



Non-governmental organisation “Bureau of Social and Political Developments”

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Stocktaking of Social Sector Reform Processes in Ukraine

Contract No. 43190817

Task 3: Analysis of legislative and strategic documents in the field of social sector reform

OVERVIEW OF THE ANALYSIS' CONCLUSIONS

Introduction

The contract's objective is to consolidate the existing knowledge on and results of the social sector reform in Ukraine, identify gaps and bottlenecks in planning and implementation of the reform, and develop recommendations on further steps in the social sector reform in Ukraine.

The contract envisages the following activities (tasks): 1. Mapping of stakeholders in the social sector reform processes in Ukraine. 2. Analysis of the stakeholders' vision of the social sector reform and analysis of stakeholders' activities in support of the reform. 3. Analysis of legislative and strategic documents in the field of the social sector reform. 4. Analysis of gaps and bottlenecks of the current social sector reform processes. 5. Analysis of the development and introduction of social services standards in Ukraine.

1. General Features of the Legislation Regulating the Social Sector

The hierarchy of laws and regulations is an important feature of Ukraine's legal framework, which has been in development throughout 25 years of independence. This hierarchy has the following features:

- It carries simultaneously the ideology of Soviet, post-Soviet, European, and international law-making as well as the law-making of CIS countries.
- In different periods, lawmakers based their decisions on different political factors against the backdrop of different state of the balance of power between the President, the Parliament, and the Cabinet of Ministers, which shifted three times.
- The number of legal documents – both developed and under development – makes the social legislation unwieldy and complicated. For example, in Ukraine's legal classification, the model of social sector as an instrument of human development borders on three sections: Section 21 – “210.000.000 Labour, Employment, Social Insurance and Social Security. Public Service”, Section 22 – “220.000.000 Education”, and Section 25 – “250.000.000 Health Care.” Section 21 alone consists of 101 subsections and paragraphs with references to **over 4,000 legal documents**.
- Strategic documents set global tasks, and oftentimes those tasks remain pure declarations and good wishes.

Taking into account the number of legal documents that require amending and total revising, the system of law-making is in need of considerable changes, above all – the legislative activities of the Parliament, the Administration of the President, and the Cabinet of Ministers. It is of particular importance in view of the Ukraine's commitment to harmonise the majority of its legal acts with those of the EU in the next two to three years, as stipulated in the *Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part* and the *Action Plan for Ukraine 2015-2017*.

2. Two Approaches to the Social Sector Reform

Since 1991, independent Ukraine has been using two antipodal approaches in reforming its social sector: the **social approach** and the **pragmatic approach**. Both have exerted significant influence over strategic legal documents and their social contents.

Under the **social approach**, social sector is an instrument to ensure social and labour rights as well as an instrument to fight poverty, both poverty and the need to protect the rights being the result of economic reforms. This approach has contributed to the increase in social burden on the state budget.

The **pragmatic approach** considers social sector as secondary to economic development. This approach has contributed to the decrease of state budget expenditures.

The Constitution of Ukraine of 1996 defined Ukraine as a “social” state, thus firmly securing the social approach in financing of the social sector and practically *condemning social reforms* and optimisation of state budget expenditures *to failure*.

Being unable to fulfil all guarantees and social commitments of the state, social policy has rather become an instrument to buy votes at elections. That explains why core strategic documents on reforming social sector saw the light during the periods of intense political and electoral campaigns.

With passing of the Law “On Preventing Financial Catastrophe and Establishing Pre-Conditions for Economic Growth in Ukraine” in 2014 as one of the first laws in the reform package and introducing radical changes into the ideology of the Government’s achievements and in its action plan, the new reformative government chose the pragmatic approach, in some respects in its very radical form.

Throughout all years of independence, the efficacy of economic reforms and approaches to the financing of social sector have been vigorously questioned. The eminent Ukrainian economist Lukin wrote in 1994: “Under the veil of radical economic reforms in Ukraine, we are witnessing the process of artificial shrinking of its industrial and agricultural production and infrastructure – crucial areas for the resiliency of the state and society.”¹ Furthermore, in his address to Verkhovna Rada in 1994, the President of Ukraine stated: “The policy of price increase and parallel curb on salary rates increase is an economic nonsense. Market is social by its definition as a place where the satisfaction of population’s effective demand is stimulated by an active economic policy of the government.”²

3. State Budget and Social Sector

The budgetary policy goes at cross-purposes with the attempts to widen social guarantees and ensure social rights in accordance with the international treaties.

The budgetary system of the social sector of Ukraine bears the following features:

- The large number of officially registered target groups, by social and professional attribute, entitled to diverse social benefits and subsidies.
- The Government’s tendency to increase the number of recipients of social benefits.
- Ineffective measures to ensure the targeting of social benefits.
- Ineffective use of budgetary funds.
- Chronic excess and rapid rise of state budget liabilities, which lead to constant adjustments of the state budget and tax legislation as well as to difficulties in administration of taxes and in tax forecasts.

