

CURRENT STATE AND DEVELOPMENT PERSPECTIVES OF LEGAL REGULATION FOR PROVIDING COSMETOLOGICAL SERVICES IN UKRAINE

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ABSTRACT

It has been indicated that the rapid development of the market of cosmetological services in Ukraine requires proper legal regulation of cosmetological activities. The authors have formulated problematic issues that need to be resolved immediately, namely: not defined subjects who provide cosmetological services, in particular, there is no definition of the legal status of a nurse in cosmetological manipulations and features of performing professional duties by such a subject or a nurse; lack of regulatory requirements for the safety of cosmetic products; lack of clear rules of control (supervision) over the development, production and circulation of cosmetic products, etc.

The problem of assigning cosmetological services to the sphere of consumer services has been studied. It has been stated that a clear regulatory definition of cosmetological and cosmetic services, the establishment of criteria for their delimitation, as well as enshrinment in the legislation of cosmetological services as a kind of consumer services should contribute to a common understanding of legislative requirements in the field of taxation both by revenue officers and entities of businesses activities.

The authors have substantiated the necessity: to adopt the Law of Ukraine “On cosmetological activity in Ukraine”; to make changes to the Nomenclature of Medical Specialties approved by the Order of the Ministry of Health of Ukraine of February 22, 2019 No. 446; to supplement Section V “Other Nomenclatures of Medicinal Specialties” with the clause “Cosmetology”, which can assist to create a legal basis for licensing cosmetological services; to develop and approve the Procedure for state accreditation of a cosmetological institution and the Standards of state accreditation of a cosmetological institution in order to establish control over the subjects who provide cosmetological services; to amend the State Pharmacopoeia of Ukraine and supplement it with the Article “Cosmetic products”, which would contain requirements for the quality of ingredients in cosmetic products, safety indicators and production conditions; to amend the Handbook of Qualification Characteristics of Employees’ Professions approved by the Order of the Ministry of Health of Ukraine of March 29, 2002 No. 117, regarding the consolidation of the profession of cosmetologist and development of appropriate qualification requirements for it, etc. The authors have pointed out the need to strengthen the control by the State Service of Ukraine for Medicinal Products and control over drugs, over the circulation of so-called cosmetics, which are medicines according to the definition. It has been offered to supplement the list of persons who have the right to draw up the minutes on administrative

offenses, as well as the classification of administrative liability in the field of providing cosmetological services in Ukraine depending on the subject of the tort in order to expand the powers of the subjects of supervision and control in the researched area.

Keywords: Consumer Services, Cosmetological Services, Cosmetic Services, Subject of Cosmetological Services Provision, Production and Circulation of Cosmetic Products, Administrative Responsibility, Legal Regulation

INTRODUCTION

The market for cosmetological services is currently being developed rapidly around the world, covering almost all segments of the population. Thus, the EU is one of the largest cosmetological markets and the forecast for an increase in the number of clients for cosmetologists will grow at a rate of 10% during 2016-2026 according to the US Bureau of Labor and Statistics (World Cosmetic and Dermatology Conference (2019)). Ukraine has no such statistics, as well as data on complications that arose after receiving low-quality cosmetological services. Besides, the Ukrainian legislation regulating the procedure for providing cosmetological services does not meet the requirements of this sector, which is currently developing very rapidly. Most of the State and National Standards of Ukraine are outdated, there are no regulatory requirements for the safety of cosmetological products, there are no clear rules of control (supervision) over the production and circulation of cosmetic products, the range of subjects of regulation of the market for providing cosmetological services is not defined. The result is a rapid dynamics of sales of counterfeit cosmetic products in the country and violations of the rights of consumers of cosmetological services.

It should be noted that most countries have special legislation regulating the provision of cosmetological services and the activities of cosmetological institutions; contains specific requirements for those who provide such services (special education and a license for a specific type of cosmetological services); determines specific subjects of control and supervision; provides specific sanctions for violations of legislation on in regard to the provision of cosmetological services, etc. Unfortunately, Ukraine still has no special legislation aimed at regulating the market for the provision of cosmetological services.

In addition, Ukraine has not formed a comprehensive state policy in the field of regulation of the market for providing cosmetological services. It negatively affects the legal opportunities to protect the rights and interests both of providers and consumers of these services. For example, there are facts when the subjects who provide cosmetological services commit illegal actions in the course of economic activity, which are manifested in violation of the rights and interests of consumers of these services. However, there is no liability in Ukrainian law that should be applied in such a case. The legislator does not also specify the liability in case of violation of professional duties by the subjects who provide cosmetological services, especially given the fact that such services are sometimes provided by persons who do not have any licenses or permits.

