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Research Article

INTERNATIONAL LEGAL STANDARDS OF JUSTICE FOR CHILDREN: THEIR FORMATION AND CONTENT

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ABSTRACT

The article analyzes the emergence and formation in the normative form of international legal standards of justice for children in international law. The periodization of the normative development of international legal standards of juvenile justice (justice for children) was carried out and a detailed analysis of special international UN documents in the field of justice for children was made. The international legal concepts and the content of the concepts "justice for children", "child-friendly justice", "child-sensitive justice", "access to justice for children" from the point of view of the modern theory of international law are investigated.

The paper analyzes the effectiveness of the use of artificial intelligence in the justice system for children and notes the need for an individual approach to each child and when making a decision to proceed only from human awareness, and not only artificial intelligence.

The author also notes that the current global growing trends of digitalization of all spheres of society contribute to the further development of the electronic justice system, based on which the emergence of a new concept of "electronic justice for children" in international law is predicted.

KEYWORDS

Child, juvenile justice, international standards of juvenile justice, justice for children, child-friendly justice, child-sensitive justice.



INTRODUCTION

The rights of the child are an integral part of human rights, and today a number of international legal instruments on the rights of the child have been developed and adopted in international law. Although the first international documents on the rights of the child were adopted at the beginning of the twentieth century, the trends in the development of children's rights were especially strong in the late twentieth and early twenty-first centuries. In the international arena, the legal protection of children's rights is achieved by reflecting their rights in declarations and conventions in the field of human rights, and then in special international documents aimed at protecting the rights of the child.

One of the main issues in the protection of children's rights is ensuring their rights and freedoms in the justice system. Today, international law has a system of international standards of justice for children (rules, principles, recommendations), which are universally accepted by the UN and its agencies, as well as regional organizations.

Analyzing the normative development of children's rights to justice, this process can be considered in the form of 5 conditional stages.

Stage 1 is associated with the emergence of the League of Nations and covers the period before the formation of the United Nations (1919-1945). At this stage, the first document of an international legal nature in the field of the protection of the rights and interests of the child was the Declaration of the Rights of the Child of 1924. Although the declaration did not contain clear instructions regarding justice for children, it set a strategic direction according to which "humanity should provide children with the best", and had a significant impact on the emergence of children's

rights. In the declaration, the child is considered as a passive object of protection, and not as an active subject capable of protecting his rights. This document reflects a paternalistic approach to the well-being of children, i.e. adults fully control the fate of children [1]. The Declaration consists of 5 basic principles of ensuring the rights of the child [2]. The Declaration says for the first time that taking care of children and protecting them is the responsibility not only of the State, but also of the whole world.

Stage 2 began with the founding of the United Nations (1945) and lasted until the 1980s. By this time, the basic principles of justice had received international legal recognition. The Universal Declaration of Human Rights of 1948 established international standards in the field of justice. This declaration created an imperative requirement that judicial protection be the universal and most effective way to ensure human rights. It was the Universal Declaration of Human Rights that laid the foundation for the international legal system for the protection of human rights and the system of international documents designed to ensure the right to justice for all segments of the population.

The role of the UN Charter of 1945 in the creation of mechanisms for the protection of human rights in international law is invaluable. The Charter laid the legal basis for these mechanisms. Within the framework of the United Nations, international monitoring bodies have been established to protect human rights. During this period, special international legal acts on the rights of the child were adopted.

In 1959, the Declaration of the Rights of the Child [3] was created, based on the goals and principles enshrined in the UN Charter. This declaration expands the list of principles published in the Geneva



Declaration of 1924 to 10 principles. The preamble of the document states that "given that children are immature physically and mentally, children need special protection and work both before and after birth." For the first time in an international document, the term "interests of the child" is used, and as a principle, the need to ensure the best interests of those responsible for his upbringing, first of all parents, is established. However, at the same time, the Declaration did not contain clear instructions on the rights of children to justice.

The Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955, established non-binding legal norms for the treatment of prisoners, which should be based primarily on the rules of humanism and respect for human dignity. The International Covenant on Civil and Political Rights of 1966 provides that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". These international documents establish general rules for ensuring human rights in the justice system.

In international law, in the period from 1980 to 2000, special international legal norms (principles, recommendations, rules) were adopted in the field of justice for children, and at this 3rd stage, the term "juvenile justice" was used for the first time in international law. International legal norms provide for the creation of a special system (at the legislative and institutional level) in order to ensure the rights and freedoms of minors in conflict with the law under the international term "juvenile justice"[4]. In particular, the "UN Standard Minimum Rules for the Administration of Juvenile Justice" (Beijing Rules,

1985) [5]; "Guidelines for the Prevention of Juvenile Delinquency" (The Riyadh Guidelines, 1990) [6], "Rules for the Protection of Juveniles Deprived of their Liberty" (Havana Rules, 1990) [7], Standard Minimum Rules for Non-Custodial Measures" (Tokyo Rules, 1990) [8] and other international standards were adopted by the UN General Assembly.

The 1989 UN Convention on the Rights of the Child is the only legally binding international document that enshrines norms regarding justice for children. The Convention was developed on the basis of the liberal theory of paternalism, according to which children are recognized as full members of society. With the help of this concept, the rule that has existed for hundreds of years about the child's belonging to parents or other persons who replace them is terminated. The Convention on the Rights of the Child expanded the range of subjects of international law, in which children began to be considered as subjects with their rights, and not as objects of protection and care. In addition, the adoption of the Convention for the first time in history marked the beginning of the creation of an international mechanism for monitoring the implementation of the provisions of the Convention - the Committee on the Rights of the Child.

Stage 4 of the process of adopting international legal standards on justice for children covers the period from the 2000s to the present. By this period, in international law, in addition to the concept of "juvenile justice", the concepts of **"justice for children"**, **"child-friendly justice"** [9], **"child-sensitive justice"** [10], **"access to justice for children"** [11] were formed in international legal documents.

The concept of the term "Juvenile justice" was used in the UN Standard Minimum Rules on Juvenile Justice of 1985 (Beijing Rules). However, the concept of "Juvenile Justice" is reflected in the title of the document, but its

content is not disclosed in the document. The term "Juvenile Justice" means not only juvenile justice as a judicial process, but also as a set of stages from the beginning of the preliminary investigation, up to the execution of the sentence and the prevention of the re-commission of a crime among minors.

The concept of "justice for children" (justice for children) appeared after the development of the concept of "juvenile justice". "Justice for children", unlike juvenile justice, also applies to children who have become victims or witnesses of a crime, as well as to children who, for one reason or another, have become participants in the legal process (including in matters of inheritance, custody). This definition applies to all types of jurisdiction of the justice system (not only criminal, but also administrative and civil) [12].

The concept of "Access to justice for children" (Access to justice for children) appeared in the last decade. It covers all judicial and non-judicial mechanisms (national and international) that relate to the rights of children, suspects, accused or convicted of crimes, victims and witnesses of crimes, or children associated with the justice system for other reasons (for example, in matters of custody, inheritance, etc.).

These concepts are reflected in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005) [13], the UN Secretary-General's Guidelines on the Common Approach to Justice for Children (2008) [14] and the UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009) [15], Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010) [16] and other documents.

In 2019, the 30th anniversary of the UN Convention on the Rights of the Child marked the beginning of a Global Pledge: "for every child, every right."

Many States of the World have proclaimed their pledges: to create a national coordination of the criminal responsibility system for adolescents; to establish juvenile criminal courts (Venezuela); to continue their efforts towards incorporating children's rights in the Fundamental Law - the Constitution (Germany); to undertake a complex reform of national juvenile law to strengthen / support children's rights, including the strict separation of protective and criminal measures; to introduce specific procedural guarantees for juveniles; to set a minimum age for imprisonment (Luxembourg); to prevent violence against children; to ensure the inclusion of children in procedures that concern them; to guarantee security in the digital space; to implement child-friendly justice and to provide equal opportunities for all children (Slovenia), etc. [17]

The promises of many countries relate to the establishment of special courts for juveniles or special judicial procedures for children.

