

REPUBLIC OF AZERBAIJAN

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ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

**IMPLEMENTATION OF INTERNATIONAL LAW
NORMS IN THE FIELD OF PROTECTION OF CHILDREN'S
RIGHTS INTO THE LEGISLATION OF THE REPUBLIC OF
AZERBAIJAN**

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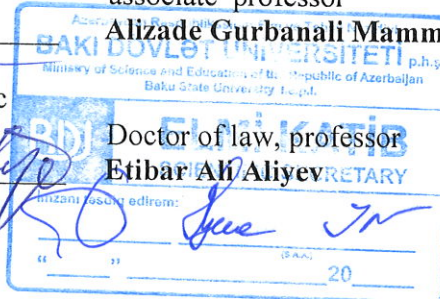
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GENERAL CHARACTERISTICS OF DISSERTATION

Relevance of the research topic and degree of scientific elaboration of the theme. The future of every nation potentially depends on the younger generation, therefore, the protection of children's rights is undoubtedly the main task of our modern era, and all states of the world should be interested in its solution. The peculiarity of children's rights is that they need special protection in order to create opportunities and favorable conditions for their free and comprehensive development. One of the important indicators of the international human rights system today is the recognition by the international community of the child's need for special protection and care, including necessary legal assistance, both before and after birth.

Before the adoption of the UN Convention on the Rights of the Child, which can be considered a landmark event for children, the idea that children can have rights separate from adults was either limited or not expressed at all. The elevation of the child from the position of an object to the position of a subject, and most importantly, its inclusion in international documents, was achieved as a result of long-term efforts. Although the CRC, which has been ratified by 196 states, is currently guided by the national legislation of most countries of the world, unpleasant facts are still included in world statistics. For example, the high number of early marriages, the involvement of children in forced labor, etc. This once again confirms that there are shortcomings and problems in the application of international principles on the protection of children's rights in domestic law. We must take into account that many rights enshrined in international legal documents on the rights of the child will be merely a declaration if they do not have a mechanism for their protection in domestic law. In addition, the fact that children are still immature and, in a certain sense, "dependent" on other persons creates serious difficulties in resolving issues related to the realization of their rights in practice.

Children, the world's most precious asset, should be protected from child abuse, whether physical, sexual or psychological, child trafficking, child abuse, child labor or early marriage, regardless of where they live. Child protection should be a permanent problem in

every country and one of the main directions of state policy. Creating a protective environment, especially for children who are most in need, will help prevent abuse, violence and exploitation. All this is directly related to the correct implementation of international norms into domestic law, which indicates the relevance of the research topic.

The problem of protecting children's rights in the world has been sufficiently covered in scientific literature. In particular, the works of S. Isaacs, C. Brownee, V. Kartashkin, M. Rodriguez and others can be noted. The issues of the international legal status of the child and the international legal protection of children's rights have been studied by Tekin A.,¹ Emine A.,² Kösesoy E.,³ Hacı Can, Ekin Tuna, Nehir Tuna,⁴ Arslan I.,⁵ Inal K.⁶ and others. Most of the scientists whose names have been mentioned claim that an effective mechanism for ensuring the rights, freedoms and legitimate interests of the child cannot be limited to the legal or legislative dimension. Taking this into account, the provision of the rights and freedoms of the child should be viewed in the context of the adaptation of socio-economic, legal, cultural, political conditions, means and methods aimed at constantly improving the rights and freedoms of the child.

At the same time, there are studies on children's rights by H.A. Sokolova, A.I. Muranova, E. David, P. Beaton, O.N. Khlestova, A.S. Chebotareva and other researchers.

Although the theoretical study of children's rights has been widely studied in Republic of Azerbaijan (hereinafter referred to-

¹ Akıllıoğlu, Tekin. Çocuk Haklarına Dair Sözleşme. – Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi İnsan Hakları Merkezi Yayınları, – 1995. – 101 s.

² Akyüz, Emine. Ulusal ve Uluslararası Hukukta Çocuğun Haklarının ve Güvenliğinin Korunması. – Ankara: Milli Eğitim Bakanlığı, – 2000. – 654 s.