We believe that activities related to the provision of cosmetological services in Ukraine require special legal regulation and creation of an effective mechanism for consumers' rights protection. First of all, it is due to the fact that the Order of the Ministry of Health of the USSR "On measures to improve cosmetological care of population" dated from December 28, 1982 No. 1290, which contains an outdated list of cosmetological services and professionals who have the right to provide them, is still valid in Ukraine (The Ministry of Health of the USSR (1982)). Besides, such services are currently often provided by people who have not got either medical or pharmaceutical education, or even no education at all. Thus, the above indicates the need for conducting research of the modern state of legal regulation for providing cosmetological services in Ukraine and the formation of propositions aimed at its improvement.

RESULTS AND DISCUSSION

One of the main tasks of Ukraine on the way to the adoption of European standards is the necessity to improve the legal regulation of state and public life. Particular importance in this area is given to the field of cosmetological services, the inadequate level of which is inextricably connected with the possibility of harm to health and even human life. At the same time, the state has enshrined the protection of life and health, the establishment and support of human rights and freedoms as its main responsibility. Accordingly, the assessment of the current state of legal regulation of cosmetological services should ensure the identification of its shortcomings and gaps, as well as become a scientific basis for outlining ways to improve it.

The legal regulation of the provision of cosmetological services is inextricably connected with the existence and protection of the rights and obligations of the subjects of legal relations in this area. As known, it is the Constitution of Ukraine (Law of Ukraine, 1996) that defines the basic rights, freedoms and liabilities of man and citizen in the main spheres of public life. Analysis of the provisions The Constitution of Ukraine allows to distinguish the following rights related to the provision of cosmetological services: "Everyone has the inalienable right to life" (Article 27); "Everyone has the right to engage in entrepreneurial activity, which is not prohibited by law. ... The state protects the rights of consumers, controls the quality and safety of products and all types of services and works..." (Article 42); "Everyone has the right to health care, medical assistance and medical insurance. ... The state creates conditions for effective and accessible medical care for all citizens. ... The state promotes the development of medical institutions of all forms of ownership" (Article 49); "Everyone is obliged to pay taxes and fees in the manner and amounts prescribed by law" (Article 67). Thus, the Constitution of Ukraine does not directly regulate the functioning of the sphere of provision of cosmetological services, but it is the basis for the adoption of normative legal acts that directly regulate such activities.

Since the activity of providing cosmetological services is covered by legal relations in the field of health care, the first piece of legislation related to the legal regulation of the market of cosmetology services should be considered the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care", which in terms of regulation of the functioning of the market of cosmetological services contains provisions on basic principles of formation of the state health care policy; the procedure for implementing the state health care policy; outlining a system of standards in the field of health care, namely: state social norms and industry standards; rules of medical and pharmaceutical activities; state control and supervision in the field of health care (Sadovenko, 2021).

The next legal act that regulates the market of cosmetological services is the Economic Code of Ukraine (Law of Ukraine, 2003a), certain norms of which regulate: the concept and types of economic activity (entrepreneurship and non-commercial economic activity) (parts 1-2 of Article 3); the procedure for participation of the state, public authorities, local governments in economic activity (Article 8); main directions of economic policy of the state (Article 10); means of state regulation of economic activity (Article 12); principles of licensing in economic activity (Article 14); specifics of technical regulation in economic activity (Article 15); the place of taxes in the mechanism of state regulation of economic activity (Article 17); the content of state control and supervision of economic activity (Article 19); key aspects of protection of the rights of business entities and consumers; general principles of economic commercial activity (entrepreneurship) (Article 42), etc.

Since business entities in the provision of cosmetological services are aimed at making a profit, an important place in the legal regulation of these services has the Law of Ukraine "On Entrepreneurship" (Law of Ukraine, 1991a). This law determines the general legal, economic and social principles of entrepreneurial activity (entrepreneurship) by citizens and legal entities on the territory of Ukraine, establishes guarantees of freedom of enterprise and its state support. The procedure for state registration of business entities, in particular those that intend to provide

