

INTERNATIONAL PRINCIPLES OF CHILD SUPPORT AND PROTECTION

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The Universal declaration of human rights notes that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”, and owing to it childhood is entitled to special care and assistance. The observation and protection of the rights of the child are global problems of the present in whose solution all world community is interested. It explains a defining role of the rising generation in warranting the viability of the society and forecasting its future development. However it should be recognized, that no state in the world can claim to be a model in the sphere of observing the rights of the child. Even the most democratic and economically developed states are characterized by the growth of criminality of minors, presence of families with a low standard of life, death rate of children because of insufficient health services, increasing number of homeless children. All these factors prove the impossibility of solving the children’s problem only through national means and call for the necessity of an association of efforts of the world community as a whole, which has caused the emergence of the institute of international protection of the rights of the child.¹

Today the international protection of the rights of the child represents a set of international legal principles and norms determining the rights and freedoms of children, establishing the obligation of states to ensure and realize these rights and freedoms, and also international mechanisms of control over performance by the states of their international obligations.²

The international protection of the rights of the child includes both the general principles of protection of human rights, and the special principles concerning a legal status of the child. Main principles of protection of human rights include: respect of human rights and freedoms,

¹ *Ismailov B. I.* Legal basics of juvenal justice. Manual. Tashkent, 2002. P. 3. (in Russian).

² *Starovoytov O. M.* Consolidation and development of international protection of the rights of the child // The Belarus magazine of international law and international relations. 2002. № 3. (in Russian).

non-discrimination and equality, universality of human rights, equality and self-determination of peoples and nations.³ Special principles include: the right to life⁴ and protection of children's health;⁵ the right to the help, education, training,⁶ protection against neglect, violence, exploitation⁷ and discrimination;⁸ the right to a name and citizenship from the moment of birth;⁹ protection of inviolability of private and family life,¹⁰ motherhood protection,¹¹ harmonization of labor and family life;¹² guarantee of legal protection;¹³ protection against illegal imprisonment.¹⁴

The international law recognizes the child as a person from the moment of birth.¹⁵ However, it is not forbidden to the states to consider

³ International law: Textbook / Ed. in charge Ju. M. Kolosov, E. S. Krivchikova. M, 2000. P. 479-480. (in Russian).

⁴ The Convention on protection of human rights of 1950, art. 2. The Convention on the rights of the child of 1989, art. 6.

⁵ Social Charter of 1961, art. 11; general provisions on removing the causes of ill-health (par. 1, art. 11); on providing advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health (par. 2 art. 11); on preventing as far as possible epidemic, endemic and other diseases (par. 3 art. 11). The Convention on the rights of the child of 1989, art. 24.

⁶ Par. 1, par. 2 art. 17 item 2, Social Charter of 1961; Protocol №1, art. 2. The Convention on protection of human rights of 1950; the Convention on the rights of the child of 1989, art. 5, art. 13.

⁷ Par. 7 art. 10, par. 1b art. 17 the Social Charter of 1961.

⁸ Social Charter of 1961, art. E, art. 10, art. 17 preamble; the Convention on protection of human rights of 1950, art. 14; the Convention on the rights of the child 1989, art. 2.

⁹ The Convention on the rights of the child of 1989, art. 7.

¹⁰ The Convention on protection of human rights of 1950, art. 8; the Social Charter of 1961, art. 12 (Support of well-being of a family, social security), art. 16 (Support of parents-singles and development of preschool institutions, maintenance of living conditions to young families); the Convention on the rights of the child of 1989, art. 16.

¹¹ Social Charter of 1961, art. 8. Regulation of the right to take leave before and after childbirth and ensuring for such period sources of revenue, the right to take breaks for mothers who are nursing their infants for this purpose.

¹² Social Charter of 1961, art. 27. Contains standards of duration of holidays for parents for taking care of their child depending on needs, and also the raised standards demanding preservation of the right for both parents to continue vocational training or labor activity when organizing the day care of the child.

¹³ The convention on protection of human rights of 1950, art. 6, art. 13.

¹⁴ The convention on protection of human rights of 1950, art. 5.

