

СОЦІАЛЬНЕ ПРАВО

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TO THE ISSUE ABOUT UPDATING THE LEGAL FRAMEWORK FOR PROVIDING SOCIAL SERVICES IN UKRAINE

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The article substantiates the essential characteristics of the legal framework, which, according to the author, should be at the heart of the post-reform system of providing social services to persons / families who have suffered / may be exposed to a difficult life circumstance in Ukraine. These are: the obligatory application of measures to prevent a person / family from falling into a difficult life circumstance; the obligation to stimulate, encourage and facilitate independent / family participation in overcoming or minimizing a difficult life circumstance; the best result of the social services for its recipient.

Certain problems of the state guaranteeing of the provision of social services in the procedure of social prevention of difficult life circumstances are analyzed. The need for legislative regulation of the effective availability of social services is determined.

The current Law of Ukraine «On Social Services» as well as by-laws are critically analyzed for compliance with the above principles of providing social services. Corresponding amendments to the legislation are proposed.

Keywords: difficult life circumstance, vulnerable groups of the population, social prevention, recipient of social services, the best result of social services.

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Introduction. The urgency of providing social services to individuals / families who are in difficult life circumstances or belong to the vulnerable groups is increasingly attracting attention in the context of the need to build a new and effective mechanism for the functioning of the system of such services in Ukraine. This is evidenced by the content of the Decree of the President of Ukraine «On certain measures to ensure the right of the citizens to high-quality and safe social services» [11], the Resolution of the Cabinet of Ministers of Ukraine «On the establishment of a working group on improving legislation on the development and regulation of the market of social services» [14] and other acts of the Cabinet of Ministers of Ukraine and the Ministry of Social Policy of Ukraine, more than thirty of which were adopted in 2020 alone [8].

Formulation of the problem. Reforming the system for the provision of social services requires the definition of new orienting values on which it will be based, and requiring an updated legal framework for the activities of all subjects of this system. Consequently, the *aim* of the proposed *research* is to characterize some of the principles of providing social services, which, according to the author, should become the foundation of the post-reformed Ukrainian system of social services, as well as ensure the personal and social effectiveness of its functioning.

Presentation of the main material. Among the legal foundations of the new state paradigm of social services in Ukraine, in particular, there should be: 1) the obligation to apply measures to prevent a person / family from falling into a difficult life circumstance; 2) the obligation to stimulate, encourage and facilitate independent / family participation in overcoming or minimizing a difficult life circumstance; 3) the best result of the social service for its recipient.

The first principle – «the obligatory use of measures to prevent a person / family from falling into a difficult life circumstance», reflects the priority task of the entire system of providing social services: prevention in any form of the onset of a difficult life circumstance or preventing the deepening of a difficult life situation dangerous for a person / family and society.

The current Law of Ukraine «On Social Services» (Clause 1, Part 1, Article 2) considers prevention of difficult life circumstances one of the main goals of the provision of social services, in turn, involves the legislative consolidation of the mechanism that should be applied to achieve the stated goal [13].

The philological interpretation of the term «prevention» is based on the Greek term, which means «prevention», however, what is significant, formulated in The Great Explanatory Dictionary of the Modern Ukrainian Language, only taking into account the technical sphere and health care. The above additionally testifies to the uncommon use of «precautionary measures» in other types of social activities, in particular regarding the provision of social services [2, p. 1177].

Based on the analysis of the Law of Ukraine «On Social Services» in the prism of identifying the norms that ensure the achievement of the declared goal of «prevention», we draw the following conclusions:

Firstly, Article 11 (Part 4, Paragraph 3) among the powers of regional state administrations in the cities of Kyiv and Sevastopol, executive bodies of city councils of the cities of regional significance, councils of united territorial communities provides for «the implementation of measures to identify vulnerable groups of the population and individuals / families who are in difficult life circumstances». At the same time, the list of subjects outlined in paragraph 5 of «The procedure for organizing the provision of social services» that show potential recipients of social services is much wider [9].

These provisions draw attention to the lack of laws in the legislation that would properly ensure the effectiveness of the obligation «to identify vulnerable groups of the population and persons / families in difficult life circumstances.» Subject list of «detectors» (for example, these are: centers for the provision of free secondary legal aid, as well as enterprises, institutions, organizations regardless of the form of ownership, public associations, charitable, religious organizations, individuals - entrepreneurs and individuals who provide social care services without carrying out entrepreneurial activity, etc.) determines not obligated, but possible subjects, given their own professional activities, may have information about potential recipients of social services. Therefore, the identification of persons / families who are in difficult life circumstances or potentially may be there, according to the current legislation is not a legal obligation of any authorized body of the social services system. Legal obligations as a system of regulations binding on the bearer (the authorized provider of social services) to guarantee the subject of law (the potential recipient of social services) the exercise of his right to prevent a difficult life circumstance and legal responsibility in case of non-fulfillment / improper fulfillment of this obligation the appropriate entity. In addition, failure to fulfill the authority to prevent difficult life circumstances is enshrined in the Law of Ukraine

«On Social Services» as a legal basis for bringing authorized officials to legal responsibility.