cosmetological services, is regulated in detail in Articles 14-34 of the Law of Ukraine "On State Registration of Entrepreneurs and Public Associations" (Law of Ukraine, 2003b). Since the economic activity of the provision of cosmetological services is subject to licensing, public relations in this area of activity are regulated by the Law of Ukraine "On licensing of economic activities" (Law of Ukraine, 2015). It should be noted that paragraph 15 of Part 1 of Article 7 of this Law contains an exhaustive list of economic activities that are subject to licensing. Herewith, the type of economic activity, which includes the provision of cosmetological services (as a kind of medical services), is called "medical practice". At the same time, the activity of providing cosmetological services carried out by entities engaged in the economic activity of providing household services to the population is not subject to licensing and therefore does not require special education. Therefore, we support the necessity to amend the Nomenclature of Medical Specialties, approved by the Order of the Ministry of Health of Ukraine dated 02.22.2019 № 446 (The Ministry of Health of Ukraine, 2019), and supplement Section V "Other Nomenclature of Medical Specialties" with "Cosmetology", which will create a legal basis for licensing cosmetological services (Sadovenko, 2021).

Entrepreneurs, carrying out activities in the market of cosmetological services, which aims to make a profit, are obliged to pay taxes and fees in accordance with the names, amounts and procedures established by the Tax Code of Ukraine (Law of Ukraine, 2010). Regarding the taxation of business activities carried out today by manufacturers and providers of cosmetological services, we note the following. Ukrainian law does not have a clear answer to the question of whether an individual entrepreneur who provides cosmetology or cosmetic services has the right to be on the 1st group of the single tax. The list of types of services provided by single taxpayers of the first and second groups is defined in paragraph 291.7 of Article 291 of the Tax Code of Ukraine (Law of Ukraine, 2010). So, it is necessary to find out which services (cosmetic or cosmetology) belong to the field of consumer services. In indent 36 of paragraph 291.7 of the Tax Code of Ukraine, among the list of activities related to household services, the services of hairdressers are indicated, at the same time there is no explanation of what exactly belongs to these services. According to paragraph 96.02 of the Classification of Economic Activities (CEA 009: 2010) "Provision of services by hairdressers and beauty salons" includes hair washing, straightening and trimming, styling, colouring, toning, curling, hair straightening and similar services provided for men and women, shaving and trimming of beards, facial massage, manicures and pedicures, make-up, etc. Thus, the types of cosmetological services, which by the way are of a non-exclusive nature, belong to the sphere of household services, and therefore, business entities that provide them may be payers of the single tax for the first group. Regarding the taxation of cosmetological services, the issue is controversial. We believe that a clear regulatory definition of cosmetology and cosmetic services, establishing of criteria for their delimitation, as well as enshrining in the legislation of cosmetological services as a kind of household services will contribute to a common understanding of legal requirements in the field of taxation by both taxpayers and businesses.

The Law of Ukraine "On Consumer Protection" is important in the regulation of public relations that arise between providers and consumers of cosmetological services (Law of Ukraine, 1991b), which establishes the rights of consumers and determines the mechanisms of their protection. The application of administrative liability for improper provision of cosmetological services is in accordance with the Code of Ukraine on Administrative Offenses (Law of Ukraine, 1984). This normative act does not contain a specific list of administrative offenses in this area. However, we consider it possible to apply by analogy some of its rules but provided to the committing of offenses in the provision of cosmetological services.

Bylaws are of special importance in the administrative and legal regulation of the market of cosmetological services in Ukraine. They give grounds to talk about the affiliation of discussed above legislative acts to the regulation of public relations in the functioning of the market of cosmetological services.

For example, it is from the content of the national classifier of Ukraine "Classification of economic activities", which was adopted and entered into force by the order of the State Committee of Ukraine for Technical Regulation and Consumer Policy from 11.10.2010 № 457 it follows that in the structure of the classification of economic activities a separate class of economic activity 8622 is distinguished: "Specialized medical practice" chap. 86: "Health care" of section Q: "Health care and social assistance". For its part, this class of economic activity is the manipulations associated with damage to the skin and mucous membrane, in particular with the use of medical equipment and tools (the State Committee of Ukraine for Technical Regulation and Consumer Policy, 2010).

Only from the provisions of the "Handbook of qualification characteristics of employees' professions Issue 78 Health care", approved by the order of the Ministry of Health Care of Ukraine from 03.29.2002 № 117 (hereinafter – HQCE) (the Ministry of Health of Ukraine, 2002) it can be concluded that the plastic surgeon as a professional in the field of medical affairs (Item 93 of the subsection "Professionals in the field of medical business (except dentistry)" of the section "Professionals") must know such a feature of plastic surgery as "cosmetology support of plastic surgery". That is, plastic surgery should be performed by a health care professional. A similar conclusion is possible with respect to:

- A doctor-dentist-therapist of the highest qualification category, who must be able to carry out "cosmetic restoration work" (the Ministry of Health of Ukraine, 2002) (item 5 of subsection "Professionals in the field of dentistry" section "Professionals" of HQCE);
- Pharmacist, qualification requirements for the education of whom allow full higher education (specialist, master) in the field of "Pharmacy", speciality "Technology of perfumes and cosmetics."

