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PROTECTION OF RIGHTS OF MINORS IN ADMINISTRATIVE PROCEEDINGS IN THE EUROPEAN LEGAL FRAMEWORK

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ABSTRACT

Juvenile justice is an essential element of the development of social justice provision for minors in all countries, thus enhancing the safety of youth and the maintenance of order in society. The aim of the research is to analyse the theoretical provisions and legal norms governing the administrative and legal protection of minors in European countries. It is also to formulate proposals and recommendations for the modernization of the legal framework for juvenile justice institutions' functioning in the Republic of Kazakhstan. According to the set goal and objectives, a range of general and special research methods were used for a comprehensive analysis. The theoretical and practical significance of the article is determined by its relevance and novelty, with its focus on solving the most important problems facing protection of minors' rights in the judicial process.

1 INTRODUCTION

The international community, realizing the importance of childhood for social progress and its future, has developed the concept of childhood as one of the most valuable time periods. The international normative legal acts focus mainly on the preferential protection of child's rights. The legal status of children today is determined by extensive international legislation on the protection of the child's rights. There is no doubt that the primary international legal sources in this area are universal, and regional international acts proclaim human rights and freedoms.

The issue of the protection of child's rights is one of the fundamental activities the European Union and the United Nations allocates time to because caring for children means caring for future generations - for the very continuation of human civilization. In recent years, the international community has developed a wide range of treaties regarding the protection of the children's rights and interests, making it possible to assert a certain stability in an international system of standards.

Today's realities help us to ponder about the behaviour of minors in a legal manner. Social transformation causes a change in their behaviour as they age. Thus, the state is more humane towards offenders, especially those under the age of 18. However, humanity cannot increase in pity for offenders. There is controversy among scholars about the effectiveness of existing measures to minimize the delinquency of minors. In addition, in administrative law, there are several administrative influential measures that apply to minors. Though based on their content, compliance problems arise in these measures due to the typical behaviour of a juvenile offender.

Minors are of a special social group, not adapted to life yet and deprived of the opportunity to adequately assess the current situation or the situation(s) in which they find themselves and correctly respond to it. Therefore, children are identified as the most vulnerable group of the population, both socially and legally, in the process of radical transformations that have occurred in the Republic of Kazakhstan over the past decades. This is the reason that demonstrates the existing need to develop an effective mechanism for the legal protection of minors, bolstering it as one of the priority directions of state policy.

Undoubtedly, the Republic of Kazakhstan, in its activities, pays great attention to solving problems regarding protecting the rights of children, systematically conducting socially significant measures for protecting the rights of minors, and has achieved certain success in creating a system of juvenile justice. The basis of the state policy for the protection of children's rights is a system comprised of mutually coordinated actions of the state, the public, and international non-governmental organizations targeted at ensuring children's rights to form a full-fledged and harmoniously developed personality.

The academic novelty of the research is attributed to by the issue regarding formation of an integral mechanism in the Republic of Kazakhstan's juvenile justice bodies, considering the modern demands for social and economic reforms in the field of protecting the rights, freedoms, and interests of children has not been previously posed as a comprehensive study subject, although its need is obvious. The article can serve as subsequent scientific research in the field of the administrative and legal protection of minors and contribute to the search for solutions facing juvenile justice problems.

Many scholars, such as A. Omarova, S. Vlasenko¹, G. Alibayeva, and N. Razzak², and D. Liakopoulos³, studied the issue of protection of minors' rights in administrative proceedings in the European Union countries.

The conceptual and theoretical deviant behaviour problems and legal socialization of minors in the Republic of Kazakhstan were studied by B. A. Zhetopisbayev.⁴

Kratcoski, P. C., examines recent changes in offenders' characteristics along with changes in laws and the development of social media and smartphones, and conducts research on the international perspective on juvenile justice and crime, mental health, and special needs of youth in the juvenile justice system, at-risk children, and innocent children as victims.⁵

The theoretical and practical significance of the article is determined by its relevance and novelty, with a focus on solving the most important problems concerning the protection of minors' rights.

2 METHODOLOGICAL FRAMEWORK

The study used a wide range of scientific methods, including philosophical, general scientific, and special research methods which allowed for an objective analysis of the subject matter. The methodological basis of the study is dialectical, formal legal, and axiological, and uses forecasting, analysis, deduction, induction, and appeal to the categories of general and particular, essence and phenomenon, abstract and concrete.

The dialectical method contributed to the analysis of various conceptual approaches to the protection of minors' rights when bringing them to administrative responsibility. Using the formal legal method, the author traced the interrelationships between the internal content and external expression of the protection of minors' rights in administrative proceedings in the European Union.

The hermeneutic method is also utilized, primarily adapted through the interpretation of legal texts. The legal and dogmatic method analysed existing regulations and identified the factors that determine the current situation for minors. Comparative methods analysed the peculiarities of legal policy in the field related to securing the legal status of minors in administrative cases in different countries.

The axiological method was used to clarify the value orientations of modern law, which are manifested in the need to improve the quality of legal relations for the protection of

1 Aisel Omarova and Serhii Vlasenko, 'International Standards of Juvenile Justice: Its Creation and Impact on Ukrainian Legislation' (2022) 5 (1) Access to Justice in Eastern Europe 116, doi: 10.33327/AJEE-18-5.1-n000100.

2 GA Alibayeva and N Razzak, 'Juvenile Justice in Central Asia: Current Status and the Possibility of Using the European Model' (2015) 6 (5) Mediterranean Journal of Social Sciences 139.

3 Dimitris Liakopoulos, 'Interactions Between European Court of Human Rights and Private International Law of European Union' (2018) 10 (1) Cuadernos de Derecho Transnacional 248, doi: 10.20318/cdt.2018.4123.

