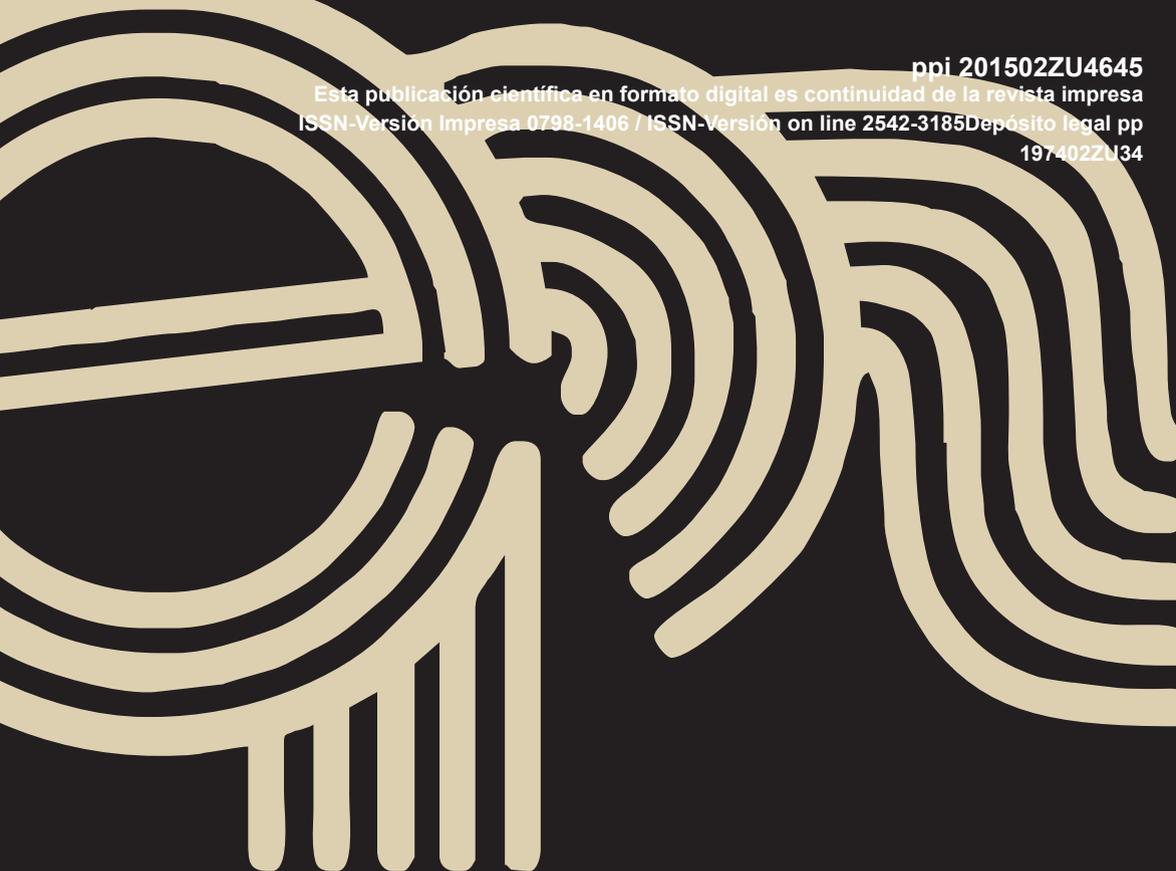


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Social and legal protection of orphans and children left without parental care under martial law

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Valentyna Myronenko *
Anzhela Kaliniuk **
Kateryna Kutsyk ***
Anastasiia Zadorozhna ****
Inna Kovalenko *****

Abstract

Using general scientific methods such as cognition and reflection of legal philosophy, the article is devoted to the study of peculiarities of legal protection of orphans and children deprived of parental care in Ukraine. In this connection, the definition of orphanhood is formulated, as well as the socio-legal protection of children, the main stages of the socio-legal protection of children are defined, the general principles of ensuring the family rights of children in the system of their protection are established. It was also emphasized that the social and legal protection of orphans and children left without parental care should take into account the state approach and take place in the conditions of a new adoptive, foster and adoptive family. It is concluded that, the optimization of state activities in this area lies in the formation of an effective system, the basis of which is the mechanism of socially coordinated interaction of regional authorities and society as a whole.

