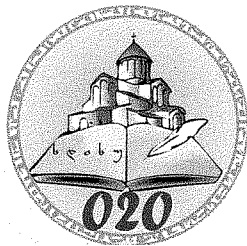


David Aghmashenebeli University of Georgia



COLLECTIVE MONOGRAPH

**Theoretical
and Practical
Mechanisms
of Development
of Legal Science
at the Beginning
of the Third
Millennium**

DAVID AGHMASHENEBELI UNIVERSITY
OF GEORGIA

**THEORETICAL AND PRACTICAL MECHANISMS
OF DEVELOPMENT OF LEGAL SCIENCE
AT THE BEGINNING OF THE THIRD MILLENNIUM**

Collective monograph

The book is compiled by: David Gugava, Doctor in Law, Professor, Dean of Law School,
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THE IMPROVEMENT OF THE OFFENCES AGAINST THE FAMILY AND CHILDREN, SOCIAL ORPHANHOOD AND DOMESTIC VIOLENCE PREVENTION SYSTEM

Chekhovska I. V., Kovalova D. K.

INTRODUCTION

The current state of Ukraine is characterized by rather strong changes taking place in all social spheres. The instability of modern society has a significant impact primarily on families with children, as the least protected part of the population. The modern family has its own (with minimal state support) to solve a lot of problems: socio-economic, social and every day, socio-psychological, problems of birth and planning, family education, etc. The ability to solve them makes the family stable. A stable family does not require constant social assistance from the outside and can not only effectively withstand destabilizing influences, but also itself is a stabilizing factor in society. However, the increasing rates of crime, offenses, drug addiction, alcoholism, mental illness, the number of orphans, children deprived of parental care, respectively, children in residential institutions and social welfare institutions for children prove the failure of most families to perform socially significant functions and to withstand destabilizing social influences^{1 2 3 4}.

A number of legal acts adopted to ensure favorable conditions for the comprehensive development of the family as the basis of society, improvement of the situation of the family and demographic situation in the country; the resolution of the problems of the prevention of homelessness and offences among children, the creation of appropriate conditions for their

¹ Чеховська І. В. Теоретико-методологічні аспекти дослідження проблем сучасної сімейної політики України. *Науковий вісник Національного університету державної податкової служби України (економіка, право)*. 2010. № 1 (48). С. 229–238. Chekhovska I. V. Teoretiko-metodologichni aspekti doslidzhennya problem suchasnoyi simeynoyi polityky Ukrainy. *Naukoviy visnik Natsionalnogo universitetu derzhavnoyi podatkovoyi sluzhbi Ukrainy (ekonomika, pravo)*.

² Чеховська І. В. Співвідношення соціальної і сімейної політик: деякі теоретичні і практичні аспекти. *Право та управління*. 2011. № 1. С. 416–474. URL: http://www.nbu.gov.ua/e-journals/prtup/2011_1/pdf/11hivipa.pdf. Chekhovska I. V. Spivvidnoshennya sotsialnoyi i simeynoyi polityky: deyaki teoretichni i praktichni aspekti. *Pravo ta upravlinnya*. 2011. № 1. С. 416–474. URL: http://www.nbu.gov.ua/e-journals/prtup/2011_1/pdf/11hivipa.pdf.

³ Чеховська І. В. Державна соціальна допомога сім'ям в Україні: аналіз правозастосовної практики. *Університетські наукові записки*. 2011. № 4. С. 255–261. Chekhovska I. V. Derzhavna sotsialna dopomoga sim'yam v Ukrainy: analiz pravozastosovnoyi praktyky. *Universitetski naukovi zapyski*. 2011. № 4. С. 255–261.

⁴ Irina Chekhovska, Lynne Marie Kohm. Child Policy & National Strength: Restoring Ukraine in the Best Interests of the Child. *International Journal of the Jurisprudence of the Family*. Т. 8. 2018. S. 95-122. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167502.

physical, intellectual and spiritual development (Presidential Decrees "On the National Program "Children of Ukraine"⁵; "On Approval of the Comprehensive Measures for the Prevention of Homelessness and Offenses among Children, their social rehabilitation in society"⁶; the Resolution of the Cabinet of Ministers of Ukraine "On the Program "Ukrainian Family"⁷; Resolution of the Verkhovna Rada (the Parliament) of Ukraine "On Approval of the Concept of the State Family Policy"⁸) and others, did not take into account the socio-economic situation of the country and remained the declarative purposes of legislators. That is why the actual implementation of the basic tasks of the aforementioned documents practically did not take place. This negatively affected the material and moral and psychological situation of families. As a result, there has been an increase in the percentage of families who practically do not perform or have ceased to perform specific, inherent functions only. Of course, methodological and theoretical approaches to understanding family functions can differ significantly, however, their specificity and uniqueness should be noted as well. Since only the reproduction and socialization of children can be carried out in the family, there is a coherent household and cultural activity, there are special psychological relationships and moral obligations. It is the ability to perform the abovementioned functions for the family stable to be made. A stable family does not require constant social assistance from the outside and can not only withstand destabilizing influences effectively, but also itself is a stabilizing factor in society. It is in the existence of such a family that the state should be interested. And for the development and support of such families, appropriate conditions should be created. Instead, the growing rates of crime; offenses; drug addiction; alcoholism; mental illness; the number of orphans; children deprived of parental care, respectively, children in residential institutions and social protection institutions for children indicate an ineffectiveness of state measures to support families and the crisis of the Institute of Family in Ukraine.

⁵ On the National Program "Children of Ukraine": Decree of the President of Ukraine dated January 18, 1996, No. 63/96. URL: <http://zakon3.rada.gov.ua/laws/show/63/96>.

