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THE CURRENT STATE OF COMPLIANCE WITH CHILDREN'S RIGHTS IN UKRAINE AND THE PREREQUISITES FOR THE USE OF FOREIGN PRACTICE FOR THE FORMATION OF A MECHANISM FOR THEIR ADMINISTRATIVE AND LEGAL PROTECTION BY THE POLICE

Андрій Собакар, Олександра Нестерцова-Собакар. СУЧАСНИЙ СТАН ДОТРИМАННЯ ПРАВ ДИТИНИ В УКРАЇНІ ТА ПЕРЕДУМОВИ ВИКОРИСТАННЯ ЗАРУБІЖНОЇ ПРАКТИКИ ДЛЯ ФОРМУВАННЯ МЕХАНІЗМУ ЇХ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ПОЛІЦІЄЮ. У науковій роботі досліджено досвід зарубіжних країн у сфері адміністративно-правового захисту дітей від насильства. Наголошено на багатоаспектності форм і методів державного впливу на сферу організації умов для повноцінної реалізації дітьми своїх прав і законних інтересів, передбачених законодавством інших країн.

Узагальнення зарубіжного досвіду адміністративно-правового захисту прав дитини засвідчило, що система забезпечення безпечного дитинства нерозривно пов'язана та доповнюється діяльністю інститутів громадянського суспільства, які здійснюють моніторинг рівня захищеності дітей, права та формування пропозицій органам державної влади щодо покращення стану державного захисту правового статусу дитини. Використання зарубіжного досвіду адміністративно-правового захисту прав дитини довело доцільність: підвищення рівня профілактики соціального сирітства шляхом запровадження адресних соціальних послуг на рівні територіальної громади сім'ям з дітьми, які потребують соціальної підтримки; розвиток сімейних форм виховання дітей-сиріт та дітей, позбавлених батьківського піклування; запровадження ефективної системи притягнення до адміністративної відповідальності батьків, які неналежним чином виконують батьківські обов'язки; запровадження елементів ювенальної юстиції – спеціалізованих суддів у сімейних справах загальних судів, які спеціалізуються на розгляді справ щодо вирішення спорів між батьками про участь у вихованні дитини, місце її проживання, призначення аліментів, встановлення опіка/піклування, усиновлення, позбавлення батьківських прав або відібрання дитини без позбавлення батьків батьківських прав тощо.

Ключові слова: дитина, права дитини, охорона дитинства, адміністративно-правовий захист дітей, ювенальна юстиція, ювенальна превенція, зарубіжний досвід.

Relevance of the study. Protection of children's rights is one of the priorities in every country, because the level of their safety and protection, the state of their development is one of the indicators of a civilized and developed society. It is in childhood that the fundamental system

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of human moral values and personality qualities is formed. The protection of children's rights is not narrowed down to the formation of a normative and legal framework, is not limited to the legislative activity of the state, it is a completely diverse set of measures, among which the conditions of the child's existence, the environment occupy the main places. Moreover, these are also certain criteria for a child's understanding of his rights and awareness of these rights by others. Protection of children's rights is a priority of a developed legal state, which is provided by the Constitution of Ukraine, in Art. 51 of which it is noted that the family, childhood, motherhood and parenthood are understood as food [1].

Recent publications review shows the urgent need to find new ways to protect childhood by means of administrative law, including by studying foreign experience in this regard and implementing its positive achievements in the law enforcement practice of Ukraine. This is precisely what Ukrainian legal scholars emphasize in their scientific works, in particular: R. Opatskyi [2], L. Nalivayko [3], V. Moroz [4], N. Krestovska [5], O. Maksimenko [6], N. Kolomoets [7], O. Navrotsky [8] and other.

Ukraine is, in fact, a very young state, so it is too early to talk about the perfect development of normative and legal regulation in the field of protection of children's rights. In this aspect, the negative statistics regarding the increase in the number of cases of crimes against children, bringing people to administrative responsibility for the improper fulfillment of parental rights, as well as the high level of juvenile crime, indicate the need to study and research the positive international experience of the developed countries of the world regarding social, legal, criminal-legal, administrative and legal protection of the rights of the child and, taking into account domestic legislation, the institutional component and cultural and historical development of our country, its introduction into the sphere of law enforcement.