Keywords: family rights; orphans under martial law; parental care; social and legal protection; right to education.

* Candidate of legal sciences, Associate Professor, Head of the department of the civil and juridical disciplines of National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-8841-8855>

** Doctor of Philosophy, Associate Professor, Senior lecturer of the department of the civil and juridical disciplines of National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-8032-3632>

*** Candidate of Juridical Sciences, Senior lecturer of the department of the civil and juridical disciplines of National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9365-5935>

**** Doctor of Philosophy, Senior lecturer of the department of the civil and juridical disciplines of National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8681-1386>

***** Candidate of legal sciences, Associate Professor, Associate Professor of the department of private and public law of the Kyiv National University of Technologies and Design, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-7595-777X>

Protección social y jurídica de los huérfanos y los niños privados del cuidado de sus padres bajo la ley marcial

Resumen

Mediante el uso de métodos científicos generales como la cognición y de la reflexión propia de la filosofía jurídica, el artículo científico está dedicado al estudio de las peculiaridades de la protección legal de los huérfanos y niños privados del cuidado de los padres en Ucrania. En este orden de ideas, se formula la definición de orfandad, así como la protección sociojurídica de la infancia, se definen las principales etapas de la protección sociojurídica de la infancia, se establecen los principios generales para garantizar los derechos familiares del niño en el sistema de su protección. También, se enfatizó que la protección social y legal de los huérfanos y los niños que quedan sin el cuidado de los padres, debe tener en cuenta el enfoque estatal y tener lugar en las condiciones de una nueva familia adoptiva, tutelar y adoptiva. Se concluye que, la optimización de las actividades del Estado en esta área radica en la formación de un sistema efectivo, cuya base es el mecanismo de interacción socialmente coordinada de las autoridades regionales y la sociedad en su conjunto.

Palabras clave: derechos de familia; huérfanos bajo ley marcial; cuidado de los padres; protección social y jurídica; derecho a la educación.

Introduction

The modern stage of Ukraine's development is characterized by the implementation of a socially oriented policy aimed at protecting and protecting families with children, providing them with comprehensive assistance and support. Special treatment of the family, priority protection of the rights and interests of its members, provision of a wide variety of support measures are defined as priority directions in national normative acts devoted to issues of family policy implementation. The growing role of the family in society, raising the authority of parenthood in the family and society, preventing and overcoming family adversity, improving conditions and improving the quality of life of families are of great social importance for Ukraine.

The fundamental provisions aimed at the implementation of social guarantees for families with children, ensuring conditions for decent upbringing of children, are formulated in Art. 13 of the Constitution of Ukraine (Constitution Of Ukraine, 1996), which reveals the social nature of the Ukrainian state, directs state bodies, parents and families to create

proper (decent) conditions for the upbringing of the young generation, which contribute to achieving such a standard of living, when the basic needs of children will be fully satisfied.

At the same time, it is necessary to take into account the social value of Art. 3 of the Constitution of Ukraine, which declares the highest value of the rights and freedoms of every person, the observance of which is the duty of the state. Also in Part 3 of Art. 52 states that the maintenance and education of orphans and children deprived of parental care is entrusted to the state (Constitution Of Ukraine, 1996).

The state's close attention to the family, concern for the needs of families with children was clearly manifested in the conditions of the war in Ukraine, because the society was faced with previously unknown life circumstances, when every family found itself in conditions that violate the usual way of life: many parents were left without work, no income, children do not attend preschools and educational institutions, they are forced to study at home.

There is no doubt that under such conditions families with children suffer the most. In addition, due to the war in Ukraine, thousands of children remain orphans, lose contact with their relatives and find themselves in difficult life circumstances. Therefore, the problems of social orphanhood are more relevant today than ever.