⁶ On Approval of the Comprehensive Measures for the Prevention of Homelessness and Offenses among Children, their social rehabilitation in society: Decree of the President of Ukraine dated March 18, 1998, No. 200/98. URL: <http://zakon2.rada.gov.ua/laws/show/200/98>.

⁷ On the Program "Ukrainian Family": Resolution of the Cabinet of Ministers of Ukraine dated March 14, 2001, No. 243. URL: <http://zakon5.rada.gov.ua/laws/show/243-2001-%D0%BF>.

⁸ On Approval of the Concept of the State Family Policy: Resolution of the Supreme Council of Ukraine dated September 17, 1999 No. 1063-XIV. URL: <http://zakon5.rada.gov.ua/laws/show/1063-14>.

1. The state measures for the prevention of the offences against the family and children, social orphanhood, domestic violence

At the same time, it should be noted that violence in the families is a fairly widespread phenomenon in modern society. However, initiators of various measures and campaigns aimed at overcoming this disgraceful phenomenon are mainly public organizations that spend them at their own expense, while the state has not paid enough attention to anti-violence measures, despite the fact that cases of violence in the family tend to increase. For example, for committing domestic violence, failure to comply with a protective provision or not passing a corrective program, according to Art. 173-2 Code of Ukraine on Administrative Offenses, 79735 persons were brought to administrative liability in 2015⁹, in 2016 this figure increased to 85648 people¹⁰. Every year, the number of cases of domestic violence by courts is growing, which is an indicator of positive dynamics in this area. It should be added that this phenomenon costs the state 158 million a year¹¹. In case of non-fulfillment by parents or their substitutes, the responsibilities for raising children were brought in 2016 for administrative liability, according to Art. 184 Code of Ukraine on Administrative Offenses, 39497 persons¹². In 2017, this figure also increased to 40124¹³.

Particularly disappointing are indicators of the number of children who are in residential institutions and institutions for social protection for children. It should be also added, that the number of social orphans, homeless children increases annually. At the same time, it should be noted that there is no official data on the number of such children in Ukraine. Despite the fact that in 2006, the Government approved the State Program for the Prevention of Children's Homelessness for 2006-2010¹⁴, one of the main tasks of which was the introduction of registration of homeless children, the creation of a Single Electronic Data Bank on orphan children

⁹ Administrative Offenses in Ukraine in 2015. *Statistical Bulletin*. K.: State Statistics Committee of Ukraine, 2015. 204 p.

¹⁰ Administrative Offenses in Ukraine in 2016. *Statistical Bulletin*. K.: State Statistics Committee of Ukraine, 2016. 205 p.

¹¹ State Statistics Committee of Ukraine Database. URL: <http://www.ukrstat.gov.ua/> (Date of revision: 12.08.2018).

¹² Administrative Offenses in Ukraine in 2016. *Statistical Bulletin*. K.: State Statistics Committee of Ukraine, 2016. 205 p.

¹³ State Statistics Committee of Ukraine Database. URL: <http://www.ukrstat.gov.ua/> (Date of revision: 12.08.2018).

¹⁴ Monitoring the implementation of Ukrainian legislation on combating domestic violence in 2001–2011 / col. aut.: O.M. Bandurka, O.F. Bondarenko, V.O. Brigik, et al.; comp. Ed. O.M. Bandurka, K.B. Levchenko; introduction. the word O. Zarubinsky. Kh.: Human Rights Publishing House, 2011. 240 p.

and children found themselves in difficult living conditions and an optimal network of social protection institutions for such children; state statistics are still limited to children in shelters and centers for social and psychological rehabilitation. There are currently no official statistics on the number of social orphans in Ukraine (only the data of the Children's Rescue Service in Ukraine, as a result of which the number of such children is between 140,000 and 2 million, is not available), the optimal network of social protection institutions for such children has not been created. The audit conducted by the Accounting Chamber in 2010 on the effectiveness of the use of the state budget funds to implement measures to overcome child homelessness, social orphanhood and homelessness showed that the funds for carrying out the measures indicated in the program were expended unsystematically in violation of the requirements of the order regulating the use of budget funds, in the absence of substantiated calculations¹⁵.

The above proves the expediency of reviewing the content of state measures for the prevention of offenses, social orphanhood, and domestic violence. However, before developing appropriate preventive measures, it is necessary to determine: the families of the families for which preventive measures are to be directed; directions of prevention; content of preventive measures and subjects of prevention.

As previously noted, not every family today is capable of educating a socially-adapted personality. By this indicator, scholars and practitioners divide families into two categories: safe and disadvantaged¹⁶. Let's consider in more detail such a concept as a dysfunctional family, which is a scientific interest for us in the aspect of developing proposals for improving administrative and legal measures for the prevention of offenses, social orphanhood, domestic violence and the system of such prevention.

The authors of the draft Law of Ukraine "On the bodies and services for juvenile and special institutions for minors" consider that "a poor family is a family in which parents refuse to perform their parental responsibilities as a result of alcohol and drug abuse, conduct immoral way of life, cruelly and irresponsibly behave with children; in which psychological relationships between children and parents are violated, unfavorable conditions are

¹⁵ According to the Ministry of Internal Affairs of Ukraine / Official website. URL: <http://mvs.gov.ua/mvs/control/main/uk/publish/article/541107>.

¹⁶ Smirnov S.S. Interaction of institutions of social protection of the population and law enforcement bodies as an organizational basis for the prevention of family dysfunction. *Vestnik of the Chelyabinsk State University*. 2009. No. 14 (152). P. 76.

created for the upbringing of the child, living conditions provoke the release of children from the family, their neuroticism, suicidal manifestations, the growth of homelessness and homelessness of children, their asocial and criminal behavior”¹⁷.