4 BA Zhetpisbaev and others, *Conceptual and Legal Foundations of Juvenile Justice* (Kazakh University 2019).

5 Peter C Kratcoski, Lucille Dunn Kratcoski and Peter Christopher Kratcoski, *Juvenile delinquency: theory, research, and the juvenile justice process* (6th edn, Springer 2020) doi: 10.1007/978-3-030-31452-1.

minors' rights in court. The method of forecasting studied the European experience of case consideration involving administrative offenses by minors in the European Union so it was possible to determine further vectors of legislation development on the protection of children's rights in court and was also used in the reception and implementation of foreign legislation.

The dialectical method deepens the conceptual and terminological apparatus, analysis, and synthesis, and clarified the essence of juvenile justice. A systematic approach unified the theoretical and cognitive foundations of the protection of minors' rights in court. The formal-logical method allowed us to identify the logical and methodological foundations for building basic definitions. The formal legal method, combined with logical analysis, aided our comprehensive study of the existing legal provisions system for governing juvenile justice, and outlined the areas for improving legislation in this area.

3 CHILDS' RIGHTS IN EUROPEAN COUNTRIES AND POLICIES

The issue of protecting children's rights is a problem facing the entire international community. Several international institutions and regulations are designed to facilitate its solution. Today, we can say with confidence that there is no country in the world where there is no problem regarding protecting children's rights. An essential role in the international legal protection of children's rights is played by acts of a general nature that protect human rights in general. Even though these international legal agreements do not practically provide special protection to the child as a representative of a separate social group, their provisions are still important for the protection of the children's rights. The Universal Declaration of Human Rights⁶ contains a list of basic civil, political, economic, social, and cultural rights. Currently, this is the standard to which all states are working to approximate their national legislation as much as possible.

After the Universal Declaration of Human Rights was adopted, the United Nations General Assembly, in 1952, decided to prepare and adopt a single pact that could incorporate a scope of fundamental rights and freedoms. After lengthy work on this document and long discussions, two Covenants on Human Rights were developed and adopted - the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights (Resolution 2200 A (XXI) of December 16, 1966).⁷ The adoption of these documents served as a new step in the qualitative development, provision, and protection of the rights proclaimed in them. The rights that are expressed and consolidated in these Covenants have already acquired the character of "jus cogens." They are recognized at the international level as invariable norms and deviation from this is unacceptable.

An important document regarding the children's rights was the Declaration of the Rights of the Child, adopted by the UN General Assembly in 1959, consisting of ten articles with key social and legal principles for the children's protection aimed at the harmonious development and social protection of children. The Declaration was a document, for the first time, specifically and fully dedicated to children's rights. Recognizing the statement's validity that "the child should be given the best that society has," the Declaration pointed to the need to "ensure a happy childhood for children" and

6 UNGA Res 217 A 'Universal Declaration of Human Rights' (10 December 1948) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 19 April 2023.

7 UNGA Res 2200 A (XXI) 'International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights' (16 December 1966) <<https://www.refworld.org/docid/3b00f47924.html>> accessed 19 April 2023.

set as its goal the proclamation and fulfilment of rights and freedoms aimed to benefit both children and society⁸.

Today, the Convention on the Rights of the Child (1989) should be considered the main source of international law in the field of protection of children's rights. The initial draft of the Convention, developed by the Polish Republic, was permeated with minors' rights in economic and socio-cultural spheres, which caused heated discussions among countries, organizations, and experts. The subject of the discussion that arose was the requirement to maintain a balance between civil, economic, social, and cultural rights. Polish opponents, recognizing the importance and necessity of economic, social, and cultural rights, defended their position on the inclusion of rights covering the situations encompassing special needs children, refugee children, children who become delinquents, children in emergencies, orphans, etc⁹.

Thus, the first step towards the systematization of the norms that form the modern institution of "juvenile law" was taken at the level of international legal documents on the protection of human rights. The norms enshrined in these international acts apply to the state's parties to the agreements. They have a tremendous impact on the formation of the domestic instruments for human and civil rights, helping to ensure them. In this regard, the Republic of Kazakhstan, in November 2005, ratified the listed international Covenants and, subsequently, the Optional Protocols to them. The named international acts are the most important documents used to determine the global directions of international legal norms action regarding human rights protection, and, meanwhile, affect the rights, freedoms, and legitimate interests of the child.

A study of the international organizations' reports allows us to state that there is an improvement in world practice regarding ensuring and protecting children's rights and improving their well-being. It cannot be said that the problems of child protection have been resolved, but one can observe attempts by states to systematically improve the situation. We believe that it is due to the influence of the Convention, which prompted many states to improve their domestic legislation, bringing it in accordance with the Convention's requirements. The provisions included in the Convention have significantly influenced the activities of international and regional non-governmental organizations working on children's rights¹⁰.

Other key international legal documents regarding the protection of the children's rights include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") 1985,¹¹ and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).¹² It is these acts, in addition to the Convention, that constitute the foundation of the protection mechanism in the administration of juvenile justice.

One of the main goals of the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) is to proclaim the states' desire to promote the well-being

8 UNGA Res 1386 (XIV) 'Declaration on the Rights of the Child' (20 November 1959) <<https://digitallibrary.un.org/record/195831?ln=en>> accessed 19 April 2023.

9 UNGA Res 44/25 'Convention On the Rights of the Child' (20 November 1989) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 19 April 2023.

10 Bart van der Sloot, Chris Jay Hoofnagle and FJ Zuiderveen Borgesius, 'The European Union General Data Protection Regulation: What it is and what it means' (2019) 28 (1) Information & Communications Technology Law 65, doi: 10.1080/13600834.2019.1573501.