UNICEF experts noted: «We recognize that the 21st century has brought forth new challenges in the form of, inter alia, climate change, rapid urbanization, unsustainable exploitation of natural resources, protracted conflict and humanitarian crises, forced displacement, digitalization and mass connectivity and multi-dimensional and inter-generational poverty with a profound impact on children's rights and well-being. It also brings new opportunities, including through the advancement of science, technology and innovation, for our renewed collective and concerted action with, and for, the 21st century child» [18].

In the current so-called information age, the digitalization of all spheres of society, especially in the era of pandemics, the acceleration of this process has not spared the justice system. Electronic justice as an important area of legal and political practice around



the world is assessed as the main direction of electronic democracy. The COVID-19 pandemic has created health threats with serious human and social consequences. In a short period of time, States have made significant efforts to adapt to new conditions and use available resources to ensure the functioning of justice bodies. The crisis caused by the COVID-19 pandemic creates the need for more active development of areas based on digital technologies and innovative solutions, in particular, the adoption of national and international regulations on the introduction and further use of digital justice.

The fact that information technologies have become the "driver" of economic growth has laid the foundation for the use in international documents of such terms as "information age", "digital age", "electronic justice", "cyber justice", "remote justice", "digital justice", "artificial intelligence". In addition, the process of developing and adopting international documents on the protection of human rights in the digital space by universal and regional organizations continues.

It should be noted that today a number of international documents on digital justice have been adopted in the international arena, and as an example, an international document entitled "European Ethical Charter on the use of artificial intelligence in judicial systems" [19] can be cited adopted by the The European Commission for the Efficiency of Justice (CEPEJ) in 2018. The document for the first time at the European level adopted the basic principles of the use of artificial intelligence in the judicial system.

The emergence of a crisis period around the world in 2019-2020 dictated the adoption by the European Commission for the Efficiency of Justice (CEPEJ) in June of 2020 of the Declaration "On lessons learnt and challenges faced by the judiciary during and after the

covid-19 pandemic" [20]. The Declaration sets out guidelines for ensuring quality justice and respect for human rights. In the document, the Commission called on governments to invest in cyber justice, provide Internet access and conduct court hearings remotely. The Declaration states that the main task of the judiciary in times of crisis should be to ensure justice in cases affecting vulnerable groups, especially women and children. The European Parliament and the Council adopted "The Regulation (EU) 2020/1783 of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence)" [21].

In 2021, the UN Committee on the Rights of the Child published its General Comment No. 25 "On children's rights in relation to the digital environment". It sets out guidelines for ensuring children's rights in the digital space [22].

The Kyoto Declaration, adopted by the UN Congress on Crime Prevention, also provides recommendations for establishing cooperation between States in the field of protecting children's rights and preventing their violations on the Internet [23].

In general, the development of electronic justice is now entering a new period of protection of children's rights in the digital space. The new era requires the development and adoption of international legal standards to ensure the rights of children in the digital space. Ensuring children's rights in the e-justice system lays the foundation for the concept of "digital justice for children" (e-justice-, cyber justice-, digital justice for children), and this period marks the beginning of a new stage in the development of children's rights in the justice system. It can be predicted that this period will mark the beginning of a new, 5th stage of the normative development of children's rights to access to justice.



Proceeding from the above, in order to improve the system of protection of the rights and fundamental freedoms of the child in international law, we consider it appropriate to adopt an Optional Protocol to the Convention on the Rights of the Child "On the Protection of children from Information threats in the digital space" within the framework of the United Nations.

CONCLUSION

To date, e-justice as an important area of legal and political practice around the world is assessed as the main direction of e-democracy. The administration of justice for children who have committed crimes in emergency situations, especially during periods of health crisis, requires a special approach. This is due to the increase in juvenile delinquency rates in States during the COVID-19 pandemic that spread around the world. Proceeding from this, we consider it expedient to include in the agenda of the next meeting of the UN Congress on Criminal Justice and Crime Prevention the adoption within the UN framework of the Principles of Children's Access to digital-justice defining rules and guidelines regarding children's access to justice in the electronic justice system, as well as special Principles of access to justice for children in conflict with law during crisis periods.

