

DISCUSSION PLATFORM 2

LEGAL PROBLEMS OF THE DEVELOPMENT OF PRIVATE LAW

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SOCIAL AND LEGAL PROTECTION OF FAMILIES WITH CHILDREN

The article defines types of social protection of family. The article reviews the characteristics of the family policy in some EU countries, and the social protection of child families in the context of their significant experience for Ukraine. The peculiarities of social protection of certain categories of child families. Concluded imperfection of legal acts in this area. Specific proposals to improve legislation.

Keywords: *social protection benefits, benefits for multi-child families, state social assistance, social leave, pregnancy leave and childbirth leave.*

Андрійв Валентина, Корольков Олексій. Соціальний та правовий захист сімей з дітьми.

У статті розглянуто види соціального захисту сім'ї, особливості сімейної політики в деяких країнах ЄС та соціальний захист сімей з дітьми в контексті їх значного досвіду для України. Проаналізовано особливості соціального захисту окремих категорій сімей з дітьми, визначено недосконалість нормативно-правових актів у цій галузі, зроблено конкретні пропозиції щодо вдосконалення національного законодавства.

Ключові слова: *пільги на соціальний захист, пільги для багатодітних сімей, державна соціальна допомога, соціальна відпустка, відпустка по вагітності та відпустка по народженню.*

Relevance of the research topic. In recent years, the exacerbation of the demographic situation has prompted most developed countries to address the issue of supporting motherhood, childhood and families with children. The tendency of increase of labor migration of Ukrainians and significant decrease of the population will lead to a shortage of labor in our country and to an aging population. The significant shortfall in the Pension Fund and its filling also require immediate resolution today and are linked to the demographic situation in our country. Therefore, the issue of social and legal protection of families with children, raising fertility is one of the urgent problems of our country.

Formulation of the problem. According to the State Statistics Service of Ukraine, the number of deaths in Ukraine exceeds the number of births: there are 57 births per 100 deaths. In 2018 335.9 thousand children were born in the country and 587.7 thousand people have died (On of January DSSU). Demographic growth is closely linked to the economic development of the state, and economic development creates the conditions for population demographic growth. And as A. Solonko points out, reducing the number and density of the population frees up the living space that migrants can occupy (Solonko O. 2019).

The weakening of family relationships, the increasing number of divorces, single-parent families, the reduction of the overall standard of living require a comprehensive approach to the study of legal protection and social guarantees for families with children.

In view of the above, our country should pay more attention to measures that could improve the financial support of families with children, using the experience of developed countries of the world. After all, positive changes in the sphere of social and legal protection of families with children play a key role in solving the demographic, migration and economic situation in our country.

Analysis of recent research and publications. The problems of family policy in Ukraine are at the center of scientific research of specialists in various fields of law. Significant contributions to the development of scientific opinion on social protection of families with children have been made by leading scientists such as I. Andriyenko (Andriyenko, 2014), K. Borovichenko (Borovichenko, 2016), L. Kulachok (Kulachok, 2009), O. Potopakhina (Potopakhina, 2013), S. Prylypko (Prylypko, 2018), V. Tarasenko (Tarasenko, 2018), I. Chekhovska (Chekhovska, 2012), B. Stashkov (Stashkov, 2011) and others.

Presenting main material. Social and legal protection of motherhood and childhood is now considered in our country as one of the most important vectors of economic, social and cultural development. The reluctance to have children is caused by the low standard of living in Ukraine and insufficient regulatory and legal protection of families with children. If in Europe benefits and surcharges are for middle-income families, only poor families are financially supported in Ukraine.

Legal framework for the protection of families with children is multifaceted and covers various branches of law as: social security, civil, labor, administrative, family, criminal, financial etc.

State obligations regarding material support for families with children are defined in the Basic Law. In Art. 46 of the Constitution of Ukraine states that all types of social benefits should ensure a standard of living not lower than the subsistence minimum established by law. Article 48 of the Constitution of Ukraine states that «everyone has the right to a sufficient standard of living for himself and his family, including adequate food, clothing, shelter» (Constitution of Ukraine). But the legislator does not define the term «sufficient standard of living» and what should be understood, so the rules of this article are somewhat declarative.

E. P. Yarygina's opinion is that norms of Art. 48 of the Basic Law of the country on ensuring a sufficient standard of living for themselves and their families are implemented by state social standards and state social guarantees provided for by law (Yarygina, 2016, p. 45).

Support for families with children is, first and foremost, the social and legal protection of women and children, including financial support and the creation of social infrastructure to ensure optimal conditions for the birth and upbringing of children.

