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Volume Twenty-Six

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CONTENTS

Editor's Introduction.....i

Contribution.....ii

Happy, Controlled, and Pristine Grass: ¡*Gracias!*

Carmen M. Cusack and Matthew E. Waranius.....1

Improvement of the Regulatory Framework for
Social Order in Ukraine

Nataliya Datchenko, Yurii Mosaiev,
Ellina G. Pozdniakova-Kyrbiatieva, Zhanna
Petrochko, and Olena L. Pozdniakova.....50

Black People Have Good Skin: What Is Your
Problem Anyway?

Carmen M. Cusack.....77

The Cyclical Nature of Reproductive Coercion in
America

Rebekah Carson.....116

IMPROVEMENT OF THE REGULATORY FRAMEWORK FOR SOCIAL ORDER IN UKRAINE

Nataliya Datchenko, Yurii Mosaiev,
Ellina G. Pozdniakova-Kyrbiatieva, Zhanna
Petrochko, Olena L. Pozdniakova

I. INTRODUCTION

The system of social order in many countries of the world is one of the effective tools for ensuring the system of social services provision both at the national and regional levels. In 1991, since the restoration of independence, Ukraine began to form its own social security system. Due to the absence of such a system in the Union of Soviet Socialist Republics (USSR), or rather due to the functioning of a totalitarian social security system without an extensive network of social service institutions for the population, this system had to be built from scratch. That is why the Ukrainian system of social services for the population for more than 30 years of its existence did not have a clear concept of development and with the change of

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Petrochko, Pozdniakova

leadership of the Ministry of Social Policy of Ukraine could change radically. In order to avoid such radical changes in the future, it was necessary to define the conceptual frameworks and tools that would outline the development of the social service system. One of those such tools is the social order technology.

Social order provides an opportunity to determine the target expenditures for financing certain categories of populations in need of social services and their volumes by non-profit organizations.

The social order model is one of the progressive tools for improving the system of social services provision, but for its implementation it is necessary to overcome a number of barriers and challenges. In particular, most of the challenges to the development of social order are related to the imperfect regulatory framework in Ukraine, which limits the access of non-governmental organizations to the provision of social services at the expense of the state budget at different levels.

II. ANALYSIS OF RESEARCH ON THE ISSUE OF THE ARTICLE

The problem of social order and social order in the field of social services has been studied in the works of such scientists as V. Dudarov and V. Popovych, who studied social order as a tool to improve the efficiency of provision of social services at the national and regional levels.¹ K.V. Dubych studied social order as a mechanism of social services provision in Ukraine.² The problem of social order is reviewed in the works of T. Semyhina,³ N.I. Chudyk-Bilousova,⁴ and K. Kuli-Ivanchenko.⁵ These authors outlined the importance of social order development as a

¹ V. Dudarov & V. Popovych, *Social Ordering as a Tool for Reporting the Effectiveness of Providing Social Services at the Regional Level*, *Bulletin of NTUU "KPI,"* 2 POL. SCI., SOC., L. 11 (2019).

² K.V. Dubych, "Social Order as an Effective Mechanism for Social Service Provision in Ukraine," *Derzhavne Upravlinnya: Theoria & Practika*, 1. [Public Administration: Theory and Practice], (2013) http://nbuv.gov.ua/UJRN/Dutp_2013_1_14. [in Ukrainian].

³ T. Semyhina, *Social Order*, in *Entsyklopediya Dlya Fakhivtsiv Sotsial'noysfery [Encyclopaedia For Social Workers]* [in Ukrainian] (I. Zvierieva ed., 2012).

⁴ N.I. Chudyk-Bilousova, *Social Order in the System of Social Service Provision*, 63 *UNIVERSYTET-S'KI NAUKOVI ZAPYSKY* 167 (2017). [in Ukrainian].

⁵ K. Kuli-Ivanchenko, *Social Order of Self-governance in Ukraine: Constitutional and Legal Research*, Extended abstract of candidate dissertation, National University "Odessa Legal Academy" (2015). [in Ukrainian].

technology of social services in Ukraine and described the prospects of using this technology both in general and within the framework of providing social services to certain categories of clients, in particular children and their families. At the same time, the problem of improving the regulatory and legal framework for social order in Ukraine is not widespread and requires further reflection and research. The purpose of the article is to propose ways and mechanisms for the effective implementation of social order in Ukraine through the improvement of the regulatory framework.