A difficult economic situation has developed in the country during the war, which affects all spheres of life (Tolkachova, 2015). According to the latest sociological research, Ukraine is on the verge of a demographic crisis, as its population is shrinking not only due to a drop in the birth rate, an increase in mortality, but also in connection with the forced migration of the Ukrainian population to other countries due to the Russian invasion of the territory of our country.

Therefore, the state creates a wide legal field for social service workers and social work specialists to successfully fulfill their duties in solving tasks of social support for children who are in a difficult life situation. These tasks lead to the achievement of the main goal - the preservation and multiplication of the gene pool of Ukraine (Barabash, 2022).

During the war in our country, every Ukrainian child, without exception, in any case suffered violations of their legally enshrined rights. Even if the child is not physically harmed, the child has not been subjected to exploitation prejudicial to any aspect of the child's well-being, sexual abuse, torture or other cruel, inhuman or degrading treatment or punishment, there is a violation of the child's fundamental rights (Drobyazko, 2023).

Under such conditions, it is necessary to determine the key role of the state in providing assistance and support to poorly protected and

unprotected sections of the population, in particular through the adoption of various normative acts that regulate the support of families in conditions of military aggression and volunteer movements.

The state's activities should be aimed at protecting various spheres of family life, providing them with the necessary information about specific types of assistance, methods of their provision, etc. In view of this, it is important to outline the main directions of social security for orphans and children deprived of parental care, especially in the conditions of war and internal migration through the territory of Ukraine.

1. Methodology of the study

Theoretical knowledge about the socio-legal protection of orphans and children left without parental care in the conditions of martial law reflects the subject of research in the perspective of universal internal essential connections and regularities that are highlighted by the rational processing of normative legal acts and scientific views. The validity and reliability of scientific results was ensured by the use of philosophical, general scientific, special and specific scientific methods of cognition.

In particular, the formal-dogmatic method became the basis for the scientific elaboration of normative legal acts, the disclosure of their essence, the formation of ways of improving legislation in the researched area. Scientific-legal, practical information, as well as the prospects of socio-legal protection of orphans and children left without parental care, are clarified by applying the methods of analysis, synthesis and logical approach.

2. Analysis of recent research

Protecting the rights of children and ensuring their full development is a problem of national importance, which is studied in various contexts: historical, cultural, demographic, sociological, pedagogical and, of course, legal. We are talking about the establishment by certain laws and other normative legal acts of certain rules, norms, provisions, standards and requirements regarding the organization of the child's life.

The problem of the development of legislation on children's rights has received the attention of many scientists who were engaged in research in the field of law and in other fields of knowledge. In particular, it should be noted the works of O. Barabash, K. Drobyazko, V. Marchuk, N. Lucić, E. HendersonDekort, V. Chernega (Barabash, 2022; Drobyazko, 2023; Marchuk, 2022; Lucić, 2021; HendersonDekort *et al.*, 2021; Chernega *et al.*, 2021) and others.

In view of the subject of the research, the scientific positions of the mentioned scientists are used in the article as those devoted mainly to the issues of the general normative legal framework in the field of state policy on the protection of children's rights, certain aspects of the development of juvenile law, and the civil legal basis of the regulation of issues related to the protection orphans and children left without parental care.

3. Results and discussion

Childhood is the stage when fundamental qualities and personality traits are formed in an individual, which ensure psychological stability, positive moral orientation towards people, vitality and purposefulness. The mentioned spiritual qualities of the personality are not formed spontaneously, they are formed in the conditions of parental love, when the family creates in the child the need to be recognized, the ability to empathize and rejoice with other people, to be responsible for himself and others.

In recent decades, the protection and well-being of children during conflict has become an important part of the international community's agenda. In this way, a number of norms and standards were developed that form a legal framework for the protection of children in armed conflict.

Children growing up in the conditions of war are protected by the norms of international humanitarian law as part of the civilian population. However, given the vulnerability and developmental needs of children, children have special protections. Some guarantees provided by international legal acts have become part of customary law.