11 UNGA Res 40/33 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")' (29 November 1985) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>> accessed 19 April 2023.

12 UNGA Res 45/112 'United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines")' (14 December 1990) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>> accessed 19 April 2023.

of the minor and his family. At the same time, juvenile justice is a vital component of each country's development regarding the provision of social justice for all minors while ensuring the protection of children and maintaining an order in society (paragraph 1.4. Part 1). The standards for juvenile justice are defined by two main objectives of its implementation. The first is to promote the well-being of the juvenile, and the second is to respect the "principle of proportionality" (clause 5.1. Part 1). The implementation of both goals should be based on mandatory consideration of the individual characteristics of a minor participant in the relevant procedures, his rights, and legitimate interests, ensuring full access to the process of considering the case, as well as limiting the punitive approach of the state's response to the child's offense. Similar goals and principles are listed in the UN Guidelines for the Prevention of Juvenile Delinquency.

Further, attention should be paid to the provisions of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice provided on November 17, 2010.¹³ The recommendations feature the possibility of their application in all possible cases including child participation, regardless of the reason and role in which the child is involved (paragraph 2 of section I). The drafters of the Guidelines on Child-Friendly Justice, drawing on experience from previous documents, have attempted to articulate a set of universal provisions and standards in the juvenile justice field. These standards can be roughly classified into two main groups: general standards for the administration of justice, which should be available to all participants in legal proceedings, and special standards, which should consider special needs of children in the administration of justice regardless of their procedural status.

The first group of standards is embodied in Art. 6 of the 1950 European Convention on Human Rights, guaranteeing everyone "the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"¹⁴. The second group of standards is specific and related directly to the regulation of children's participation in the administration of justice. It should be noted that both groups of standards highlighted in this work are closely related. Special standards and guarantees for the participation of children in the legal proceedings supplement and concretize the general standards specified in Art. 6 European Convention on Human Rights 1950.

The above recommendations formulate five fundamental principles of friendly justice: 1) participation, which is the children's right to receive the necessary information and express their opinion during court proceedings; 2) the most important interests of the child, meaning the need for the best and most effective provision of the child's rights; 3) dignity, so children must be treated with sensitivity and respect during all procedures, with special attention given to their situation and unique needs, regardless of the case's form and procedural status; 4) protection against discrimination; and 5) the rule of law, applying equally to children and adults, presupposing the implementation of all elements of fair justice¹⁵.

All other elements and guarantees of child-friendly justice are linked to and based on the above fundamental principles. Thus, the Recommendations on child-friendly justice specify in detail measures to inform and provide qualified legal assistance to children and their family members and measures aimed at protecting private and family life, ensuring the safety of minors themselves (subsections 1-3 of section A of part IV). Strict requirements

13 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (CoE Publishing 2011) <<https://www.coe.int/en/web/children/child-friendly-justice>> accessed 19 April 2023.

14 Council of Europe, *European Convention on Human Rights: as amended by Protocols Nos 11, 14 and 15 supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (CoE Publishing 2021) <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>> accessed 19 April 2023.

15 Ton Liefwaard and Ursula Kilkelly, 'Child-Friendly Justice: Past, Present and Future' in Barry Goldson (ed), *Juvenile Justice in Europe: Past, Present and Future* (Routledge 2019) ch 4, 57.

have been established for all specialists working with and for children, accounting for the need for an interdisciplinary approach to the consideration of cases with the participation of minors (subsections 4-5 of section IV). The specifics of the conduct of procedural actions are regulated, considering the peculiarities of the children's development and perception of the world to ensure their effective participation in the process of administering justice (subsections 4-5 of section D of part IV).

Having analysed the provisions in the main international documents on minors' rights in the administration of justice and the practice of the ECHR, it should be noted that many provisions and principles laid down in the 1989 Convention on the Rights of the Child continue to develop and are subject to critical analysis, assessment, and additions. Thus, the principle of child's best interests in the ECHR's practice began to be reflected through the effective participation of the child in the administration of justice with his participation, and the failure to provide any conditions for the child's effective participation in the consideration of his case is regarded by the ECHR as a breach of Art. 6 of the 1950 European Convention on Human Rights. At the same time, the assessment to ensure the effectiveness of the child's participation in the administration of justice should always be carried out ad hoc, considering the individual features and needs of the minor. The state's ability to properly organize a judicial process with the participation of children, regardless of the type of legal proceedings and their procedural status, can be considered a litmus test of the effectiveness, humanity, and vitality of the entire judicial system in a given country¹⁶.

We consider it necessary to consider the experience of countries in the juvenile justice field, which we consider important and useful for our research and further development of this area in the Republic of Kazakhstan.

The legal system of Great Britain, although it did not differentiate proceedings in cases involving adults and minors, passed a law in 1847 on juvenile offenders. On December 21, 1908, the Law on Children was adopted (entered into force on 01.01.1909), or it was also called, the "Charter of Children," which defined the juvenile courts system in Great Britain. The significance of this Children's Act of 1908 is that it defined several institutions of the UK juvenile justice: the prevention of cruelty and violence against minors, the protection of the health and life of children and adolescents, introduced a ban on alcohol, minors who smoke, determined the status of educational and industrial schools, etc. This law consolidated the state's important role in raising children. The state, emphasizing the role of parents in the child's life, determined the importance of family education, regulating the relationship between parents and children, and reserved the right to control the performance of parental duties¹⁷.

