



DOI: 10.54919/physics/56.2024.611au2

Topical issues of international legal protection of the rights of the child

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Abstract

Relevance. The growing global concern for child rights has prompted the development of robust international mechanisms to safeguard children's legal status.

Purpose. The purpose of the article was to identify and research international approaches to ensuring the system of child rights protection.

Methodology. In the research process, methods of analysis, synthesis, comparison, formal-legal, deduction, generalization were used.

Results. As a result, the main theoretical principles of protection, as well as protection of the fundamental rights of minors, were revealed. An analysis of the main legal acts establishing the special legal status of children at the international level was also carried out. Based on this, the study also analysed practical approaches to ensuring the legitimate interests of minors. The work defined and described the essence of various international legal approaches aimed at regulating the sphere of protection of the rights of young children. As a result, the priority of the rights of the child was established, and the essence of the main tools for their protection was also characterized.

Conclusions. The study highlighted that protecting children's rights is a key priority for the international community today. The results obtained in the study should be used to improve the modern system of protection of children's rights in Kazakhstan and increase the effectiveness of international cooperation in this field.

Keywords: juveniles; convention; crimes against minors; upbringing; interaction between states.

Introduction

In today's conditions, namely, sharp socio-economic changes and the spread of digitalization in the world, there is a change in approaches to the protection of human rights

as the highest value. The issue of ensuring and protecting the interests of minor citizens is gaining no less relevance. This is because children are the future of the nation, and therefore the further development of the state depends on

Suggested Citation:

Abulkairova B, Bidildaeva G, Imankulova A. Topical issues of international legal protection of the rights of the child. *Sci Herald Uzhhorod Univ Ser Phys.* 2024;(56):612-620. DOI: 10.54919/physics/56.2024.611au2

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the development and protection of their legal status. In addition, the development of information and communication technologies also affected the sphere of protection of children's rights, as the range of approaches to the organization of crimes, the victims of which are minors, has expanded. Thus, the priority task of each state is the development and consolidation of effective tools for the protection of the above-mentioned category of subjects.

It should be noted that violation of children's rights can occur not only within national borders but also internationally. This shows that the problem of protection and prevention of encroachment on the rights of minors is of an international nature [1; 2]. Thus, to effectively combat such crimes, as well as to ensure the normal development and education of the future generation, it is necessary to develop international cooperation in this area. Taking this into account, the research problem is the lack of unified approaches to understanding the mechanism of legal protection of children's rights. In addition, the question of the structure of this mechanism, its forms, and the institutions that allow its implementation is still unexplored.

In scientific doctrine, the positions of researchers differ, which allows one to reveal the research question from different angles. In particular, K.Zh. Kapsalyamov et al. [3] concluded that the level of protection of children's rights in the state reflects the level of its development as well as its prospects. He justifies this position by prioritizing the role of the child and his personality in current and future society. The issue of the possibility of using international instruments to protect the rights of minors remains unsolved. A.K. Kukeev [4] directly investigated the concept of an international legal mechanism for the protection of rights and established that its effectiveness depends on the level of its renewal. The researcher believes that the dynamic conditions of society's development oblige states to constantly improve existing legal instruments to protect the rights of minors. At the same time, he did not investigate specific types of instruments and forms of implementation of the international legal mechanism for the protection of the rights of young citizens. M.N. Sagidollaeva et al. [5] established that the system of protection of children's rights is multi-level; accordingly, it includes not only the global level but also the local one. It did not investigate the question of the hierarchy of these levels and did not reveal their role in ensuring the system of protection of children's rights. A. Erbulekova [6] concluded that it is the common duty of states to join their efforts to fight for the universal rights of children around the world. Its approach is based on the idea of international cooperation as a prerequisite for the effective development of minors responsible for shaping the future. A. Jomart and Zh. Davletbaeva [7] and O. Moroz et al. [8] proved that the organization of the system for the protection of children's rights should be based on accurate data on the state of protection of this category of population in specific regions. He believes that in this way it is possible to qualitatively identify the factors that influence the spread of crimes against children and eliminate them promptly.

