

Roksolana Stasiv*Polgári Jogi Tanszék (Department of Civil Law)**Témavezető (Adviser): Szeibert Orsolya***THE RESULTS OF LAST ECONOMIC CRISIS
FOR THE FAMILY LIFE IN UKRAINE**

The state, being interested in rising a new generation, gives to parents the right and a duty of protection, education, formation, and the maintenance of children. Also the parental rights are given not only for satisfaction of maternal and parental needs, but also with a purpose of maintenance of interests of children.

The results of the last economic crisis led to a worsening of the situation of many children in Ukraine, due to increasing of unemployment of their parents. Therefore the state should pay more attention to the problems of education and protection of children. To solve the problem of protecting children is setting a new norms and rules to regulate this important sphere. This of course will not solve the problem at all, but helps to choose the right direction.

Important laws adopted in Ukraine so far

Ukraine as an independent state has already reported two times to the United Nations Committee on the Rights of the Child (the UN Committee). Concluding Observations of the UN Committee gives the best opportunity to see the effects of socio-economic transformations in the society. During last years Ukraine did a big step forward in respect to improve children rights. To prove the abovementioned it should be noted, that several important laws were adopted:

1. The Law on Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population (2010);
2. The National Strategic Action Plan for HIV prevention among children and youth of risk groups and HIV vulnerable people (2010);
3. The Law to Combat Child Pornography (2010);
4. The National Plan of Action for Children 2010-2016 as a Law on the National Plan of Action for Children (2009);

5. The National Program against Children's Homelessness and Neglect 2006-2010, and
6. the Law on Social Protection for Orphans and Children deprived of Parental Care (2005).

The UN Committee in concluding observations on Ukraine¹ distinguished with appreciation the ratification /or accession of Ukraine to:

- (a) The Hague Convention No. 23 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (2007);
- (b) The Hague Convention No. 34 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect to Parental Responsibility and Measures for the Protection of Children (2007);
- (c) The Convention on the Civil Aspects of International Child Abduction (2006), and
- (d) the European Convention on Action against Trafficking in Human Beings (2010).

But there is still a need to undertake a comprehensive review of all domestic legislation and adopt a comprehensive Child Rights Act which will fully incorporate the provisions of the Convention on the rights of the child and its Optional Protocols.²

Is new administrative reform in Ukraine step toward or step back in child protection sphere?

To my mind, a big step back was done by the Presidential Decree No.1085/2010 in 2010, in context of new administrative reform in Ukraine. The Decree dissolved the Ministry of Family, Youth and Sports and transferred its functions to the State Service for Youth and Sports under the Ministry of Education and Science, Youth and Sports. Existing professional and technical capacities in the field of child protection were lost. There was no comprehensible plan on delegation of responsibilities and functions relating to child care and protection.

According to the annex to the UN General Assembly resolution 48/134 of 20 December 1993 on the National institutions for the promotion and protection of

¹ Fifty-sixth session held on 3 February 2011

² Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, <http://www2.ohchr.org/english/law/crc.htm>

human rights³ Ukraine shall undertake the necessary measures for establishing a separate independent national mechanism, in full accordance with the principle set in the about mentioned resolution to ensure comprehensive and systematic monitoring of children's rights. Also it was recommended by the UN Committee to Ukraine to adopt the Law on the Introduction of the Ombudsman for Children in Ukraine. For the moment, in Ukraine the ombudsman institution exists, as a part of human rights protection system along with the Ukrainian legal system, international judicial and extrajudicial bodies. At the same time in the Ukrainian society there have been for several years' debates about the form of implementation of the recommendations of the Committee on the Rights of the Child about the introduction of an ombudsman for children's rights.⁴ Article 55 of the Constitution of Ukraine⁵ says, that "everyone shall have the right to appeal for the protection of his rights to the Authorized Human Rights Representative (Ombudsman) to the Verkhovna Rada of Ukraine". But there is no one word in the Constitution about the institution of the Ombudsman for Children in Ukraine. The idea of creating of independent structure has not received the necessary support among the Ukrainian politicians. In 2011 in Ukraine by the Presidential Decree an institution of the ombudsman for children as part of the Presidential Administration was created. This institution does not meet the main requirements of the institution of the ombudsman: it is not independent from the executive power, the position is appointed by the President, and accordingly it may be abolished by him, there is no sufficient legal framework to regulate and provide real authority, no principle of parliamentary control, which is replaced by the presidential control. Ukrainian human rights organizations are planning to raise this question before the Council of the UN Human Rights as part of their periodic report.