From the first steps of juvenile justice in England, the idea of guardianship, having the character of a civil procedure, was developed, justifying the juvenile court's intervention in family relations to provide the care and upbringing of a child. This idea later became one of the principles formed by the end of the 30s. 20th century doctrine states "juveniles in need of care, protection, or control" - the doctrine of "care, protection, and control" regarding minors. Great Britain's juvenile justice is positioned in the primary role of guardianship, care, and upbringing of children. In English law, it was also necessary to thoroughly study the life and environment of the defendant in Great Britain, distinguished by special severity, clear definiteness, and elaboration of punishments. For a minor under the age of 14, the parents or guardian, in the event of a court decision, must pay a fine and reimburse damages or

16 Liakopoulos (n 8).

17 Act of Parliament of the United Kingdom 'The Children Act 1989' <<https://www.legislation.gov.uk/ukpga/1989/41/contents>> accessed 19 April 2023.

expenses in the case. The only exceptions are cases, firstly, when the parents cannot be found and, secondly, when the parents are innocent of the child's behaviour that leads to the offense¹⁸.

In general, the Anglo-Saxon system of juvenile justice is characterized by the following features that reflect the merits of this model: 1) educational orientation; 2) lack of judicial investigation, debate, and formal accusation; 3) elimination of publicity when considering offenses; 4) participation of legal representatives; 5) mandatory clarification of the reasons and conditions that contributed to the minor's unlawful behaviour; 6) focus on the face of the child (minor); 7) cooperation with public and charitable organizations; and 8) application as a measure of punishment, as a rule, transferring under supervision of officials of special bodies. However, despite the positive dynamics of this model's functioning in juvenile justice, it has opponents who consider it a wrong approach to borrow its experience and introduce it into the other states' practices.

One of the states using the Romano-Germanic legal system, the juvenile justice model of practical interest for its best practice, is the Federal Republic of Germany. One of the features of juvenile legal proceedings in Germany is a deeply individual approach to adolescents, which is expressed in the judge's specific actions, provided for by law, to establish contact with the accused, investigation methods for the case's circumstances, the language of court proceedings understandable to the minor, and the involvement of special non-legal institutions in the study of the personality¹⁹.

In the Eastern European countries, there are peculiarities in the functioning of the juvenile justice system. They are careful about the introduction of elements into the juvenile justice system, considering their national characteristics, the specifics of the legislation, and the needs of society. For example, the Republic of Bulgaria, like all countries in the European Union, fulfils the requirement of Article 14 of the International Covenant on Civil and Political Rights, so the process should consider minors' age and the need for facilitating their re-education.

Therefore, like all EU member states, it has juvenile courts in its arsenal of judicial bodies, where activities are carefully regulated per international and European standards. The Republic of Bulgaria has an extensive legislation on ensuring and protecting the rights, freedoms, and legitimate interests of minors. The complex legislative acts cover almost all problematic aspects of the lives of modern children, including the issues of social security for certain categories (orphans, without parental care, disabled people). In Bulgaria, the juvenile justice system is represented not only by juvenile justice. Day rehabilitation hospitals have been organized there, where conditions are provided for a rehabilitation complex offering measures for children. Since 2001, the State Agency for Child Protection has coordinated and monitored state policy's execution on the protection of children in the Republic of Bulgaria.

The State Agency for the Protection of the Child implements a wide range of tasks facing modern society:

- develops a unified and coordinated state policy for the child's protection;
- develops and monitors the implementation of national and regional programs for the child's protection;
- organizes checks on the observance of children's rights in all public and private schools, kindergartens, nurseries, service departments, medical institutions,

¹⁸ Liefwaard and Kilkelly (n 20) 57.

¹⁹ Eva Lievens and others, 'Children's Rights and Digital Technologies' in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* (Springer Singapore 2018) 487, DOI: 10.1007/978-981-10-4184-6_16.

social aid offices of the Social Assistance Agency (ASA), and other non-profit institutions handling child's protection;

- monitors and controls institutions in charge of raising children for the fulfilment of the child's rights;
- develops social services standards for children, implementing measures for assistance, support, and services in a family or placement in the family of relatives, a foster family, or specialised institution;
- participates in the development of by-laws to the Law on the Protection of Children;
- creates a database in the information system as a mechanism for managing the protection system and analysing problems, policies, and services;
- develops and provides methodological assistance for the child protection departments and the ASA;
- supports the activities of non-profit institutions dealing with child's protection.

The National Council for Child Protection is a body within the State Agency for Child Protection and performs advisory and coordinating functions. Thus, world experience shows that different countries seek out their approaches to the administrative and legal protection of children's rights, forming their own models of the juvenile justice system²⁰.

Developed countries create an extensive network of juvenile justice bodies, allowing them to cover and provide protection for all aspects of the minors' lives, ensuring a quality level in all sectors. In developed foreign countries, a comprehensive system of prevention of neglect, as well as bringing minors to legal and other responsibilities, has been created and is functioning. The juvenile justice system in these countries is unified, well-coordinated, and integral.

Summing up the above, we consider it necessary to highlight the following priority areas of the administrative and legal protection of children's rights in Kazakhstan: improve the juvenile justice authorities, improve the quality of children's social services and special institutions for children; ensuring the protection of children's rights and combating violence in the family, eliminating cruelty towards children, and prevention of child delinquency.

When shaping international standards for judicial protection and representation of the juvenile participants' interests in justice, it is critical to achieve a balance between their participation and non-participation in the judicial procedure, between publicity and confidentiality of court proceedings, and between protection measures and juvenile offenders' responsibility. On one hand, by adhering to the tactics of excluding children from participation in court proceedings, we try to keep them from colliding with the official legal process; on the other hand, without their direct and effective participation, it is impossible to resolve a legal dispute. Therefore, the formation of international standards on the child justice poses a question to find a balance between the child's best interests and the interests of the state regarding resolving legal disputes and ensuring legal certainty.