The UN Convention on the Rights of the Child (Art. 20) provides for special assistance and protection provided by the state to a child temporarily or permanently deprived by his family of normal living conditions and development of interests (Convention On The Rights Of The Child, 1989). The rights of the child at the international level, which regulate and guarantee the protection of its interests, are enshrined in the Declaration of Human Rights and the Convention on the Rights of the Child, recognized by most countries of the world.

Also, the Convention orders all states to take all necessary legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, insult or abuse, lack of care or negligent and rough treatment, exploitation, including sexual abuse by parents, legal guardians and guardians. The main provisions of this document of the international level are also reflected in the legal acts of the countries that have signed it, regulating the rights of children within these countries.

An important area of activity in the field of protection of children's rights is the improvement of national legislation, the ratification of conventions, in particular the implementation of the provisions of international law. Ukraine is a party to a number of international documents in the field of ensuring children's rights, however, it is worth admitting that in the conditions of martial law it is extremely difficult to implement the functions entrusted to the state to ensure the protection of children's rights.

The structure of social and legal protection of childhood consists of four stages: local, regional, state, international. This system is a complex of social institutions that regulates their work, regulatory documents, children's rights, mechanisms for the implementation and protection of these rights.

Children's rights cover two areas: personal rights (name, citizenship, private life, inviolability of housing, rest and leisure, health care, etc.) and the right to education. Legislative, administrative, social and educational reforms are proposed among the main measures to protect childhood (Kolomoets, 2018).

At the state level, the protection of the rights of children left without parental care is carried out by the Constitution - the highest legislative act of the state. One of its fundamental principles is the protection and protection of motherhood, childhood and the family, which are entrusted directly to the state. All children have the right to protection and special care from state authorities and local self-government bodies (Constitution Of Ukraine, 1996).

At the same time, there is a special category of children that needs increased care from the state - these are orphans and children left without parental care. Such protection should really ensure the full development and life of children, their place in society.

In connection with hostilities, terrorist attacks by Russian troops on the civilian population and mass evacuation, the number of children whose parents have died or whose fate and whereabouts are unknown is increasing. The current regulations did not provide an opportunity to accommodate such children to family forms of upbringing.

Moreover, the procedure for placing children under guardianship or guardianship of relatives requires the provision of such a large number of documents that, under martial law, their collection requires extraordinary efforts. At the same time, it is very important for children traumatized by war and loss of contact with their parents to be in conditions as close as possible to family ones.

Therefore, in March 2022, the Cabinet of Ministers of Ukraine worked out a decision that allows such a child to be temporarily placed in a foster family or a family-type orphanage or under the guardianship or care of

relatives under a simplified procedure during martial law. This will ensure the best interests of the child until it is known for sure what happened to their parents.

State support measures for orphans and children left without parental care in Ukraine are regulated by the Law of Ukraine «On Ensuring Organizational and Legal Conditions for the Social Protection of Orphans and Children Deprived of Parental Care», which defines guarantees that apply to almost all aspects of life minors and persons equated to them (On Ensuring Organizational And Legal Conditions For Social Protection Of Orphans And Children Deprived Of Parental Care, 2020).

By exercising the right to education for children who need social assistance, the state fully or partially covers the cost of their maintenance during the education period. The law provides for the admission of orphans and children left without parental care to educational institutions of all levels without competition, but on the condition of successfully passing entrance exams.

This category of children is enrolled in full state support until they graduate from primary, secondary and higher education institutions. In addition, they are paid a social stipend, regardless of their performance. Therefore, the state gives children the opportunity to realize themselves in education, without thinking about how to feed themselves.

Employment is equally important for a child. The main task of the state in this direction is to provide orphans and children left without parental care, equal opportunities in the right to work and in choosing a profession. For this purpose, they are provided (in the form of special bodies) with a whole set of various measures regarding professional training, quotas and incentives for employers to hire such persons, preservation of certain types of professional activities for former children of orphanages and boarding schools.

