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STATE AND LEGAL POLICY OF UKRAINE IN THE FIELD OF PROTECTION OF CHILDREN DURING MARTIAL LAW

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Abstract. The article analyzes the state and legal policy of Ukraine in the sphere of child protection during the period of martial law. A review of normative legal acts of Ukraine in the field of child protection, which reflect the state-legal policy, in particular: the Law of Ukraine "On Childhood Protection", the Concept of the State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2021, State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2021, etc. On the basis of the analysis of normative legal acts of Ukraine, conclusions are made about the state of the state-legal policy in the field of child protection.

Key words: state and legal policy, child protection, state and legal policy in the field of child protection.

Introduction. Children are the future of every state.

During the war, children especially need attention and care. Due to the fact that children do not know about such a phenomenon as war, it is very difficult for them to experience those emotions. Even if a child is not a direct participant in a military conflict, he experiences significant stress, because his immediate environment is worried, because some irreversible events occur that are difficult for him to perceive and realize.

According to the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974), children are identified as the most vulnerable part of the population. The state must ensure the best possible conditions for the protection of children, especially during martial law; is obliged to take all necessary measures to promote the physical and psychological recovery and social integration of the child who is a victim of armed conflict. Such restoration and reintegration must take place in conditions that ensure the health, self-respect and dignity of the child.

Main part. The course of action chosen by the state authorities to solve a certain problem or set of interrelated problems is defined as state-legal policy.

The state-legal policy of Ukraine and the mechanisms of the state, through which relations in the field of protection of children are regulated, are reflected in regulatory legal acts. The legal basis of legislation in the field of childhood protection is primarily the Convention on the Rights of the Child (Convention on the Rights of the Child, 1989), since it enshrines all the rights that belong to children.

The main national normative legal act in the field of protection of children's rights is the Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001), which determined that the protection of childhood in Ukraine is a strategic national priority that is important for ensuring Ukraine's national security.

The Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001) defines that «protection of childhood» is a system of state and public measures aimed at ensuring a full life, comprehensive upbringing and development of a child and protection of his/her rights.

Also, the Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001 : art. 5) stipulates that the basic principles of childhood protection and state policy in this area are determined by the Verkhovna Rada of Ukraine by approving relevant national programs.

However, as of today, at the level of our state there is no national program for the protection of childhood, approved by the Verkhovna Rada of Ukraine.

The Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001 : art. 5) stipulates that the implementation of state policy on childhood protection, development and implementation of targeted national programs of social protection and improvement of the situation of children, support for families with children, coordination of activities of central and local executive authorities in this area is provided by the Cabinet of Ministers of Ukraine.

Since 2009, the relevant program documents have been constantly implemented: the National Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2016 (National Action Plan for the Implementation of the UN Convention on the Rights of the Child, 2009), as well as the State Social Program «National Action Plan for the Implementation of the UN Convention on the Rights of the Child» for the period up to 2021, adopted in 2017 (National Action Plan for the Implementation of the UN Convention on the Rights of the Child, 2017).

These regulations ensured the continued implementation into national legislation of the provisions of the UN Convention on the Rights of the Child (Convention on the Rights of the Child, 1989), as well as international standards and priorities of the Council of Europe Strategy for the Rights of the Child (Council of Europe Strategy for the Rights of the Child (2016–2021), 2022).

Currently, at the regulatory level, there is a single effective Concept of the State Social Program «National Action Plan for the Implementation of the UN Convention on the Rights of the Child» for the period up to 2021, approved by the order of the Cabinet of Ministers of Ukraine of April 5, 2017 (Kontsepsiia Derzhavnoi sotsialnoi prohramy «Natsionalnyi plan dii...», 2017). To implement it, the Cabinet of Ministers of Ukraine approved the State Social Program National Action Plan for the Implementation of the UN Convention on the Rights of the Child for the period up to 2021 (Pro zatverdzhennia Derzhavnoi sotsialnoi prohramy..., 2018). At the level of the Government of Ukraine, programs for the protection and improvement of the situation of children have not yet been approved, taking into account the introduced and current martial law.

In our opinion, it is necessary to continue the existing practice of approving the Concept of the State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child», which reflects the basic needs of children, taking into account the circumstances of martial law and mechanisms for ensuring them during martial law. Also, the adoption of such a normative legal act is necessary for further implementation of the norms of the UN Convention on the Rights of the Child (Convention on the Rights of the Child, 1989 : art. 38, 39) and the Law of Ukraine «On the Protection of Childhood» (Law of Ukraine «On Childhood Protection», 2001 : art. 5).

In addition, it should be noted that today in the system of central executive bodies of Ukraine there is no body that dealt exclusively with the protection of children.

The Law of Ukraine «On Bodies and Services for Children and Special Institutions for Children» (Law of Ukraine «On Bodies and Services for Children and Special Institutions for Children», 1995 : art. 1) defines the system of bodies entrusted with the implementation of social protection of children and the prevention of offenses among them:

the central executive body that ensures the formation of state policy in the field of family and children, the central executive body that implements the state policy in the field of family and children, the executive body of the Autonomous Republic of Crimea in the field of family and children, the relevant structural subdivisions of regional, Kyiv and Sevastopol city, district state administrations, executive bodies of city and district councils in cities;

authorized units of the National Police;

receivers-distributors for children of the National Police;

schools of social rehabilitation and vocational schools of social rehabilitation of educational bodies;

centers for medical and social rehabilitation of children of health care institutions;

special educational institutions of the State Criminal-Executive Service of Ukraine;

orphanage for children;

centers for social and psychological rehabilitation of children;

social rehabilitation centers (children's villages).