III. THEORETICAL FOUNDATIONS OF SOCIAL ORDER IN UKRAINE

The development of society depends on the level of efficiency of its institutions and the quality of the correlation between the elements of social statics and social dynamics. According to Article One of the Constitution of Ukraine, Ukraine is a democratic, social, legal state.⁶ In particular, the concept of a social

⁶ Constitution of Ukraine,
<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

state provides for a developed social policy, which, according to David Garland, is the basis of the welfare state.⁷ Within the framework of this state model, welfare plays the role of the goal of the functioning of the whole society. That is to say, public institutions function to achieve a high level of social comfort for all members of society.

According to Mozammel Haque, the social policy of the state is always aimed at solving existing social problems in society.⁸ If they follow this model, one of the most important problems of social work in modern Ukraine is the redistribution of funds in the field of social security. One of the most important tools for solving this problem is social order. Social order makes it possible to meet the needs of the population in social services by non-governmental providers at the expense of the state budget, and at the same time to involve the

⁷ David Garland, *The Welfare State: A Fundamental Dimension of Modern Government*, 55 EUR. J. SOC. / ARCHIVES EUROPÉENNES DE SOCIOLOGIE / EUROPÄISCHES ARCHIV FÜR SOZIOLOGIE 327 (2014).

⁸ Mozammel Haque, *Social Policy: Concept, Goals and Influencing Factors*, Researchgate, (Oct., 2021)

https://www.researchgate.net/profile/Mozammel-Haque-6/publication/355174750_Social_Policy_Concept_Goals_and_Influencing_Factors/links/616443a30bf51d481770621e/Social-Policy-Concept-Goals-and-Influencing-Factors.pdf?origin=publication_detail.

resources of non-governmental organizations and other public sector organizations to provide social assistance and quality social services to individuals or groups of individuals in need due to difficult life circumstances.

Social order is understood as "a set of measures of organizational and legal nature aimed at solving a social problem in the state or in a separate administrative-territorial unit, carried out by non-profit organizations at the expense of the budget and other sources on the basis of a social contract with public authorities or local self-government bodies."⁹ According to the definition, social order enables to provide quality social services to people in difficult life circumstances. The main feature of the social order is that it is aimed at producing social services and other forms of social assistance by non-profit organizations with sufficient experience.

The economic conditionality of the social order is that the possibility to receive state and municipal

⁹ N.I. Chudyk-Bilousova, *Social Order in the System of Social Service Provision*, 63 UNIVERSYTET-S'KI NAUKOVI ZAPYSKY 167 (2017).

funding within the framework of the social order increases the number of potential providers of social services, which automatically reduces the price of one particular service due to the increase in the level of supply in the social services market.¹⁰ In addition to increasing supply in the market of social services, the factor of monopoly in this market is reduced or leveled.

Today, both in Ukraine and in a significant number of countries, social services are provided by specialized social services and institutions financed from the budget. This leads to the fact that the social sphere becomes a non-profit activity, which does not allow private structures to consider it as a sphere of investment. At the same time, the state and local governments invest significant funds in the social sphere. In order to meet the demand for social services of people in difficult life circumstances, state and municipal authorities have to create and support the functioning of hundreds or even thousands of specialized institutions that provide social services. In

¹⁰ N. Datchenko, *Social Order as a Factor in Improving the Quality of Social Services*, <https://zenodo.org/record/5905660#.Y2K7pHbP02w>.

this form, the system has a low level of efficiency due to the lack of high competition between social service providers. This is due to the fact that most social services are provided by state and municipal institutions, competition between which is possible only in the regional dimension and because large cities and wealthy territorial communities are able to allocate more funding to the social sphere and municipal social service institutions. This causes internal migration within the country due to the uneven level of social comfort in different regions and the availability of social services.