Social security for families with children has an extensive system, which consists of individual types, such as: 1) retirement benefits; 2) providing various benefits (insurance and government); 3) providing social services and benefits.

The main support for families with children in our country are in the following ways:

- 1) giving birth, adoption, or parental leave;
- 2) payment of different types of social assistance depending on the type and composition of the family;
- 3) provision of benefits and social services (including medical services), depending on the circumstances of the family;
- 4) natural help in the form of «baby boxes» (baby packages) for newborns;
- 5) the appointment of pensions in connection with the loss of a breadwinner;
- 6) tax benefits.

In our country, social security for families with children provides for direct payments to children, payments to parents and payments to all family members (assistance to low-income families, subsidies).

Among the most important laws that form the legal basis of social protection for families with children, the following laws of Ukraine should be noted: «On child protection», «On state aid for families with children», «On state social assistance to low-income families», «On state social standards and state social guarantees», «About providing organizational and legal conditions for social protection of orphans and children deprived of parental care», «About social services», etc.

It is necessary to agree with K. Borovichenko that during the life of families with underaged children there is a large number of social risks, including disability, illness, low income, raising the child alone, etc., which requires the state to develop and adopt new social programs aimed to protect the subject of the right of social security against the adverse effects of such risks (Borichlenko, 2015, p. 1).

Recently, our state has made positive steps in this direction by adopting new regulations and amending existing ones. By the Decree «On additional measures for state support of the family, maternity, paternity and childhood» of May 11, 2019, the President of Ukraine outlined constructive ways to improve the demographic situation and demographic processes in Ukraine, including the creation of socio-economic preconditions for birth in Ukraine, including the creation of socio-economic preconditions for birth in families of two or more children (On additional measures). If only this decree would really improve the situation and would not just be declarative.

On January 1, 2019, a new type of care for families with ill children emerged in Ukraine. The allowance is set at the subsistence level for people who have lost their ability to work and is paid for every sick child, regardless of receiving other types of state aid (On State Aid). But in our opinion, the novelty has its drawbacks. Assistance to a person caring for a sick child is set at the subsistence level for those who have lost their ability to work, and not at the subsistence level for a person of working age. And the subsistence level for disabled people (as of July 2019 – UAH 1,564) is much smaller than the subsistence minimum for an able-bodied person for this period (UAH 2007).

Some legislation on social support for families with children does not include a constructive decision to bring the basic social standards into line with the real subsistence level (the subsistence level is used, etc.). The legislative level does not take into account high inflation (rising prices), indexing social payments to families from time to time.

The Law of Ukraine «On State Social Assistance to Persons with Disabilities from Childhood and Children with Disabilities» benefits for children with disabilities depend on the subsistence minimum for disabled persons and not on the subsistence minimum for a child of age. And in Article 3 of the above law, when determining the amount of the allowance for the care of a child with a disability, the subsistence minimum for a child of the appropriate age is already used.

According to the Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Procedure for Assignment and Payment of State Aid to Families with Children» No. 2751 of December 27, 2001, non-working women and women registered as entrepreneurs, pregnancy and childbirth allowances are paid in the amount of 25 percent of the subsistence minimum for the able-bodied person per month. It is clear that this amount of payment cannot meet the needs of the family.

In the Law of Ukraine «On State Social Assistance to Poorer Families» the amount of state social assistance is determined taking into account the level of subsistence level and may not exceed 75% of the level of subsistence level for the family.

Decree of the Cabinet of Ministers of Ukraine «On Improving the Education, Training, Social Protection and Material Support of Orphans and Children Deprived of Parental Care» No. 226 of 05.04.1994, social payments for orphans depend on the non-taxed minimum income of citizens, but such standard is not provided by our government.

According to the calculations of the Ministry of Social Policy, the actual subsistence level for able-bodied people, taking into account the amount of obligatory payments in accordance with the current legislation in June 2019 was 4853 UAH. Thus, the subsistence minimum for the able-bodied people (UAH 1921, and for July 2019 – 2007 UAH) set by June 2019 is 2.5 times lower than its actual size. The minimum wage was lower than the actual subsistence level for able-bodied people by 680 UAH or 14%. (Basic state social standard) This suggests that state-level authorities are discriminating against families with children, using the duality of social standards. Minimum wages, pensions, social benefits are lagging behind the rise in prices, which in turn leads to considerable impoverishment of families with children.