The degree of distress is highlighted: criminal families, conflicts, and pedagogically unable to bring up children¹⁸.

Belarussian scientists V. Kondrashenko and O. Cherniavska distinguish the following types of dysfunctional families: destructive; a broken or broken family; incomplete family; rigid family; family with characteristic hyperprotection; family with hypertension; family with emotional rejection; a family with cruel relationships; a family with increased moral responsibility¹⁹.

Four types of disadvantaged families are defined by B. Almazov, in particular: families with disadvantages of educational resources, conflicting families, morally unfavorable families, pedagogically incompetent families²⁰.

A.M. Isol believes that to disadvantaged families it is necessary to include the following categories: many children; incomplete; those in difficult living conditions (socially vulnerable); a family with a disabled child or a chronically ill child; low-income people; problem, crisis²¹.

In our opinion, such a classification is not successful, since categorization of dysfunctional large families and single-parent families is rather controversial. In addition, the proposed definition does not take into account the categories of families of the so-called “social risk” group. It’s poor; unemployed; those with children with disabilities; those in which one employee has more than one deputy. In the absence of state aid, such families are often classified as “disadvantaged”.

It should also be noted that in 2006 the term “disadvantaged family” was replaced by the term “a family that was in difficult life circumstances”.

¹⁷ Про внесення змін до Закону України «Про органи і служби у справах неповнолітніх та спеціальні установи для неповнолітніх»: проект Постанови Верховної Ради України. URL: [http : //search.ukr.net/yandex/search.php?search_mode=ordinal&geo=11000187](http://search.ukr.net/yandex/search.php?search_mode=ordinal&geo=11000187).

¹⁸ Smirnov S.S. Interaction of institutions of social protection of the population and law enforcement bodies as an organizational basis for the prevention of family dysfunction. *Vestnik of the Chelyabinsk State University*. 2009. No. 14 (152). P. 77.

¹⁹ Kondrashenko V. On the labyrinths of the soul of a teenager. Minsk: Higher school, 1991. P. 23.

²⁰ Yarskaya-Smirnova E.R. Yes, yes, I remember you, you are a bad family!: Discourse design of modern Russian family policy. *Woman in Russian society*. 2010. No. 2. P. 14.

²¹ Yarskaya-Smirnova E.R. Yes, yes, I remember you, you are a bad family!: Discourse design of modern Russian family policy. *Woman in Russian society*. 2010. No. 2. P. 19.

According to the legislator, a family in difficult life circumstances is a family with children who have been in difficult circumstances and cannot overcome them on their own due to the disability of parents or children with involuntary migration, narcotic or alcoholic dependence of one of the family members, his stay in places of imprisonment, HIV infection, domestic violence, homelessness, orphanhood, neglect and negative family relations, unemployment of one of the family members.

The list of circumstances allowing the classification of such families was fixed by a joint order of the former Ministry of Ukraine for Family, Youth and Sports, Ministry of Health of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Labor and Social Policy of Ukraine, Ministry of Transport and the communications of Ukraine, the State Department of Ukraine on the Execution of Sentences of 14.06.2006, No. 1983/388/452/221/556/596/106²².

Today, almost 150,000 such families are registered in social services²³.

It should also be noted that the list of families mentioned in the above-mentioned order is not complete. In particular, in Art. 1 of the Law of Ukraine "On Social Services"²⁴, complex life circumstances have a somewhat wider interpretation, namely: circumstances that objectively violate the normal livelihoods of a person whose consequences it can not overcome independently (disability, partial loss of motor activity because of age or state of health, loneliness, orphanhood, homelessness, lack of housing or work, violence, disrespectful and negative attitudes in the family, low income, psychological or mental disorder, natural disaster, catastrophe, etc.). That is, the law more widely disclose the concept of "difficult life circumstances" in comparison with industry standards. Such a discrepancy between the legislative interpretation of the concept of a "family in difficult living conditions" and the lack of clear criteria for the identification of such families complicates not only the organization of the work of the centers of social services and children's services, but also the whole system for the prevention of family disadvantages.

²² On Approval of the Procedure for the Interaction of Subjects of Social Work with Families in Complicated Life Situations: The Order of the Ministry of Family and Youth of Ukraine, Ministry of Education and Science, Youth and Sport, Ministry of Health, Ministry of Labor and Social Policy, Ministry of Internal Affairs, Ministry of Transport and Communications, State Department of Ukraine for Execution of Sentences: dated June 14, 2006 No. 1983/388/452/221/56/596/106. *Official Bulletin of Ukraine*. 2006. No. 28. P. 545. Art. 2074

²³ Parliamentary hearings "The Institute of Family in Ukraine: Status, Problems and Solutions" dated September 21, 2011. K., 2011. P. 29.

²⁴ On Social Services: The Law of Ukraine: from 19.06. 2003 No. 966-IV (as amended in accordance with 5 Laws of 2004-2011). *Official Bulletin of Ukraine*. 2003. No. 29. P. 52. Art. 1435.

At the same time, it should be noted that over the last five years there have been significant changes in the study of the causes of family disadvantage. Scientists singled out four main reasons not for the well-being of families:

41% – due to social insecurity of parents: disability of one or both parents, low income of the family, absence of mother or father, absence of parents, parents' abnormalities;

37% – due to the asocial behavior of parents: irresponsible parenthood, imprisonment, alcohol addiction, child abuse, drug addiction, conflicts between parents, conflicts between children and parents;

15% – due to the asocial behavior of children: social phenomena, predisposition to vagrancy, drug addiction, alcoholism, imprisonment;

7% – due to the social vulnerability of children²⁵.