Due to the impossibility of attracting investment funds in the sphere of social services, the development of commercial and non-commercial projects in the sphere of social services at both national and regional levels also looks unrealistic. Despite the possibility of receiving patronage and grant assistance within the framework of social initiatives of business and international charitable institutions, social order is one of the effective mechanisms for involving non-profit organizations in the provision of social services. Since

within the framework of social order it is possible to receive public funds for the provision of social services for different categories of the population, it enables organizations that do not have significant budgets to provide quality social services, in particular for children and their families.

Families with children are a priority category in the use of social services due to the peculiarities of their social status and the potential that a child can realize during his or her life.¹¹ A child has the highest indicator of social potential compared to representatives of other age and socio-demographic groups of the population. At the same time, the child's social potential may not be realized due to various unfavorable circumstances, which, as a rule, result from the low level of social services provided to their families. Instead, timely ensuring of social services, including through the provision of social services, create conditions for the upbringing, primary socialization, and enculturation of the child in a protected environment of the family,

¹¹ J. Petrochko & N. Datchenko, *Ensuring the Best Interests of the Child as a Priority in the Provision of Social Services to Families with Children*, 5 KNOWLEDGE, EDUC., L., MANAGEMENT 150 (2021).

community, and state. High-quality social security for children contributes to the protection of their interests and provides additional resources for harmonization in the family as a social system and institution.

IV. INTERNATIONAL EXPERIENCE OF SOCIAL ORDER TECHNOLOGY IMPLEMENTATION

Social order is a common technology in the framework of social services for children in many European countries. In 2013, the European Commission in the document "Investing in children: breaking the cycle of disadvantage"¹² noted the priority of social welfare of children and their families, in particular in the framework of social services for them, access to education, housing, and quality health care. This document focuses on the fact that, first of all, the priority of children in access to these services should be ensured through social services for children and their families, especially those in difficult living

¹² "Investing in Children: Breaking the Cycle of Disadvantage: European Commission Recommendation of 20.02.2012 no. 2013/112/EU," <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0112>.

conditions. This priority should be implemented in accordance with the existing tools of social services, one of which is social order.

According to Alfonso Lara Montero, in the European Union (EU) countries there is a tendency towards decentralization of the social order system and transition to the fact that today most social services are provided at the local level with the involvement of non-governmental organizations.¹³ This tendency shows progress in the spread of social order practices at the EU level. This process is still being implemented at the level of individual countries, but it can be predicted that in the future this process will be regulated at the EU level, through the adoption of legal documents that will regulate the sphere of social order at the European level and will be adapted to the legal documents at the national and regional levels.

Romanian scientists O. N. Barbu and C. Stănilă consider the process of establishing the process of providing social services of common interest as an

¹³ ALFONSO LARA MONTERO, INVESTING IN CHILDREN'S SERVICES, IMPROVING OUTCOMES: RESEARCH (2016), AT 11.

important factor in the integration of EU countries into a single social and legal field.¹⁴ In the researchers' opinion, this context is important because it allows the countries of Eastern and Southern Europe to integrate their own legislation in the field of social work to the level of other EU countries. Another aspect is that the implementation of this legislation could be facilitated by non-governmental organizations that are flexible to legal innovations and can operate in several countries at the same time. Within this system, the social order technology could also contribute to the economic integration of the social work services market through the possibility for organizations from different EU countries to apply for contests. This is important as the most worthy organizations could provide social services of a narrow spectrum in dozens of EU countries simultaneously.

The already mentioned rule of the EU single market allows national governments to put the need for

¹⁴ O. N. Barbu & C. Stănilă, *Services of General Interest and Territorial Sustainability in Romania*, 16 ANNALS OF VALAHIA, UNIV. TARGOVISTE, GEOGRAPHICAL SERIES 67 (2016), <https://doi.org/10.1515/avutgs-2016-0006>. See *id.* at 69-74.

certain social services on the European competition or not.¹⁵ This rule is very important in the context of the responsibility of national governments to their voters, since by not putting certain social services on the general social order competition due to national protectionism, they do not allow local residents to receive the best quality social services that can be provided in the EU, which reduces the level of social services for a particular category of the population due to national selfishness. Therefore, at the EU level, regulations should be developed to limit national protectionism in the field of social order. In the researchers' opinion, an effective mechanism in this area could be the practice of involving people in need of social services in the commissions to determine the winners of the selection of organizations that will provide social services through the mechanism of social order.