The purpose of the study was to reveal the international system of ensuring the rights of minors. Several tasks were formed in the work, namely: to characterize the content of the mechanism for the protection of children's rights; to

study the provisions of normative legal acts that establish the rights of minors; to consider different forms of implementation of the international legal system of ensuring children's rights; to investigate the goals of the international mechanism for ensuring and protecting the rights of minors.

Materials and Methods

The analysis method was used to study the international legal mechanism for protecting children's rights. With the help of this method, the meaning of this institute was revealed, and its structure was expressed. The analysis was used to determine the role of child rights protection in the future development of the state. The main approaches in the international community to ensuring the interests of minors were also investigated using this method.

The synthesis method made it possible to establish a relationship between the development of society and the level of observance of children's rights in it. Based on this method, the dependence between different levels of protection of the rights of minors was established, and the relationship between them was also investigated. The synthesis was used in the research to reveal the features and principles of the implementation of the international system of regulatory and legal support and protection of children's interests.

The research used a comparative method to identify common and distinctive features between the approaches of Kazakhstan and other countries to the organization of activities of various institutions for the protection of children's rights. It was also necessary to consolidate the unity of the principles laid down in normative legal acts, as well as vectors of state policy in the field of ensuring the rights of minors.

This research belongs to the legal plane, and therefore it also used the formal-legal method. This method involved the study of various provisions of normative legal acts regulating the sphere of protection of the rights of minors at the international level. Accordingly, this method was used during the study of the Geneva Declaration of the Rights of the Child [9], UN Declaration on the Rights of the Child [10], Convention on the Rights of the Child [11].

Based on the deduction method, the study revealed the essence of the child rights protection system. In this process, a general understanding of the role of the child in society and the future development of the state was used. The deduction was necessary to establish the specificity of the mechanism for ensuring the rights of minors both at the national and international levels.

The generalization approach was essential in identifying the primary strategies employed by various nations to organize the activities of institutions and bodies dedicated to safeguarding the rights of minors. This methodology proved indispensable in determining the priority areas of state policy aimed at protecting the legal interests and values of children.

Results

When studying the issue of protection of children's rights, it is advisable to pay special attention to the regulatory framework of this mechanism. Accordingly, it is precisely in the provisions of international and national legislation that the legal prerequisites for the protection of minors are established. The international movement aimed at

protecting children became especially widespread in the 20th century. It aimed to develop ideas regarding the recognition of the rights of any child in the state through the adoption of special legal acts. Accordingly, it should be noted The Geneva Declaration of the Rights of the Child [9], which was adopted in 1924 by the Fifth Assembly of the League of Nations. This document established five principles of ensuring the economic, social, and psychological interests of minors. The main part of the provisions of this legal act concerns social issues, since children appear in it as recipients of social security, and not as holders of rights.

The next equally important document in the field of child rights protection is the UN Declaration on the Rights of the Child [10]. The significance of this regulatory act is to draw the attention of the international community to children and their legal status. In connection with the adoption of this document, the necessity of developing a single international legal instrument for the protection of children, as well as reforming the policy of various states to ensure the interests of minors was proven. The Declaration "On the Rights of the Child" represents a cultural and political document in which almost all children's rights were comprehensively enshrined for the first time. Thus, its adoption contributed to the spread of policies among states on non-discrimination of children and giving the interests of children the highest value. The UN Declaration "On the Rights of the Child" was the source for the adoption of the Convention on the Rights of the Child [11]. This document systematically discloses all norms related to the protection of every person under the age of eighteen, namely civil, political, economic, social, and cultural rights. It is important to note the multifacetedness of the Convention, as its provisions take into account the national, cultural, economic, political, and social characteristics of the activities of various states. This normative legal act acquired the status of the most important international legal instrument for the protection of the rights of minors and remains relevant to this day [12; 13].

