CZU: 341.231.14-053.2:340.13 **https://doi.org/10.59295/rpijn2025.23**

LEGAL REGULATION OF THE INTERNATIONAL PROTECTION OF FAMILY RIGHTS AND INTERESTS OF THE CHILD: SEPARATE ASPECTS

VOLKOVA Natalia,
National University "Odesa Law Academy",
doctor of legal sciences, professor,
Department of civil engineering, notarial and executive process

SUMMARY

The article is devoted to a comprehensive study of individual norms of international legal acts on children's rights, their protection and protection. An overview of the main provisions of international legal documents and doctrinal approaches to the protection of family rights and interests of the child was carried out. It was established that the concept of protection of children's rights and interests developed gradually over many centuries. However, this process became more active only in the 19th century, when a number of international acts were adopted regulating the protection of human rights and interests in general and the protection of family rights and interests of the child in particular. However, there is still no single mechanism for protecting the family rights and interests of the child. In connection with the declaration of martial law in Ukraine, in addition to the increase in the number of armed conflicts, not only internal, but also international, new problems arise regarding the protection of children: providing the child with immediate protection, support, assistance, creating appropriate living conditions for him, etc. All this becomes an urgent problem of modern times for the whole world.

Keywords: legal regulation, international protection, protection of the rights and interests of the child, family legal relations.

From birth, the rights and freedoms of a person and a citizen belong to and are guaranteed by the state in accordance with the generally recognized principles of the norms of national law and norms of international law. For the first time, children's rights as an independent phenomenon were recognized in France in 1792 in a document with the symbolic name "Declaration of the Rights of the Child".

After 17 years, Sweden proposed the concept of creating independent bodies to monitor the government's activities in the field of protection of individual rights. In international law, as N. V. Ortynska notes, "... the idea of protecting children developed gradually over many centuries. However, this process became more active only in the 19th century, when the encroachment of adults on their personal interests

led to the creation of the concept of protection of children's rights. It began with the creation of the institution of public guardianship, which was the first practical attempt to protect the rights of the child. The crown of these actions was the publication in England in 1908 of Children Charter, or Habeas corpus. This Law entered into force in 1909. It was an attempt at the first codification of the rights of minors, which in the future became the basis for more complete legislation. The law established the same rights for all children – legally and illegitimately born, and recognized the need to treat them with courtesy. After that, in 1912, the Law on the Protection of Childhood was adopted in Belgium. In 1919, the People's Organization for the Care of Children was created, which was supposed to coordinate all actions designed to ensure the realization of the idea of protecting children's rights. The activities of this organization aroused interest in other countries, which was the beginning of international cooperation in this field" [1, p. 70]. At the 3rd session of the Hague Conference on International Law, the Convention was prepared, which provided for provisions on the custody of a minor child, dated June 12, 1902 (Convention on Agreements on the Custody of Minors dated June 12, 1902) [2]. This Convention existed almost until the adoption of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation Regarding Parental Responsibility and Child Protection Measures of October 19, 1996 (entered into force for Ukraine on February 1, 2008).

At the same time, it should be noted that the first international act providing for the protection of the child was the Geneva Declaration of the Rights of the Child in 1924 [3]. As noted in the legal literature, " Eglantyne was the author of the Declaration Jebb is a British social reformer who founded the Save the Children » at the end of the First World War. After witnessing the horror of the First World War, Eglantyne Jebb realized that children need special protection. In 1919 with the help of his sister Eglantyne Jebb founded the " Save. Fund" in London the Children » to provide assistance and protection to children who survived the war. In 1920, with the support of the International Committee of the Red Cross (ICRC), the " Save the Children " was organized and structured around the International Union " Save the Children ". On February 23, 1923, the International Union " Save the Children » adopted the first version of the Declaration of the Rights of the Child during its fourth general assembly. Later, the project was ratified during the fifth general assembly on February 28, 1924. Eglantyne Jebb sent this document to the League of Nations, saying that she believed