Proceeding from the above, we consider it appropriate to take into account the causes of family troubles during the development of administrative and legal measures for the prevention of offenses, social orphanhood, and domestic violence.

In this regard, we propose administrative and legal measures for the prevention of offenses, social orphanhood, violence in the family to classify the measures: general-social level, special-administrative appointment, individual safety.

We believe that the administrative-legal measures for the prevention of offenses, social orphanhood, and violence in the family of the general social level should be attributed to: increase in the material well-being of families, primarily due to a noticeable increase in the level of remuneration and job creation; expansion of the material and technical and cultural base of educational institutions in accordance with modern standards and taking into account the needs of school and out-of-school educational work; foresight in the staff of general educational institutions of the posts of employees in educational work; improving the early detection system of families in need of assistance and providing them with timely targeted social support; conducting large-scale informational and educational and promotional work on the promotion of family values, lawful behavior, in particular among

²⁵ The situation of families in Ukraine (in 2000-2009): annually. state add President of Ukraine, Verkhovna Rada. Council of Ukraine, Cab. Ministers of Ukraine on the situation of families and state of implementation of the state. family policy / manager author: A. Yu. Taranovskaya; Ministry of Ukraine for Family, Youth and Sports, State inst. family and youth development. – electron. earl. given electron. text. Given. K.: State. in-t probl. Family and Youth, 2011. P. 193. 1 ea. wholesale CD (CD-ROM). – systems. Requirements: Windows 2000 and above; Word; Excel; Acrobat Reader; pdf format.

young people, on a permanent system basis; involvement of public associations in the implementation of information and education programs on issues of family relations, education of children, formation of health care establishments, establishment of effective interagency cooperation of crime prevention actors, social orphanhood, homelessness, domestic violence, etc.

Measures of special-administrative appointment should be directed at identifying the causes and conditions that determine the offense, and mainly – to eliminate the influence (influence) of these factors, with the immediate task of preventing the commission of offenses. These include:

- administrative supervision of persons who have been subject to administrative liability for committing domestic violence, failure to comply with a protective provision or non-compliance with the collection program;
- administrative supervision of parents or their substitutes, which were subject to measures of administrative liability in accordance with Art. 184 Code of Ukraine on Administrative Offenses;
- administrative supervision of persons to whom measures of administrative responsibility were applied in accordance with Art. 42, 46-20, 173, 175-1, 180 Code of Ukraine on Administrative Offenses;
- administrative supervision of persons who served punishment for crimes related to juvenile delinquency in criminal activities and released from places of imprisonment;
- verification of identity documents;
- the cause, registration and official warning of parents, which adversely affect their minor children or their substitute, on the inadmissibility of anti-social behavior;
- different checks, personal review.

Individually-precautionary administrative and legal measures should be directed at identifying the causes and conditions of an individual offense. The individual scale of this activity is ensured by the fact that the object of its influence is a specific subject, his personality, individual conditions of its formation and behavior.

Consequently, some administrative and legal measures for the prevention of offenses, social orphanhood, and domestic violence are directed directly at preventing a person from committing a new offense (for example, administrative oversight of the bodies of internal affairs for those who committed the offense), others promote the observance of their legitimate obligations by citizens (for example, the official warning of parents, which

adversely affects their minor children, the inadmissibility of anti-social behavior, etc.). A special group form the so-called medical and preventive measures of coercion, the purpose of which is not only to ensure public safety, but also in the treatment of those who are mentally ill, alcoholics, and others who are dangerous to family members and society in general.

Proceeding from the above, all administrative and legal measures for the prevention of offenses, social orphanhood, and domestic violence can be divided into three groups.

The first group should include social, economic, educational, organizational measures aimed at protecting families. The second group of preventive measures aims to neutralize the spread of certain negative phenomena that exist in a society or in a social group. That is, this group of measures is aimed at eliminating the expressed risk factors, which under certain conditions can lead to violence, the release of a child from a family, committing an offense. The third group includes so-called rehabilitation measures that directly deal with offenders, homeless children, orphans.

2. The ways of the improvement of the offences against the family and children, social orphanhood and domestic violence prevention system

In order to improve the legal regulation of administrative and legal measures for the prevention of offenses, N. Les'ko proposes to develop and adopt a single normative act that would regulate all preventive activities in the country – the Law of Ukraine “On the Prevention of Offenses in Ukraine”²⁶.

It is also worth noting Y. M. Kvitka proposes to improve the work on the prevention of violations of the subsystem of the organization of the militia's activities on the prevention of juvenile delinquency, which consists of two blocks: the direction of activity, the type of activity. The first block, depending on the object to which the preventive activity is directed, divides into such areas of activity: work with bad families; work with adults who involve juveniles in criminal activities; work with minors who commit offenses; work with groups of minors with antisocial orientation; work with adults violating the lawful interests of minors undermines their human dignity; general preventive work.

²⁶ Lesko N.V. Administrative and legal measures for the prevention of offenses among children. *Customs*. 2011. No. 1 (73). P. 154.

The second block (type of activity), depending on the place where the preventive work is carried out, Y. M. Kvitka proposes to divide into the following areas: by place of residence; at the place of work; at the place of study; with nonresident; with respect to refugees and displaced persons²⁷.

Separately, you need to focus on the problem of social orphanhood. The situation that has developed today in our country with children's orphanage, can be described extensively as complicated. Despite the fact that the total number of children annually decreases, the percentage of children left without parental care tends to increase^{28 29}.