Violation of children's rights is caused by various forms of violence, manifested in various types of their life activities. That is why special attention is paid to the spheres of health care, education, development of social services, to ensure quality support for children and their families. This was also mentioned in the provisions of Art. 19 of the Convention, according to which every minor must be protected from all forms of violence, including physical, mental, and sexual [11; 14]. In addition to this international legal document, provisions for the protection of children from violence are established at the national level in the states, namely in-laws [15].

Protection of children's rights is carried out not only based on normative legal acts but is also ensured by the activities of various international non-governmental organizations, for example, the Children's Fund. Taking

into account the experience of foreign countries, it is also possible to single out institutes (commissions) for the protection of children's rights operating in Norway, Australia, Latin America, Canada, and New Zealand. They can be implemented in the form of ombudsmen, authorised bodies in the field of childhood protection, and non-governmental organizations. As an example, it is appropriate to cite Poland, which has a children's ombudsman (since 2000) to protect the interests of children. Ensuring its activities is an important component of the state policy regarding children, namely the protection of their legal status. The children's ombudsman in this country is responsible not only for preventive work to protect children's rights but also for contributing to the formation of a microclimate for children to successfully exercise their rights. It is worth noting that Kazakhstan also has a children's ombudsman. This institute was formed in 2002 to inform the population about the state of protection of the rights and legitimate interests of children, the development of legal education of citizens in this area of implementation, as well as the protection of the rights of minors.

In addition to the open form of the institute for the protection of children's rights, there is also a parliamentary model for the protection of children's rights. It operates in such countries as Bosnia and Herzegovina (Committee for Children), Serbia (Structure on the Rights of the Child in the Parliament), and Croatia (Family Committee) [16]. As for Kazakhstan, this form of protection of children's rights has also been developed, namely the Committee for the Protection of Children's Rights of the Ministry of Education of the Republic of Kazakhstan, which is a subordinate department of the Ministry of Education of the Republic of Kazakhstan. The next form of protection of children's rights is non-governmental organizations (NGOs), representing a non-profit organization whose purpose is voluntary service to social development and the population. The activities of the NGO are aimed at various spheres of children's lives, namely, their health protection, their care, the development of pregnant women, and the provision of social justice.

The implementation of state policy in the field of protection of children's rights based on the above forms and institutions plays an important role in the state's activities as a whole and its future [17-19]. That is why it is advisable to pay special attention to the effectiveness of this process and remove obstacles to its implementation. One of the main shortcomings in the context of ensuring mechanisms for the protection of children's rights is the lack of qualified specialists who can qualitatively and quickly solve problems, and carry out multivariate work with families and children in social services. Taking this into account, Figure 1 presents a system of measures aimed at improving approaches to the implementation of state policy on childhood protection in Kazakhstan.



Figure 1. Measures taken in Kazakhstan to improve state policy in the field of protection of children's rights

Source: [5]

The implementation of the approaches listed above will allow for the consolidation of the valuable cognitive, political, and legal status of Kazakh society in the sphere of protection of vulnerable categories of the population, in particular children. State policy in this context should be based on the legal protection of children's rights; the proper support of families for the full education of the future generation; the protection of the rights of minors, and their preparation for a full-fledged adult life in society. Part of the legal mechanism for the protection of these categories of subjects is the provision of housing for orphans and children left without parental care. In this way, the problem of social orphanhood is solved, and minors are provided with social rights.

The implementation and development of social policy is ensured by social work in law enforcement agencies. As an example, it is appropriate to cite such countries as Germany, the USA, and Sweden, in which the tasks of social workers are assigned to law enforcement agencies. Implementation of their activities takes place in the following forms: conducting consultations on issues of criminal justice; providing juvenile justice; and teaching law and order. Directly in law enforcement, social workers provide diagnostic, assessment, and placement services to criminal justice and juvenile justice associations, and write recommendations and reports on a child's mental state, interests, and ability to testify. In addition, social workers act as expert witnesses in October [20].

Taking into account the above, it can be established that the international policy on the protection of children's rights embodies the organised activity of various state bodies, as well as civil society institutions, with the aim of

providing strategic and tactical mechanisms for the protection of minors. The effectiveness of this process depends on a combination of factors, namely: the socio-economic development of the state, the legal status of citizens, the maturity of civil society, as well as political culture and national characteristics.

