ukrainy, 1996*).

In connection with the events which happened on our territory at the beginning of 2014 and which paid the world's attention to Ukraine, the majority of children can not realize their socio-economic interests, preserve or increase their social status, receive the qualified medical care and high-quality education. A problem of social protection of a child especially intensifies under conditions of crisis situations, in particular during the armed conflict. This is especially about the children who suffered in the result of the military actions and armed conflicts. So, first of all, it is necessary to define a nowadays state of legal regulation of this sphere of relations in order to define a state of social protection of children under conditions of the armed conflicts in Ukraine.

The following well-known scientists researched the problems of protection of the children's rights under conditions of the military actions: D. Chyzhov, N. Stepanenko, O. Klymenko, T. Mikhaylina, A. Frantsuz, I. Salamakhina and others. Also, Ye. Gerasymenko, Ye. Mykytenko, O. Fesenko, O. Vynohradova, B. Zakharova and others researched in their scientific works the problems of legal ensuring the protection of the internally displaced persons. But, the problems of legal regulation of sphere of social protection of children under conditions

of the armed conflicts have been not researched thoroughly enough and this testifies the topicality of our publication. Under the conditions when Ukraine fulfills the requirements of the European Commission related to our country's membership in the EU, and when irreversible transformational processes take place in the social sphere related to the military aggression of the Russian Federation, there is an urgent need in Ukraine to introduce legal innovations to ensure social protection of children who suffered in the result of the military actions and armed conflicts. The effective legislation can not adequately solve a number of existing problems in this sphere. The established practice requires analysis and specific recommendations to improve legal regulation of social protection of this vulnerable category in Ukraine. All the above mentioned determines the topicality of the chosen theme.

A purpose of our research is to analyze a modern state of legal regulation of social protection of children under conditions of the military and armed conflicts in Ukraine, to define its problems and to find the ways to solve them.

A methodology of our research is based on application of both general scientific and special scientific methods. In particular, the methods of analysis and synthesis were applied to characterize the effective state of legal regulation of social protection of children and to define its problems. A logical-semantic method was applied to improve the conceptual-categorical apparatus, to expand and clarify the researched concepts and categories. A system-structural method was applied to determine a system of legal regulation of this sphere of relations in Ukraine. The structural-functional and system analysis methods were applied to research social protection of children under conditions of the military and armed conflicts. A formal-legal method made it possible to research qualitatively the normative material, to formulate the definitions of special concepts of our research, as well as to form the main directions to improve legal regulation of social protection of children under conditions of the military and armed conflicts in Ukraine.

2. Purpose of social protection

Social protection is an important element of functioning any modern state, which strives to ensure every citizen with the decent conditions of existence, social security and necessary opportunities for self-realization of an individual.

A system of social protection of the population in Ukraine, during the period of its formation, underwent drastic changes from the post-Soviet system to the European-oriented one. However, Ukraine has not acquired a sufficient level of social ensuring yet and it is in the permanent reformation process. That is why the existing social problems and shortcomings in Ukraine are of concern to the European Union, because a state with poor people is traditionally considered by the Europeans as "potentially dangerous" (*Kotova, Shetilova, 2019: 64*).

A full-scale invasion of the Russian Federation on our land and introduction of the martial law in Ukraine became a huge challenge for the social protection system as a whole.

With the beginning of the armed conflict, our state faced with a wave of new social problems and with emergence of a new vulnerable category of citizens, namely children, who need proper social ensuring. Today social problems which should be solved by our legislators and lawyers are acutely as never before, and it is characterized by the high relevance of such researches and a necessity to determine certain ways to solve them.

The main task in the sphere of social protection is to provide our citizens, especially children, timely, affordable, high-quality support, to build a system of providing social services and performing social work, which will be close to the best European practices.

Organizing the work in peacetime and understanding that social work and social services are professional activity, and here, as in medicine, the main thing is not to hurt, it is necessary to approach the decisions on providing social services, and especially to research a situation of each child, his/her problems and opportunities, to work only in a close contact with a child, maximally involving his/her in solving his/her own problems (*Sotsialni posluhy, yaki nadaiusia pid chas voiennoho stanu ta ostanni zminy u tsii sferi, 2022*).

A war became a moment of crisis for all social institutions not only of Ukraine, but also of the whole world. 7,5 million of Ukrainian children suffered from the full-scale invasion of the Russian Federation, and among their urgent needs we can separate ensuring the rehabilitation by the technical means, the long-term treatment and prosthetics, recovery, socio-psychological rehabilitation (*Vid ahresii rf postrazhdaly 7,5 miliona ukrainskykh ditei – Zelenskyi, 2023*).