³ Kösesoy, Elif. Birleşmiş Milletler Çocuk Hakları Sözleşmesi çerçevesinde çocuğun ihmal ve istismardan korunma hakkı. – Ankara, – 2019. – 237 s.

⁴ Hacı, C., Ekin, T., Nehir, T. Çocuk hukuku. – Ankara: Nobel Akademik Yayıncılık, – 2019. – 270 s.

⁵ İlyas, Arslan. Avrupa İnsan Hakları Sözleşmesinin milletlerarası özel hukuka etkisi. – İstanbul, – 2018. – 973 s.

⁶ Inal, K. Çocuk Hakları ve Siyaset. – İstanbul: Töz Yayınları, – 2019. – 458 s.

RA), the works¹ of Professor A.I. Aliyev, the work² of Professor M.D. Demirçiyeva have been used as a useful and practical source for scientific research, and the scientific works³ of Z.H. Aliyev and the doctoral dissertation⁴ of T.I. Huseynov have been used. Also, the doctoral dissertation⁵ and scientific articles⁶ of G.A. Rzayeva, who conducts research on information law in our republic, have been used in the analysis of aspects related to the protection of children's rights in the digital environment in modern times.

Among the dissertations defended in RA, we can mention the research of A.M. Gasimova on “Protection of children's rights during military conflicts in modern international law”⁷ and L.K. Salimova on “International legal standards for the protection of children's rights in places of deprivation of liberty and their implementation in the national legislation of the Republic of Azerbaijan”⁸. However, in

¹ Əliyev Ə.İ. İnsan hüquqları. Dərslük. - Yenidən işlənmiş və əlavələr edilmiş ikinci nəşri. - Bakı: Nurlar, - 2019. - 352 s.; Əliyev Ə.İ. İnsan hüquqlarının beynəlxalq-hüquqi müdafiəsi. Dərslük. - Bakı, - 2009. - 490 s.

² Dəmirçiyeva, M.D. Uşaqların tərbiyəsində valideynlərin hüquq və vəzifələri. Dərs vəsaiti. – Bakı: Qanun, – 1996. – 72 s.

³ Əliyev, Z.H. Avropa İnsan Hüquqları Məhkəməsi. Dərs vəsaiti. – Bakı: AZSEA nəşriyyatı, – 2012. – 232 s.

⁴ Гусейнов, Т.И. Осуществление международно-правовых норм в области гражданских и политических прав и свобод человека в Азербайджанской Республике / дис. ... канд. юрид. наук / - Казань, 2000. - 201 с.

⁵ Rzayeva, G.A. İnformasiya sahəsində əsas insan hüquq və azadlıqlarının təminatının beynəlxalq və milli-hüquqi problemləri: / Hüquq üzrə elmlər doktoru elmi dərəcəsi almaq üçün dissertasiya işinin avtoreferatı / – Bakı, – 2024. – 54 s.

⁶ Rzayeva, G.A. Protection of human rights violated by cybercrimes in global information society // Науковий вісник Дніпропетровського державного університету внутрішніх справ, – 2020. №2, – pp. 35-41.; Rzayeva, G.A. Digital age, globalization: Ensuring economic rights in the new information society // Law Review of Kyiv University of Law, – 2019. №3, – pp. 115-128.; Rzayeva, G.A. Information creativity as a right in the digital society // 8th International Conference of PhD Students and Young Researchers – “The future decade of the EU law”, – Vilnius university, – 2020. – pp. 180-192.

⁷ Qasımova, A.M. Müasir beynəlxalq hüquqda hərbi münaqişələr dövründə uşaq hüquqlarının müdafiəsi: / Hüquq üzrə fəlsəfə doktoru elmi dərəcəsi almaq üçün təqdim edilmiş dissertasiyanın avtoreferatı / – Bakı, – 2021. – 30 s.

⁸ Səlimova, L.K. Azadlıqdan məhrum etmə yerlərində uşaq hüquqlarının müdafiəsi üzrə beynəlxalq-hüquqi standartlar və onların Azərbaycan Respublikasının milli

both studies, children's rights were approached in a limited framework and analyses were conducted in only one direction.

In addition, the research on the sources of international law and the principles of international law by local scholars of international law such as R.F. Mammadov¹, L.H. Huseynov², and A.G. Mammadov³ served as an important direction in writing the dissertation.