4. Directions of the Reform of Social Sector Legislation

4.1. Types of Strategic Documents

Strategic documents in the area of social sector reform can be grouped into several blocks:

- **Complex presidential strategies** became a group of separate strategic documents that defined key reform directions in Ukraine. These documents were developed either on the basis of a president’s election programme or as a preparation for an upcoming presidential election.
- **Social strategies** focused on resolving acute social problems, such as demographic issues,

¹ Lukinov, I. “Economic Science and Public Economic Policy.” *Economy of Ukraine* No 5 1994: 3.

² <http://zakon4.rada.gov.ua/laws/show/216/94-%D0%B2%D1%80>

poverty, and unemployment. Such strategies recur every several years and exert an important influence on the legal framework for the social sector reforms.

- **European integration block** comprises legal documents that ensure European integration and facilitate the approximation of the Ukrainian legislation to the EU's.
- **Decentralisation** is a separate area in the legal framework aimed at decentralisation and denationalisation of the social sector. These legal acts are playing an increasingly important role in the social sector reforms.
- **International regulatory documents** comprise the documents ratified by Ukraine that lie outside the domains of decentralisation and European integration and focus on the protection of social and labour rights (these are predominantly UN documents, particularly ILO's).

4.2. Complex Presidential Strategies

On the eve of the signing of the EU- Ukraine Association Agreement, Ukraine adopted several strategic documents that considered economic development and social policy issues in a quite balanced manner. Many strategic documents envisaged that reforms in the social sector should stabilise the budget through the increase in efficiency of expenditures (transition to targeted social assistance, measures to stabilise the pay-as-you-go pension system, change of principles and mechanisms of financing the health care and education sectors). Another important direction of reforming the budgetary policy before 2014 was the use of performance budgeting for budgets at all levels. The reform envisaged amending the Budget Code to provide a legal definition of performance budgeting and introducing a system of monitoring and evaluation of budgetary programmes efficiency.

All complex presidential strategies³ carried the same common features:

- In setting strategic goals for the legal framework of the social sector, they relied on regulatory documents in the areas of European integration, decentralization, and international documents governing social and labour rights.
- They became the basis for the development of packages of regulatory documents (action plans, reports, legal acts) on implementation of strategic directions for next several years.
- The strategies considered social issues not in the context of systemic work to ensure sustainable (human) development or to increase the cost of human capital, but rather from the viewpoint of resolving social problems encountered by society in times of political and economic crises.
- They considered economic aspects as primary elements and social issues, to a large degree, in the context of budgetary resource optimisation.

Several “key points” dominated the process of establishment of the legal framework of the social sector throughout all the years of the framework's development. Later on, strategic documents in the social sphere have always included them. The key points are:

- Social sector's dependence on the continuous radical economic reform.
- Decentralisation and denationalisation of the social sector, including social services.
- Translation of the brunt of social expenditures from the central (state) level to the regional and local levels.
- Continuous pension, medical, and education reforms.
- Engagement of non-public sector.
- Special programmes of protection of low-income categories of population and indexing cash benefits to actual inflation rates.
- Compensations for utility payments.
- Transfer of social infrastructure to the local level.
- Ensuring targeted social policy.

³ Key Social Policy Directions for 1997-2000 (*1997*), Ukraine: Advancement into 21 Century. Economic and Social Policy Strategies 2000-2004 (*2000*), On Key Social Policy Directions until 2004 (*2000*), The Strategy of Economic and Social Development of Ukraine for 2004-2015 “On the Path of European Integration” (*2004*), Economic Reforms Programme 2010-2014 “Prosperous Society, Competitive Economy, Effective State” (*2010*), Sustainable Development Strategy “Ukraine 2020” (*2015*).

- Monetisation of privileges.

4.3. Social Strategies

The strategies called to resolve social problems⁴ entailed activities that required additional funding, thus exerting additional burden on the state budget. For example, the *Strategy of Demographic Development until 2015* envisaged, among other things, further expansion of support to children, families, and youth, the expansion of activities of Centres of Social Services for Families, Children, and Youth as well as an increased funding for children and families. The bulk of activities involved the provision of social services to different categories of children, such as street children, neglected children, orphan children and children deprived of parental care, as well as social adaptation of children in difficult life circumstances.

Every strategy required the development of additional regulatory documents to ensure the implementation of its objectives. Oftentimes, the issues tackled by the strategies were interrelated; the activities, therefore, were duplicated in different documents.