Each child suffered in the result of the military actions and armed conflicts needs the appropriate treatment, rehabilitation, psychological support and social protection.

3. The status of a child suffered in the result of the military actions and armed conflicts

According to the Law of Ukraine “On Childhood Protection” (in the following – the “Law”), a child suffered in the result of the military actions and armed conflicts is a child who, in the result of the military actions and armed conflicts, received injury, contusion, mutilation, who suffered physical, sexual, psychological violence, who was stolen or illegally exported outside Ukraine, who was involved in military formations or illegally kept, including captivity (*Pro okhoronu dytynstva, 2001*).

The Resolution of the Cabinet of Ministers of Ukraine of April 5, 2017 N 268 approved a procedure for granting the status of a child suffered in the result of the military actions and armed conflicts. As of 2023, more than 64 thousand children have been given this status (*Informatsiina platforma «Dity-viiny» 24 liutoho 2022 – 25 sichnia 2023*). This status is obtained by children who suffered in the result of the military actions in any form.

At present, we understand that an intensification of the military actions with the beginning of a full-scale invasion of the Russian Federation leads to the fact that the number of such children increases daily.

Such children are mostly under the guarantees determined by the law for the internally displaced persons. They are placed in kindergartens and schools, also they are provided by free food, medicines, preferential rest, compensation for accommodation and simplified entry into universities. In some regions, they receive monetary compensation from 2 to 5 thousand hryvnias, but at the expense of local budgets and at the discretion of local authorities (*Poiasni-valna zapyska do proektu Zakonu Ukrainy “Pro status i sotsialnyi zakhyst ditei, yaki postrazhdaly vnaslidok voiennykh dii ta zbroinykh konfliktiv”, 2021*).

4. Problems of the targeted legal regulation

Nowadays, the effective legislation does not foresee any payments for families with children who have a status of a child suffered in the result of the military actions and armed conflicts. But, the Draft of the Law of Ukraine “On a Status and Social Protection of Children Who Suffered in the Result of the Military Actions and Armed Conflicts on the Territory of Ukraine” of March 31, 2017 is on the consideration of the Verkhovna Rada of Ukraine and it is not accepted by this time yet (*Pro status i sotsialnyi zakhyst ditei, yaki postrazhdaly vnaslidok voiennykh dii ta zbroinykh konfliktiv, 2017*).

The Draft proposes the following additional benefits for children who have a status of a child suffered in the result of the military actions and armed conflicts in the territory of Ukraine, in particular:

- full course of psychological rehabilitation in the procedure established by the Cabinet of Ministers of Ukraine;
- sending to children's health and recreation establishments at the expense of the state budget, and free travel within Ukraine by all types of transport (except taxi) of a child and a person who accompanies such a child to the place of recovery in both directions;
- free travel by all types of city passenger transport, public transport in rural areas, as well as by rail and water transport of suburban connections and buses of suburban and long-distance routes;
- providing baby food for infants and children of the second year of life;
- providing free food for children studying in preschool, general, vocational schools, regardless of their subordination and forms of ownership, in the procedure established by the Cabinet of Ministers of Ukraine (*Poisniuvalna zapyska do proektu Zakonu Ukrainy "Pro status i sotsialnyi zakhyst ditei, yaki postrazhdaly vnaslidok voiennykh dii ta zbroinykh konfliktiv"*, 2021).

Therefore, a main purpose of the Draft is to protect and to consolidate social support for children suffered in the result of the armed conflict, to resolve the related medical and social problems. Its adoption is extremely important, because now there are no guarantees for children growing in the war conditions except for free hot food in state and municipal educational institutions. A situation with the social protection of citizens of Ukraine, which at the end (September 2, 1945) of the Second World War was less than 18 years, is some better. State guarantees for these persons are guaranteed by the Law of Ukraine "On Social Protection of Children of War".

Thus, in January 2020, the Law of Ukraine "On Amendments to Some Laws of Ukraine on Ensuring the Free Food for Children of the Internally Displaced Persons" stipulates that children who have a status of a child suffered in the result of the military actions and armed conflicts and who study in preschool, general education, vocational schools, regardless of their subordination, types and forms of ownership, are provided with free food in the procedure established by the Cabinet of Ministers of Ukraine (*Yaki sotsialni ta medychni harantii maiut dity, shcho postrazhdaly vnaslidok voiennykh dii*, 2022).