The problem of social orphanhood was reflected in the following legislative and normative legal acts: the laws of Ukraine "On the Protection of Childhood"³⁰; "On ensuring the organizational and legal conditions for social protection of children deprived of parental care"³¹; "On the Fundamentals of Social Protection of Homeless Persons and Homeless Children"³²; Resolution of the Cabinet of Ministers of Ukraine "Issues of the Activities of the Bodies of Care and Care Bodies Associated with the Protection of the Rights of the Child"³³; the order of the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Labor and Social Policy of Ukraine, the Ministry of Transport and Communications of Ukraine, the State Department of Ukraine for the Execution of Sentences "On approval of the Procedure of interaction of subjects of social support of families (persons) who are in difficult living conditions"³⁴. They regulate

²⁷ Kvitka J.M. Prevention of Administrative Violations among Minors: diss. ... candidate lawyer Sciences: 12.00.07. K., 2002. P. 68-85. URL.: <http://www.lib.ua-ru.net/diss/cont/33324.html>.

²⁸ According to the "Children's Rescue Service". *The official website of the Alliance Ukraine without orphans*. URL: http://www.ukrainabezsyrit.org/en/participants/members/shablonmembers/people_organization/12396.

²⁹ According to the State Statistics Service of Ukraine. Official website. URL: <http://www.ukrstat.gov.ua/>

³⁰ On Protection of Childhood: Law of Ukraine: No. 2402-III of April 26, 2001. *Uriadovy Courier*. 2001. № 98.

³¹ On ensuring the organizational and legal conditions for social protection of orphans and children deprived of parental care: Law of Ukraine dated May 13, 2005. № 2342 - IV. *Official Bulletin of Ukraine*. 2005. № 4. P. 22. Art. 189.

³² On the Basics of Social Protection of Homeless Citizens and Homeless Children: Law of Ukraine dated 02.06.2005 № 2623-IV. *Official Bulletin of Ukraine*. 2005. No. 25. P. 45. Art. 1412.

³³ Questions of the activities of the trusteeship and care bodies related to the protection of children's rights: Resolution of the Cabinet of Ministers of Ukraine: № 866 dated September 24, 2008 (as amended). *Uriadovy Courier*. 2008. № 204.

³⁴ On Approval of the Procedure for the Interaction of Subjects of Social Work with Families in Complicated Life Situations: The Order of the Ministry of Family and Youth of Ukraine, Ministry of Education and Science, Youth and Sport, Ministry of Health, Ministry of Labor and Social Policy, Ministry of Internal Affairs, Ministry of Transport and Communications, State Department of Ukraine for Execution of Sentences: dated June 14, 2006, No. 1983/388/452/221/56/596/106. *Official Bulletin of Ukraine*. 2006. No. 28. P. 545. Art. 2074.

the coordination and cooperation between the relevant bodies of state administration and local self-government, other interested organizations and institutions for the prevention of social orphanhood. In 2007, the Strategy of the Ministry of Ukraine for Family, Youth and Sports was developed to ensure the rights of children to upbringing and development in the family environment. The purpose of this Strategy is to create conditions where each child will grow in a safe environment for the family and community³⁵. In 2011, the "Plan for the Implementation of the Strategy for the Development of the System of Social Services for Family, Children and Youth" was approved³⁶.

However, in the above-mentioned legislative and regulatory acts, respectively, in scientific and periodicals, there is no single interpretation of the concept of "social orphans". In particular, scholars often use this term and define it as such: "social orphan is a social phenomenon caused by the evasion or removal of parents from performing parental responsibilities in relation to the child"³⁷ ³⁸; the phenomenon is due to the evasion or removal of parents from the performance of parental responsibilities in relation to the child"³⁹.

Other terms are also used to refer to this category of children, such as "unchecked children", "homeless children", "homeless children", "street children", "children deprived of parental care", "children at risk", etc. Therefore, it is necessary to make a clear distinction between these concepts, since in practice this situation creates many problems for both children and for state bodies involved in working with the mentioned categories of children.

There are several types of social orphanhood: biological, social, migratory. For each type of orphanage a certain category of children meets the corresponding status in the procedure established by law: biological – orphan children; social – children deprived of parental care; migration – status not set. Although, as L.F. Krivachuk rightly points out, it is necessary

³⁵ Tolstoukhov S.V. The Strategy of Formation of the National System for the Protection of Children's Rights. *Social Work in Ukraine: Theory and Practice*. 2007. No. 3. P. 78–83.

³⁶ On Approval of the Implementation Plan of the Strategy for the Development of the System of Social Services for the Family, Children and Youth for 2011: Order of the Ministry of Family and Youth: from February 1, 2011 No. 306 URL: <http://zakon.nau.ua/doc/?uid=1038.3064.0>.

³⁷ Dictionary of reference for social workers and social pedagogues / for co-workers. Ed. A.Y. Kapskyi. K., 2000. 246 pp.

³⁸ Social work: short encyclopedic dictionary. K.: DTSSM, 2002. P. 406.

³⁹ Kapska A.Y. Actual problems of social-pedagogical work : modular course of distance learning / Kapska A.Y., Bezpalko O.V., Vaynola R.Kh.; for co. Ed. A. Y. Kapskoy. K., 2002. P. 59.

to establish this category of "children of migrant workers" for this category of children⁴⁰.

The category of children deprived of parental care by the legislation of Ukraine includes children who were left without parental care in connection with the deprivation of their parental rights, removal from their parents without deprivation of parental rights, recognition of parents missing or incapacitated, announcement of their deceased, parents' serving of punishment in places of deprivation of liberty and their stay in custody at the time of the investigation, the search of their organs of internal affairs, connected with evasion from payment of alimony and lack of information pr their location, their parents long illness that prevents them to fulfill their parental responsibilities and throw children, children whose parents are unknown, children abandoned by parents, and street children^{41 42 43}.