The article's objective is to find out the current state of children's rights in Ukraine and to determine the prerequisites for the use of foreign practice for the formation of a mechanism for their administrative and legal protection by the police.

Discussion. Violence against children is currently a real threat to the development and formation of Ukrainian society, because cruel treatment of these persons in the future turns them into socially maladjusted people, unable to create a full-fledged family, to be good parents, and is also an impetus for the reproduction of cruelty in towards relatives and friends.

According to statistical data in Ukraine, psychological (48 %) and physical violence (31 %) are the most common forms of violence between parents and children. The lack of an effective system of guarantees for the protection of children's rights in Ukraine is one of the most acute problems, which leads to an increase in legal nihilism and a decrease in the level of indicators of the functioning of public administration entities. The need to provide administrative support for the protection of children's rights in accordance with generally recognized international standards necessitates the reform of Ukrainian legislation.

Ukraine is one of the rule-of-law states that pays enough legislative attention to the protection of childhood. Today, there are about fifty normative legal acts on the social and legal protection of childhood, in particular: the Constitution of Ukraine (Articles 24, 27, 51-53), the Family Code of Ukraine, the Law of Ukraine of May 23, 1991 No. 1060-XII "On Education", Law of Ukraine dated June 1, 2000 No. 1768-III "On the Protection of Childhood", Law of Ukraine dated February 28, 1991 No. 796-XI "On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster", Law of Ukraine dated November 21, 1992 No. 2811-XII "On state assistance to families with children", Law of Ukraine dated November 16, 2000 No. 2109-III "On state social assistance to disabled children and disabled children", Law of Ukraine dated June 2, 2005 No. 2623-IV "On the Basics of Social Protection of Homeless Citizens and Homeless Children", Law of Ukraine dated January 13, 2005 No. 2342-IV "On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived parental care" and others.

However, in the presence of a sufficiently large and developed regulatory framework on childhood protection, the actual implementation of established norms faces serious difficulties. On the one hand, the cause of this state of affairs is negative processes in the sphere of economy, education, health care, culture, etc. On the other hand, we can make sure that the legislation of Ukraine regarding the protection of children's rights is more declarative than practical in nature. Therefore, there is a need for effective protection of the rights of the child, and a fairly widespread problem that needs to be solved is the questioning of the child regarding the detection of signs and caused consequences of violence, where the child was a witness or became a victim. Such situations are quite traumatic for the children's psyche, but not in all cases the appropriate

attention is paid to it by the relevant institutions.

The Law of Ukraine "On Prevention and Combating Domestic Violence" states that "a child who has suffered from domestic violence is a person who has not reached the age of 18 and has experienced domestic violence in any form or has witnessed such violence" [9]. Having studied the decisions of the European Court in which a similar topic is defined, it is necessary to refer to the case "Yeremia against Republic of Moldova", which states that if a child observes systematic violence against one of his parents from the other side, he himself is a victim of violence from the state and has the right to protection [10].

Therefore, there is a need to acquire special knowledge, skills and communication skills with a child. The basis of effective interaction with a child is the observance of a number of rules related to the presence of a person who has knowledge of psychological, physical and age-specific features of the child's development, peculiarities of age-appropriate communication, mastery of skills necessary for effective communication with the child and a safe environment for the child.

In order to implement an effective child protection system, it is necessary to implement certain methods to improve the situation in the sphere of prevention and combating domestic violence. For example, it can be implemented by educational institutions and their employees, who should be more actively involved in detecting facts of domestic violence and necessarily and urgently report the facts to the children's service and the police station.

Hundreds of thousands of people in the country suffer from domestic violence. According to official data, the police registers more than a hundred thousand complaints of domestic violence per year. But no more than 20 % of victims of violence turn to human rights defenders. Thus, a question arises in the study of international experience.

Each state forms a national system for the protection of children's rights in accordance with its own socio-cultural, historical, economic, legal, and organizational standards. Regarding the general typology of systems for the protection of children's rights implemented in different countries, the following models can be distinguished:

1) "Child protection" – normative and organizational activity aimed at protecting the rights and interests of the child from circumstances that negatively affect his development, health and life;

2) "Support of families in which children are raised" – provision of support and protection of families with children, implementation of various services and mechanisms of interaction with families in order to ensure the conditions of upbringing and development of children in them;

3) "Child development" – the system combines both work with families and protection of the rights and interests of the child, at the same time it is "child-oriented" – the child is the center of the system of protection and support. In most European countries, policies on care and protection of children combine elements of family support, protection of rights and child development, but each country has differences regarding the priority directions of policies in this area.