To date, there are numerous ECtHR decisions regarding the protection of child's rights based on the European Convention on the Protection of Human Rights, the Universal Declaration of Human Rights, and the Convention on the Rights of the Child. During the review of the ECtHR's practice, several situations were revealed where the applicants did not receive adequate legal protection within their state.

20 Omarova and Vlasenko (n 6).

In the decision on the case “Y.U. against Russia,” the court recognized the violation of Art. 8 of the Convention, expressed because the applicant’s legitimate interests in maintaining contact with her child were not adequately protected by law enforcement agencies that refused to help her ensure the execution of the court action that entered into legal force.

Based on the existing law enforcement practice of the ECtHR, “the best interests of the child” can be identified as the following aspects. The interest of the child, as a rule, is the main criterion for the children’s rights protection. The need to listen to child’s opinion during any legal proceeding that concerns the child. According to the principle of a fair balance between the interests of parents and children, the most important interests of the child are crucial and should prevail over the parents’ interests. The child must be brought up in the family and the establishment of state guardianship is possible only in exceptional circumstances, and in particular, if there is a real danger for the child.

In European countries, judicial systems are still not sufficiently adjusted to the special needs of children. Studies show that children’s rights to be heard, informed, protected, and not discriminated against are not always fulfilled. Children in conflict with the law have special rights that are not always adequately respected by the justice system. Restrictions on the freedom of children are not considered, contrary to the requirements of the UN Convention on the Rights of the Child, and are a last resort to be used. The administrative detention of migrants and other children, as well as the deprivation of liberty, create serious problems regarding the observance of their rights²¹.

By the UN Convention on the Rights of the Child, children must be allowed to be heard in any legal proceeding that affects them and have access to competent, independent, and impartial complaints mechanisms in case their rights are violated. Apart from that, state parties to the UN Convention on the Rights of the Child recognize that all children in conflict with the law have the rights that require treatment in a manner that respects their dignity, while considering the children’s age and aiming for their social reintegration. In all actions concerning children, regardless of whether they are taken by public or private institutions, courts, administrative authorities, or legislative bodies, the child’s best interests must be essential.

The Council of Europe promotes the execution of the guidelines on child-friendly justice by providing support to states in enhancing children’s access, conduct, and participation of children in all types of justice procedures. This embraces a scope of activities carried out by the European Committee for Legal Co-operation (CDCJ), the Legal Professionals Human Rights Program (HELP), and other relevant authorities. Consequently, the Council of Europe will work together with the European Commission, the EU Agency for Fundamental Rights, UNICEF CEE/CIS, and the Council of the Baltic Sea States (CBSS). These actions will be adopted to assist member states in ratifying and implementing the Third Optional Protocol to the UNCRC on a communication procedure.

At the meeting of the UN General Assembly on the rights of children, in her opening statement, the Deputy High Commissioner for Human Rights mentioned that children’s access to justice is a crucial element in the protection of human rights and a vital condition for the promotion of all other human rights. She explained that access to justice meant ensuring that children had access to equal and timely remedies for violations of their rights. She also recalled that, despite not being incorporated directly in the Convention on the Rights of the Child, the right to an effective remedy had been recognized as an implication

²¹ Alibayeva and Razzak (n 7).

of the Convention's requirements in the text of the Committee on the Rights of the Child's general comment No. 5²².

To ensure children's access to justice, other fundamental rights under international agreements should be exercised, including the right to a fair trial and the right to access information. In addition, children must be able to exercise their right to be heard and the right to be protected from discrimination on any grounds. She highlighted the challenges children face in exercising this right, including the complexity of legal systems, ignorance, lack of information, fear of reprisals and stigmatization, societal attitudes towards children, and dependence on adult support. Certain groups of children also face additional barriers to accessing justice, such as children in institutions, children of migrants, children living in extreme poverty, and children affected by conflict.

At the national level, two main issues need to be considered: empowering children to claim their rights, including raising awareness of rights, providing adequate information, and recognizing children's evolving capacities; and the national legal systems' ability to recognize and address the problems that children face or may face. In this regard, child-sensitive, independent, safe, effective, and easily accessible mechanisms must be introduced. For rights to have real meaning, there must be access to effective remedies in the event of an offense. The rights of the child should not be perceived as "mini-rights." They need to be protected on an equal basis with other rights while considering the additional barriers associated with the children's involvement²³ (Neuwahl & Rosas, 2021).

Also important is a report prepared by Child Rights Connect that provides an overview of the results of a survey of 310 children, aged 11 to 17 and from 24 countries, on issues related to the justice system. Many children stated that they were not always listened to or taken seriously and were often the easiest to ignore due to their lack of authority. Children named parents and guardians as the main source of information regarding access to justice, although 20% prefer to seek information from people outside their family as they believe such individuals are less subjective and easier to communicate with.

UNICEF research indicates that children face the same challenges as adults in accessing justice, such as high fees, lack of trust in the system, lack of information, and stigmatization. However, children experience difficulties related to their special status, including the lack of legal grounds for appeal or social norms that make it unacceptable or impossible for a child to file a complaint without parental consent.

Child-friendly justice must be age-appropriate, accessible, responsive, fair, respect the child's rights, and help the child participate in legal proceedings by explaining the process to them. Access to justice is the cornerstone of human rights protection and is fundamental to sustainable development and effective governance. Ensuring the rule of law and access to effective justice systems, in addition to having an immediate beneficial effect, can stimulate development.

In countries where violence and stability are prevalent, the law rules, and law enforcement lacks, it is difficult to overcome impunity; children in these countries may be at risk of health and social discriminations. The justice system seems to children not just complex, but as a labyrinth - an unknown universe that they do not understand. Access to justice requires the implementation of a system provided with necessary materials, capacity, and resources. At

22 UN Committee on the Rights of the Child, General Comment No 13 'The right of the child to freedom from all forms of violence' (18 April 2011) <<https://digitallibrary.un.org/record/711722?ln=en>> accessed 19 April 2023.

