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RIGHTS AND FREEDOMS OF THE CHILD AS AN OBJECT OF ADMINISTRATIVE AND LEGAL PROTECTION

Abstract. Purpose. The purpose of the article is to analyse the problematic issues of rights and freedoms of the child as an object of administrative and legal protection. **Results.** The article provides a theoretical and legal description of rights and freedoms of the child as an object of administrative and legal protection. In the context of ensuring administrative and legal protection of rights and freedoms of the child in Ukraine, it is important to note that both the procedure for upbringing of children and the availability and possibility of exercising children's property and non-property rights are directly linked to the persons responsible for their upbringing, parents or persons who perform such duties until the child comes of age. Hence, the importance of considering the issues of property and non-property rights under various types of Ukrainian legislation, the content and essence of children's passive and active legal capacity, as well as the legal framework for the care and upbringing of orphans and children deprived of parental care, is directly related to the administrative and legal protection of rights and freedoms of the child and should be considered in the context of this study. Although criminal law protection of rights and freedoms of the child goes beyond the concept of administrative law protection, we believe that it is necessary to specify the relevant boundaries in order to separate these institutions from each other. For example, administrative and legal protection of rights and freedoms of the child may cover the institution of administrative liability for offences against children, as well as administrative and legal procedures and relevant administrative jurisdictional activities related to the enforcement of rights and freedoms of the child, both by children and by persons authorised to do so. In addition, the institution of criminal law protection of rights and freedoms of the child is a sanctioning mechanism that provides for criminal prosecution of persons who have committed respective offences against children. **Conclusions.** It is concluded that an important aspect of improving the mechanism of administrative and legal protection of rights and freedoms of the child is to ensure a socio-legal formulation of the phenomenon of childhood as an important stage in the formation of a young citizen's consciousness, which will further affect the ability and willingness to fulfil their duties regarding the development and protection of their State. In this context, the possibility and realistic way of implementing the function of national and patriotic education of the population, namely children, is clearly considered by expanding the possibilities for their exercise of rights and strengthening the mechanism of administrative legal protection of such rights, which will further lead to an early sense of responsibility for their actions and, accordingly, will contribute to maturation.

Key words: children's rights, legal protection, liability, international law, observance of rights, object of administrative law.

1. Introduction.

The rights and freedoms of the child as an object of administrative and legal protection have been studied by scholars repeatedly, which, in our opinion, although suggests the existence of a certain foundation in the relevant theoretical and practical topics, but considering the current requirements and dynamics of society, as well as the current legal regime of martial law in Ukraine and in the context of total and flagrant

violation of the rights and freedoms of the child, in particular through the commission of crimes related to Russia's military aggression against Ukraine, this legal institution requires additional analysis. In particular, we believe that such an analysis may be possible if the material for the study is considered as retrospectively as possible, allowing for the establishment of certain regularities in the functioning of the institution of ensuring the rights and freedoms

of the child through administrative and legal protection and legislation in general.

In the first half of the twentieth century, a philosopher, psychologist, and educator V. Zenkovskiy (1881-1962), in his study of the philosophical portrait of the child, saw in it an organic unity of wisdom and naivety, which from the first moments of life is endowed with individual characteristics that gradually begin to be reflected in a particularly vivid way under the influence of life circumstances. The dominance of the real Self, the weak power of the empirical Self, leads to the fact that there is nothing artificial, forced, or corrective in children; the child acts directly in accordance with his or her own urges and feelings; it is thanks to this that childhood is full of truly spiritual freedom (Zinkivskiy, 1950).

Representatives of the ethnographic approach have made a significant contribution to the study of childhood as a social phenomenon. In particular, A. Bogush distinguishes two trends: the first trend: childhood is seen as a cultural and historical value, it is about the psychological anthropology of childhood (F. Boas, E. Kurulenko, B. Malinowskyi, M. Mead); the second trend: childhood is studied in the historical aspect, the history of childhood, ways of upbringing and the world of childhood are investigated (V. Abramenkova, F. Ariès, L. DeMause, E. Erikson, V. Kudriatsev, M. Osorina, etc.) (Bohush, Varyantsia, Havrysh, Kurinna, Pechenko, 2006; Kryvachuk, Kostyshyn, 2014). However, a number of issues still remain unresolved at the strategic level and therefore require further research.

The object of the article is public relations in the field of ensuring the protection of the rights and freedoms of the child.

The purpose of the article is to analyse the problematic issues of rights and freedoms of the child as an object of administrative and legal protection.