The main provisions of international standards in the field of combating domestic violence are based on a deep awareness of the inadmissibility of such violence, which is a gross violation of human rights. Among the most important international legal documents, we consider it expedient to include the UN Model Law on Domestic Violence, adopted on February 2, 1996 by the UN Commission on Human Rights.

According to the United Nations Special Rapporteur on violence against women, Radhika Kumaraswamy, the purpose of this model legislation is to serve as a drafting guide for legislators and organizations seeking to lobby for their legislative mandate for comprehensive legislation on violence against women.

It is worth noting that the UN Model Law on Domestic Violence aims to ensure that the actions of a law enforcement officer in the event of a report of domestic violence are set out from a technical point of view and require due consideration of each request for assistance and protection. There are clear cases of response upon arrival at the scene, which include the existence of a protective order in the event of its violation, a real danger of violence or its escalation, and the existence of facts of violence in this family in the past. At the same time, the speed of response to the statement must be adequate in those cases when it comes not from the victim of violence, but from another person, who can be anyone (a witness, a friend or relative, medical assistance, a representative or a center for assistance to victims of violence and etc.).

At the same time, the model law recognizes that domestic violence cannot be resolved by legal means alone. This orients the state and society to the adoption of complex social, moral-

ethical, psychological, and pedagogical measures in addition to regulatory and law enforcement measures. It is also important to focus the state authorities on providing victims of domestic violence with both operational and long-term assistance, as well as training specialists on legal issues and services for victims of domestic violence.

The use of the provisions of this law orients states to strengthen the fight against domestic violence and offers various forms, the use of which appears to us to be very effective and promising. We consider it no less promising to study and implement the significant experience of regulatory and organizational measures aimed at preventing domestic violence, developed by countries in Europe and the world.

Therefore, all actions regarding a child who is in difficult life circumstances are aimed at protecting his rights and interests, eliminating the causes of such circumstances and ensuring safe conditions for his maintenance and upbringing, providing him and his parents with a set of necessary services and social assistance. However, in the context of our research, it is worth analyzing the provisions of international legislation, with the help of which it will be possible to modernize and bring domestic legislation closer to European and world standards.

Thus, the provisions of Austrian legislation aimed at preventing and combating domestic violence are contained in the Civil Code, the Law Enforcement Code and the Security Service Act, but a special legal act regulating the prevention and combating of domestic violence in Austria is the Law on Protection from of violence in the family (last edition – 2004), which has the force of law. We believe it is extremely important to include the legal protection of the victim of violence by the offender through the procedures of eviction of the offender and the imposition of a restraining order. The right to make appropriate decisions should belong to the powers of the police [11, p. 160]. Belgian law treats domestic violence as a criminal offence. Domestic violence refers to the scope of Art. 442 of the Criminal Code and is considered an accusation. Domestic violence is now considered an aggravating circumstance, leading to a harsher sentence [12]. Liability for domestic violence in Germany is established by criminal law and is defined mainly as violence against women.

From the analysis of the legislation of many countries, we see that the phenomenon of domestic violence is a painful issue for the legislator of each state. We believe that the issue of domestic violence is quite relevant in our time, because right now we can see the trend of "latency" of crimes, when the victim simply keeps silent about the violence committed against him in the family. The legislation of each country should move in the direction that the victim can safely complain about domestic violence, and it is equally important to establish a stricter punishment system so that before committing domestic violence, a person thinks about the negative consequences that may occur to him.

For example, a special family court has been established in Polish legislation for persons under the age of 13 who have committed a criminal act. He takes into account all the circumstances of the act and chooses the appropriate measure. There is also an institution that helps the court – the District Center for Family Assistance. They help in crisis situations, conduct interviews, cooperating with family curators. There are also such instances as family curators, who may be at the family court and supervise families with difficult family circumstances. They also specialize in children who have not reached the age of criminal responsibility [13].

As for Ukraine, in our opinion, there are not enough centers that provide psychological help, despite the fact that family diagnostic and counseling centers are practiced in Poland. These are centers that conduct psychological research in the field of guardianship on behalf of the court.