An important feature of these strategies lies in the use of recurring objectives from one strategy to another, for instance:

- to improve the targeting of state social assistance;
- to substitute social services for individual social benefits;
- to shift from budgetary financing of state institutions to programme budgeting of civil society organisations that should provide social services, such organisations competing for public funding;
- to transfer the authority for planning and financing social services and organising social services delivery to local self-government bodies.

In their development, the social strategies relied exclusively on the social approach to the legal framework of the social sector reform.

4.4. European Integration

The approximation of Ukrainian legislation to the EU legal norms covered a wide variety of topics, among which the social sector was not always popular. The block of European integration documents consists of the documents developed in the framework of bilateral cooperation and strategic documents developed at national level as a result of political processes. The social sector structure used in the European integration documents was not established and varied from document to document. The range of social issues also varied from global “putting in place a well targeted social security system so that the social aspects of the transition to a market economy are taken into account” (as presented in the European Council Common Strategy of 11 December 1999 on Ukraine) to “the health care and life protection of people, fauna and flora” (as presented in the *National Programme on Approximation of Ukrainian Legislation to Legislation of the European Union* of 2004). The European integration was the most systemic direction of the reform of the Ukrainian legislation, funded by international donors and the European Union. After signing the EU-Ukraine Association Agreement, Ukraine faces global challenges in approximation of its legislation to the EU norms.

4.5. Decentralisation

The strategic documents took on the issue of decentralisation practically during the first years of building of the Ukrainian independent state. The decentralisation process took a parallel course with the development of local self-governance, the administrative and territorial reform, and the denationalisation of the social sector. Both decentralisation and denationalisation envisaged that the brunt of social expenditures would be transferred to the local and regional levels.

In the legislative framework for decentralisation, the pragmatic approach dominated. The

⁴ Key Social Policy Directions for 1997-2000 (1997), Key Directions of the Development of Ukraine’s Labour Potential until 2010 (1999), Poverty Reduction Strategy (2001), Concept Note on Demographic Development for 2005-2015 (2004), Demographic Development Strategy until 2015 (2006), Strategy of Reforming the System of Social Services (2007), Strategy of Reforming the System of Social Services Delivery (2012), National Strategy for Human Rights until 2020 (2015), Poverty Reduction Strategy (2016).

majority of legal documents put sustainable development, the increase in welfare of population and the reduction of poverty and unemployment as the main goal of the development of the regions. The decentralisation also provided for the introduction of minimum social standards and effective social security mechanisms regardless of economic potential of a region as well as for local budget planning based on secured financial limits.

After 2014, the pragmatic approach to the legal framework of decentralisation became mainstream.

The health care, education, and social service delivery system reforms all follow the same pattern:

- optimisation of state institutions;
- development and calculation of a minimum package of services (for healthcare services and services in the social sector) and introduction of a methodology to cost these services;
- lack of coordination between the decentralisation vectors of the social sector reforms and the reforms pursued by relevant ministries (Ministry of Education and Science, Ministry of Health, and Ministry of Social Policy);
- lack of a common approach to the issue of delegated and intrinsic authorities in the delivery of social services at the local level.

In any event, the decentralisation of social sector progresses extremely slowly and requires additional adjustments in the logic of the reforms.

4.6. Legal Documents Governing the Protection of Social and Labour Rights of the Population

Protection of social and labour rights is a separate block in the legal framework of the social sector development. This block consists of many diverse international documents and constantly grows.

International documents are an instrument of protection of social and labour rights of working population and socially disadvantaged groups of population and must ensure a consensus among the parties to social dialogue on public policy and legislation balanced in terms of socio-economic agenda. These documents became the tool in the hands of trade unions to influence the reforms of the social sector and contributed to the domineering role of the social approach, which considered social policy only in terms of **protecting social and labour rights, reducing poverty, and surmounting the results of economic reforms**, rather than a policy to spur the replacement of population and ensure capitalisation of human capital.

5. Peculiarities of the Reform Processes

5.1. Stakeholders to the Process of Enhancement of Social Legislation

An important reason why stakeholders participate so actively in legislative processes is that by doing so they attempt to secure funding for their own organisations or institutions and target groups of population the stakeholders focus on. For instance, every public provider of social services that works with different target groups tries to save the funding of institutions and the top-down governance system and to lobby the legislative amendments that will secure the interests of different service providers. Ministries and other parties are also interested in the development of legal documents because if such documents are included in a ministry's work plan and thus monitored, the ministerial staff have to submit the document's draft by a set deadline. A lot of civil society organisations' experts also have to report on their activities and results; and draft legislation is a good reporting means. Naturally, every strategic document provides for the development of subsequent legislation that must ensure the implementation of strategic vectors.

Such large number of strategies generates an avalanche of legal documents of different levels; and quite often, these documents contradict one another. Oftentimes, the stakeholders impede the development of a common vision that would allow systemic reforms to come to fruition. Additionally, legislative activities allow to report not on the reform, but on a mere draft piece of legislation.