An important role in the system of ensuring children's rights is played by preventive activities aimed at preventing the occurrence of such offenses. Moreover, preventive activities can be revealed in the context of the formation of safe and quality conditions for the life and development of the child. Accordingly, the Convention stipulates that every child has the right to be heard [11]. This shows that the opinion of a child is no less important than that of an adult. Creating a favourable environment in which the child will feel comfortable will give him a sense of safety and security. This indicator is also reflected not only in the physical, but also in the social, emotional, and cognitive development of a person [21; 22].

The protection of children's rights should be based on ensuring their safety, preventing discrimination, researching their interests, the availability of social benefits, and the opportunity to exercise their right to vote (in particular, in matters related to children's lives). Children belong to the least protected category of the population, and therefore can become the object or subject of a number of offenses, such as petty crimes, begging, prostitution, sexual exploitation. The Convention enshrines precautionary norms that obligate the state to monitor the rights and freedoms of children, as well as to protect them in case of violation [11; 23-25]. The Convention pays special attention to the protection of the

interests of the family, which is the main environment for the child's development. Accordingly, the family is entrusted with the duty to ensure the interests and welfare of the minor. However, if it is impossible to create normal conditions for the child's development in the family, this duty is transferred to the relevant state authorities. In addition to national bodies, international organizations whose activities are aimed at protecting children's rights play an important role. For example, in Kazakhstan, United Nations International Children's Emergency Fund (UNICEF) also deals with the development of children, which allows for ensuring the appropriate level of protection of the legal status of minors [26-28].

In addition to the above-mentioned problems in the field of children's rights, there are other challenges, namely, child trafficking, the distribution of child pornography, the use of child labour, and child abuse. The nature of these crimes is to a greater extent international, and therefore cannot be limited only by national borders. This indicates the priority of organising international cooperation in order to detect, investigate and prevent similar crimes. In this way, it is expedient to provide mechanisms of interaction between law enforcement agencies of Kazakhstan and other states of Europe, USA, and Asia.

Despite the global nature of the problem of violation of children's rights, it should be understood that its solution must begin at the local level. Accordingly, the level of protection of minors in general also depends on the level of provision of a safe environment for children by parents. This also applies to other persons involved in raising children, in particular, adoptive parents, guardians, foster family institutions. In these cases, it is important to create favourable conditions for the comprehensive development of the child, since he is also an important part of the state and is responsible for its future.

Discussion

In scientific doctrine, the issue of protection of children's rights has been studied for a long time, which allows to follow various trends in its development. Scientists reveal its aspects from different angles, which allows for an in-depth disclosure of the structure of the institute for the international protection of children's rights. T.M. Collins et al. [26] researched international experience in the field of ensuring and protecting children's rights. They paid special attention to Sweden, where the Institute of Ombudsman for Children's Rights operates. Its activities are aimed at holding open dialogues and consultations with the public and directly with minors. This institute was also mentioned within the scope of this study, namely, the specifics of its activity in Kazakhstan were disclosed. The researchers established that in Sweden, both children and their parents can contact the Ombudsman directly to obtain clarification or necessary information regarding the state of protection of minor citizens. It is worth emphasising that the Swedish ombudsman for children's rights performs his functions not only in Sweden, but also actively organises human rights projects abroad. As an example, the researchers cited his interaction with the Swedish Organization for International Development Cooperation (Sida), which is expressed in joint activities on the "Right to be Heard" project. The common thing between the conclusions in both works is that they reveal the same

vectors of authority and employment of the child rights ombudsman in Sweden and Kazakhstan. What they have in common is that they are aimed at studying the situation of children not only in specific countries, but in the whole world. That is why it can be established that the results in both articles imply that the functions of the ombudsman are aimed at improving the situation of the protection of children's rights.