All of the aforementioned scientific works were used during the research and results were obtained by generalizing.

Object and subject of research. The object of the study is the problem of implementing international legal norms in the field of child rights protection into the legislation of the RA. The subject of the study includes the history, principles and features of the implementation of international legal norms related to the protection of children's rights into the legislation of the RA, as well as legal issues related to the application of these norms in the legal system of the RA.

Goals and objectives of the study. The main purpose of the research is to conduct a theoretical analysis of the implementation of international legal norms in the field of child rights protection into the legislation of the RA, to implement measures aimed at increasing the efficiency of implementation mechanisms in this area, to identify existing legal and practical problems and to prepare theoretical and practical proposals for their elimination.

The following **tasks** have been identified in the research work in order to achieve the main goal:

- chronological study of international legal documents on children's rights and their protection and their interpretation based on a historical and systematic method;

qanunvericiliyinə implementasiyası: / Hüquq üzrə fəlsəfə doktoru elmi dərəcəsi almaq üçün təqdim edilmiş dissertasiyanın avtoreferatı / – Bakı, – 2016. – 29 s.

¹ Məmmədov, R.F. Beynəlxalq hüquq. – Bakı: Qanun nəşriyyatı, – 2002. – 752 s.

² Hüseynov L.H. Beynəlxalq hüquq. – Bakı: Qanun nəşriyyatı, – 2012. – 368 s.

³ Məmmədov, Ə.Q. Beynəlxalq hüququn ümumtanınmış prinsipləri Azərbaycan Respublikasının beynəlxalq xüsusi hüquq qanunvericiliyinin hüquqi əsası kimi // – Bakı: Azərbaycan hüquq jurnalı, – 2004. № 3, – s. 86-97.

- study of the directions of action of international and regional mechanisms in the field of children's rights protection;
- study of the directions of application of international legal principles on children's rights protection to national practice and separate analysis of the main principles;
- study of the experience of the ECtHR on children's rights protection, determination of the position of the Court in the field of children's rights protection;
- comparative analysis of the Comments of the Committee on the Rights of the Child on Azerbaijan with other states and international regulations;
- analysis of the norms on the protection of children's rights in the legislative system of the Republic of Azerbaijan;
- analysis of the process of harmonization of the legislation of RA with international legal norms in the field of children's rights protection;
- development of proposals and recommendations for the purpose of improving the legal regulation and practical provision of children's rights and their protection in RA.

Research methods. The methodological basis of the study was the use of historical and comparative legal methods, which included the analysis of scientific works on law, sociology, and psychology. At the same time, the research methods included logical and systematic analysis and interviews. During the research, not only general scientific methods, but also special methods were used in a comprehensive manner.

The main provisions for the defense. The main **new scientific provisions** that express the scientific novelty of the research are as follows:

1. The analysis of international legal acts on children's rights gives grounds to say that the international community recognizes a significant part of the rights and interests of children, as well as an effective mechanism for their protection has been developed. It is within the competence of states to implement and apply these norms nationally. The analysis of national legal regulation in the study was initially conducted on the basis of the Constitution of Azerbaijan, and then on the basis of relevant sectoral laws. As is known, there is no

direct norm recognizing children as subjects of law in the constitutional order. However, the expression “everyone” expresses the recognition of children's rights and freedoms. Based on the analysis of the experience of foreign states, it can be noted that in many states the provision on children's rights has been reflected in the constitutional order. For example, the Constitution of Finland has imperatively established the equal and individual treatment of children and the permission to influence matters concerning them in accordance with their level of development. Such a successful regulation has also been envisaged in the Republic of Turkey. It would be more correct to include a similar norm in our Constitution. In particular, it is important to establish the principle of the best interests of the child. This will serve to ensure compliance with international norms. It has also been proposed to fully enshrine internationally declared principles for the protection of children's rights in the Law of the Republic of Azerbaijan “On the Rights of the Child”.