that "we must demand certain rights of children and make efforts for their universal recognition." On September 26, 1924, the League of Nations adopted a declaration and called it the Geneva Declaration. It was a historic day - the specific rights of children were recognized for the first time" [4, p. 72]. So, in Geneva on the basis of the project Eglantyne Jebb On September 26, 1924, the General Assembly of the League of Nations adopted the Declaration of the Rights of the Child (Geneva Declaration of the Rights of the Childs). The preamble of the Declaration states that "by this Declaration of the Rights of the Child, commonly known as the 'Geneva Declaration', men and women of all nations recognize that humanity is bound to give the best to the child, declaring and accepting it as their duty, regardless of race, nationality or religion" [3]. Therefore, the Declaration emphasized that the care of children and their protection is not the exclusive duty of the family and even of a separate state. All humanity must care about the protection of childhood. The declaration also contained a number of articles and additional protocols to it, which provided for the protection of the rights and interests of children in the conditions of hostilities and conflicts, which is extremely relevant, given the current state of our country. However, despite its important role in protecting the rights and interests of the child, such a Declaration was still of a recommendatory nature. The Geneva Declaration of the Rights of the Child, of course, "...is not a perfect document from the point of view of defining the terms and mechanisms for the implementation of its provisions. The list of prohibited grounds for discrimination against a child is limited to "race, nationality and religion." In the Children's Charter of the post-war period of 1943, this list was expanded to include "gender" and "social status" [5, p. 9]. Speaking about the international legal basis for regulating relations between parents and children regarding upbringing, it should be noted that the Geneva Declaration lost its legal basis in 1946 after the collapse of the League of Nations. All international human rights bodies involved in the protection of children's rights operate at the universal level, within the framework of the UN. The UN General Assembly performs a number of functions regarding human rights. Thus, it organizes research, makes recommendations to promote the realization of human rights, adopts resolutions (declarations) on human rights issues and approves treaties. Considering the priority of human rights in solving almost all issues of international relations and children's rights as an integral part of universal human values, the UN General Assembly established the United Nations Children's

Fund in 1946, which was the main guarantor and mechanism for protecting children's rights around the world. One of the important acts regarding the protection of children's rights was the Universal Declaration of Human Rights of December 10, 1948, which was adopted by the UN General Assembly. In this Declaration, the issues of protection of children's rights were defined, in particular, the right of all children to special care and assistance was proclaimed.

The next step was the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, ratified by the Verkhovna Rada of Ukraine on July 17, 1997, which does not contain norms directly regulating the protection of the rights and interests of the child. However, it should be noted that "a child is a subject of international law, therefore some provisions of the Convention may be applied in the protection of the rights and interests of the child" [6, p. 85]. In 1957, the UN Commission on Human Rights began work on the draft text of the new Declaration on the Rights of the Child, which was developed by the UN Economic and Social Council (ECOSOC) with the participation of a number of public organizations. In 1959, the UN General Assembly proclaimed the Declaration of the Rights of the Child, the purpose of which was to provide children with a happy childhood and the enjoyment of rights and freedoms. The Declaration of the Rights of the Child consists of ten articles aimed at the harmonious development and social protection of children. The document was adopted "...on the basis of and in fulfillment of the Universal Declaration of Human Rights (1948) and emphasizes that every child should possess and enjoy all the rights specified in it. The Declaration of the Rights of the Child contained only ten principles, but they became the foundation of the international legal protection of the rights of the child" [7, p. 38]. The Declaration proclaims the following important principles and rights: "...equality and all the rights of the child; special protection of children's rights; the right to a name and citizenship; the right to social protection; ensuring proper conditions for the protection and development of children with disabilities; full and harmonious development of the child in love and understanding; the right to free and compulsory education; the priority of protecting the rights of the child; protection from all forms of neglect, cruelty and exploitation; raising a child in the spirit of mutual understanding, tolerance, friendship between peoples, peace and brotherhood" [8]. Therefore, the content of the Declaration is a broader document than the Geneva Declaration of 1924. The declared Declaration proclaims the principle of equality of

children, norms regarding the protection of motherhood and childhood, the protection of children from exploitation, and the right of children to education. One of the principles of the Declaration of the Rights of the Child establishes the duty of society to take special care of children. The Declaration lists not only the rights of the child as a citizen (the right to a name, to citizenship, to compulsory and free education, to primary assistance and protection - especially from all forms of neglect, cruelty and exploitation), but also stand out as independent provisions concerning her upbringing in the family. The Declaration of the Rights of the Child "...became the basis for the adoption of the Convention on the Rights of the Child (1989)".