³UN General Assembly resolution 48/134 of 20 December 1993 on the National institutions for the promotion and protection of human rights <http://www.unhcr.ch/Huridocda/Huridoca.nsf/%28Symbol%29/A.RES.48.134.En?Opendocument>

⁴ Maria Yasenovskaya, an Ukrainian expert, comments on the possibility of the introduction of the ombudsman institution in Belarus, <http://belhelcom.org/en/node/14764>

⁵ Constitution of Ukraine adopted and ratified at the 5th session of the Verkhovna Rada (parliament) of Ukraine on 28 June 1996. http://gska2.rada.gov.ua/site/const_eng/constitution_eng.htm#c2

Social assistance and more benefits to low income Ukrainian families are needed

There is a need to ensure that poverty reduction reforms focus on social assistance and benefits to low income families and child protection in Ukraine. Efforts should be taken by the State to ensure that poverty in families with children be addressed concretely in the Poverty Reduction and Prevention Programme 2010-2015. During economic crisis the number of parental cruelty increased. A lot of "mothers" gave birth with an intention to receive money from state. State regularly pays them certain amount, but the money women spend on themselves. They are interested in children because of money, as a source of profit. What will happen to these families in future? There are two possible variants: the first one to deprive such "mothers" of parental rights, and the second one that the number of children in orphanages will increase.

In case if parents do not fulfill the duties or they fulfill the parental duties in the contradiction with the interests of the child such behavior of parents can lead to application of the sanction expressed in deprivation of their parental rights. It is necessary to notice, that this measure is quite complicated and its mechanism is regulated by the Family code of Ukraine.

Deprivation of the parental rights is carried out judicially with obligatory participation of guardianship body.

With respect to the Family code of Ukraine parents can be deprived of the parental rights, if they:

- Evade from performance of duties of parents;
- Refuse to take without valid excuse the child from maternity hospital, other medical institution, educational establishment and other similar establishments.
- Abuse the parental rights.
- Exploit the child, including the practice of physical or mental violence over them, force to be on the tramp and beg;
- Are sick of a chronic alcoholism or a narcotics;
- Have committed a deliberate crime against a life or health of children.

Deprivation of the parental rights does not release parents from a duty to support the child. Parents can be restored in the parental rights in cases if they have changed a way of life and the relation to the bringing up process of the child.

There are high rates of children deprived of their family environment at birth and in later stages of childhood. Family Code of Ukraine regulates the issue of parental responsibility to take the child away from the maternity home or any other health

institution.⁶ But every year the number of children abandoned in maternity homes increases. There is the insufficient number and poor quality of State services aimed at protecting and assisting families with children in Ukraine. Paragraph 3 of Article 143 of the Family Code of Ukraine says, that “the parents may abandon the child in the maternity home or any other health institution if the child suffers from serious physical and/or mental handicaps, as well as under other essential circumstances”. The UN Committee urges Ukraine to amend the abovementioned article of the Family Code in order to bring it in line with article 9 of the Convention on the rights of the child. Ukraine should intensify its efforts to provide the necessary support and resources to strengthen the family, in particular by moving from punitive measures with respect to neglect of parental duties to strengthening support systems and social benefits for families with children in order to enhance their capacity for the performance of their child-rearing responsibilities. So, placing children in alternative care or institutions only should have place as a measure of last resort and if in the best interests of the child.