2. The shortcomings of national legal regulation arise from the paternalistic approach to the protection of children's rights. In most cases, the preference given to parents over the child's opinions can be cited as an example. Therefore, as a result of the study, reasonable proposals were presented regarding the mechanisms for the protection of rights such as personal integrity, honor and dignity, and recognition of the child's own identity in accordance with international norms. However, the protection of children's rights should not mean that their protection and care should lead to their growth as individuals free from responsibility. In short, the protection of children's rights must be ensured by taking into account the duties assigned to them.

3. Based on a comparative analysis of international norms, in particular the 1989 Convention on the Rights of the Child, and national legislative norms, a dual aspect can be noted in the protection of the rights of the child: On the one hand, due to the child's lack of legal capacity, the protection of his rights and interests is carried out by his parents. This right of parents is also connected with their obligation to take care of the child's physical, spiritual and moral development, since the violation of the child's rights can

negatively affect his development. On the other hand, state control in the protection of the rights of the child is considered mandatory in order to prevent parents from abusing the aforementioned powers.

4. Another feature of the child's right to know his or her own identity is that the child can obtain this information after growing up, that is, after reaching the age of majority. For this reason, although it is claimed that this right should be associated with adults, not children, it is not correct to consider this approach acceptable. Because imposing obligations on states at birth can also prevent violations later. In addition, in many cases (especially related to health), it is necessary to obtain information about the biological identity of the child. For example, the detection of any genetic disease before reaching adulthood. Therefore, although the right to know the identity of the child is a new expression, it is of great importance in protecting the best interests of the child.

5. It is not right to implement international norms in the field of child rights protection into national law in only one direction. Because in a rapidly developing digital society, the protection of children's rights faces many legal problems. For example, children are exposed to sexual violence in virtual space, their right to personal integrity is violated, exposure to the negative effects of harmful information, etc. In this regard, it is necessary to implement national legal instruments not only on children's rights, but also on international legal instruments regulating new social relations arising from the development of science and technology. This can be specified in more specific areas. For example, the protection of children involved in sports from doping, violence, manipulation and corruption, the protection of children from online sexual exploitation and sexual violence, etc.

6. In order to protect the rights of the child and children, the Committee on the Rights of the Child has noted in its general comments and reports the need to raise the age of marriage and, in particular, to eliminate the inequality in the age of marriage between girls and boys. In fact, in its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", adopted at its thirty-third session in 2003, the Committee on the Rights of the Child strongly recommends that the

legal age of marriage for both men and women, with or without parental consent, be raised to 18 years of age, and that it be raised to 18 years of age for girls, in accordance with the existing legal rules and practices of States parties, where necessary. The legal regulations of the world regarding the age of marriage have been analyzed in detail, the facts regarding the number of early marriages in our country and the consequences they cause have been investigated, and as a result, it has been considered more appropriate to maintain the age of marriage at 18 years and not to allow any reduction.

Scientific novelty of the study. The scientific novelty of the study is that it specifies international legal principles for the protection of children's rights, presents effective proposals for improving the norms on their mechanisms for ensuring in national law. In addition, solutions to existing problems for the protection of individual children's rights are presented in a concrete way, both legally and practically.

Theoretical and practical significance of the study. The theoretical basis of the study was formed by the scientific works of local and foreign scientists, legal theorists, including specialists in the field of protection and regulation of children's rights, who studied various aspects of the problem of children's rights. The theoretical significance of the study is that the dissertation classified the main principles in the field of protection of children's rights and specifically identified their mechanisms of ensuring them. In addition, theoretical analyses were conducted on the application of international norms related to the protection of individual children's rights to national practice.

The practical significance of the study is determined by the possibility of making a contribution when applying the presented proposals and recommendations in practice.

In addition, the results obtained, as well as the content of the dissertation, can be used in teaching subjects such as “Women's and Children's Rights”, “Human Rights”, etc.

Approbation and application. The results and innovations obtained in the research work have been reflected in the author's scientific works published in various languages (Azerbaijani and

English) in prestigious scientific journals of our republic and foreign countries on the topic of his dissertation, as well as in the materials of international scientific conferences. The author has published 9 scientific works (6 scientific articles and 3 conference proceedings), 3 of which are published abroad (2 of which are in international abstracting and indexing systems).

The name of the organization in which the dissertation work is performed. The dissertation work was completed at the UNESCO Department of Human Rights and Information Law, Faculty of Law, Baku State University.