Article 3 of the Law of Ukraine «On Social Services» deserves additional criticism [13].

Among the principles that the legislator has defined as basic, there is no principle of state guarantees for the provision of social services. To implement this principle, Article 29 «Liability for violation of the requirements of the legislation on social services» of the specified normative act must acquire a better (and not declarative) content: with a list of comprehensive legal grounds for bringing to legal responsibility, its types and application procedure. As amended, Article 29: 1) provides that «persons guilty of inaction in organizing the provision of social services, violation of the requirements of the legislation on social services, shall be held liable in accordance with the law»; 2) has not received any practical application due to the lack of clarity and blanket rules.

Secondly, Article 16 (Part 1, Paragraph 1) determines that one of the types of social services are the services aimed at social prevention (prevention of difficult life circumstances and / or getting a person / family in such circumstances) [13]. It is important to note that from the content of the Law of Ukraine «On Social Services» it is impossible to identify services, the target direction of which is prevention. «The procedure for organizing the provision of social services» does not contain any subjects, content, or procedures for the provision of services with a preventive purpose [9].

Clause 11 of Part 6 of Article 16 of the Law of Ukraine «On Social Services» identifies social prevention as a basic social service. The substantive characteristics of the «social prevention» service are contained in the «Classifier of social services» (see Section II, Code 007.0) [7] and «State standard of social services for social prevention» [5]. Analyzing them, we conclude that this service does not ensure the achievement of the legislative goal – «prevention of difficult life circumstances» and requires substantive adjustments by making changes to the relevant regulatory legal acts. For completeness of the description, let us quote its definition: «a social prevention service is a set of activities carried out by an entity that provides social services aimed at preventing, limiting and stopping negative social and personal (behavioral) phenomena and their consequences in the social environment and is implemented with the help of various instruments of influence of a social, legal, pedagogical, psychological nature» [5]. In this interpretation, the social prevention service is a type of social work, as evidenced by the scientific research in this area of relations [6].

More effective, in our opinion, would be the practice of a clear legislative definition of the goal of each basic social service in the Classifier of Social Services. Thus, the system of social services will acquire clear contours of their application both for potential recipients of social services and for providers. Proposals in the Social Service Classifier can serve as an example [15].

Another option is to establish in the Law of Ukraine «On Social Services» a norm according to which each of the statutory social services can also be provided with a preventive purpose.

Clarity and consistency of legislative provisions on the mechanism for the preventive use of social services is important in the context of building an effective mechanism for the realization by a person / family of the right to social services and high-quality social integration into society.

Summing up, we believe that the essential characteristics of the principle of providing social services – «the obligation to apply measures to prevent a person / family

from falling into a difficult life circumstance», with subsequent reflection in the norms of the Law of Ukraine «On Social Services» should be:

1) the prevention of difficult life circumstances or the state of a vulnerable group of the population as a component of the system of social services is declared as the duty of the authorized entities of the system for the provision of social services with the corresponding legal consequences;

2) a clear legislative definition of a person (personally) by position responsible for identifying and supporting individuals / families in this state within the specific territorial units (state, administrative-territorial unit, territorial community, starosta's district, etc.);

3) in the case when, based on the results of an assessment of the needs of the recipient of social services, his potential opportunity to avoid the «red line» of a difficult life circumstance and further independent social integration or adaptation, the priority should be the direction of state and non-state social services to achieve such a result.

A logical continuation of the above is the legal basis for «the obligation to stimulate, encourage and facilitate the independent / family participation of the recipient of social services in overcoming or minimizing a difficult life circumstance.» Indeed, unlike social payments, the target direction of the functioning of the system of social services should be the creation of all conditions for the independent life of individuals / families, the restoration of the necessary skills for their full integration into society, overcoming / minimizing the influence of such circumstances on each person in need. The current Law of Ukraine «On Social Services» needs to be supplemented with norms defining the legal conditions and the procedure for implementing this principle.

In the mechanism of receiving a social service, it is not the service itself (as a process, ongoing activity) that is socially important and personally valuable, but the result of the activities of state / non-state social services. Its external manifestation is:

1) prevention of a difficult life circumstance (avoidance of a person / family getting into a difficult life circumstance or withdrawal of a person / family from the status of a vulnerable category of the population);

2) overcoming difficult life circumstances (exit of a person / family from a status such that it is in difficult life circumstances, ensuring the possibility of a person / family to carry out high-quality life activities outside the system of social services);

3) minimizing the negative consequences of difficult life circumstances (ensuring favourable conditions for the life of a person / family who are in difficult life circumstances, social conditions at their place of residence and maximum compensation for the impact on a person / family of difficult life circumstances to ensure the best conditions for its life, adaptation to the social environment).