In short, the protection of children's rights in international law in the justice system was achieved first through the adoption of universal declarations and conventions in the field of human rights, and then special international documents on justice for children. Today, the UN has created a number of international legal standards aimed at ensuring the rights and freedoms of the child in the justice system.

Today, e-justice is considered as the main element of e-democracy in the legal and political practice of

countries around the world. Accordingly, international legal standards of justice for children should cover issues related to ensuring their rights in the electronic justice system. The practice of using artificial intelligence in the justice system has its positive aspects, but the importance of the human factor in the work of children, the fact that the fate of each child should be decided not by artificial intelligence, but by a conscious human approach should be one of the basic principles of international legal standards in this area.

Specialised juvenile courts or child-friendly justice has not been established in all countries, while the justice system for children needs to be rethought and adapted to the emergence of new digital technologies and the limitations caused by the pandemic.

REFERENCES

1. Trevor Buck. "International Child Law". Third edition. London, 2014 – p.21.
2. Geneva Declaration of the Rights of the Child. Adopted 26 September, 1924, League of Nations // <http://www.un-documents.net/gdrc1924.htm>
3. Declaration of the Rights of the Child, 1959. <https://www.humanium.org/en/declaration-rights-child-2/>
4. Understanding juvenile justice in a broad sense means a set of measures aimed at ensuring not only its legal, but also medical, psychological, pedagogical and rehabilitation, as well as a high degree of protection of the rights and legitimate interests of minors.
5. Adopted by General Assembly resolution 40/33 of 29 November 1985 // https://www.ohchr.org/documents/profession_alinterest/beijingrules.pdf
6. Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990



7. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>
8. Adopted by General Assembly resolution 45/113 of 14 December 1990 // https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf
9. Adopted by General Assembly resolution 45/110 of 14 December 1990 // <https://www.ohchr.org/documents/professionallinterest/tokyorules.pdf>
10. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. Council of Europe, October 2011.
11. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. Council of Europe, October 2011.
12. A/HRC/25/35. Совет по правам человека. Доступ к правосудию для детей. 16 December 2013.
13. <https://undocs.org/ru/A/HRC/25/35>; UN Common Approach to Justice for Children, 2008.
14. ECOSOC Resolution 2005/20 // <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>
15. <https://www.un.org/ruleoflaw/blog/document/un-common-approach-to-justice-for-children/>
16. Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. New York, 2009. // https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf
17. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. Council of Europe, October 2011. <https://rm.coe.int/16804b2cf3>
18. Тарасова, А. Е. Новый этап конвенции ООН о правах ребенка -the global pledge: "for every child, a right" / А. Е. Тарасова // Международно-правовые аспекты семейного права и защиты прав детей : Сборник статей по итогам VI международной конференции, Москва, 02–03 декабря 2019 года / Под ред. А.Е. Тарасовой. – Москва: Общество с ограниченной ответственностью "Издательство "КноРус", 2020. – С. 128-148.
19. <https://www.unicef.org/child-rights-convention/global-action>
20. Adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018) // <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>
21. CEPEJ (2020)8rev. Strasbourg, 10 June 2020. // <https://rm.coe.int/declaration-en/16809ea1e2>
22. Regulation (EU) of the European Parliament and of the Council on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence). 22 October 2020.
23. Regulation (EU) of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). 22 October 2020.
24. CRC/C/GC/25. General comment No. 25 (2021) on children's rights in relation to the digital environment. UN. Committee on the Rights of the Child // <https://digitallibrary.un.org/record/3906061>
25. Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development. Fourteenth United Nations Congress on Crime



Prevention and Criminal Justice. Kyoto, Japan,
7–12 March 2021, New York, 2021 //
https://www.unodc.org/documents/commissions/Congress/21-02815_Kyoto_Declaration_ebook_rev_cover.pdf