It should also be noted that the legislator categorizes homeless children as a category of children deprived of parental care. At the same time, according to the current legislation, "homeless children" are children who were forced to leave or themselves left the family or children's institutions where they were raised and do not have a definite place of residence"⁴⁴. This implies the presence of the child's parents, guardians (trustees), adopters, parent-caregivers, foster parents, or the child is brought up in a state institution. In addition, this category of children is also not defined in paragraph 24 of the "Procedure for the conduct of guardianship and trusteeship activities related to the protection of the rights of the child"⁴⁵, which defines the documents confirming the corresponding status of the child.

Therefore, it is expedient to exclude from the list of categories of children who are given the status of "child deprived of parental care" the category

⁴⁰ Kryvachuk L.F. Improvement of the legal and regulatory mechanism of social and legal protection of orphans and children deprived of parental care: establishment of legal status. *Actual problems of public administration*. 2011. No. 2 (40), P. 3.

⁴¹ On ensuring the organizational and legal conditions for social protection of orphans and children deprived of parental care: Law of Ukraine dated May 13, 2005 No. 2342 - IV. *Official Bulletin of Ukraine*. 2005. No. 4. P. 22. Art. 189.

⁴² On the Basics of Social Protection of Homeless Citizens and Homeless Children: Law of Ukraine dated 02.06.2005 № 2623-IV. *Official Bulletin of Ukraine*. 2005. No. 25. P. 45. Art. 1412.

⁴³ About protection of childhood: Law of Ukraine: from April 26, 2001 № 2402-III. *Uriadovy Courier*. 2001. No. 98.

⁴⁴ On the Basics of Social Protection of Homeless Citizens and Homeless Children: Law of Ukraine dated 02.06.2005 № 2623-IV. *Official Bulletin of Ukraine*. 2005. No. 25. P. 45. Art. 1412.

⁴⁵ Issues of the acts of the guardianship and trusteeship bodies related to the protection of children's rights: Resolution of the Cabinet of Ministers of Ukraine: No. 866 dated September 24, 2008 (as amended). *Uriadovy Courier*. 2008. No. 204.

“homeless children”. That is, homelessness of children, in our opinion, cannot be a criterion for granting the status of a child deprived of parental care.

It is also necessary to introduce the concept of “migratory orphans” and “children of migrant workers” and to develop an appropriate mechanism for the appointment of temporary guardianship (care) for these children. To do this, it is necessary to amend the Law of Ukraine “On the Protection of Childhood”.

For the effective implementation of administrative and legal measures for the prevention of offenses, social orphanhood, violence in the family, it is important to cooperate with all stakeholders involved in such prevention: education, health care, social protection, law enforcement agencies, etc. In the opinion of the legislator, the multidimensional nature of state agencies should promote a comprehensive approach to improving the prevention system.

Consider the implementation of administrative and legal measures for the prevention of offenses, social orphanhood, violence in the family on the example of the activity of the subjects of prevention.

For example, children’s services in conjunction with criminal militia departments for children, centers for social services for families, children and youth, education and health services to prevent the commission of crimes and juvenile delinquency, begging, vagrancy and detection. The facts of juvenile adolescents’ involvement in drunkenness, drug addiction, and prostitution are carried out every year by operational and preventive measures: “Children of the street”, “Teenager”, “Station”, “All-Ukrainian raid” Lesson”. The children’s services also monitor, conduct state statistics, work among children from disadvantaged families, orphan children and children who have been in difficult life circumstances, adopted, arranged for foster families, family-type orphanages and social and rehabilitation centers (children’s towns); directly conduct business, develop and implement social measures; coordinate activities related to the protection of the rights, freedoms and legitimate interests of children, work in solving social protection of children and organizing work to prevent child abandonment, etc. Systematically carry out: survey of living conditions of dysfunctional families, comprehensive inspections of retail outlets for the sale of alcoholic beverages and tobacco products to persons under 18 years of age, on the results obtained, relevant acts are prepared and preventive conversations

with shop workers, bars and clubs are held to prevent the sale of alcoholic beverages to individuals before 21 years old and tobacco products for people under 18 years of age, educational preventive conversations, lectures at universities, schools. Work is also under way to replenish the data bank for orphans, children deprived of parental care, children from disadvantaged families, potential adopters, guardians, carers, foster parents and parenting caregivers.

However, the content and quality of the measures taken are not always effective. In particular, inspections carried out by the prosecutor's offices during 2011 found that children who live in dysfunctional and foster families are the most affected by violence, are being cared for or cared for. At the same time, there is almost no control over the conditions for the detention of children in dysfunctional families, foster parents, guardians. According to Deputy Chief of the Department for the Protection of the Rights and Freedoms of the Main Directorate for the Protection of the Rights and Freedoms of Citizens and the State's Interest of the General Prosecutor's Office of Ukraine G.J. Dagaeva, the children's services do not adequately coordinate the efforts of local executive authorities, local authorities, enterprises, institutions and organizations in addressing the urgent needs of children and underperforming the conditions for the maintenance of children in dysfunctional families. She cites the facts revealed by the prosecutor's office, when visits to children living in such families were limited to the formal drawing up of inspection acts. Social support has been reduced to providing charitable or cash assistance at best. There were no measures for the employment of parents, etc. The unsatisfactory attitude of these subjects of prophylaxis to their own responsibilities leads to significant violations of children's rights, and often to grave consequences⁴⁶.