¹⁵ Prior to the adoption of the Convention on the rights of the child of 1989 only the Declaration of the rights of the child of 1959 mentioned since what moment the person is considered to be a child. In its preamble it says, that « the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth». As the national legislation on abortions varies greatly, the adoption of the provision to consider as the child the human be-

the human being as a child from the moment of conception, though no international treaty provides the protection of a not yet born child, except for the American convention on human rights (art. 4 (1))¹⁶. International agreements contain provisions according to which protection is indirectly given to a not yet born child. Article 6 (5) of the International covenant on civil and political rights forbids to carry out the death sentence on pregnant women. A similar norm is consolidated in the Additional protocol I of 1977 to the Geneva conventions of 1949 on the protection of victims of armed conflicts (art.6 (4)). The international covenant on economic, social and cultural rights guarantees special protection to mothers during a reasonable period before and after childbirth (art. 10 (2)). However it testified only to the fact that protection to a not yet born child is provided within the framework of protection of the rights of women, and the child's absolute right to life is not recognized.¹⁷

The Convention on the rights of the child of 1989 has fixed for the first time the principle of observance (securing) of the right of the child on the survival and healthy development.¹⁸ According to the Convention "States Parties should ensure to the maximum extent possible the survival and development of the child" (art. 6 (2)). Article 24 of the Convention is devoted to problems of health protection and granting of services in the field of public health. The Convention recognizes the child's right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (art. 31). The Convention protects children from economic exploitation; i. e. forbids engaging children for performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (article 32). Art. 32 also

ing already *before birth*, would prevent many states from ratifying or acceding the Convention. Therefore the Convention does not contain provisions obliging the contracting states to guarantee life to yet unborn child. It is mentioned only in a preamble of the Convention which does not possess validity.

¹⁶ Adopted at the Inter-American conference on human rights on November 22, 1969 in San Jose. It came into force on July 18, 1978 // http://www.hro.org/docs/ilex/6/6_3.htm

¹⁷ *Ismailov B. I.* Legal basics of juvenal justice. Manual. Tashkent, 2002. (in Russian).

¹⁸ This principle was confirmed by the World declaration on the survival, protection and development of children and by the Plan of Action for Implementing the World declaration on the survival, protection and development of children adopted at the World summit for children in 1990. The African charter of the rights and well-being of the child also fixed the given principle in article 4 (2).

provides for a minimum age of the child for admission to employment, duration of the working day, etc.

International norms about the labor safety of children are also contained in the conventions adopted by the International labor organization. In 1973, it adopted the Convention № 138 on the minimum age of employment. The ILO Conventions № 77 and № 78, adopted in 1946, provide for an obligatory carrying out of physical examination of children and teenagers for the purpose of finding out their suitability to work in the industry and at non-industrial enterprises. They establish that children and teenagers under 18 years will not be employed, if as a result of a physical examination it will be established, that they are not fit for the job where they are intended to be employed. Conventions № 79 and № 90 are designed to restrict the night work of children and teenagers on non-industrial works and in the industry.

International legal norms on the prohibition of children's marriages play a significant role for the protection of health and rights of children. The Convention on consent to marriage, minimum age for marriage and registration of marriages of 1962 provides for the adoption by states of acts establishing the minimum age for consent to marriage. Recommendation on consent to marriage, minimum age for marriage and registration of marriages and the Declaration on liquidation of discrimination of women, adopted by the UN General Assembly on November 1, 1965 and November 7, 1967, accordingly, contain provisions on prohibition of marriage in children's age and a betrothal of young girls, and also propose to states adopting effectual measures for establishment of a minimum age of marriage and registration of marriage in official establishments.

It is necessary to note also the international agreements connected with slavery and slave traffic in children, and also devoted to suppressing traffic in women and children for the purpose of prostitution. In 1953 the General Assembly resolution 794 (8) approved the Protocol on amendment of the Convention of 1926 on slavery. At the Geneva conference in 1956 the Supplementary Convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery was adopted. The Convention provides an establishment of criminal punishment for slave trade.

The UN Protocol of October 20, 1947 to the International Convention for the suppression of the traffic in women and children of 1921 and International Convention for the suppression of the traffic in women of full age, provide an obligation of states to institute criminal proceedings of the persons who are engaged in involving women in

prostitution and in traffic in women and children, to inform each other the on professional dealers in women and children.

Article 34 of the Convention on the rights of the child of 1989 urges the States Parties to protect children from “unlawful sexual activity” and use with a view of operation in prostitution and pornography. On May 25, 2002, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, was adopted.

Thus, the states should not only guarantee to the child the right to life, but also undertake positive steps on maintenance and prolongation of life of the child and its high-grade physical and spiritual development. The principle of observance of the right of the child to survival and healthy development can be considered as a platform for economic, social and cultural rights of the child.

For each child in formation of its personality the ensuring of its interests, that is satisfaction of its vital needs is very important. Observance of this right allows the child to grow physically, spiritually and mentally healthy, creates possibility for a normal and all-around development of its individual abilities. The principle of the best ensuring of interests of the child assumes the respect of its rights as a person, that in many cases demands respect of human rights of all children's population: in all cases when actions of the public or private persons infringe on interests of children, the prime attention should be given to the observance of children's interest. It is the fundamental principle determining the aspiration to a high-grade development of the personality of the child on which all legislation on protection of the rights of children should be based.