Also, at the constitutional level, the duty of the state to raise and educate harmonious individuals who also have good physical health is determined. In this regard, orphans and children left without parental care are provided with free medical care and prompt treatment in any medical and preventive institution (Yarygina, 2016). Regular medical examinations (dispensary examinations) and the necessary rehabilitation of children are carried out with the funds of the budgets of all levels. They are provided with free tickets to school and student sports and health camps, to sanatorium-resort facilities in the presence of medical indicators, free travel to the place of rest, treatment and back is provided.

One of the most important issues faced by graduates of institutions for orphans and children left without parental care is the issue of providing housing. Protection of housing rights of minors consists in securing and

providing housing to each ward. State bodies monitor the actual use of the housing stock intended for this category of persons until they come of age, and control is also carried out during the conclusion of agreements with such residential premises belonging to minor graduates.

According to Art. 252 of the Family Code of Ukraine, guardianship over a child is temporary care, upbringing and rehabilitation of a child in the family of a foster carer for the period when the child, his parents or other legal representatives overcome difficult life circumstances (Family Code Of Ukraine, 2002).

The purpose of patronage is to ensure the protection of the rights of a child who, due to difficult life circumstances, is temporarily unable to live with his parents/legal representatives, to provide him and his family with services aimed at reintegrating the child into the family or providing the child with an appropriate status for making further decisions taking into account the best interests of the child in ensuring his right to upbringing in the family or in conditions as close as possible to family ones.

Issues arising in connection with the establishment, implementation and termination of guardianship and care of orphans and children left without parental care are regulated by the Family Code of Ukraine, the Civil Code Of Ukraine, the Law of Ukraine «On State Assistance to Families with children» (Family Code Of Ukraine, 2002; Civil Code Of Ukraine, 2003; On State Assistance To Families With Children: Law of Ukraine, 1992) and normative legal acts adopted in accordance with this Law, which specify and clarify the provisions of the law and other

In view of the introduction of martial law in Ukraine on February 24, 2022, the Rules for crossing the state border by citizens of Ukraine clarify and clarify the provisions of the law). One of these documents is the Resolution of the Cabinet of Ministers of Ukraine «Some issues of protection of children's rights and provision of child guardianship services» No. 893 dated 20.08.2021, which approves the Procedure for the creation and activity of a family of a foster parent, placement, stay of a child in the family of a foster parent educator, as well as a list of types of activities and services provided by organizations for orphans and children left without parental care (Resolution Of The Cabinet Of Ministers Of Ukraine No. 893, 2021).

Important documents in this direction are also: Decree of the Cabinet of Ministers of Ukraine «Some issues of mentoring a child» No. 465 of 04.07.2017 (Decree Of The Cabinet Of Ministers Of Ukraine No. 465, 2017), Order of the Ministry of Social Policy of Ukraine «On approval of the Model procedure for the transfer of documentation regarding children orphans, children deprived of parental care, and persons from their number, children who are in difficult life circumstances, from services for children's

affairs of district state administrations to services for children's affairs of executive bodies of city councils, village and settlement councils» No. 48 dated 06.02.2021 (Order Of The Ministry Of Social Policy Of Ukraine No. 48, 2021), Resolution of the Cabinet of Ministers of Ukraine «Some issues of providing housing for orphans, children deprived of parental care, persons from their number and support of small group homes» No. 615 dated 26.05.2021 (Resolution Of The Cabinet Of Ministers Of Ukraine. No. 615, 2021) and others.

It should also be noted that the Rules for crossing the state border by citizens of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 5737 of 01.27.1995, are supplemented by provisions on the peculiarities of crossing the state border in the event of the introduction of a state of emergency or martial law on the territory of Ukraine.

In particular, orphans, children deprived of parental care, who have not reached the age of 18 and live or are enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, may leave Ukraine accompanied by a legal representative or another person authorized by him and in the presence of relevant documents.