The current Law of Ukraine «On Social Services» (Clause 15, Part 1 of Article 3) calls one of the principles of providing social services, which can be associated with the effectiveness of a social service for its recipient, «ensuring a high level of quality of social services.» The implementation of this framework is due to the application of several articles of the Law of Ukraine «On Social Services».

First of all, under Part 1 of Art. 17, social services are provided by the providers of social services of the state, communal, non-state sectors, regardless of funding sources, in accordance with state standards of social services. The essential elements of the state standard of social services are the meaning, volume, norms and standards, conditions and procedure for the provision of social services, indicators of their quality (Clause 2, Part 2, Article 17). Additionally, it should be noted that an integral part of the state standard of social services is compliance with the requirements to ensure the required level of its availability. The legislative definition of the content of the availability of

social services as a principle of their provision is already the object of scientific criticism [17, p. 135–138].

The essential content of the principle of accessibility should be based on international standards declared in the direction of the implementation of the European Social Charter and the conclusions of the European Committee of Social Rights (in particular, on the content of Article 14 of the European Social Charter) [18, p. 154–156]. The legal basis for «accessibility», in our opinion, should consist of several aspects: territorial, financial, information and consulting, organizational and technical.

Territorial accessibility should provide for the reformatting of the system of providing social services by creating or attracting a system of providers of basic social services that is appropriate in terms of geographical location and coordinated according to the specific needs of the population of the administrative-territorial unit / territorial community. The second, no less important, aspect of this principle is the priority of the provision of social services at the place of residence of the recipient of the social service or, if necessary, within the territory of the territorial community, or at the location of the closest provider of social services of a particular type corresponding to the needs of the individual / family.

The current Law of Ukraine does not provide for a legal mechanism for the implementation of the right to social services, taking into account their availability across the territory. And provided for in paragraph 8 of Part 1 of Art. 3, the principle of accessibility is legally enshrined in one subparagraph with the principle of «openness» and is meaningfully close to ensuring information awareness of citizens about the system of providing social services.

Another component of the legal framework for accessibility is financial. We formulate its content taking into account the norms of the current Article 28 of the Law of Ukraine «On Social Services»: full budgetary support of the system for the provision of basic social services to individuals / families who, in accordance with this Law, are entitled to receive free social services, as well as an equivalent to the average monthly total income of a person / family and the cost of the service the rate of payment for its provision in the event of full or partial payment by recipients or third parties of the social service.

The principle of financial inclusion is also important in the context of the standardization of social services. The procedure for the development of the state standard for social services (Clause 1.3) determines the targeted use of social service standards. In particular, they are used for: organizing the provision of social services; evaluation, monitoring and control of the quality of social services; determination of the tariff for paid social services [10]. However, a study conducted by the Ukrainian Helsinki Human Rights Union on Ukraine's implementation of the European Social Charter (revised) confirms that the financial use of social service standards to determine the cost of social services is a problematic issue. In the Methodological Recommendations for calculating the cost of social services, the term «state standard of social services» is used only once: «food products purchased for catering for recipients, if it is provided for by state standards of social services» [1, c. 40].

The information and consulting aspect of the principle of accessibility is the only one, the essence of which is defined in the current legislation on social services. In particular, clause 1.2 of the Procedure for the development of the state standard of social services provides that the Standard defines «the requirements for ensuring the required level of accessibility of social services in general, as well as at each stage of their provision», and clauses 1.4 and 5.2.4 determine the content «accessibility» through the

obligation to provide full information to all citizens - potential recipients of social services about social services, the conditions and procedure for its provision in all available forms [10].

And finally, one more aspect of accessibility is organizational and technical, which, in our opinion, can be formulated as: creating conditions for unhindered access of potential recipients of basic social services to the infrastructure of the system for providing basic social services, including using digital technologies. The Law of Ukraine «On Social Services» lacks norms that ensure the implementation of this legal framework. Therefore, it should be supplemented taking into account the norms of Section V «Creation of conditions for unimpeded access of persons with disabilities to social infrastructure» of the Law of Ukraine «On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine» [12].

In accordance with paragraph 4 of Part 2 of Art. 8 of the Law of Ukraine «On Social Services», «monitoring the provision of social services, assessing their quality and monitoring compliance with the requirements established by the legislation on social services» is the final stage in the provision of social services. The applied aspect of monitoring and assessing the quality of social services in Ukraine, possible ways to improve it based on the experience of other states are considered in economic research [4]. We believe that the monitoring procedure is of public importance and should be applied not only in the context of reporting and assessing the effectiveness of the entire nationwide system for the provision of social services or for its territorial features, but also to determine the needs of the population of the state / administrative-territorial unit in social services. On the other hand, the assessment of the quality of social services should be considered solely taking into account the individual / family performance of the received social services.