Labour migration of Ukrainians

Economic crisis also influenced on labour migration of Ukrainians. A lot of parents are moving to other countries with an intention to find a new best paid job. As a result, children are staying at home without parental care and supervision. According to the State Statistics Committee, 15,000 workers have left Ukraine only during last year.⁷ But due to unofficial statistics the number of labour migrants is bigger (at least in three times). Estimated statistics indicates that over 20 years of independence of Ukraine over six million people left Ukraine. This amount does not decrease, but increases. Every year they send home about 4.43 billion dollars. Now the Ukrainian diasporas abroad reaches 20-30 million people, but official statistics indicates only 3 millions of Ukrainians abroad.⁸ Social circumstances forced them to leave their homeland and go abroad. Just one example: six years ago a women moved to Israel. In Ukraine, a woman left two sons and husband. Sons say that the first year without mother was very difficult and painful, but they have learned to do everything by themselves. Son Lesyk says that he would give

⁶ Article 143 of the Family Code of Ukraine, http://www.mfa.gov.ua/data/upload/publication/usa/en/7148/family_kideks_engl.pdf

⁷ KRAVETS 2012.

⁸ VASYLYSHYN Nashe slovo №15 April 15, 2012

everything to be with his mother, but he also understands the situation in Ukraine.⁹ There are millions of similar stories in my country. Because of low salaries, or lack of jobs, people are forced to leave everything to ensure better maintenance for their families. Most Ukrainians are traveling as labour migrants to Poland, Italy, Portugal, Spain, and Russia. Many of them never return home, as a result – broken families. The UN Committee is concerned at the large number of children who remain in residential care and at the absence of services for family reintegration. Ukraine should increase its efforts to develop further a system of alternative care such as foster families and family-type children's home, and develop a clear reform strategy in this sphere.

Poverty, reduced well-being leads to the descent of people's moral values. As a result – sexual abuse cases, child pornography and prostitution in Ukraine increased. In 2010 the Law to Combat Child Pornography was adopted by the Ukrainian Parliament. It was a step towards enhancing protection of children against sexual abuse and harmonizing national legislation with the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. Also there are a disturbingly high number of internet users of child pornography (5 million users/month and pornographic website accounted for 70 percent of all internet traffic in Ukraine). But still a very small number of criminal cases initiated in this respect.

Conclusions

1. Crisis processes particularly affect families with children. Even in times of economic growth, the most important poverty factor in Ukraine was the presence and the number of children in a family. Families with two and more children usually had high poverty risks.¹⁰

2. All children have equal rights, but different opportunities for implementing them. This applies first of all to children deprived of parental care, children with special needs and children from rural areas.

3. Economic crisis also influenced on labour migration of Ukrainians. A lot of parents are moving to other countries with an intention to find a new best paid job. As a result, children are staying at home without parental care and supervision.

⁹ KRAVETS 2012.

¹⁰ Child Poverty and Disparities in Ukraine / [L.M. Cherenko, S.V. Polyakova, A.H. Reut, et al]; under the editorship of E.M. Libanova – Kyiv, Institute for Demography and Social Studies of NAS of Ukraine, United Nations Children's Fund (UNICEF), Ukrainian Centre for Social Reforms, 2009, http://www.unicef.org/ukraine/6_Street_children_and_young_people_ua.pdf

4. There is a need to establish a system of data collection on child victims of sexual exploitation and abuse, effectively prevent and combat such offences and continue efforts in harmonizing national legislation with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in Ukraine.

5. In addition, the key problems of Ukrainian social policy are: inefficient use of available resources due to outdated funding mechanisms in the education, health care and social protection spheres. Absence of political will to implement structural reforms in these sectors is obvious.

6. At the same time, the State Budget's capacity does not allow enhancing the performance of social benefits to families with children for poverty reduction purposes. The problem of provision of housing to orphan children and children deprived of parental care also requires a solution and legislative regulation.

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