23 Nanette A Neuwahl and Allan Rosas (eds), *The European Union and Human Rights* (Martinus Nijhoff 1995).

the same time, this system should be understandable to children, they should feel involved in and trust it without fear of threat. States need to introduce specialized legal aid mechanisms for children and professional codes of conduct for children.

It is also necessary to introduce measures to ensure children's access to justice in Kazakhstan. They embrace the appointment of ombudsmen; the creation of "hotlines;" the provision of free legal assistance; the introduction of a "network cop" who can be contacted via social media or email for advice or to convey information to the police; creation of children's rooms in social assistance centres; introduction of "complaint boxes" in schools; the use of videoconferencing and closed-circuit television systems to provide evidence during court hearings; creation of special courts for juvenile offenders composed of specialized judges; and the use of alternative non-custodial mechanisms in juvenile justice, including mediation, probation, and family rehabilitation (Macenaite & Kosta, 2017).

Attention must be paid to how children are perceived and treated by society. They must be recognized as holders of their rights and given legal authority to protect them. The states of the European Union should create conditions in which the child's voice would be heard. Children need to be made aware of their rights in order to promote and defend children's rights, and an international campaign has been called for in this regard. It should be noted the need to find innovative, creative, and accessible ways to ensure children's access to information, the development of a curriculum and brochures for children to prepare them for participation in court processes and inform them about the role and functions of the courts, and raising children's awareness of their rights through street performances or home visits is essential to protect children as it increases their access to justice.

The lack of professional training remains, including the need to improve the level of training of judges, prosecutors, and law enforcement officials. In addition, accountability is an important factor to ensure access to justice. Effective promotion of rights requires independent, national, regional, and international monitoring mechanisms.

4 ADMINISTRATIVE AND LEGAL PROTECTION OF CHILD'S RIGHTS IN KAZAKHSTAN

The integration processes taking place in the modern world have not left Kazakhstan behind. Kazakhstan, integrating into the international community, and various international and regional organizations pursue a balanced policy in matters of the legal protection of childhood, as evidenced by the adopted legal acts. In particular, the Regulatory Resolution of the Constitutional Council of the Republic of Kazakhstan states that children, due to their age, need enhanced protection and care. Therefore, it is important to provide conditions for their full and harmonious development and protect their rights, freedoms, and interests. It should also be emphasized that minors require special protection because this is a requirement of the life of modern society, consistent with the practical activities of both international and national human rights bodies and the ideas underlying international legal documents.

This determines the importance and need for the development of close international cooperation in the field of protecting child's rights since the use of European countries' positive experience will increase the effectiveness of solving problems such as neglect and homelessness, delinquency of minors, adoption of children, trafficking in minors, etc. Foreign experience in the operation of juvenile justice is also characterized by long-term traditional foundations for the protection of human rights being progressive, having effective methods and positive results, and, most importantly, allowing one to see new variability.

The study of international legal acts on children's rights permitted a summarisation that the Republic of Kazakhstan, like other states, consistently forms national juvenile legislation. The legislation of the Republic of Kazakhstan on children's rights protection and law enforcement practice indicates that the legislation on minors has not found its systematization. Due to the existence of norms governing legal relations involving minors in various branches of law, it is impossible to talk about juvenile legislation itself. It can be characterized as interdisciplinary legislation on the child's legal status. Modernization of branch legislation ensuring children's rights should be systematic, purposeful, consistent, and based on constitutional and legal norms.

When analysing the national legal system as related to child's rights protection, it can be stated that it is headed up by the Constitution of the Republic of Kazakhstan, approved at the referendum on August 30, 1995. The basic law of Kazakhstan declares that the highest value is a person, his/her life, rights, and freedoms (Article 1). Recognizing them as the highest value means that the state has no more important task than caring for a person and his well-being²⁴.

Today, domestic legislation on the protection of child's rights, along with law enforcement activities of state authorities, is being systematically improved while considering the generally recognized norms of international law. The Code of the Republic of Kazakhstan on Administrative Offenses contains juvenile legislation norms, and with their help, the rights and interests of minors are protected in administrative legal relations and proceedings in cases of administrative offenses²⁵.

In the Republic of Kazakhstan, the idea of adopting a single codified law on children has been discussed relatively recently. We believe that this initiative will be implemented in the foreseeable future and juvenile law will become an independent branch of law. We believe that the improvement of the legislation will have a positive effect on the legal status of minors. The administrative and legal status of the child is of particular concern, because of how the issue of minors' legal status is observed in the system of relations between the minor and his legal representatives.

The UN Convention's "On the Rights of the Child," and the Law of the Republic of Kazakhstan's "On the Rights of the Child"²⁶ are the most important legal documents regarding the provision of the child's rights, of one who is subject to justice. In accordance with this norm, children have the right to express their opinions when solving any problem in the family that affects their interests and the right to be heard in any legal procedure. Considering the viewpoint of a child who has reached the age of ten is mandatory if it does not conflict with his/her interests. As well, the child's right to be heard does not mean "the right to self-determination," but only means that he/she has the right to "participate in decision-making."

Article 8 of the Convention on the Rights of the Child stipulates the state's obligation to ensure the children's right "to preserve his identity, including nationality, name, and family ties, as provided by law, without allowing unlawful interference." Today, it is essential to consider the reform of legislation in the juvenile justice field and the protection of children from all types of violence and ill-treatment. Since 2001, the project "Juvenile Justice in Kazakhstan" has been implemented to change the methods of working with minors in the Kazakhstan's juvenile justice system. The purpose of juvenile justice is to prevent offenses committed by minors.