The central executive body that ensures the formation and implementation of state policy in the field of family and children today is the Ministry of Social Policy of Ukraine. According to the Regulations on it (Pro zatverdzhennia Polozhennia pro Ministerstvo sotsialnoi polityky Ukrainy, 2015), this ministry is the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy on family and children, rehabilitation and recreation of children, adoption and protection of children's rights.

At the same time, this is not the only function assigned to the Ministry of Social Policy. The scope of activity of the Ministry of Social Policy is quite wide. In 2020, the Cabinet of Ministers of Ukraine approved the Concept for the implementation of state policy on social protection of the population and protection of children's rights (Kontseptsiia realizatsii derzhavnoi polityky shchodo sotsialnoho zakhystu naseleattia ta zakhystu prav ditei, 2020).

This Concept states the fact that the Ministry of Social Policy continues to perform a significant number of functions for the implementation of state policy on a wide range of issues. At the same time, the system of administration of social programs is complex, control over the protection of children's rights is not fully ensured, and the mechanism for exercising such control needs to be improved. Despite this, at the basic level, there remains insufficient resource capacity and human resources for local self-government bodies to exercise their own and delegated powers in the field of social protection and ensuring children's rights in accordance with the needs of residents of the territorial community.

In the above-mentioned Concept, the proposal of the Government of Ukraine was to establish a state executive body, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Social Policy and which implements the state policy in the field of social protection of the population and protection of children's rights, state control over compliance with the requirements of the legislation when providing social support and observance of children's rights is ensured by transforming the State Social Service into the National Social Service of Ukraine (National Social Service).

The National Social Service, the provision of which was approved by the Resolution of the Cabinet of Ministers of Ukraine dated August 26, 2020 No. 783 (Deiaki pytannia Natsionalnoi sotsialnoi servisnoi sluzhby Ukrainy, 2020), is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Social Policy and which implements state policy in the field of social protection of the population, protection of children's rights, state control over compliance with the requirements of the legislation when providing social support and observance of children's rights.

The main tasks of the National Social Service are the implementation of state policy in the field of health improvement and recreation of children, adoption and protection of children's rights; implementation of state policy in the field of state control over the observance of children's rights.

Based on the Regulations on the National Social Service, it can be concluded that this state body is entrusted with a range of analytical issues, which by no means ensures maximum satisfaction of the needs and interests of children.

On January 19, 2022, the Resolution of the Cabinet of Ministers of Ukraine decided to establish the State Service of Ukraine for Children as a central executive body with a special status, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy in the field of adoption and protection of children's rights (Pro utvorennia Derzhavnoi sluzhby Ukrainy u spravakh ditei, 2022).

However, this resolution has not yet entered into force.

The resolution itself stipulates that it enters into force simultaneously with the law defining the special status, special tasks and powers of the State Service for Children, and the law amending the Law of Ukraine «On the State Budget of Ukraine for 2022» regarding the financing of this Service.

Such a bill was under consideration by the Parliament – «On Amendments to Certain Legislative Acts of Ukraine on the Delimitation of the Functions of State Authorities and Local Self-Government Bodies on the Protection of Children's Rights in Connection with the Establishment of the State Service of Ukraine for Children» (Pro vnesennia zmin do deiakykh zakonodavchyykh aktiv Ukrainy..., 2022).

The draft law provided for the separation of powers of central and local authorities, local self-government bodies and territorial communities in the field of childhood protection and protection of children's rights in connection with the establishment of the State Service of Ukraine for Children.

The bill also introduced a much broader system of bodies and services for children. The draft law stipulates that the Cabinet of Ministers of Ukraine, in accordance with its powers, provides general regulation of activities in the field of protection of children's rights. The central executive body that ensures the formation and implementation of state policy in the field of adoption and protection of children's rights is the State Service of Ukraine for Children.

According to the aforementioned draft law, the State Service of Ukraine for Children is a central executive body with a special status, which is entrusted with exercising powers to prevent, detect, suppress cases of violation of children's rights, powers of the competent adoption authority, coordinate the activities of central executive bodies and local self-government bodies, children's services, other bodies for children on adoption and protection of children's rights, implementation of the Convention on the Rights of the Child.

According to the information contained in the bill card, the draft was submitted to the President of Ukraine for signature on 31.08.2022.

Conclusions. Firstly, at present in our country there is no normative legal act that would define a national program on the basic principles of protecting children's rights. Consequently, the priority directions of child protection during martial law and the mechanisms for their implementation have not been determined.

Secondly, the authority to protect children is assigned to several executive bodies (Ministry of Social Policy, National Social Service, etc.). At the same time, in addition to protecting children, the above-mentioned bodies exercise a wide range of other powers.

This leads to a lack of targeted approach to addressing issues related to child protection. We consider it necessary to create a separate body in the system of central executive bodies, the only task of which will be the formation and implementation of state policy in the field of child protection. In particular, we consider it expedient to create the State Service for Children and define it as the main

body that ensures the formation and implementation of state policy in the field of protection of children's rights.

The presence in the system of central executive authorities of the main body in the field of child protection, in our opinion, will clearly define the state and legal policy in this area and create favorable conditions for ensuring proper protection of children both in peacetime and during martial law.

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