The structure of the research work. The research work structurally consists of an introduction, three chapters, a conclusion, and a list of references.

The abstract consists of, with the Title Page 330, Introduction 13929, Main Contents 17668, Conclusion 12538, and characters, for a total of 44442 characters.

THE MAIN CONTENT OF THE DISSERTATION

In the introductory part of the dissertation the relevance of the topic is justified, the degree of development of the research, its object and subject, goals and objectives, new scientific provisions presented for defense, the scientific novelty of the research, the theoretical and practical significance of the research are explained, and information is provided about the approbation of the research results and the structure of the research.

The first chapter of the dissertation is entitled “Formation and Development of International Legal Regulation on the Protection of Children's Rights” and consists of three paragraphs.

The first paragraph, entitled “The place of children’s rights in the human rights system: a brief theoretical and historical analysis of the concept of a child” is devoted to the theoretical and historical study of the place of children’s rights in the human rights system and the concept of a child. It is noted here that when we talk about a child, of course, we should first refer to the UN Convention on the Rights of the Child and the Law of the Republic of Azerbaijan “On the Rights of the Child” dated May 19, 1998. According to the Convention, every person is considered a child until he or she reaches the age of 18. A similar norm is provided for in Article 1 of the aforementioned Law. However, in that article, it is also stipulated that in order for a subject to be considered a child, he or she must also be a person who has not acquired full legal capacity. In fact, this requirement is identical to the condition in the Convention that “according to the law applicable to that child, he or she has reached the age of majority earlier.” As can be seen, the Convention has given priority to the national law of the states on this issue. If domestic law recognizes the full legal capacity of a person under the age of 18, he or she will no longer be considered a child.

In order to conduct an analysis within the framework of the current paragraph, the history of the concept of a child was examined against the background of the Roman and German states, Sumerian Civilization, Ancient Egypt, etc., the views of thinkers J. Locke, T. Hobbes, C.S. Mill, J.J. Russo, C. Rawls and others were examined,

and the concept of children's rights was analyzed in the context of natural law and positive law approaches.

Two directions are noted regarding the position of children's rights in the human rights system: The first direction is the paternalistic approach, which encompasses the methods and means aimed at protecting children and their rights by the state, and is based on the idea that interference with the freedom of action should be done to protect the happiness, needs, and well-being of a person. The second direction examines the child liberation method, which considers the limited abilities and dependencies of children not as a matter of rights, but as a reason for providing additional protection in order to achieve equal rights with adults.

The second paragraph, entitled “The interaction of international norms and national legislation in the field of child rights protection” and is devoted to the analysis of universal and regional norms in the field of protection of children’s rights and their interaction with national legislation. It is noted that among the international treaties adopted by the Republic of Azerbaijan in its legislation, there are a number of documents dedicated to the protection of children's rights, the issue of revealing the legal bases on which their implementation is based is noticeable, and the problem of their application to relations regulated by domestic law attracts attention. It is necessary to note that there are differences in the mechanism for the implementation of international treaties on children's rights. The implementation of some acts requires the relevant participating states to perform certain actions or to refrain from these actions. However, the implementation of other international treaties seems impossible without domestic normative legal accompaniment. Because they are directly directed at the subjects of national law. International documents such as the Convention on the Rights of the Child adopted by the UN in 1989, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, etc., which play an important role in the protection of children's rights, are not in the style of requiring the participating state to perform certain actions or to refrain from these actions. Therefore, when examining the implementation of documents in this area, it would be good to note

that they are among the treaties that need national legislative and organizational accompaniment, arising from the bilateral relationship of international and domestic law.

Also, this paragraph focuses on the most important international document on the protection of children's rights, the CRC, and, as regional norms, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the American Convention on Human Rights ("Pact of San Jose") and other international documents.

The third paragraph, entitled "Directions of action of international and regional mechanisms in the field of protection of children's rights", covers the study of the directions of action of international and regional mechanisms in the field of protection of children's rights. It mentions the activities of the UN Security Council, the Human Rights Council, UNESCO, the International Fund for Children (UNICEF), as well as the Committee on the Rights of the Child, the Global Movement for Children (GMC), the international non-governmental organization KidsRights and other mechanisms.