It should also be mentioned that in the Netherlands, the care of children who have committed a criminal offense between the ages of 12 and 18 is entrusted to voluntary child care organizations, and the Government performs subsidiary functions. Even in this country there is a voluntary offer – Stop Response, which is used for children under 12 years old. It manifests itself in the fact that the child is told that she had another way out and is given the opportunity to apologize [13].

We fully agree with O. Protsenko's opinion that minors belong to a special legal category, because due to age development and social immaturity, they are not able to fully assess the nature and consequences of their actions, especially serious and especially serious crimes [14, p. 86].

The significance of juvenile issues is also reflected in the desire for international legal regulation of the most important parameters, the formation of universal principles for working with juvenile offenders for all modern states. It is for this purpose that the general generic concepts of the categories "child", "minor" and "minor offender" are provided in the

UN Convention on the Rights of the Child [15]. Despite the fact that these acts do not contain an independent regulation of the administrative responsibility of a minor, we can single out several principled provisions that are basic for the type of legal responsibility under consideration.

It must be said that the functioning of the commissions for the affairs of minors and the protection of their rights as a special separate legal institution is not a purely Ukrainian novel, since there are more or less identical analogues in world practice. For example, a "non-judicial" version of the organization of the system of juvenile rights protection bodies has developed in Scotland, where attempts to create a specialized juvenile court were unsuccessful. This system there is administrative in nature: special commissions conduct "Children's Hearings" as part of the Collegium, formed of members of the public who have undergone special training. A decision on measures of influence, which can be appealed to the court, is made only after a detailed consideration of the case, discussion of relevant issues with parents, social workers, teachers and the child himself. That is, foreign practice shows that juvenile commissions can function quite effectively in this area, and the preservation of this form in Ukraine, subject to significant modification, can have real advantages over the judicial method of solving tort cases involving minors.

In addition, the described Scottish commission system is recognized by the specialists of the International Center for Child Development of UNICEF as progressive, as it allows to avoid "unnecessary" contacts of a child or teenager with the judicial system. According to experts, such consideration of cases of juvenile delinquency corresponds to the letter and spirit of the Convention on the Rights of the Child. Countries of the world with different judicial systems have specialized courts operating within the framework of juvenile justice, it seems to us that the Commissions operating in Ukraine, provided they are reformed accordingly, can be considered as a fairly successful alternative option. At the same time, one cannot ignore the positive aspects inherent in the judicial resolution of tortious relations involving minors [16, p. 57-59].

As for existing family courts in other countries, we can name the US system, where there are juvenile courts and family courts, and the family courts in France, which exist as an experiment (originated in 1970-1972) [17]. Which also use many auxiliary services in their activities. This practice is very positive, and it seems that Ukraine could "borrow" some of the mentioned institutes, which would operate under the commissions for the affairs of minors and the protection of their rights or guardianship and guardianship bodies. In the light of the above, it should be noted that Ukraine needs further development and is not yet sufficiently coordinated with the activities of juvenile commissions and the functional purpose of such subjects of police law. Separately, it should be said about the possibility of practical implementation of the elements of administrative delictology provided in the legal regulations – certain powers are aimed at the implementation of the general preventive function associated with informing the relevant officials about criminogenic factors that stimulate the illegal behavior of minors.

Conclusions. Thus, the above-mentioned foreign practice of administrative and legal protection of children indicates the multifaceted forms and methods of state-authority influence on the sphere of organization of conditions for the full implementation of the rights provided for by the law. The analysis of the considered forms of administrative and legal protection of the rights of the child, which are used by other states, confirms the clear social orientation of the functioning of all branches of the state apparatus, the focus on the priority of ensuring the rights of the child in the state policy system.

The generalization of the foreign experience of administrative and legal protection of the rights of the child proved that the system of ensuring a safe childhood is inextricably linked and complemented by the activities of civil society institutions, which are engaged in monitoring the level of protection of children's rights and formulating proposals for state authorities to improve the state of state protection of the legal status of the child.