In addition to the elements already mentioned, such a component of the procedure for obtaining a social service as the obligatory consideration of the opinion of a person / authorized family member within the limits of the parameters of her (person / family) basic needs by types of social services, objectively determined when assessing by social workers, is becoming acute. The need to supplement the Law of Ukraine «On Social Services» with a norm providing for the dominant opinion of the recipient of social services was justified by I. Voloshyn [3, c. 14]. The researcher proposed to supplement Part 2 of Art. 20 of the Law of Ukraine «On Social Services» norm on the priority of the right of a potential recipient of social services to choose the necessary types of social services, which in accordance with the results of the assessment conducted by social workers meet his needs. The relevance of such an innovation is confirmed by case law on changes / adjustments to the types of social services provided to a person [16].

Summarizing, we believe that the modern mechanism for realizing the right of a person / family to social services requires replacing the legislative principle of providing social services from «ensuring a high level of quality of social services» to «the best result of a social service for its recipient.»

Summary. Legal bases as norms-principles, guiding ideas always serve as «frameworks, standards» for the formation of an integral system of norms regulating a certain type of legal activity. Consequently, the consolidation in the new Law of Ukraine «On Social Services» of the principles given in the study among the basic principles on which programs for the provision of social services to persons / families in difficult life circumstances are based have signs of a vulnerable group of the population in Ukraine, contribute to the construction of a mutually agreed system of state guarantees rights of citizens in this area and effective implementation of their rights for a person/family.

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ДО ПИТАННЯ ПРО ОНОВЛЕННЯ ПРАВОВИХ ЗАСАД НАДАННЯ СОЦІАЛЬНИХ ПОСЛУГ В УКРАЇНІ

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Обґрунтовано сутнісну характеристику правових засад, які, за переконанням автора, повинні бути в основі постреформованої системи надання соціальних послуг особам/сім'ям, які зазнали/можуть зазнати впливу складної життєвої обставини в Україні. Такими названо: обов'язковість застосування заходів запобігання потрапляння особи/сім'ї у складну життєву обставину; обов'язковість стимулювання, заохочення та сприяння самостійній/сімейній участі щодо подолання або мінімізації складної життєвої обставини; найкращого результату соціальної послуги для її отримувача.

Критично проаналізовано чинний Закон України «Про соціальні послуги» та підзаконні нормативно-правові акти щодо відповідності названим принципам надання соціальних послуг. Запропоновано відповідні зміни до законодавства.

Сутнісними характеристиками принципу надання соціальних послуг – «обов'язковість застосування заходів попередження потрапляння особи/сім'ї у складну життєву обставину», із наступним відображенням у нормах Закону України «Про соціальні послуги» визначено: 1) профілактика складних життєвих обставин чи стану вразливої групи населення як складова системи соціальних послуг декларується як обов'язок уповноважених системи надання соціальних послуг суб'єктів із відповідними правовими наслідками; 2) чітке законодавче визначення особи (персонально) за посадою, відповідальною за виявлення та підтримку осіб/сім'ей, що перебувають у зазначеному стані в межах конкретних територіальних одиниць (держави, адміністративно-територіальної одиниці, територіальної громади, старостинського округу тощо); 3) у випадку, коли за результатами оцінки потреб отримувача соціальної послуги є потенційна його можливість

уникнення «червоної лінії» складної життєвої обставини та подальше самостійне соціальне інтегрування чи адаптація пріоритетом повинно бути спрямування державних та недержавних соціальних служб на досягнення такого результату.

Окреслено деякі проблеми державного гарантування надання соціальних послуг у процедурі соціальної профілактики складних життєвих обставин. У контексті реалізації цього принципу проаналізовано зміст ст. 29 чинного Закону України «Про соціальні послуги», запропоновано шляхи її удосконалення.

Аргументовано потребу законодавчого врегулювання ефективної доступності соціальних послуг. Доведено, що в основі сутнісного наповнення змісту принципу доступності повинні бути стандарти Європейської соціальної хартії та висновки Європейського комітету соціальних прав. Правову засаду доступності соціальної послуги розглянуто у декількох аспектах: територіальному, фінансовому, інформаційно-консультаційному, організаційно-технічному.

Підтримано необхідність законодавчого закріплення обов'язкового врахування думки потенційного отримувача (особи/сім'ї) щодо видів соціальних послуг, які формуватимуть Індивідуальний план отримувача під час процедури оцінювання його потреб у межах, визначених соціальними працівниками відповідно до законодавства та державних стандартів соціальних послуг.

Ключові слова: складна життєва обставина, вразливі групи населення, соціальна профілактика, отримувач соціальної послуги, найкращий результат соціальної послуги.

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