24 Constitution of the Republic of Kazakhstan of 30 August 1995 <https://adilet.zan.kz/eng/docs/K950001000_> accessed 19 April 2023.

25 Code of the Republic of Kazakhstan No 235-V 'On Administrative Offenses' of 5 July 2014 <<https://adilet.zan.kz/eng/docs/K1400000235>> accessed 19 April 2023.

26 Law of the Republic of Kazakhstan No 345 'On the Rights of a Child in the Republic of Kazakhstan' of 8 August 2002 <https://adilet.zan.kz/eng/docs/Z020000345_> accessed 19 April 2023.

Juvenile justice, which is a specialized judicial subsystem, should be carried out within the framework of a complex, mixed jurisdiction. In part 3 of Art. 3 of the Constitutional Law of the Republic of Kazakhstan's "On the Judicial System and the Status of Judges in the Republic of Kazakhstan," a specialization of courts is provided and demonstrates the creation of specialized courts for this purpose, including those for juvenile cases, to be carried out in Kazakhstan²⁷. The Republic of Kazakhstan's policy expressly states that to further improve the judicial system, it is crucial to address the issue of creating the institution of specialized courts, including juvenile ones.

The process of creating such institutions is not an easy task. Therefore, during the initial stage, it is possible to create a juvenile board in the regional and equivalent courts (for example, such a board has existed in the St. Petersburg City Court since 1962), and then create an interdistrict juvenile court. The creation of district juvenile courts is inexpedient because the number of proceedings on minors in the total array of cases and materials considered by the courts is small. However, the requirements that the judicial composition of such collegiums must meet should be analysed in detail. First, it should be formed among judges who do not only have high professional legal knowledge, but also are specialized in children's and youth pedagogy, psychology, and defectology.

It is necessary that these specialized courts (colleges) for juvenile cases should be courts, as indicated above, of complex, mixed jurisdiction, i.e., in addition to considering criminal cases and related problems of protecting the rights and legitimate interests of minors, these courts should consider cases of civil, administrative, and other jurisdictions relating to persons under the age of majority. In other words, this court should have a strict social orientation. The law must allow for a provision on the inadmissibility of referring such cases to courts of general jurisdiction, as well as to other bodies and organizations. Also, to participate in the consideration of juvenile cases, the courts have the right to involve representatives of the state and organizations in charge of the protection of minors' rights and the provision of social assistance to them (for example, guardianship and guardianship authorities, commissions for minors, health authorities, etc.).

Created within the framework of the pilot project, "Juvenile Justice in Kazakhstan," in the city of Almaty and the Almaty region as an experiment, specialized institutions for accompanying minors in the judicial process have shown their effectiveness and relevance. As a result of this experiment, the Presidential Decree of August 23, 2007, established specialized interdistrict courts for minors in Almaty and Astana, authorized to consider cases of administrative offenses against minors and civil cases affecting their interests.

The main goal of the "Juvenile Justice in Kazakhstan" project is to create and ensure the functioning of a specialized justice system for minors who are suspected or accused of committing a crime.

Analysis of experience with juvenile justice has shown that there are options for solving this problem in Kazakhstan, as they were successfully implemented in the Auezovsky district of the Almaty city and the Karasay district of the Almaty region within the pilot project "Juvenile Justice in Kazakhstan," initiated by the "Soros-Kazakhstan" Charitable Foundation.

The implementation of the pilot project during the period from 2003 to 2006 has significantly improved the criminal justice practice. Another positive factor is that during the four years of the project, the following results were obtained:

27 Law of the Republic of Kazakhstan No 132 'On the Judicial System and the Status of Judges in the Republic of Kazakhstan' of 25 December 2000 <https://adilet.zan.kz/eng/docs/Z000000132_> accessed 19 April 2023.

- 1) The number of juvenile defendants subjected to the measure of restraint in the form of arrest was reduced (68 of 485 juveniles were arrested).
- 2) The services of a lawyer specializing in juvenile cases were provided around the clock.
- 3) A social psychologist was present from the moment of actual detention.
- 4) By the current legislation of the Republic of Kazakhstan, criminal prosecution at the investigation stage was stopped for 131 juveniles out of 345.
- 5) As a result of careful consideration of the circumstances of each criminal case, the number of cases in which the charges were mitigated increased: 34 minors' criminal prosecution was terminated, 14 minors' articles of the Criminal Code of the Republic of Kazakhstan were reclassified as less serious).
- 6) Non-custodial punishments were applied in respect to 61 out of 91 juveniles.

The most important result was that, based on the positive results of this pilot project, the Concept for the Development of Juvenile Justice in Kazakhstan envisages the creation of juvenile justice as part of specialized services: juvenile police, juvenile prosecutors, juvenile courts, juvenile services, the bar, the criminal executive inspection for juvenile affairs, social psychologists, and regional child protection agencies.

Thus, the creation of a juvenile justice system, including through the development of social service institutions, will strengthen society's stability, reduce tensions among minors, and actively influence the processes taking place in society.

It can be noted that, in the development of juvenile delinquency prevention, its step-by-step, timely legislative provision has played a great role.

To further develop and improve the juvenile justice system in the Republic of Kazakhstan, the Concept of the Development of the Juvenile Justice System in the Republic of Kazakhstan was approved. The concept provided for the gradual introduction and development of juvenile justice elements in Kazakhstan, which would contribute to enhancing the effectiveness and quality of the implementation of juvenile justice in all its stages. In this long-term document, it is noted that the judiciary of Kazakhstan fulfils the requirements for ensuring effective legal protection of the rights, freedoms, and interests of citizens, organizations, and the state.