The Committee on the Rights of the Child was established to monitor the implementation of the obligations set out in the Convention by States Parties. Although the Committee's supervisory and sanctioning powers are not comparable to those of the European Court of Human Rights, they are important in terms of exposing mechanisms and practices that lead to violations of children's rights. If the necessary procedures are followed, it is possible to minimize violations of children's rights. In particular, the effective functioning of the individual complaint mechanism will ensure effective international supervision and monitoring, both in terms of resolving individual complaints and establishing a public mechanism.

Furthermore, although the text of the European Convention does not correspond to the text of the CRC on children's rights in family matters, the European Court of Human Rights has established fundamental principles that clearly reflect the approach of the CRC to the subject of private and family life. That's why, it may be effective to take into account the provisions of the CRC in the practice of the ECtHR in order to protect children's rights.

The second chapter of the dissertation, entitled **“Directions for the application of international legal principles on the protection of children's rights to national practice”**, consists of five paragraphs.

The first paragraph, entitled “The essence of international legal principles for the protection of children’s rights”, covers the study of international legal principles for the protection of general human rights. Based on the study of international norms, the following principles for the protection of human rights and freedoms can be listed: universality, indivisibility, accountability and the rule of law, participation, equality and non-discrimination, completeness and interdependence.

The principle of the universality of human rights is a cornerstone of international human rights law. This means that the rights of all people on Earth are recognized. Inalienability refers to the inalienability of rights from people and the impossibility of alienation. All human rights are integral and interdependent. This means that one set of rights cannot be fully enjoyed without the others. For example, progress in civil and political rights facilitates the realization of economic, social and cultural rights. Similarly, violations of economic, social and cultural rights can negatively affect many other rights.

The principle of participation establishes the right of all people to participate in and have access to information in decision-making processes that affect their lives and well-being. Under the principles of accountability and the rule of law, states and other duty-bearers are responsible for respecting human rights. In this regard, they must comply with the legal norms and standards set out in international human rights instruments. If they fail to do so, injured rights holders have the right to seek redress in accordance with the rules and procedures provided for by law. Individuals, the media, civil society and the international community play an important role in holding governments accountable for their obligations to protect human rights.

The second paragraph, entitled “Current problems in the application of international norms on the principles of equality and non-discrimination in national practice”, states that, as in

other international human rights instruments, Article 2 of the CRC, which regulates the principle of non-discrimination, does not specify what constitutes discrimination. The Convention does not define discrimination, but rather draws the attention of the parties to the criteria for non-discrimination. Article 2 of the CRC imposes obligations on States Parties to prohibit discrimination. The first obligation includes ensuring the rights of all children without discrimination of any kind, regardless of race, colour, sex, language, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The second obligation states that States Parties shall take all appropriate measures to ensure the effective protection of the child from any form of discrimination or punishment based on the status, activities, or expressed opinions or beliefs of his or her parents, legal guardians, or other family members.

The dissertation refers to two main General Comments of the Committee on the Rights of the Child: “The Goals of Education”¹ and “The Implementation of the Rights of the Child in Early Childhood”.²

Both Comments provide examples of the following grounds of discrimination against children that are most common in practice: sexual discrimination or gender inequality; ethnic and racial discrimination; and discrimination against children with disabilities.

In the third paragraph, entitled “The principle of the best interests of the child as a fundamental principle in the protection of children's rights: a comparative analysis of international and national legal regulations,” the principle of the best interests of the child is analyzed in the context of the Law on the Rights of the Child,

¹ UN Committee on the Rights of the Child (CRC). General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1: [elektron resurs] – URL: <https://www.refworld.org/docid/4538834d2.html> [son daxil olma tarixi: 22.03.2025]

² UN Committee on the Rights of the Child (CRC). General comment No. 7, 2005, Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1: [elektron resurs] – URL: <https://www.refworld.org/docid/460bc5a62.html> [son daxil olma tarixi: 22.03.2025]

the CRC, and other international and national legal regulations, and the practice of the ECtHR is examined.