According to M. Kajimbwa, evaluating performance based on results, not resources expended,

¹⁵ European Parliament and Council, "On Public Procurement and Repealing Directive 2004/18/EU," No. 2014/24/EU, (Feb. 26, 2014) <https://eur-lex.europa.eu/eli/dir/2014/24/oj>.

and the use of contracting social service providers is a way that has opened up the possibility for European countries to significantly improve social work services.¹⁶ This European experience should be implemented in the Ukrainian legislation of Ukraine, which will contribute to Ukrainian European integration.

Not in vain the researchers have already mentioned contracting as a technology to improve the quality of social services. It is this technology that is a symbol of social order in European countries. Since contracting is the finalization of the social order procedure. Moreover, the EU has standards of contracting for state and municipal order of social services.¹⁷ Development of a similar form of contract in Ukraine is an important element of further improvement of sphere of social order.

Despite the integration of European legislation in the field of social services, certain national traditions

¹⁶ M. Kajimbwa, *New Public Management: A Tribute to Margaret Thatcher*, 3 PUB. POL'Y. & ADMINISTRATION RES. 64, 65 (2013).

¹⁷ Putting Quality First, "Contracting for Long-Term Care," Europeat Social Network, https://www.esn-eu.org/sites/default/files/2021-01/Long_Term_Care_2021_Interactive.pdf.

and features should be noted. Especially it should be said about the German principle of subsidiarity, when it is customary to provide financial resources for social security of certain categories of the population, to persons who themselves needed social services.¹⁸ This approach, which is a national feature of financing social work in Germany, has become the basis of the local system of social order, which is being improved at the request of the EU.

The process of standardization of social service provision is not always a guarantee of the quality of social services. Thus, scientists A. Bilson and R. Gotestam came to similar conclusions, analyzing the experience of social order technology implementation in the Nordic countries.¹⁹ In this context, the flexibility of the direct provider of social services is more important, as it being a professional in this field, can in the process of its activity increase the effectiveness of

¹⁸ E. Pavolini & C. Ranci, *Restructuring the Welfare State: Reforms in Long-term Care in Western European Countries*, 18 J. EUROPEAN SOC. POL'Y 246 (2008).

¹⁹ A. BILSON & R. GOTESTAM, *IMPROVING STANDARDS OF CHILD PROTECTION SERVICES* (2003), AT 104, <https://digitallibrary.un.org/record/565269>.

the results of social services provision within the framework of social order.

In general, the process of determining the scale of efficiency of social service provision should be transformed, since the provider and customer of social services cooperate to achieve maximum results. Therefore, in 2020, the Ministry of Social Policy of New Zealand began to recommend that customers and providers of social services jointly define standards and criteria for determining the effectiveness of social service provision within the framework of social order.²⁰ This formula promotes maximum liberalization of the process of ordering and providing a specific social service. It is effective in developed societies where the corruption component is minimized. Implementation of this mechanism in developing countries is risky.

²⁰ MINISTRY OF SOCIAL DEVELOPMENT OF NEW ZEALAND, SOCIAL SECTOR COMMISSIONING: PROGRESS, PRINCIPLES AND NEXT STEPS (2020), AT 34, https://www.msdc.govt.nz/documents/about-msdc-and-our-work/publications-resources/planning-strategy/social-sector-commissioning/msdc-social-sector-commissioning.pdf?fbclid=IwAR0r-jL0sgJhCYpMtl18zaz5r5y35Pw0EDD6gQ9S_Bm9pheSLsSdKyiqT2Y.

V. Pestoff considers the possibility within the EU countries to involve in the process of social services the maximum number of community members who do not have professional knowledge through volunteering and related technologies.²¹ In this case, we can talk about the solidarity of the process of providing social services in the EU countries within the social order technology through the ability of everyone to help people in need of social assistance.