It is determined that the main perspective of the judiciary improvement is the specialization of courts and judges, such as the separation of juvenile courts. Meanwhile, juvenile courts should be the major link with the juvenile justice system. The jurisdiction of juvenile courts also includes cases of administrative offenses, for example, infringement of the rights of minors, non-fulfilment by parents or persons who replace them of their duties regarding the upbringing of children, involvement of minors in the commission of an administrative offense, etc. It will be proper for these cases to be considered by a specialized court, since this category of cases has its specificity and can cause certain difficulties²⁸.

It is proposed to further expand the scope of probation services in Kazakhstan following the example of the U.S., Germany, and Italy, where both pre-trial and post-trial probation operate in the sphere of juvenile justice. Probation services provide rehabilitation measures for juvenile offenders, providing them with psycho-social support, mediation in the framework of restorative justice, organizing educational measures, and other socially useful activities.

28 G Suleimenova, 'Judicial protection of the rights and legitimate interests of minors' (2003) 4 World of Law 11.

In the sphere of probation application, it is proposed: A) As part of the prevention of juvenile delinquency, to introduce pre-trial probation control; and B) Concerning juvenile delinquents, as well as children with deviant behaviour in the judicial stage, to introduce probation, to carry out rehabilitation and adaptation measures with minors involved in court proceedings.

The issues of introducing social workers into the process of juvenile justice administration require the adoption of several measures to further improve the Republic of Kazakhstan's legislation in the field of juvenile justice, including:

- at the legislative level, taking measures to organize the activities of social workers (psychologists) who will provide social support for juvenile justice as employees of juvenile authorities (courts, police, local executive bodies in the field of education and healthcare), or non-governmental organizations (based on cooperation agreements between courts and other organizations for the prevention of juvenile delinquency)
- determining the procedural status of social workers, allowing them to participate in the case trials committed by minors
- activation of the activities of commissions for minors, educational organizations, mediation centres, and school groups in resolving conflict situations for schoolchildren who miss classes or are prone to committing offenses, etc.

In modern conditions, it is advisable to take a set of measures aimed at strengthening the state policy regarding children. In particular, measures include: form juvenile justice in the country, including juvenile justice and advocacy; create a system of special services for social and legal assistance to minors and their parents; ensure monitoring of legislative acts on the life of children; restrict children from information that is harmful to their well-being; develop protection mechanisms; adopt an appropriate law; create an interdepartmental commission for the protection of minors' rights to coordinate the actions of all ministries interested in this problem.

Summarizing the above, we consider it necessary to highlight the following priority areas of the administrative and legal protection of child's rights in Kazakhstan: improvement of juvenile justice bodies, improvement of the quality of social assistance for children, and prevention of juvenile delinquency. When forming international standards of judicial protection and representation of the interests of minor participants in justice, it is important to maintain a balance between their participation and non-participation in court proceedings, between publicity and confidentiality of court proceedings, and between protection measures and the responsibility of minor offenders. On one side, by following the tactics of preventing children from participating in legal proceedings, we try to protect them from encountering an official legal process; while it is otherwise impossible to resolve a legal dispute without their direct and effective participation. Therefore, the question of forming international legal framework in juvenile justice is a question of finding a balance between the best interests of the child and the interests of the state in the field of resolving legal disputes and ensuring legal certainty.

5 CONCLUSIONS

A child is a nominal social component of society and the state. It reflects the world in which it lives and the social relations in which it grows. Therefore, the further fate of the entire civil society of the state, its economic, political, and socio-cultural institutions will depend on the

quality of the authorized state institutions to ensure proper conditions for the development of the child as an individual.

During the last decades, the world community considers the issue of legal protection and protection of the rights of the child, childhood, and motherhood, because it understands that each successive generation affects the settlement of world security and peace, mutual understanding and respect, stability, and development of all spheres. A child who receives the necessary support from the state in the process of his growth and formation as a person is the guarantor of his sovereign development, international recognition, the basis of all democratic transformations and processes that take place, and has a main goal to improve everyone's well-being.

Developed countries are creating an extensive network of juvenile justice authorities which allows them to cover and protect all aspects of the lives of minors, ensuring a quality level in all sectors. In developed foreign countries, a complex system of prevention and prevention of neglect, as well as bringing minors to legal and other responsibilities, has been created and is functioning. The juvenile justice system in these countries is unified, coherent, and integral.

We consider it necessary to highlight the following priority areas of the administrative and legal protection of children's rights in Kazakhstan: improvement of juvenile justice bodies, improvement of the quality of social services for children and special institutions for children, ensuring the protection of children's rights and combating violence in the family and team, and eradicating cruel treatment of children, prevention of juvenile delinquency.

Also, in modern conditions, it is advisable to take a set of measures aimed at strengthening the state policy regarding children, in particular: to form juvenile justice in the country, including juvenile justice and advocacy; create a system of special services for social and legal assistance to minors and their parents; ensure monitoring of legislative acts on the lives of children; restrict children from information that is harmful to their well-being; develop protection mechanisms; adopt an appropriate law; create an interdepartmental commission for the protection of minors' minors to coordinate the actions of all ministries invested in this problem.

It is necessary to implement measures to ensure children's access to justice in Kazakhstan. They cover the appointment of ombudsmen; the creation of "hotlines;" the provision of free legal assistance; the introduction of an 'online policeman' who can be contacted via social media or email for advice or to convey information to the police; creation of children's rooms in social assistance centres; implementation of "complaint boxes" in schools; use of video conferencing systems and closed-circuit television for providing evidence during court hearings; creation of special courts for juvenile offenders with specialized judges; and the use of non-custodial alternatives in juvenile justice, including mediation, probation, and family rehabilitation.

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