For the first time the principle of the best ensuring of interests of the child is mentioned in the Declaration of the rights of the child of 1959. There are also other international documents which are a basis for the formation of the given principle: the Convention on the elimination of all forms of discrimination against women, the Declaration on social and legal principles relating to the protection and welfare of children of 1986, especially when fostering children and adopting them at national and international levels, etc. Directly, as a principle, this norm was consolidated in article 3 (1) of the Convention on the rights of the child:¹⁹ «In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

¹⁹ This principle is reflected also in other articles of the Convention: 9 (1, 3), 18 (1), 21, 37 (c), 42 (2iii).

authorities or legislative bodies, the best interests of the child shall be a primary consideration». At the regional level this principle is fixed in article 4 (1) of the African charter on the rights and welfare of the child of 1990 which says that «in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration». The Charter of fundamental rights of the European Union of 2000 also has reproduced the given principle in article 24 (2), having borrowed it from the Convention on the rights of the child.

The Convention on the rights of the child of 1989 has stated a requirement of taking into consideration the interests of the child as the basic collective value, concerning all children's population and each individual child. The Convention urgently recommends to public, private institutions to be guided in their relations towards children by the principle of the best maintenance of interests of the child in all vital areas (art. 3). This principle concerns also decisions of courts of law, administrative authorities and legislative bodies.

In case of the collective interest concerning all children's population, this requirement is addressed especially to the level of the political and administrative decision making. Children should be provided with guarantees that they under no conditions will be abandoned: ensuring a safe society, its stimulating character, accessible care, supervision and training services.

The Convention on the rights of the child of 1989 consolidates special measures for protection of children who are in extreme situations.²⁰ It is necessary to single out international agreements, concerning protection of women and children in armed conflicts: the Geneva Convention relative to the protection of civilian persons in time of war of 1949 and Additional protocols to the Geneva conventions, adopted in 1977, the Declaration on protection of women and children in emergency and armed conflict of 1974. In response to the recent increase of involvement of minors in internal armed conflicts (Afghanistan, Sudan, Sierra Lyons, Chechen Republic, etc.), the Optional Protocol to the

²⁰ For children-refugees it is the solution of problems of receiving the status of refugee and appropriate help under the norms of international humanitarian law (art. 22); for children in armed conflicts it is questions of physical and psychological recovery (art. 38, 39); for children in system of administration of justice on cases of minors and children deprived of freedom, including any form of detention, imprisonment or placing in a correctional facility, it concerns the promotion of their reintegration and assuming a constructive role in society (art. 37 and 40).

Convention on the Rights of the Child on the involvement of children in armed conflict was adopted.

The Declaration of the rights of the child of 1959 underlines, that «the best interests of the child shall be the guiding principle of those responsible for his education and guidance». Article 26 of the Universal declaration of human rights proclaims the right of each person to education: «Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory», it also provides that «parents have a prior right to choose the kind of education that shall be given to their children». The International covenant on economic, social and cultural rights (art. 13) speaks also about compulsory and free for all elementary education.

On December 14, 1960, UNESCO adopted the Convention against discrimination in education, containing obligations of the states not to allow discrimination in education based on race, color, sex, language, religion, political or other opinion, national or social origin and to undertake, if appropriate, all measures to eliminate discrimination in education. The Convention, in particular, contains provision according to which the state undertakes to make primary education free and compulsory (par. a, art. 4).²¹

The interest of an individual child is to receive a safe and fair social environment, maintenance corresponding to his needs, and also good care and education and additionally, an understanding and care.²²

The Convention on the rights of the child of 1989 pays a great attention to a family environment of the child and alternative care of him, providing the right of parents to direct and guide the child (art. 5) and the parents' common responsibilities for the upbringing and development of the child (art. 18, points 1, 2).²³ The attention is given to cases of separation of the child with parents and reunification of families (art. 9, 10), the illicit transfer and non-return of children from abroad (art. 11), to measures of recovery of maintenance for the child from the parents or other persons having financial responsibility for the child (ar-

²¹ *Ismailov B. I.* Legal basics of juvenal justice. Manual. Tashkent, 2002. (in Russian).

²² *Mikkola M.* Rights of children and protection of the child in Europe and Russia. M., 2004. (in Russian).

²³ Family education of the child assumes its upbringing in his own family which makes, first of all, his parents. In that case the state fulfils only a guarding function, protecting a family from external encroachments. However, at infringement of the rights of the child in a family, application of such state influence, as restriction or deprivation of parental rights is possible.

(art. 27, item 4). A special emphasis is made on cases when the child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State (art. 20).

The right of the child to the care from parents assumes satisfaction of all his vital interests and requirements by the parents, ensuring respect of his human dignity. The care of the child means the comprehensive support and rendering to him all kinds of assistance: providing him with food, clothes, educational accessories and books, medical treatment in case of illness, etc. The concept of respect of human dignity includes interdictions for mental submission and cruel treatment, any exploitation, discrimination, and also includes measures on ensuring a life merited by the person in all conditions.²⁴ According to the Convention, no child shall be subjected to torture or other cruel, inhuman or degrading treatment (art. 37a).