On the other hand, the main indicator of the work of the prosecutor's office, the courts, bodies of internal affairs remains the indicator of the removal of children from dysfunctional families. Annually in Ukraine about 10 thousand such decisions are taken [108, p. 30-31]. This negative tendency is confirmed by the current practice of encouraging parents to establish children and institutions as a means of overcoming poverty. In our opinion, this approach to addressing the problems of family poverty is

⁴⁶ Practice of application and effectiveness of the implementation of the provisions of the Law of Ukraine "On the Prevention of Domestic Violence": transcript of committee hearings of November 15, 2011. URL: <http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article.jsessionid>.

discriminatory. That is, the state invests significant financial and human resources in the provision of social services, but does not receive an adequate result.

In this regard, we believe it is necessary to review first of all the current procedure for deprivation of parental rights. It is advisable to provide mandatory information to the authorities of guardianship and care of courts on their activities to assist families in the exercise of their parental rights, to introduce compulsory social support for persons whose children are sentenced by the court without deprivation of parental rights, who declared their desire to restore their parental rights.

It is also necessary to review the existing practice of making a decision on the deprivation of parental rights of persons who cannot perform parental responsibilities due to poverty or disability, to develop and make appropriate proposals to legislative and regulatory acts that regulate the procedure for deprivation of parental rights.

Criminal police on children's affairs also do not fully fulfill their obligations to prevent domestic violence. Police officers do not always have reliable information on the living conditions and education of minors who are registered. As a result, dysfunctional families are not timely, not registered, administrative and legal measures to prevent the negative impact of parents on the behavior of children are not used. Exploratory work in families where violence is occurring or there is a real threat of its commission is not carried out, instead numerous protocols on administrative violations, stipulated by Article 173-2 of the Code of Administrative Offenses, are drawn up.

Thus, according to statistics in 2011, 2,300 criminal militia divisions of the Department of Children's Affairs issued official warnings about the inadmissibility of domestic violence, which is one of the grounds for registering these persons. Instead, only 706 persons are registered in the units of the criminal militia, that is, almost 3 times less than that of such persons was brought to the administrative responsibility.

Bodies of care and care establish guardianship and care for orphans and children deprived of parental care, decide on the removal of children from families where there is a threat to the life and health of the child, inform the prosecutor's office and apply to the court for the deprivation of parental rights.

Educational management bodies carry out legal advocacy, provide material assistance to children from low-income families, organize their substantive leisure and rest, inform respective structures about the identification of dysfunctional families, work with parents or with persons who replace them, provide psychological and pedagogical assistance. However, it should be noted that preventive work with families and children at risk requires a rethinking of the content of educational work in educational institutions. So far, she is weakly responding to such forms of offenses as substance abuse, drug addiction, prostitution, gambling, racketeering, and the like. The modern educational system does not always form the attitude to these phenomena, but simply goes along the path of prohibitions. To date, there is a standardization of the educational process, the substitution of the educational system by an amorphous set of educational activities, the predominance of pedagogical practice of instructional education. Over the past ten years, about 15 new approaches and concepts of education have emerged in Ukraine.

The problem of the effectiveness of the educational process in school remains unresolved. We believe that one of the main reasons is the low level of training of pedagogical workers for effective educational process, low wages and a decrease in the status of a teacher in a society. Consequently, there are every reason to assert that educational activities in educational institutions are often formal. In addition, educational activities are usually carried out after the offense has been committed. In the educational work related to the prevention of offenses, a special place should take legal education. However, because of the unpreparedness of teachers to this work, the lack of necessary methodological literature does not meet modern needs. This education, as a rule, is to familiarize students with the basic provisions of administrative and criminal law. Other branches of law, which play no less role in human life, are left out of sight. Prevention requires a peculiar approach to the choice of methods and forms of educational work. In school practice, it is necessary to apply such methods that would promote the formation of skills for lawful behavior among schoolchildren. Experience convinces that students are often wrong in certain situations because they have no experience, and theoretical knowledge does not work. Given this, it is necessary to rebuild and forms of educational work. The pedagogical system of prevention should take into account the educational capacity of extracurricular institutions. However, the difficult financial situation and the

“spirit of commerce” almost eliminated this link from the general system. The number of students attending these establishments is kept to a minimum. The potential of youth and children’s organizations, other non-governmental organizations and institutions, mass media, etc. is not fully exploited.

Centers for social services for families, children and young people – special institutions providing social services to families, children and young people who are in difficult circumstances and in need of out-of-pocket help.

Departments of social protection help the families to fulfill the material-household (economic) function by providing various types of material assistance (subsidies, child benefits, hot lunches, compensations, benefits, etc.), educational functions (free flowers for holidays, etc.).

Health care establishments provide medical care, conduct a survey of children of the so-called risk group, etc.

A network of special institutions for children of the so-called risk group has been created, namely: child-reception centers, general education schools and vocational schools for social rehabilitation; centers of medical and social rehabilitation of children; special educational institutions of the State Penitentiary Service of Ukraine; shelters for children of children’s services; Centers of social and psychological rehabilitation of children; social rehabilitation centers (children’s towns).

Details of the powers of each of these bodies and institutions are specified in separate articles. However, it is necessary to draw attention to the fact that the legislatively fixed structure of the subjects of prevention of offenses, social orphanhood, and domestic violence also has shortcomings. Thus, until now, the coordinator of this area of work has not been identified, which negatively affects inter-departmental coordination in the issues of prevention of family disadvantage. Domestic and foreign experience shows that the establishment of constructive cooperation between social services and law enforcement agencies is not always successful because of a number of reasons: departmental disparity, non-compliance of private tasks and priorities of the common cause, the absence of common criteria for evaluating the results of work, the legal basis for joint activities of interested bodies in solving problems, “Closed” activity of most structures of the Ministry of Internal Affairs, the Ministry of Justice and other “power” ministries and departments, their reluctance to contact with others, more “Open” services, the difference in the methods of solving problems: the

police concentrate their attention on force, social workers – in search of not powerful ways to solve the problem, lack of awareness of possible areas of mutually beneficial assistance, negative experience of cooperation, distrust, and sometimes hostility; a significant difference in terms of achieving the purpose of the activity. Police often operate in extreme situations, social workers usually solve problems that require lengthy interference.