The use of foreign experience in the administrative and legal protection of children's rights proved the feasibility of: increasing the level of prevention of social orphanhood through the introduction of targeted social services at the level of the territorial community to families with children who need social support; development of family forms of raising orphans and children deprived of parental care; introduction of an effective system of bringing to administrative responsibility parents who improperly perform parental duties; introduction of elements of juvenile justice – specialized judges in family cases in general courts, specializing in handling cases regarding the resolution of disputes between parents about participation in the

upbringing of a child, the place of his residence, the appointment of alimony, the establishment of guardianship/care, adoption, deprivation of parental rights or removal of a child without depriving parents of parental rights, etc.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The scientific work examines the experience of foreign countries in the field of administrative and legal protection of children from violence. The multifaceted forms and methods of state-authority influence on the sphere of organization of conditions for the full realization by children of their rights and legitimate interests provided for by the legislation of other countries are emphasized. The generalization of the foreign experience of administrative and legal protection of the rights of the child proved that the system of ensuring a safe childhood is inextricably linked and complemented by the activities of civil society institutions, which are engaged in monitoring the level of protection of children's rights and formulating proposals for state authorities to improve the state of state protection of the legal status of the child.

The use of foreign experience in the administrative and legal protection of children's rights proved the feasibility of: increasing the level of prevention of social orphanhood through the introduction of targeted social services at the level of the territorial community to families with children who need social support; development of family forms of raising orphans and children deprived of parental care; introduction of an effective system of bringing to administrative responsibility parents who improperly perform parental duties; introduction of elements of juvenile justice – specialized judges in family cases in general courts, specializing in handling cases regarding the resolution of disputes between parents about

participation in the upbringing of a child, the place of his residence, the appointment of alimony, the establishment of guardianship/care, adoption, deprivation of parental rights or removal of a child without depriving parents of parental rights, etc.

Keywords: *child, child rights, child protection, administrative and legal protection of children, juvenile justice, juvenile prevention, foreign experience.*

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PROBLEMATIC ISSUES OF STAFFING CYBER TROOPS OF UKRAINE UNDER MARTIAL LAW

Едуард Рижков. ПРОБЛЕМНІ ПИТАННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ КІБЕРВІЙСЬК УКРАЇНИ В УМОВАХ ВОЄННОГО СТАНУ. У статті розглянуто передумови створення кібервійськ Міністерства оборони України, появи первинних правових документів, що повинні у майбутньому сприяти розробці відповідного закону та підзаконних актів з цього питання. Наголошується, що наявність в Україні системи суб'єктів захисту кібернетичного простору держави в умовах воєнного стану та у оглядній перспективі сусідства з російським агресором не може в повній мірі забезпечити виконання збройними силами України їх основних функцій щодо захисту країни. Аргументується необхідність створення кібервійськ в державі з огляду на їх потенційний функціонал та його відмінність від того, що притаманний вже існуючим в Україні суб'єктам кібер захисту. Приділяється увага питанням підбору кадрів до майбутніх кібервійськ. Зазначаються їх форми та види з огляду на українські реалії та стан громадянського суспільства. Позначаються існуючі в державі проблеми співпраці державницьких інституцій з суб'єктами громадської ініціативи у сфері захисту кіберпростору. Наводяться приклади потенційних та реальних фактів порушень законодавства з боку правоохоронних органів по відношенню до представників громадської кібер спільноти.

Пропонуються підходи до формування кадрового резерву кібервійськ з урахуванням їх суб'єктності. В процесі дослідження аргументується твердження про те, що розвиток воєнної ситуації в країні обумовлює необхідність внесення коректив до плану реалізації Стратегії кібербезпеки України, затвердженої у 2021 році, з метою активізації розробки відповідного законопроекту зі створення кібервійськ.

Констатується, що відсутність належної динаміки у питанні законотворчості з цього питання позбавляє збройні сили України Міністерства оборони своєчасного створення і надання ним дієвого інструменту протидії ворогові за захисту країни. У висновку висловлюються пропозиції щодо можливих підходів у кадровому забезпеченні кібервійськ на підготовчому та проміжному етапах запуску цього державницького інституту.

Ключові слова: *Стратегія кібербезпеки, кібервійська Міністерства оборони України, кадрове забезпечення кібервійськ, законодавче забезпечення кібервійськ, співпраця державних органів з IT-фахівцями.*

Relevance of the study. Over the last 20 years of their existence in Ukraine, entities providing cyber protection and countering illegal manifestations in the field of information technologies have gone through various stages of development – from creation, filling with personnel potential to certain achievements. And although the system of cyber entities has acquired permanent features over the years, it did not meet the needs of our society in view of the threats brought by russian military aggression. The main problem was the improper

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