Specialization in the speciality "Pharmacist-cosmetologist" (item 1 subsection "Professionals in the field of pharmacy" section "Professionals" of HQCE) (Sadovenko, 2020 p. 67). Therefore, the opinion on the necessity to amend the Handbook of Qualifications for Occupations, approved by the Order of the Ministry of Health of Ukraine dated 03.29.2002 № 117, regarding the consolidation of the profession of cosmetologist and the development of appropriate qualification requirements, should be supported (Teremetskyi & Sadovenko, 2020). We believe that this will allow to legitimize the entities providing cosmetological services, to develop criteria for licensing business entities - providers of cosmetological services and to provide administrative liability for their violation.

Even more important in terms of understanding the professional composition of the subjects of cosmetological services are detailed provisions of HQCE regarding qualification characteristics (sections: "Tasks and responsibilities", "Must Know", "Qualification requirements") of such professions as a pharmacist-cosmetologist (item 4 of the subsection "Professionals in the field of pharmacy", section "Professionals of HQCE) and a nurse in cosmetic procedures (item 30 of the section "Specialists" of HQCE). Herewith, it is interesting to note that the tasks and responsibilities of a nurse in cosmetic procedures are presented in such a way that the latter "provides cosmetic care to the population under the guidance of a doctor" (The Ministry of Health of Ukraine, 2002).

Problems of providing cosmetic care (some of which remain relevant today) in order to eliminate them were raised in the order of the Ministry of Health of the USSR "On measures to improve cosmetic care" from 12.28.1982 № 1290 (The Ministry of Health of the SRSR, 1982 issued on 12.28.1982), which is still valid. Also in force are the State sanitary rules and safety standards for the perfume and cosmetics industry, approved by the resolution of the Chief State Sanitary Doctor of Ukraine dated 07.01.1999 № 27 (The Chief State Sanitary Doctor of Ukraine, 1999). However, the provisions of this document are outdated, as these sanitary rules and product safety standards were developed based on EU Directive 76/768 /EEC of 27 July

1976 and contain a list of 412 substances that are prohibited for use as cosmetic raw materials and should not be included in the composition of cosmetics. At the same time in the new resolution of the Cabinet of Ministers of Ukraine "On approval of the Technical Regulation for cosmetic products" of January 20, 2021, № 65 the number of such substances is 1383 (The Cabinet of Ministers of Ukraine 2021).

Thus, the normative legal acts governing the production and circulation of cosmetic products in Ukraine do not meet the requirements of international standards and need to be updated. Therefore, the industry standard of Ukraine SSU 201-05-97 "Cosmetologist services. General technical conditions" (The First Deputy Chief State Sanitary Doctor of Ukraine, 1999), as well as State sanitary rules and norms (SSRN) 2.2.9.027-99 "Sanitary rules and safety standards for the perfume and cosmetics industry", which regulates the safety of cosmetics in Ukraine (The Chief State Sanitary Doctor of Ukraine, 1999), should be updated.

We believe that the issue of subjects of legal regulation of the market of cosmetological services deserves a separate study. Therefore, without reasoning in detail on the characteristics of their powers, we note the following. The President of Ukraine and the Cabinet of Ministers of Ukraine in the regulation of the market for the provision of cosmetology services perform a rule-making function by issuing decrees. The Ministry of Economic Development, Trade and Agriculture of Ukraine performs informative, advisory, control and regulatory functions. An important subject is the National Police of Ukraine, which, in accordance with paragraphs 2, 3, 4, 6 and 7 of the Regulations on it, monitors and supervises the observance of law and order by entities - providers of cosmetological services, manufacturers, and sellers of cosmetic products (The Cabinet of Ministers of Ukraine, 2015c). In case of detection of violations, the National Police of Ukraine (its authorized officials) in accordance with Article 255 of the Code of Administrative Offenses have the right to draw up protocols on administrative offenses (Law of Ukraine, 1984). The Ministry of Health of Ukraine (hereinafter - the MHU) has the greatest powers in the field of legal regulation of the market of cosmetological services in Ukraine. It issues normative legal acts that approve the State sanitary rules and norms for hairdressers of various types, the Nomenclature of medical specialities, requirements for continuous professional development of doctors, clarifications on the responsibility of medical workers, etc (The Cabinet of Ministers of Ukraine, 2015b). However, the MHU has no authority to control the production and circulation of cosmetic products. Therefore, we consider it expedient to supplement the Regulations on the MHU with these powers. We also propose to expand the powers of the State Service of Ukraine for Medicines and Drug Control (The Cabinet of Ministers of Ukraine, 2015a). In addition to the right to draw up protocols on administrative offenses in the field of production and circulation of cosmetic products, this service should be empowered to