The mechanism for the protection of children's rights includes an important stage, which consists in the investigation of crimes involving minors. Accordingly, K. Toros [29] analysed the stage of the investigation, which involves identifying the violator of the child's rights and restoring his legal position. The researcher established that a special role in this process is played by social workers, whose activities are aimed at helping investigators and preparing the necessary documents related to the child. This was also stated in this study; in particular, the priority of the investigation stage was determined for the qualitative protection of children's rights. Also common between the works is the study of the role of the social worker in the process of implementing the mechanism for the protection of the rights of minors. The researcher established that this subject can conduct a professional assessment of the behaviour of the subject and the victim, in order to determine the likelihood of relapse. As an example, the researcher cited the experience of Germany, where there is a special youth forensic service. Its activities are aimed at researching the social profile of minors, their personal traits and the circumstances of the crime committed. Comparing the results of both studies, it is worth pointing out that what is common between them is the disclosure of the priority role of the social worker, as well as his ability to interact with law enforcement agencies as needed. The joint conclusion established that ensuring the activities of social services is an important component of state policy in the field of protection of children's rights.

In the process of developing and consolidating the system of protection of children's rights, priority is given to identifying their factors and sources. No less important, according to S. Okyere et al. [30], is the classification of problems related to the violation of children's rights at the international level. One of the types of such crimes is trafficking in minors. It should be noted that this article also mentioned it. Moreover, its international character was emphasised, which increases the level of its danger. The researchers found that the prevalence of this problem involves the alienation of children from their families and homelands, which is pursued by selfish motives. Accordingly, criminals take children to unfamiliar places, including abroad, permanently severing family ties between them and their families. Common between both works is the classification of forms of child trafficking, which includes commercial sexual exploitation, domestic slavery, involvement in harmful industrial work, begging, and drug trafficking. The researchers found that child trafficking is a global phenomenon, and therefore it is one of the main problems that hinder the operation of the mechanism of international protection of minors. The common conclusion is the extremely high level of danger of the considered crime and its threat not to the rights of children in a specific state, but to the whole world.

The international mechanism for the protection of children's rights embodies a system of tools and approaches. Their research was carried out by C. Breen [31], who established that this mechanism should be understood as a standard on the basis of which the national policies of various states in the field of child rights protection are formed and developed. This approach to the definition of the international normative mechanism for the protection of the rights of minors is similar to that which was used within the scope of this work. It has been established that it represents a set of international legal norms established in the form of a system of international documents regulating the legal status of the child. The researcher pointed out that the development of international law is closely related to the improvement of the institution of protection of children's rights in the world. This is due to the fact that this process affects the emergence and spread of conventions, treaties, international agreements related to the researched area. Common among the works is the conclusion that for the effective implementation of the mechanism of international protection of children's rights, it is necessary to carry out constant monitoring and update the existing methods of protecting the legal status of minors.

The development of approaches to the formation and implementation of the international regulatory mechanism for the protection of children's rights is conditioned by several stages. G. Van Bueren [32] classified them and studied their features in her research. She established that the first stage of the development of this mechanism falls on the first quarter of the 20th century. The researcher characterised it as a rule-making process that involved the adoption of a number of international acts. This approach is similar to this work, as it also considered the initial vectors of the development of the child protection institute at the international level. According to the researcher, the second stage embodied the adoption of the Declaration of the Rights of the Child. This legal act was also studied in this article, namely, its impact on reforming approaches to ensuring the protection of children's rights and interests in different countries was revealed. At the third stage, she singled out the adoption of the Convention as a fundamental element of the international normative mechanism for the protection of children's rights [11; 33; 34]. This is common between the works, as this study also determined the chronology of the adoption of these normative legal acts and established their role in the ideology of child rights protection as a whole. The study of the results obtained in both articles makes it possible to establish that they have common features, as they include the analysis of fundamental documents in the field of development of the mechanism of international normative protection of children's rights.