2. The child as an object of administrative and legal protection

M. Mead (1901-1978) is considered to be the first anthropologist to study childhood. She studied the position of the child in different cultures. According to M. Mead, in any society, a child is born with universal biological inclinations. However, each culture uses them in its own way. In her concept, M. Mead distinguishes three types of culture characterised by different intergenerational relations: post-figurative culture, one of the oldest, according to which children adopted the traditions and experience of previous generations; configurative culture, in which the centre of the clash of values is the present, and the peer group is more important for children; prefigurative culture that we live in is rapidly transforming, characterised by

constant dynamics and life-creativity, which requires children and adults to be partners, with life values projected into the future. The analysis of M. Mead's concept is in full agreement with academician A. Bogush, who argues that "the main conclusion that follows from M. Mead's concept should be that the specific nature of the present requires a fundamentally new, different from the previous ones, nature of relations between generations". F. Ariès was the first to conclude that the category of "childhood" has not only a biological (natural) character, but also a social and historical one. In his study, he proves that approaches to the interpretation of children have been different in different historical periods, and the concept of "childhood" has been changing correspondingly; it is not only a natural universal phase of human development, but a concept that has a complex social and cultural content that varies in different epochs. By focusing on childhood as a historical construct, F. Ariès's study triggered a real explosion of research on this issue in the second half of the twentieth century. (Kryvachuk, Kostyshyn, 2014).

Accordingly, the understanding of the sociological and legal content of the concept and category of childhood in general, as well as the awareness of the need to construct a regulatory and legal context for the administrative and legal protection of the rights and freedoms of the child, lead to a new legal reality in which the application of a human-centred approach to the child is extremely important. Therefore, given that a child, as a young member of society, needs to work with himself or herself and to be explained certain norms and rules of the society in which he or she grows up, liability for failure to fulfil the relevant obligation and causing destructive harm to such a child should be relevant.

Advocates of F. Ariès's ideas include I.S. Kon, O.Ye. Koshelova, O.Ye. Sapohova, and others. In contrast to the views of F. Ariès, the Norwegian theologian and historian Odd Magne Bakke put forward his statements, proving that it was Christianity that influenced the perception of childhood as a special period in human life. The Christian religion has contributed to the prohibition of infanticide, abortion, child abandonment, and sexual exploitation of children, putting forward instead the idea of children's purity and innocence, their resemblance to the image of God (Bakke, 2005). It should be noted that the influence of the Christian religion was not only positive, but also negative, which was reflected in the inequality of rights of illegitimate children, daughters and sons in inheriting property, etc. Prominent studies in the field of childhood anthropology were made by L. DeMause and M. Mead (Opolska, 2019).

In our opinion, the focus should be on some specific features of the sociological and legal concept of understanding the essence and content of certain legislative structures. According to a number of scholars, the provisions and norms of Ukrainian legislation, having deep historical and social roots, derive their standards and values from religion and established traditions of society that, in our opinion, correlates with the principles on which Ukrainian legislation is constructed, and accordingly, this position has a place in the rule-making system of Ukraine and should be considered when forming the architecture of administrative and legal protection of children's rights and freedoms.

3. The content of children's rights and freedoms

The increased development of domestic research on the idea of child equality, ensuring the needs and interests of children, and protecting their rights has been observed since the late nineteenth century. It is advisable to distinguish between the views of lawyers and educators of this period on the recognition and protection of children's rights. For example, some foreign lawyers focused on the protection of children's rights, the possibility of realising their interests and meeting their needs. Problematic issues of parent-child relationships were studied, distinguishing them from purely civil ones. For example, M. Kapustin focused on such issues. In his work "Theory of Law. General Dogmatics" (1868), the researcher recognised the need to complement the imperfect development of others as the driving force of humanity. This character is marked by the support of the weak by the stronger, mercy, education (Opolska, 2019).

In our opinion, through the prism of this concept it is possible to describe the administrative and legal mechanism for the protection of the rights and freedoms of the child comprehensively, since it complements both Ukrainian legislation and social and legal reality, in the context and dynamics, with modern democratic values regarding the treatment of the child, and provides him or her with his or her own and unique legal personality in the context of his or her awareness, is the key to the effective and continuous development of such a child as an independent member of the relevant society, which will further allow the development of democratic principles and the foundations of the state based on the rule of law in a particular country. It is through the prism of this approach that the existential essence and content of the modern world statehood aimed at continuous development and empowerment is considered.

During this period, the issues of abuse of parental power and the growth of juvenile

delinquency were also studied. A.I. Zahorovskyi in his monograph *A Course in Family Law* (1909) pointed out that there are many parents who exploit children and illegally use their property. The researcher noted that international prison congresses have repeatedly raised the issue of the growth of juvenile delinquency. According to him, the reasons for the early manifestations of delinquency in children were the low moral level of their parents, poverty and need. Often, child delinquency was the result of abuse of parental authority (Zahorovskyi, 1909). In the medical and biological approach, childhood is studied within the framework of such sciences as paediatrics, anatomy, physiology and focuses on the study of the period of human growth, physiological development of children, childhood diseases, etc. These sciences considered morphological features in the periodisation of a child, such as the change of milk teeth, completion of puberty, skeletal formation, etc. I. Sikorskyi (1842-1919), a psychologist and pedagogue, Doctor of Medicine, Professor, made a significant contribution to the development and research of childhood issues. One of the leading areas of I. Sikorskyi's research was to clarify the meaning of childhood, in particular preschool. The scientist was one of the first in the national science to single out the preschool period of a child's life as one of the most important (Fediaieva, 2010). We believe that O.I. Levytskyi highlighted important examples of parents abusing their power and violating the child's personal rights, as some researchers do not recognise that various forms of child abuse were practised in Ukraine, which occurred in many countries of the world during this period (Levytskyi, 1909; Opolska, 2019). However, in our opinion, the mechanism of legal protection of the child cannot be viewed through the prism of family law or any other law, since the set of norms ensuring the rights and freedoms of the child, for example, in Ukraine, is determined by administrative legislation, which provides for a clear mechanism of enforcement for the child, as well as the possibility of bringing to justice those persons who were obliged to fulfil their parental responsibilities towards the child and promote the comprehensive development of such an individual.