That is, the departure of orphans, children deprived of parental care, who have not reached the age of 18, outside of Ukraine is carried out accompanied by one of their legal representatives, subject to the written consent of the children's service at the place of application or the children's service of the regional military (military -civil) administration for departure with an indication of the state of final stay of the children (Resolution Cabinet Of Ministers Of Ukraine No. 5737, 1995).

In addition, on March 17, 2022, the Resolution of the Cabinet of Ministers of Ukraine «On the Formation of the Coordination Headquarters for the Protection of Children's Rights in Martial Law» No. 302 entered into force, according to which the main tasks of the Coordination Headquarters, as a temporary advisory body of the Cabinet of Ministers of Ukraine, created for facilitating the coordination of the activities of central and local executive bodies, other state bodies, local self-government bodies on the protection of children's rights under martial law, are:

- coordination of actions of executive authorities, local self-government bodies regarding the organization of evacuation of children, in particular children with disabilities, orphans, children deprived of parental care, minors living or enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, who are arranged for upbringing and cohabitation with a foster family, a family-type orphanage, who are under guardianship, care, who are arranged with families of foster carers, from dangerous areas, as well as creating safe conditions for their stay;

- coordination of the actions of the executive authorities regarding the placement and satisfaction of the needs of children evacuated to safe regions of Ukraine and those relocated to states of temporary stay;
- control over the consular registration of children in the state of their temporary accommodation and determination of ways, mechanisms and methods of solving problematic issues that arise during the consular registration of children, and ensuring the return of children to Ukraine after the cessation of hostilities;
- determination of ways and means of solving problematic issues regarding the protection of children's rights in the conditions of martial law;
- informing citizens of Ukraine and the international community about the situation and needs for the protection of children under martial law, etc. (Resolution Cabinet Of Ministers Of Ukraine No. 302, 2022).

An important step for the protection of children during martial law was the introduction by the Office of the President of Ukraine together with the United Nations Children's Fund UNICEF Ukraine and the Ministry of Social Policy of the national program «The child is not alone».

The program is a chatbot – a resource for helping children in wartime, thanks to which you can get answers to any questions about the temporary shelter of a child in a family, the search for a lost child; and also every concerned person can report cases known to him of a child being unattended. Also, the mentioned resource contains useful information for people who are not aware of how to protect the rights of children in the conditions of martial law (Drobyazko, 2023).

There is no doubt that solving the problem of orphans requires taking into account the relevant social, political and economic aspects of the current state of the country, since these aspects have changed for the worse during the war. Experts and statistics indicate that these negative factors now outweigh the positive ones, so the number of children who ended up in orphanages, residential institutions or were left without parental care continues to grow (Myronova, 2020).

Of course, an effective fight against the problem of orphans and children left without parental care requires finding out the reasons that cause it. In our opinion, these should include: a general decline in the standard of living of society and its degradation; disruption of family functions and structure; increase in the number of single-parent families and divorces; unemployment, which affects the family's ability to maintain and raise a child in favorable conditions; sublimation of children's negative emotional states; child abuse in the occupied territories.

These factors make it harder for children to socialize, make friends, and join a culture that suits their interests. It is also worth noting that some of these factors directly or indirectly affect not only the deterioration of the situation in the context of the problem of orphans, but also negatively affect the quality of life of such groups of people as pensioners, large families, people with disabilities, etc.

Effective development of the state is impossible without solving this set of problems. Along with the mentioned threats, it is worth highlighting the one that is a natural consequence of the long stay of the Ukrainian state in the conditions of war. Children who grow up in unfavorable (sometimes even dangerous) conditions are the generation that will be forced to enter society in one way or another. Referring to history and statistics, as well as taking into account the current situation in Ukraine, we can conclude that, most likely, children will face serious difficulties in the process of socialization. Therefore, along with global social modernization, the state needs to solve this problem as well.

Measures of state support for children left without parental care are divided into: material (provision by the state of free accommodation in residential institutions, clothing, food, school supplies, means of arranging life and housing after graduation from a social state institution, free travel in all types transport) and non-material (right to education, housing rights of orphans, right to medical care, declaration of employment).