Social partners working in the framework of the Law of Ukraine "On Social Dialogue in Ukraine" – trade unions and associations of employers – are also important stakeholders. Trade unions are the main driving force behind the reforms in social legislation in accordance with

international legal documents and treaties. While trade unions have been carrying out the social approach to the reforms of legislation, associations of employers have been pursuing the pragmatic approach. Working out the balance between the pragmatic and social approaches in the framework of social dialogue establishes conditions for finding consensus among stakeholders.

5.2. Contradictions between the Strategic Documents

Contradictions between the strategic documents are often the result of the issues in the reform of public management. The strategic documents developed in the framework of the social sector reform very often duplicate the activities from one another, call for the development of a large number of regulatory documents, and attempt to comprehend as many strategic topics as possible in one single strategy. Furthermore, according to “The Reform Progress Monitor” (2015)⁵, health care, education, and public management reforms progress too slowly and lag considerably behind the deadlines set in the reform plans of both the Cabinet of Ministers and the Administration of the President. That poses threats to the reforms in the social sector and contributes to the disaffection of population.

5.3. Coordinating Bodies

Every direction of legislative activities – European integration, decentralisation, international treaties and recommendations – has its own coordinating bodies, own information resources and own progress indicators on the achievements of the reforms. These bodies receive funding from different sources and have different structures, which depend to a different extent on the issues in the reforms of the public management system.

European Integration. *The National Reform Council* functions as a coordinating body for reforms. It does not have a vertical structure down to the regional level nor does it have any representative capacity. The National Reform Council works on priority reform areas under the Administration of the President of Ukraine and through dedicated reform teams in central executive authorities. It is funded by the European Bank for Reconstruction and Development.

Decentralisation. *The Offices of the Reforms* have a branched vertical structure, being represented in every region of Ukraine, and carry out practical tasks on implementation of decentralisation. They were established in accordance with the Memorandum between the Ministry of Regional Development, Construction, Housing and Utilities and the Association of Cities of Ukraine; they are funded from the resources of international donors. The Offices provide consulting, information and methodological support at regional and local levels, following decisions of central executive authorities. They do not have any representative capacity either.

International Documents. *The National Tripartite Socio-Economic Council* provides representative function for social partners, who play a key role in ensuring a balanced socio-economic development of the state. The Council has a ramified structure in every region and in every branch of economy. Its work is conditional on the policies of the Cabinet of Ministers of Ukraine, local executive bodies, and local self-government bodies, which participate in the tripartite Council and its regional branches as their third party.

5.4. Indicators of the Progress and Achievements of the Reforms

Indicators on the strategic documents implementation analysed by each document’s respective area corroborate that the decentralisation block is overarching. The analysis of indicators shows that the development of social sector in view of decentralisation is the closest one to optimal. The indicators for the development of the social sector in viewpoint of decentralisation are comparable to the basic set of indices used in the calculation of the Human Development Index. The Sustainable Development Strategy “Ukraine 2020” provides no indicators to assess its progress in the context of social sector reform and the indicators proposed by the Poverty Reduction Strategy fail to both realise complex approaches to the social sector and consider all the constituent elements of human development.

6. Proposals on Enhancement of the Legislative Framework of the Reforms

⁵ http://reforms.in.ua/sites/default/files/upload/broshura_a4_ukr.pdf

The forthcoming report will analyse the issues with the reforms in more detail and will provide proposals on how to enhance the reform processes. Here we are providing our recommendations on how to refine the legislative process.

Upon the results of the current analysis, we can provide the following recommendations on legislation regulating the social sector:

1. Introduce amendments to the Constitution of Ukraine to enable the reform of the social sector.
2. Abrogate all regulatory documents enacted during Soviet times and bylaws based on them.
3. During a transitionary period, ensure the curtailing of the legislation pertaining to social sector by means of its codification.
4. Impose a moratorium on the development of new “social strategies” and revise all strategic documents pertaining to social sector to reconcile them with one another.
5. Ensure the coordination of the social sector reforms with decentralisation processes as the most effective and pragmatic direction of the reforms.
6. Condense the target groups to five core groups:
 - Family & children.
 - Youth.
 - Elderly (pensioners, veterans).
 - People with disabilities.
 - Other social groups (the homeless, people returning from detention facilities, people living with HIV, groups at high risk of HIV infection, etc.)
7. Raise the status of the National Tripartite Socio-Economic Council to implement coordination and representation functions in the social sector reform. Ensure different forms of participation in the Council for stakeholder (both experts and representatives).
8. In accordance with the Model of Social Sector as an Instrument for Human Development, develop a set of indicators for the holistic vision of the social sector reform.