4. Conclusions

In the context of ensuring administrative and legal protection of rights and freedoms of the child in Ukraine, it is important to note that both the procedure for upbringing of children and the availability and possibility of exercising children's property and non-property rights are directly linked to the persons responsible for their upbringing, parents or persons who perform such duties until the child comes of age. That is

why the importance of considering the issues of property and non-property rights under various types of Ukrainian legislation, the content and essence of children's passive and active legal capacity, as well as the legal framework for the care and upbringing of orphans and children deprived of parental care, is directly related to the administrative and legal protection of rights and freedoms of the child and should be considered in the context of this study.

Although criminal law protection of rights and freedoms of the child goes beyond the concept of administrative law protection, in our opinion, it is necessary to specify the relevant boundaries in order to separate these institutions from each other. For example, administrative and legal protection of rights and freedoms of the child may cover the institution of administrative liability for offences against children, as well as administrative and legal procedures and relevant administrative jurisdictional activities related to the enforcement of rights and freedoms of the child, both by children and by persons authorised to do so. In addition, the institution of criminal law protection of rights and freedoms of the child is a sanctioning mechanism that provides for criminal prosecution of persons who have committed respective offences against children.

Therefore, through the prism of the analysed we believe that an important aspect of improving the mechanism of administrative and legal protection of rights and freedoms of the child is to ensure a socio-legal formulation of the phenomenon of childhood as an important stage in the formation of a young citizen's consciousness, which will further affect the ability and willingness to fulfil their duties regarding the development and protection of their State. In this context, the possibility and realistic

way of implementing the function of national and patriotic education of the population, namely children, is clearly considered by expanding the possibilities for their exercise of rights and strengthening the mechanism of administrative legal protection of such rights, which will further lead to an early sense of responsibility for their actions and, accordingly, will contribute to maturation.

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ПРАВА І СВОБОДИ ДИТИНИ ЯК ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОЇ ОХОРОНИ

Анотація. Метою статті є аналіз проблемних питань прав і свобод дитини як об'єктів адміністративно-правової охорони. **Результати.** У статті було надано теоретико-правову характеристику правам і свободам дитини як об'єкту адміністративно-правової охорони. В контексті забезпечення адміністративно-правової охорони прав і свобод дитини в Україні важливим є зазначення того, що як процедура виховання дітей так і наявність та можливість правореалізації майнових і немайнових прав дитини безпосередньо пов'язується з тими особами, що відповідають за її виховання, батьками або особами, що виконують такі обов'язки до моменту повноліття дитини. Саме тому, важливість розгляду тематики майнових і немайнових прав за різними видами законодавства України, змісту і сутності дієздатності і правоздатності дітей, а також правових засад утримання та виховання дітей сиріт і дітей позбавлених батьківського піклування, безпосередньо пов'язано з адміністративно-правовою

охороною прав і свобод дитини та має бути розглянуто в контексті цього дослідження. Хоч кримінально-правова охорона прав і свобод дитини і виходить за межі поняття адміністративно-правової охорони, на нашу думку необхідним є зазначення відповідних меж з метою розділення зазначених інститутів між собою. Так адміністративно-правова охорона прав і свобод дитини може охоплювати інститут адміністративної відповідальності за вчинення правопорушень щодо дитини, а також адміністративно-правові процедури та відповідну адміністративну юрисдикційну діяльність пов'язану з правореалізацією прав і свобод дитини, як нею самою так і уповноваженими на це особами. У той же час інститут кримінально-правової охорони прав і свобод дитини являє собою санкційний механізм що передбачає притягнення до кримінальної відповідальності осіб що вчинили відповідні правопорушення щодо дитини. **Висновки.** Зроблено висновок, що важливим в удосконаленні механізму адміністративно-правового захисту прав і свобод дитини є забезпечення соціально-правового формулювання феномену дитинства, як важливого етапу становлення свідомості молодого громадянина, що в подальшому впливатиме на можливість та бажання виконання ним покладених обов'язків, щодо розвитку та захисту своєї держави. В цьому контексті чітко розглядається можливість та реальний спосіб реалізації функції з національно-патріотичного виховання населення, а саме дітей, у спосіб розширення можливостей правореалізації ними та укріплення механізму адміністративного правової охорони реалізації таких прав, що в подальшому спричинить зародження раннього відчуття відповідальності за свої вчинки та відповідно сприятиме дорослішанню.

Ключові слова: права дитини, правова охорона, відповідальність, міжнародне право, дотримання прав, об'єкт адміністративного права.

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