The organizational basis of the state policy regarding the social protection of orphans and children left without parental care is also provided by state authorities and local self-government bodies that carry out activities related to the protection of children's rights and legitimate interests.

In order for an orphan child, as well as a child left without parental care, to feel protected not only materially, but also spiritually, he is endowed with personal rights. First of all, the right to respect for one's own dignity, the right to protection from abuse by the guardian (guardian), if the child is under guardianship (guardianship), the right to live in the family of the guardian (guardian), the right to ensure the necessary conditions for living, upbringing, education and all-round development at the expense of the state.

Guided by the main international documents and normative acts of Ukraine, which regulate activities in this direction, state authorities should direct their work on the protection of children's rights to: identify and register orphans and children left without parental care; work with orphans and their patronage in guardian families; implementation of state guarantees regarding orphans, providing them with appropriate pensions, payments and other subsidies provided for by law; work in court regarding the protection of children's rights; work to provide housing for orphans; methodical work with social teachers and public organizations.

Currently, state bodies, pedagogical science and practice are making significant efforts to solve childhood problems. New types of educational institutions (gymnasiums, lyceums, colleges), psychological services in educational institutions, centers of socio-pedagogical and psychological rehabilitation are being created.

However, in our opinion, a prospective view of the organization of social protection of childhood should not focus exclusively on social protection bodies. Such activity requires a comprehensive approach involving the intellectual resources of teachers, psychologists, lawyers, and doctors. Economic support is extremely important, requiring a reasonable ratio of economic care that extends to children's families, welfare centers, etc.

Thus, the social protection authorities are entrusted with a responsible duty – to ensure that orphans and children from socially vulnerable families do not feel deprived in any way, at least in material terms, since it will be very difficult to replace the family and family relationships difficult, almost impossible. That is why, as well as due to the increase in the number of children who need special government and public attention, it is necessary to more actively use positive foreign experience to improve the legislation on social protection of childhood in this area.

In general, we can state that today Ukraine adequately implements the functions entrusted to it to ensure the protection of children's rights. At the same time, it should be emphasized that the moral duty of every citizen of Ukraine is to help protect and implement the rights of the most vulnerable category of persons – children, primarily orphans and children left without parental care.

Conclusions

Social and legal protection of childhood is a direction of international and state policy, which provides children, in accordance with their needs, with normal conditions for life and development, protection of honor and dignity, health care, education, active participation in all spheres of life. The main stages of social and legal protection of childhood are defined as: local, regional, state, international, which represent a complex of social institutions, regulatory documents, mechanisms for the implementation and protection of children's personal rights (name, citizenship, personal life, inviolability of housing, rest and leisure, health care, etc.) and the right to education.

Ensuring the child's family rights in the system of their protection is based on the following general principles: non-discrimination, respect for the child's views, consideration of the child's interests, the child's right to life, survival and development.

In general, the state properly takes care of the interests of children in the conditions of martial law, which is evidenced, in particular, by such factors as: a simplified procedure for transferring a child to custody/care; enabling children who were left without parents during martial law to be temporarily placed with families for upbringing; «prohibition» of the simplified adoption procedure.

Orphanage is a social phenomenon caused by the existence in society of children whose parents have died, or children who have found themselves without parental care due to deprivation of parental rights, recognition of incapacity, missing persons, etc. The primary task of civil society during the war in Ukraine is to ensure maximum protection of children's rights and interests.

The socio-legal protection of orphans and children left without parental care should take into account not only the state approach, but also take place in the conditions of a new family (foster, foster, adoptive), changing the attitude of biological parents towards their own children. Systematic analysis of Ukrainian legislation in this area led to the conclusion that the legal position of the family, its status covers not only social, but also labor guarantees.

Optimizing activities in the field of providing social support to orphans and children left without parental care lies in the plane of forming an effective system, the basis of which is the mechanism of socially coordinated interaction of regional authorities and society. Various forms of implementation of social programs and projects require active development: social order, tenders, contests for social projects, contests for non-profit public organizations from various nominations, regarding social support for orphans and children left without parental care.

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