In 1966, the UN adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which should be considered the first international binding documents in the field of human rights. These documents also touch on the rights of the child separately: the prohibition of discrimination, the right to protection by the family, the state and society, the right to a name and citizenship, protection of the child in the event of a family breakup. Subsequently, the 1973 Hague Convention on the Recognition and Enforcement of Maintenance Obligations was adopted. The UN General Assembly declared 1979 the International Year of the Child (dedicated to the 20th anniversary of the adoption of the Declaration of the Rights of the Child). With these actions, the UN General Assembly once again drew the attention of the world community to the need to take appropriate actions to protect children. Based on this, Sweden demonstrated to the whole world its concern for children and "...in 1979, the International Year of the Child, Sweden became the first country in the world where physical punishment of children was prohibited by law" [9]. Such a step by Sweden became an impetus for intensifying the actions of the UN to prepare an international legal document, the legal force of which would extend to all states. And in the same year, the UN Commission on Human Rights began the development of such a legal document. In 1985, the Committee of Ministers adopted Recommendation R (85) 4 "On violence in the family", which states that "... the protection of the family involves the protection of all its members from any form of violence, which quite often occurs between by them" and challenge the governments of the member states to take appropriate measures to prevent violence in the family.

One of the main acts on the protection of family rights and interests of the child in international law is the Convention on the Rights of the Child of November 20, 1989 (for Ukraine it entered into force on September 27, 1991), which, in turn, is part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine). The doctrinal provisions of the law state that "the first part of the 1989 Convention provides for the rights of children, and the second introduces a control mechanism for compliance with the Convention - the Committee on the Rights of the Child (Committee he the Rights of the Child / CRC). The Committee on the Rights of the Child accepts general comments (general comments), which formally do not have binding legal force, but are accepted by the participants of the Convention on the Rights of the Child of 1989. The third part contains formal conditions for its entry into force" [10].

The Convention on the Rights of the Child enshrines a significant number of provisions of principle: a list of all the rights of the child is provided without singling out any of them as the main one. The general legal principle of equality in the Convention is reflected in the fact that the legal status of a child does not depend on the level of his or her material and family well-being. The Convention on the Rights of the Child establishes the principle of the greatest protection of the child's interests, namely in part 1 of Art. 3 of this Convention stipulates that "in all actions concerning children, regardless of whether they are carried out by public or private institutions dealing with social security issues, courts, administrative or legislative bodies, primary attention is paid to the best interests of the child." The Convention also provides for the right of the child to be heard, and the right of the child to take an active part in his own development, to have his own beliefs and to express his own opinions and to ensure that they are taken into account when making decisions affecting his life, etc. The Convention defines the general nature of the protection of children's rights and its direction. It indicates the circle of persons obliged to protect the rights of the child (with the first place in their list being parents, guardians, as well as those who are legally responsible for the minor), etc. It should be noted that the Convention on the Rights of the Child enshrines the definition of the term "child" at the international level in Art. 27.