The beginning of constructive cooperation in such circumstances should be personal contacts, then the programs of cooperation between the units of the internal affairs and social services at the local, regional level, especially where there is a need and where the local authorities support the idea of such cooperation, are united. Cooperation should be flexible, not contradict the existing system of social services, their financial support. It should be based on the principles of: reciprocity of interests, clarity with respect to roles and areas of activity, exchange of information, graduality and gradual convergence.

Forms of interaction in the first stage can be: personal consultations; expert opinions of social workers (within their own competence), joint measures on social prevention, etc.

The most likely areas of joint responsibility may be: prevention of juvenile delinquency, including joint decisions on the need to transfer cases to court, domestic violence, ill-treatment of children, urgent social assistance to victims.

A positive example of establishing interagency cooperation was the development and approval of the procedure for interaction of social work subjects with families who were in difficult life circumstances by the relevant order of seven ministries and departments⁴⁷, monitoring of the implementation of this order was carried out annually, and appropriate response measures were applied. However, in 2010, the optimization of the Central Bank system disrupted the established system. Today it is an important task to restore its work.

It is also advisable to form personalized data banks in families of risk groups with the only registration criteria (due to different departmental criteria or in their absence today it is difficult to objectively estimate the

⁴⁷ On Approval of the Procedure for the Interaction of Subjects of Social Work with Families in Complicated Life Situations: The Order of the Ministry of Family and Youth of Ukraine, Ministry of Education and Science, Youth and Sport, Ministry of Health, Ministry of Labor and Social Policy, Ministry of Internal Affairs, Ministry of Transport and Communications, State Department of Ukraine for Execution of Sentences: dated June 14, 2006 No. 1983/388/452/221/56/596/106. *Official Bulletin of Ukraine*. 2006. No. 28. P. 545. Art. 2074.

number of homeless, homeless, minors in difficult living conditions, as well as such families).

It is also necessary to improve the system of early detection of families in need of assistance and to provide them with timely targeted social support; carry out large-scale informational and educational work on the promotion of family values and HRM, respect for lawful behavior, especially among young people, on a regular basis; to involve public organizations in the implementation of information and education programs on family relations, child upbringing, the formation of a health care work force, to establish effective interagency cooperation between crime prevention actors, social orphans, and domestic violence.

To summarize, the main directions of improving the system of prevention of offenses, social orphanhood, violence in the family, in our opinion, should be the emphasis on preventive activities in preserving and expanding family forms of education, improving the legislation, organizational and functional structure of the bodies – the subjects of prevention offenses, social orphanhood, domestic violence and the establishment of an effective interagency coordination mechanism.

CONCLUSIONS

1. Administrative-legal measures for the prevention of the offenses, social orphanhood, domestic violence include activities of the general social level; special-administrative appointment and individual safety.
2. The reasons of social orphanhood and its types are investigated: biological, social, migration. It has been established that migrant orphanhood has not been given the appropriate status in the order established by the law. It is proposed to amend the laws of Ukraine: "On the Fundamentals of Social Protection of Homeless Persons and Homeless Children", "On Provision of Organizational and Legal Conditions for Social Protection of Orphan Children and Children Deprived of Parental Care", "On the Protection of Childhood", introducing the concept of "Migratory Orphanage" "To establish the status of "children of migrant workers" for this category, to develop an appropriate mechanism for the appointment of temporary guardianship (care) for these children, to exclude from the list categories of children who are given the status of a child, deprived of parental care, the category of homeless children.
3. The activity of the subjects of prevention of offenses, social orphanhood, domestic violence is investigated, deficiencies in their work are

revealed. The forms of interaction are defined: personal consultations, expert opinions of social workers (within their own competence), joint preventive measures.

4. It is proposed to improve the system of early detection of families in need of assistance, and develop specific measures for assistance for such families.

5. It is proved that the main directions of improvement of the system of prevention of offenses, social orphanhood, domestic violence should be the emphasis on preventive activities on preservation and expansion of family forms of education, improvement of legislation, organizational and functional structure of bodies – subjects of prevention of offenses, social orphanhood, domestic violence and the establishment of an effective interagency coordination mechanism.

SUMMARY

The article analyzes the dynamics of the offences among children and youth; cases of domestic violence, failure to comply with a protective provision or non-compliance with the correctional program; cases of non-fulfillment by parents or their substitutes of responsibility for the children upbringing; the number of children in residential institutions and social protection institutions for children; social orphans. The conclusion is made of the ineffectiveness of state measures for the prevention of offences, social orphanhood, and domestic violence. It is established that the cause of most offenses, social orphanhood, and violence is family disfunction. The content of the concepts of "dysfunctional family", "a family that was or is in difficult living conditions", types of dysfunctional families, causes of dysfunctional families was investigated. The activity of the subjects of prevention of offenses, social orphanhood, violence in the family, deficiencies in their work was investigated. The forms of interaction are defined: personal consultations, expert opinions of social workers (within their own competence), joint preventive measures. It is proposed to improve the system of early detection of families who are in need of assistance, and specific measures for such assistance have been developed. It is proved that the main directions of improvement of the system of prevention of offenses, social orphanhood, domestic violence should be the emphasis on preventive activities on preservation and expansion of family forms of education, improvement of legislation, organizational and functional structure of

authorities – subjects of prevention of offenses, social orphanhood, domestic violence and establishing an effective mechanism for inter-agency coordination.

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