V. BARRIERS TO SOCIAL ORDER IMPLEMENTATION IN UKRAINE

Despite the proven effectiveness of social order, the Ukrainian realities of the social services organization pose a number of barriers that prevent the implementation of the social order technology in Ukraine. The main barriers include: insufficient funding for joint projects; underdeveloped regulatory and legislative framework; lack of qualification of public organizations; inequality between governmental

²¹ V. PESTOFF, *CITIZENS AND CO-PRODUCTION OF WELFARE SERVICES: CHILDCARE IN EIGHT EUROPEAN COUNTRIES* (2011), AT 1-17.

and non-governmental organizations in terms of access to public funding; lack of up-to-date methodology for calculating the cost of social services that meets the idea of the social services market; and problems of competitive selection and determination of the ratio of price and quality of social services that should be provided within the framework of social order.²² These barriers to the application of social order technology are complex, so today the development of mechanisms to overcome them is a priority activity for social specialists.

The main marker of the implementation of any social technology is the scale of its application in the real sector of the social service system. Research by a team of Ukrainian scientists shows that "the volume of social order in Ukraine as a whole does not exceed UAH 1 million and is implemented only in 5-6 regions."²³ This indicator is a marker of systematic

²² N. Datchenko, *Barriers in the Application of Social Order in Ukraine*, 8 SOC. WORK & EDUC. 430 (2021).

²³ O.V. Shubina, Yu.V. Denysova, O.S. Sanchych, & A.V. Marylova, *Novitni Metody Udoskonalennia Systemy Nadання Sotsialnykh Posluh v Ukrainy* [New Methods of Improvement of Social Service Provision System in Ukraine], 3 ECON. BULL. DONBASS 213 (2020). [in Ukrainian].

regulatory, methodological and organizational problems in the sphere of social order. Therefore, it is important to improve the regulatory framework and strengthen the methodological support of social order for its further development and implementation. If these positions are not strengthened, in the future Ukraine will lose the opportunity to use this progressive tool for the provision of social services, including for children and families with children.

The structure of the social order process consists of three stages: 1. Formation of the social order 2. Fulfillment of the social order and 3. Monitoring and evaluation.²⁴ Each of these stages has its own specifics, but at the same time each of the stages is important for the formation of a closed cycle of the “social order” technology.²⁵

When forming the social order as a process, it is important to assess the needs of the population in social services and determine the subject of the social order.

²⁴ J. Petrochko & N. Datchenko, *The Essence and Features of Social Order Implementation in Ukraine*, 2 SCI. BULL. UZHGOROD U.: "PEDAGOGY. SOC. WORK" 155, 158 (2021).

²⁵ *Id.*

According to the provisions of the Ukrainian legislation, the subject of the social order should include the list of necessary social services defined in accordance with the results of the needs assessment; the list of categories and approximate number of social services recipients; and the amount of budget funds required for the social order. The second stage of the social order envisages development of the task for fulfillment of social order, organization and holding of the tender, and conclusion of the contract for social services provision and its implementation. At the second stage of social order implementation, the key role is played by the factors that influence the quality of services provided within the framework of social order, namely: availability of qualified personnel, experience of non-governmental service provider, and combination of state and non-governmental resources for maximum satisfaction of the population needs. The third structural component of the social order allows it to analyze the effectiveness of the social services provision process. At the same time, it should be taken into account that at each of these stages, individuals

and organizations seeking to provide social services to children and their families through the social order technology face difficulties related to the imperfect regulatory system.

VI. PROPOSALS FOR IMPROVING THE LEGAL FRAMEWORK OF SOCIAL ORDER IN UKRAINE

In our opinion, the process of improving the legal framework for social order should start with the basic law for the Ukrainian social security system - the Law of Ukraine "On Social Services."²⁶ Article 10 of this Law provides for equality of rights, duties and responsibility of social service providers in the public and non-governmental sectors.²⁷ At the same time, the researchers believe that this is only declared, and in real conditions, non-governmental organizations do not have the opportunity to compete on equal terms with state and municipal institutions that provide social services for access to budget funding.

²⁶ *The Law of Ukraine "On Social Services,"* 18 BULL. VERKHOVNA RADA (VVR) 73 (2019).

²⁷ *Id.*

The said Law, in the researchers' opinion, should contain sanctions for individual officials and units of state institutions that directly or indirectly impede non-governmental institutions from providing social services on the terms of social order, especially at the stage of obtaining such a right.