In the legal literature, attention is drawn to the fact that in order to develop the idea of the UN Convention on the Rights of the Child "... the participants of the World Summit at the highest level in the interests of children (1990, New York) adopted the

World Declaration on Ensuring the Survival, Protection and Development of Children and Action plan for the implementation of this declaration during the 90s of the 20th century. It says that every day many children around the world are in danger, which prevents their growing up and development" [7, p. 42]. The World Declaration set the following tasks: "improving children's health and nutrition; showing more attention, care and support to disabled children, as well as other children who are in extremely difficult conditions; strengthening the role of women as a whole and ensuring equal rights for her and men, which will benefit the children of the whole world; taking care of safe motherhood by all possible means; focusing the main attention on conscious planning of family size and intervals between childbirths ; providing the family, which is the main center and natural environment for the growth of children's well-being, with all possible types of protection and assistance; ensuring the opportunity for all children to define themselves as individuals and realize their potential in safe and favorable conditions, in the environment of a family or guardians who care about their well-being (children should be prepared for a natural life in a free society, from an early age they should be encouraged to participation in the cultural life of the country); urgent provision or restoration for the sake of the future of all children of sustainable or permanent economic growth and development in all countries, still showed special attention to the fastest possible, comprehensive and long-term solution to the external debt problems faced by developing debtor countries" [11]. An equally significant international act was the European Convention on the Implementation of Children's Rights, which was ratified by Ukraine in 1996 and entered into force for Ukraine on April 1, 2007. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation Regarding Parental Responsibility and Child Protection Measures, which entered into force for Ukraine on February 1, 2008. The Convention regulates such issues as the protection of children, the acquisition, exercise, termination or limitation of parental responsibility, as well as its delegation, guardianship, in particular, the right to determine the child’s place of residence, as well as the right to communication, custody and similar institutions, placement of a child in foster care or to guardianship and guardianship institutions, supervision by a state body of a child who is under guardianship, as well as taking measures to manage, preserve or dispose of the child's property.

On September 1, 2006, Ukraine joined the Hague Convention on Civil Legal Aspects of International Child Abduction of October 25, 1980. As scientists note, this "Convention regulates the procedure for the return of children in the event of child abduction by one of the parents. According to the said Convention, its main purpose is to return the child to his place of permanent residence, while it should be understood that this definition is absolutely not the same as the citizenship of the child or his parents" [12]. The Convention on the collection of alimony abroad dated June 20, 1956, which entered into force for Ukraine on October 9, 2006, allows not only to recognize and execute the decision of the court of Ukraine in the territories of the specified states, but also to make a decision on the collection of alimony in these countries on the basis of the provided documents. Regarding alimony obligations for child support, a number of conventions were adopted, among which: the Convention on Recognition and Enforcement of Decisions on Alimony Obligations Regarding Children of 1958; Convention on the Law Applicable to Maintenance Obligations 1973; the 1973 Convention on the Recognition and Enforcement of Maintenance Obligations and the 2007 Convention on the International Recovery of Child Support and Other Types of Family Maintenance. In 2008, Ukraine ratified the 1980 European Convention on the Recognition and Enforcement of Decisions on Child Custody and the Renewal of Child Custody. The European Convention on the Adoption of Children (revised) (adopted on November 27, 2008, ratified by Ukraine on February 15, 2011) is also of great importance in matters of adoption. The European Convention on Adoption of Children establishes age restrictions for a person who wishes to adopt a child: according to Art. 9 of this Convention, a child can be adopted only by a person who has reached the age of 18 and under 30 years. The Convention establishes the age difference between the adoptive parent and the child, which must be at least 16 years. According to Clause 1 (b) of Art. 5 of the Convention on the Adoption of Children, the consent of the child for adoption must be obtained during adoption. The Convention also stipulates that the definition of the minimum age at which it is necessary to obtain the consent of a child for adoption is established by the member states of this Convention in accordance with national legislation, but cannot exceed 14 years. At the same time, it should not be forgotten that the provisions of the European Convention on Adoption of Children of 1967 are still valid at this time, despite the adoption of the revised Convention on Adoption. The considered

Convention also provides an opportunity "...participating states to adopt provisions that are more favorable to the adoption of a child. This means that there will be no violation or inconsistency with the norms of the international document in those cases when Ukrainian legislation adopts norms that differ from the provisions of this convention and will be better for the process of adopting a child" [13, p. 278].