The life activity of the child is connected with interaction with a large number of subjects, but the main role in this process is still played by the family. A.C. Dailey and L.A. Rosenbury [35] established that the protection of the child's rights depends significantly on the conditions of its development, as well as the environment. The researchers established that in the system of international normative protection of children's rights, this aspect is also allocated a separate place. Accordingly, the principles of organization and provision of legal relations between parents and children are enshrined in the provisions of

international treaties. The priority of parental responsibility, guardianship, guardianship and similar institutions providing education of minors was also mentioned within this article. The researchers claimed that the family is a natural environment and influences the physical, mental, social and spiritual development of the child. Common among the works is the conclusion about the responsibility of parents as well as the persons who replace them, not only with regard to the financial support of the child but also the creation of appropriate conditions for the comprehensive upbringing of a minor. Accordingly, the family is the first link in the global system of child rights protection, as it is the primary source of material and emotional support, psychological preservation.

Based on the above, it can be established that the system of international regulatory protection of children's rights is multi-element and extensive. It includes various institutions and methods for improving the legal status of minors not only at the national, but also at the international level. The common point between the positions of the researchers is the expression of the value of the child and its safe development, as prerequisites for the future development of the country and the world, respectively.

Conclusions

Based on the conducted research, it was established that the protection of children's rights is one of the key elements of modern state policy in various countries, including Kazakhstan. The level of development of this institute depends on the effectiveness of the future activities of the state as well as the well-being of society. It has been established that the child belongs to the category of vulnerable persons, and therefore his upbringing, education and, behaviour are complex processes that necessitate the use of special tools. The principles of implementation of the processes listed above are enshrined in the system of local, national, and international legal acts. Accordingly, the mechanism of legal protection for the child depends on the quality of implementation as well as compliance with the norms set forth in various documents.

The problem of protecting children's rights is revealed in the constantly increasing types and instruments of crimes, the victims of which are minors. This determines the need for constant updating of approaches and tools for the effective provision of legal protection for this population category. The work indicated that crimes against children cause them systemic harm, as they have a negative impact not only on their physical health, but also on their mental health. This affects the formation and development of a young nation that will be responsible for the future of the state. Taking this into account, it was established that the protection of children's rights should be carried out both at the local (family) and national levels. In addition, the number of crimes of an international nature is increasing. This indicates the development of the problem of legal protection of minors at the global and international level.

The study established that the effective implementation of the mechanism for the protection of children's rights is possible due to the high-quality interaction of state bodies with local self-government bodies and representatives of civil society. Based on this, it is advisable to develop optimal national, regional and local human rights projects

aimed at protecting the interests of children. In the following scientific works, attention should be paid to the study of the most common types of crimes against children associated with the use of information and communication technologies.

Acknowledgements

None.

Conflict of Interest

None.

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Актуальні питання міжнародно-правового захисту прав дитини

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Анотація

Актуальність. Зростання глобальної стурбованості правами дитини спонукає до розробки надійних міжнародних механізмів для захисту правового статусу дітей.

Мета. Мета статті – виявити і дослідити міжнародні підходи до забезпечення системи захисту прав дитини.

Методологія. У процесі дослідження використовувалися методи аналізу, синтезу, порівняння, формально-юридичний, дедукції, узагальнення.

Результати. У результаті розкрито основні теоретичні засади захисту прав неповнолітніх. Також проведено аналіз основних нормативно-правових актів, що встановлюють особливий правовий статус дітей на міжнародному рівні. Виходячи з цього, у дослідженні також проаналізовано практичні підходи до забезпечення законних інтересів неповнолітніх. У роботі визначено та описано сутність різноманітних міжнародно-правових підходів, спрямованих на регулювання сфери захисту прав дітей раннього віку. У результаті встановлено пріоритет прав дитини, а також охарактеризовано сутність основних засобів їх захисту.

Висновки. Дослідження підкреслило, що сьогодні захист прав дітей є ключовим пріоритетом для міжнародної спільноти. Отримані результати дослідження мають бути використані для вдосконалення сучасної системи захисту прав дитини в Казахстані та підвищення ефективності міжнародного співробітництва в цій сфері.

Ключові слова: неповнолітні; конвенція; злочини проти неповнолітніх; виховання; взаємодія між державами.