It would also be advisable to adopt a separate Law of Ukraine "On Social Order in Ukraine." Such an initiative was discussed among the professional community in 2009, but Ukrainian lawmakers rejected it, and after that there were no other attempts to create legislative initiatives in this area, which negatively affected the development of the social services market in Ukraine.

Currently, a new attempt to draft a separate Law of Ukraine "On Social Order" is relevant. The development of this draft Law is an important task for both the expert community and the circle of lawyers involved in improving the legal framework for social work. The Law of Ukraine "On Social Order" should clearly define the procedure for organizing social order in general and within the framework of work with

specific groups of clients, in particular children. Within the framework of this Law, the procedure of transparent participation of all those wishing to participate in the competition for social order should be prescribed. The said Law should also answer the question of initiating the social order procedure and its direct funding.

The possibility of combining funding for social order from different budgets (state, community, using private funds and donor support from foreign and international organizations) could be quite progressive. In this case, the organization that will implement the social order will be able to provide better quality social services, including to children and their families in difficult life circumstances.

In view of the importance of the development and adoption of the draft Law "On Social Order," it is advisable to activate the entire professional community of social workers and lawyers, specialists in social legislation. During the military actions that are currently taking place in Ukraine, it is very important to expand the number of tools that could help

Ukrainians, especially children, to receive comprehensive and quality social services. For this purpose, in the researchers' opinion, today it is necessary to consolidate the expert community of social workers to support the development of the social services market, including through the mechanism of social order. Representatives of this environment should take part in: development of the draft Law or even several alternative draft laws "On Social Order;" public discussion, preparation for consideration in the Verkhovna Rada of Ukraine, improvement in the process of parliamentary consideration, and implementation and analysis of the results of the implementation of actions in the perspective of the adopted Law of Ukraine "On Social Order." If the Ukrainian expert community manages to consolidate around the creation of the draft Law "On Social Order," the researchers do not exclude that this will be the beginning of a new qualitative stage of development of the social services market and an important stage in the formation of the Ukrainian social code.

The priority of children and their families for the provision of quality social services should be defined in all subsidiary legislation on child protection. The importance of this priority in the field of social order in Ukraine should be based on the fact that children suffer the most during emergencies, and any delay due to the inability to provide them and their families with quality social assistance worsens the situation and even increases the risks to their lives. In view of that children are the future of both modern Ukrainian society and the state, government agencies, local communities, social services and relevant departments should be able to provide social services to children and their families on an emergency basis. In such a situation, the mechanism of social order has one of the highest coefficients of efficiency precisely to meet the immediate needs of families with children in a qualitative way, and in some emergency cases may provide for the procurement of social services through social order under a shortened procedure.

VII. CONCLUSIONS AND FURTHER PERSPECTIVES OF THE RESEARCH

Social order is a technology of meeting the needs of the population in social services on a competitive basis by state and non-governmental organizations of relevant competence. Social order is formed by the state or community taking into account the need for the nomenclature and volume of requests from people in difficult life circumstances. Today, in Ukraine, social order remains an innovation in the field of social services for children and their families, although for about 20 years there have been regulatory mechanisms that allow for the implementation of social services for children using the technology of social order. Today, the volume of social services based on this technology is minimal both in terms of the volume of services provided and in terms of financial resources. One of the main mechanisms for further development of social services provision through the mechanism of social order is improvement of the relevant legal framework, in particular the Law of Ukraine "On Social Services" and other elements of this framework. The current

problem is the lack of a law that would regulate the sphere of social order to the maximum extent possible. This role could be fulfilled by the Law of Ukraine "On Social Order," which should be directly developed, finalized, maintained, and implemented by a broad representation of the professional community of social workers of Ukraine.

In the future, the topic of researching the effectiveness of the regulatory framework will not lose its relevance for the entire system of social services in Ukraine, as well as the problem of researching the development of social order in the framework of providing social services to various categories of the population, including children and their families. Ukraine's integration into the EU can synchronize such research with scientists from the countries of the united Europe, which will be the beginning of Ukraine's entry into a unified European social space.