In January 2009, the Verkhovna Rada of Ukraine ratified the 1975 European Convention on the Legal Status of Children Born Out of Wedlock. The Convention stipulates that the father and mother of a child born out of wedlock have the same obligations to support him as they would have if he were born in wedlock. In cases where the legal duty to maintain a child born in wedlock is transferred to certain family members and relatives on the father's or mother's side, such duty also applies to a child born out of wedlock. A child born out of wedlock has the same right to inherit the property of his father and mother, as well as a family member and relative on the father's or mother's side, as a child born in wedlock. The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence was ratified by Ukraine on June 20, 2012. The objectives of this Convention are: "...to prevent and combat sexual exploitation and sexual abuse of children; protection of the rights of children who have become victims of sexual exploitation and sexual violence; promotion of national and international cooperation in the fight against sexual exploitation and sexual violence against children. This Convention establishes a special monitoring mechanism to ensure effective implementation of its provisions by the Parties" (Article 1 of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence).

Therefore, it should be noted that at the international level, quite a lot of legal documents have been adopted that regulate the protection of human rights and interests in general and the protection of family rights and interests of the child in particular. However, there is still no single mechanism for protecting the family rights and interests of the child [14, p. 327]. It should also be noted that in connection with the declaration of martial law in our country, in addition to the increase in the number of armed conflicts, not only internal, but also international, new problems arise regarding the protection of children: providing the child with immediate protection, maintenance, assistance, creating for her appropriate living conditions, etc. All this becomes an urgent problem of modern times for the whole world.

BIBLIOGRAPHY:

1. Ortynska N. V. Legal status of minors: theoretical and legal research: thesis.... Doctor of Law. Sciences: 12.00.01. Lviv, 2017. 523 p.
2. Convention du 12 June 1902 pour Regler la Tutelle Dec Mineurs. URL: https://www.hcch.net/en/instruments/the-old-conventions/1902-guardianship convention
3. Geneva Declaration of the Rights of the Child, 1924. URL: https://www.humanium.org/en/geneva-declaration/
4. Yushkevich O. G. Geneva 1924 Declaration of the Rights of the Child. Private legal and public legal relations: problems theories and practices: materials International conf. (in the author's editorial office) (Mariupol, September 24, 2021). Mariupol, DonDUVS. 2021. P. 71–73.
5. Protection of Children against Sexual Exploitation and Sexual Abuse. URL: https://rm.coe.int/protection-of-children-against-sexual-exploitation-andsexual-abuse /1680794e97
6. Volkova N. V. International law protection family rights and interest's child by the European Court of Human Rights. Journal Juridic National: theories you are practice 2018. No. 1 (29). P. 84-87.
7. Kolomoets N. V. Administrative and legal protection of children's rights in Ukraine: monograph. Kharkiv: Panov, 2019. 352 p.
8. Declaration of the rights of the child: adopted. by resolution 1386 (XIV) Gen. Assembly of the UN from November 20, 1959 // DB " Legislation of Ukraine » / Verkhovna Rada of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/995_384
9. The first anti-spanking law in the world. Historical background that the Swedish legislation. Radda Barnen. Swedish save the children 1994. P.1–2.
10. Karen M. Hess. Juvenile Justice. Fifth Edition. Wadsworth, 2009. 462 p.
11. World Declaration he the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration he the Survival, Protection and Development of Children in the 1990s: World Summit for Children. United Nations. Digital Library: website. URL: https://www.zakon.cc/law/document/read /995_075
12. Stoianova T., Iliopol I. Children`S Kidnapping: Problems of Civil Regulation in the EU and Ukraine. Journal of International Legal Communication. 2022. 4(1), P. 19–30. URL: https://doi.org/10.32612/uw.27201643.2022.1.pp.19-30 .
13. International private law Scientific and practical Commentary on the Law / edited by A.S. Dougherta. Kharkiv: " Odyssey " LLC, 2008. 340 p.
14. Volkova N. V. Protection family rights and interest's child in civilian clothes judiciary: dis.... Dr. law Sciences: 12.00.03. Odesa, 2022. 444 p. URL: https://hdl.handle.net/11300/23333