1. Supervise the production of cosmetic products with the introduction of a system of proper manufacturing practice (GMP).
2. Determine the procedure for putting cosmetic products into circulation with the submission of a pre-sale notice of cosmetic products placed on the market by authorized persons
- 3) safely assess cosmetic products
3. Control and supervision of already manufactured products. These changes should be made to the Regulations for this service. The State Service of Ukraine for Food Safety and Consumer Protection is also endowed with control and supervisory powers, as well as powers to protect and safeguard consumer rights in the area of research (The Cabinet of Ministers of Ukraine, 2015a). This proves the lack of a comprehensive approach to the formation of a system of regulatory entities for the provision of cosmetological services in the area of research, which negatively affects its effectiveness, law enforcement activities of entities and, as a consequence, legal opportunities to protect the rights and interests of consumers of cosmetological services (Sadovenko, 2021). Therefore, there is a necessity to develop and implement a new approach to the objective regulation of the market for cosmetological services through a set of legal means.

CONCLUSION & RECOMMENDATION

The authors of the article have emphasized that there are frequent cases of violation of the rights of consumers of cosmetological services along with the rapid growth of the demand for such services. We talk about the use of cosmetic products that do not meet the requirements of the standards or the dates have been expired, counterfeit cosmetic products that contain toxic substances, etc. We believe that this situation is due to:

- 1) Imperfect regulatory base
- 2) The lack of basic legislative terminology of the market for providing cosmetological services
- 3) Not specified subjects who provide cosmetological services
- 4) The lack of regulatory requirements for the safety of cosmetic products
- 5) The lack of clear rules of control (supervision) over the development, production and circulation of cosmetic products, etc.

The result of improper legal regulation of the sector of providing cosmetological services is increased production and sale of counterfeit cosmetic products, manipulation of legislation by the manufacturers, violation of legislation on labelling, chaotic sales, misleading the consumer, difficulties of proving the facts of poor quality cosmetological services provided to consumers while court hearings, etc. In such circumstances, it is important to form a scientifically sound approach to understanding the relationship associated with the provision of cosmetological services and their proper legal regulation.

Legal regulation of the market for providing cosmetological services in Ukraine is the process of creating conditions necessary to protect the rights of consumers of cosmetological services by the assistance of legal means. It has been clarified that specific features of the current state of legal regulation of the market for providing cosmetological services in Ukraine are:

1. The lack of a single (unified) object of legal regulation, as a result, legal regulation of cosmetological services market affects various spheres of public relations, which include the health care, economic (entrepreneurial) activity, technical regulation and conformity assessment;
2. The dominance of the sublegislative (departmental) level of legal regulation of relations in the field of cosmetology and the provision of cosmetological services, which indicates the "secondary" attitude of the legislator to the proper regulation of public relations in this area;
3. Inconsistency of the existing legal regulation with the specifics of public relations in this area.
4. The importance of proper normative and legal regulation of the development, adoption and application of technical regulations and procedures for conformity assessment under such technical regulations in order to ensure the quality and safety of products used (sold) at the market for providing cosmetological services, which is inextricably linked to health care and protection of lives of such services' consumers.

It has been established that the legislation of Ukraine still has no administrative liability for improper provision of cosmetological services, and the existing liability is applied only to certain aspects of the activities of the subjects who provide them. The authors have proved the necessity of adopting a unified regulatory legal act, which would regulate legal relations in the researched sphere. It has been concluded that the current Ukrainian legislation regulating the market of providing cosmetological services, production and circulation of cosmetic products does not meet the requirements of international standards. Therefore, the cosmetology sector needs the harmonization of technical regulation with EU legislation, namely by the EU Regulation in the field of cosmetics No. 1223/2009, which should improve the quality and safety of cosmetic products.

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