In the context of the European integration processes taking place in our country, improving the social and legal protection of motherhood and childhood should be based on the experience of EU countries and international legal acts implemented by Ukraine.

Baby Pack is a government initiative that has been launched in Ukraine since September 1, 2018. This is a new type of social protection for families with children, which exists in many countries and is designed to support the development of responsible parenthood. The procedure for providing the package is determined by the Cabinet of Ministers of Ukraine Resolution No. 512 of June 20, 2018. However, this kind of support has also caused the mothers to complain that the goods in the baby boxes are expensive and of poor quality, and if they have not been delivered in time, quite often things were too small for newborns. Therefore, it is advisable to use the experience of other countries to replace this package with cash payments at the request of the family. After all, there may be several children in the family and some things are already gone and need not be duplicated. Journalists have investigated that the provision of «Baby Packs» has opened new «schemes» of theft of budget funds by Ukrainian officials and they have learned to steal even those who have not been born (Shche ne narodivsya).

Issues of provision of child care services up to three years «municipal babysitter» are regulated by the Cabinet of Ministers Resolution No. 68 of January 30, 2019. This regulation provides the reimbursement of the cost of childcare services up to three years of «municipal babysitter» in the amount of the subsistence minimum for children under six years of age, as of January 1, of the respective year, starting January 1, 2019. It is clear that the amount of such reimbursement is very small, inconsistent with the level of service provided and not popular with families. In the case of formal employment, the nanny has to pay income tax on individuals, and the employer is the only social contribution. Therefore, it is advisable to reduce the tax rate for municipal nannies and the number of documents required for registration.

Special benefits for large families are set out in the Law of Ukraine «On Childhood Protection», but it should be noted that some of them are purely declarative.

Some countries have positive experience with various types of social benefits which are provided to families with children that's not provided in our country, for example:

1) Israel provides: one-time education assistance; monthly assistance for a divorced parent / mother with one of the children, regardless of the receipt of child support; monthly assistance to families with children under the age of 18 who are independent of family income and are not taken into account when calculating income and are therefore not taxable, etc.;

2) in France: Allocation rentree scolaire is paid to every family with a child or a student; Allocation de soutien familial assistance provided, if the child has lost the mother or father or if one or both parents have not been involved in the child's support for at least two months in a row; assistance for education of a disabled child (Allocation d'education de decededenfant handicape) (Yarygina, 2016, p. 137–138).

Noteworthy is the experience of some countries around the world in providing retirement benefits to mothers. When child is born retirement age is reduced by one year. In the authors' view, such a privilege would also be appropriate to introduce in Ukrainian legislation, allow a woman who has children to choose or reduce their retirement age or not.

It is advisable to carry out social – legal protection of families with children not only at the expense of the state budget, but also at the expense of local budgets (relevant local programs). Given the local characteristics, the regional standard of living can equalize the incomes of low-income families or families in difficult circumstances and provide more effective targeting of social support.

Conclusion. Summarizing the legal regulation of social security for families with children, it should be noted that it is not necessary to count on Ukrainian families to increase their welfare in the near future. The low threshold for assigning many types of state social benefits does not contribute to solving the fertility problem in our country. The state has not yet ensured the fairness of social payments to single families, young families, families with no housing.

The reasons for social protection of families with children are such social risks as pregnancy and childbirth, childbirth, child care, adoption, guardianship, orphanage, low income, child support payments, maternal illness, illness or a person caring for a child, raising the child alone, the large family, the child's disability and the need to care for him, the loss of the breadwinner, the difficult life situation.

In order to eliminate inconsistency in determining the amount of social benefits for families with children, it is necessary to:

- 1) use actual subsistence rates for both the child and the parents;
- 2) take into account the overall average wage, price increases and inflation;
- 3) to bring all normative legal acts on social protection of families with children to the use of a single standard – this is the subsistence minimum (eliminating the indicators «level of subsistence level», «non-taxable level of income of citizens»);
- 4) raise the social benefits that are low – to the level of subsistence minimum, ensuring compliance with the provisions of Art. 46, 48 of the Constitution of Ukraine and the Law of Ukraine «On State Social Standards and State Social Guarantees», according to which the basic (and only) state standard recognizes the subsistence minimum;

5) eliminate the influence of political manipulation in the next elections on the size of the pension, social benefits;

6) Use the positive experience of EU countries on this issue.

It is desirable for the new leadership of the state to avoid ill-considered social and economic reforms, to create an effective system of social protection for families with children, because we all pay taxes to the State budget and should use them for the development of the state, not for our own enrichment.

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