The principle of inadmissibility of discrimination is one of the main principles of human rights, a major principle of international law.²⁵ With reference to the rights of the child this principle is most fully disclosed in the Convention on the rights of the child where it is underlined, that States Parties shall respect and ensure the rights set forth in the Convention to each child «without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status» (art. 2). The Convention recommends taking all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Any discrimination in relation to children is prohibited, on the basis of what, in particular, it is supposed, that children, irrespective of the position in

²⁴ The Convention on protection of human rights, art. 2-12.

²⁵ The International Covenant on civil and political rights (par. 1 art. 24) establishes that every child shall have, without any discrimination as to race, color, sex, language, religion, national or a social origin, property status or birth, the right to such measures of protection as are required in his status as a minor, on the part of his family, society and the state. The International covenant on economic, social and cultural rights forbids any discrimination for reason of parentage or other conditions (art. 10 par. 3). The Declaration on the rights of the child speaks about the equality of children irrespective of whether they are born in or out of wedlock: «All children, whether born in or out of wedlock, shall enjoy the same social protection (art. 25).

the family, have equal rights to their parents and to the equal treatments both in respect of education and other social services. All children, whether born out of wedlock or adopted children, shall enjoy the rights equal to those of the children born in wedlock. Important measures on achievement of equal rights in a family are connected with paternity proof, payment of the alimony, the organization and adoption maintenance, and also with a marriage.²⁶

Ensuring of the interest of an individual child assumes also that a child should be treated as an independent subject of law, and he should have the right to be officially heard at the decision-making, concerning public health services of the child, his education, the guardianship institution, and also public guardianship. That is, each child has the right to formulate freely his own opinions and to express his views on all questions affecting his life.²⁷ The parents, authorities, public organizations are obliged to consider these views taking into account the level of maturity and age of the child.

As a principle this norm has found its expression in the Convention on the rights of the child of 1989²⁸ which has laid for the first time a way to the recognition of the right of the child for the respect of his views and the right of free expression of these views on all questions affecting him: in the family and school life, at administration of justice, at serving punishment in places of imprisonment, at granting refuge, etc. The Convention fixes also the right of the child to be heard during any judicial or administrative trial affecting his interests.

The UN Congress on the prevention of crime and the treatment of offenders has worked out a number of important international acts concerning protection of the rights of minor offenders at the administration of justice, serving punishment in places of imprisonment, measures of prevention of criminality among minors. They are the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (known as "The Beijing Rules"), and the Guidelines of the United Nations for the prevention of criminality among minors and the United Nations Organization Rules concerning protection of minors, deprived

²⁶ Social Charter of 1961, art. E, art. 10, art. 17 preamble; the Convention on protection of human rights of 1950, art. 14.

²⁷ *Starovoytov O. M.* Consolidation and development of international protection of the rights of the child // The Belarus magazine of international law and international relations. 2002. № 3. (in Russian).

²⁸ The given principle is reflected on the regional level in the African charter of the rights and welfare of the child of 1990 (art. 4 (2), 7); in the Charter of fundamental laws of the European Union 2000 (art. 24 (1)).

freedom. The general norm for all international standards in the field of protection of minors is the norm instructing states to replace detention of juvenile offenders pending trial by other alternative measures: «Whenever possible, detention pending trial shall be replaced by alternative measures, and be used only in exceptional cases. In cases when such measure as the preventive custody is used, the courts have to pay the prime attention to the maximum expedient consideration of case in order to minimize the time under arrest» (the Beijing rules, rule 17).

The Convention on the rights of the child of 1989 provides that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age (art. 37a).

Thus, the main objective of the protection of the child is the ensuring of the conditions for full-scale development of his personality, physical and mental abilities. According to this purpose it is necessary to evaluate requirements to the social environment, sufficiency and quality of public services, legal assistance to the child. The criterion for such estimation is the respect of human dignity and fundamental freedoms²⁹ of the child in all kinds of social protection.³⁰ An effective observance of principles of international protection of the childhood demands, as a rule, that they have been consolidated in the national legislation of the state, that for their realization enough resources have been allocated, that a rigid control over their realization has been established, that effectively applied sanctions for their infringement have been provided.

²⁹ The convention on protection of human rights, art. 2-8.

³⁰ Usually, the requirement to respect the human dignity does not allow any restrictions (the exception being a criminal and other extremely inadequate behavior); on the contrary, fundamental freedom usually may allow restrictions if they are determined by the law adopted by the legislative authority and if they are necessary in a democratic society for the sake of national and general security, with a view of public health care or for maintenance of the general development of the society.