There was no special order for providing free food for such children. However, the Ministry of Education of Ukraine provides clarification that the financing of free food for children from the amount of children who have a status of a child suffered in the result of the military actions and armed conflicts in preschool institutions and other educational institutions should be made by the local self-government bodies according to the Resolution of the Cabinet Ministers of Ukraine of August 26, 2002 N 1243 "On the Urgent Issues of Activity of Preschool establishments and boarding schools", as food for "persons of other categories determined by the law and/or decision of the local self-government body".

However, an obligation of the local governments to provide such children free food leads to the different levels of such providing. Therefore, it is necessary to develop a separate procedure for providing free food for all children who have received a status, as provided for in the above mentioned Law.

At the same time, in addition to the free food, it is necessary to ensure the proper social protection of such children, because to obtain only a status without proper social guarantees do not ensure any support to the suffered children.

It should be pointed that at the local level, some local self-government bodies develop programs to protect children suffered in the result of the military conflicts. However, monetary support from the local budgets is paid only as a one-time financial aid in the amount of five subsistence minimums for children of the appropriate age in Donetsk region, annual financial aid in the amount of 2000 UAH in Chernivtsi region and in the amount of 5000 UAH in Kryvyi Rig (*Ostapenko, 2022: 88*).

According to a survey of families who have children with a status of a child suffered in the result of military actions, the most necessary guarantees for this category of children are: providing monetary compensation (targeted payments in an amount sufficient to solve housing issues or receive vocational education, treatment, health), psychosocial support, budget training in the higher education institutions, guaranteed scholarship, free treatment for wounds, diseases, injuries received in the result of the military actions, free travel within the country, employment assistance (*Hromadskist zaklykaie vladu zabezpechyty pilhamy ditei, postrazhdalyykh unaslidok zbroinoho konfliktu, 2021*).

Moreover, at the state level, the official status of “a child who suffered in the result of the military actions and armed conflicts” is worthless. Proclaiming a need to support such children, a state has not made any effort to support them effectively and normatively consolidate specific types of such support and mechanisms for their implementation. However, a state is responsible for the safety of its citizens, in accordance with Article 3 of the Constitution of Ukraine, which defines the following: “Human, his/her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value”.

That is why it is necessary to approve at the state level the procedure and conditions for granting targeted benefits and guarantees for children who have an official status of “a child who suffered in the result of the military actions and armed conflicts”, as well as clear mechanisms for the purpose of assigning these benefits and guarantees and their ensuring.

The implementation of the Draft will allow to consolidate at the legislative level the additional social guarantees, compensations and privileges for children suffered in the result of the military actions and armed conflicts and it will allow to introduce an effective system of protection of such children, providing them complex material, medical and psychological assistance.

5. Conclusions

Thus, the legislation of Ukraine gives the right to a child with injury, contusion, mutilation, to receive a status of a child who suffered in the result of the military actions and armed conflicts. However, it does not provide a sufficient relevant list of benefits and guarantees.

That is, today, the legislation of Ukraine does not contain a single approach to defend children with injury. In addition, the most available guarantees do not have practical application due to the lack of order of their realization or mismatch with the modern realities.

In practice, only children with disability have the social, medical, rehabilitation rights, etc. In this case, a procedure for obtaining a disability is long-term and sometimes impossible due to the military actions.

But, the suffered children should receive the proper and timely support from the state just now, which, in particular, should consist in the following:

- to introduce one-time financial assistance for children with injury, contusion, mutilation received in the result of the military actions and armed conflicts;
- to develop and approve a procedure for providing free food for the suffered children;

– to develop and approve a procedure for passing free psychological, medical and psychological rehabilitation of such children.

Social guarantees and psychological assistance for children are a big contribution to not get a “lost generation” from hundreds of thousands of people in the future. After all, children make the most promising part of population to develop our country. Therefore, it is necessary to ensure their safety and development in their home country. Ensuring comprehensive preventive control of children’s protection in all spheres of activity will help to increase the protection of children, which will help to reduce the risks of inefficient functioning of the mechanism of social protection of children in Ukraine.

So, it is necessary not only to adopt the legal acts governing the protection of the rights of children suffered in the result of the military actions and armed conflicts, but also to develop and adopt the appropriate by-laws, but the most important – to implement properly their provisions that will really ensure protection of the rights and legitimate interests of these children.

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