This paragraph states that the principle of the best interests of the child usually serves to summarize the main idea of the CRC. It is a fundamental ethical principle that can serve as a guiding principle for all personal, professional or political discussions and actions that apply to our children. This principle implies that children should have ideal conditions in all aspects, that is, in all social areas where a child is present (school, family, kindergarten, courthouses, juvenile detention centers, etc.), the principle of the best interests of the child should be taken into account.

In general, the CRC does not specifically define what “best interests” are. Article 3 simply states that it is the primary objective in all actions concerning children and imperatively establishes that this objective-principle encompasses the activities of all state bodies.

The current paragraph states that Article 5 of the Law “On the Rights of the Child” establishes the primacy of the interests of the child. However, the Azerbaijani translation of the Convention uses the expression “the highest interests”. The combination “the best interests” in the original version essentially implies that the interests of the child are paramount and must be protected at all times. Therefore, it is considered that the national norms are formulated more appropriately.

The fourth paragraph, entitled “International and national legal aspects of the principle of survival and development”, analyzes both the international and national legal aspects of the principle of survival and development, which is among the guiding principles of the CRC. It is stated here that the CRC regulates the child’s right to development together with the right to life and lists it among the fundamental principles on which the Convention is based. In general, the following areas have been analyzed in relation to the provision of this principle:

- Protection of health, protection from infectious diseases;
- Prevention of early marriages. Exceptions in the CRC and national legislation that allow a child to reach adulthood earlier than eighteen years of age create a risk that the participating states will not fulfill their obligations under the Convention regarding children.

- Prevention of illegal abortions. The Committee has commented negatively on the high rates of abortions, the use of abortion as a method of family planning and sex-selective abortions and has encouraged States to take measures to reduce the incidence of abortions.

- Development of children with disabilities. In many countries, children with disabilities are subjected to various practices that violate this right in whole or in part, and this must be constantly combated.

The fifth paragraph, entitled “Implementation of international provisions on the principle of respect for the views (opinions) of the child into national practice,” is dedicated to examining the directions of application of international norms on the principle of respect for the views (opinions) of the child into national practice.

The current paragraph states that Article 12 of the CRC does not set any lower age limit for children to express their views freely. In all reports and comments of the Committee, no support is given to those who set a lower age limit for determining or taking into account the views of children.

In Azerbaijan's periodic reports, the principle of respect for the views of the child is guaranteed in the following relations:

- civil relations: the establishment of emancipation;
- family relations: the establishment of the right of the child to be protected from violence by his/her parents (or persons replacing them). Such cases of violence may result in the application of protection orders or deprivation of parental rights. In addition, the Family Code establishes the mandatory consideration of the views of a child who has reached the age of 10 as an imperative.

The third chapter of the dissertation is entitled “Problems of implementing international legal norms on the protection of individual rights of children into the legislation of the Republic of Azerbaijan” and consists of three paragraphs.

The first paragraph is entitled “General directions of national legal regulation on the protection of children's rights and freedoms” and covers the general directions of the establishment of children's rights and freedoms in national law. This

paragraph states that when a government ratifies international human rights treaties at the national level, it undertakes to develop national legislation consistent with its treaty obligations and duties. States usually do this by adopting constitutions and other laws that formally protect human rights. The expression of children's rights on a constitutional basis is a relatively new phenomenon. Constitutions usually have a separate section that categorizes human rights, in addition to provisions related to the activities of the state. These sections include, in addition to the classic human rights that everyone is entitled to, rights that are specific to children or that benefit them.

The current paragraph states that it is possible to say that the provision of children's rights by constitutions has several functions in practice. First, the regulation of children's rights in the Constitution will constitute the most important basis for the inclusion of these rights in the category of fundamental rights at the national legal level. Second, the direct provision of children's rights by the constitution will create conditions for the creation of a more operational mechanism of action and control in the event of possible violations.

Although the Constitution of Azerbaijan provides for human rights and freedoms for everyone, several articles provide regulations regarding the protection of children within the family (Articles 17 and 34).

The second paragraph is called “Directions for the application of international norms on the protection of children's civil and political rights to national practice”, where civil and political rights are listed and interpreted separately. It is noted here that the main difference between the CRC and our national Law on personal integrity is that the Convention regulates the identity of the child in two articles: Article 8 regulates the protection of identity, and Article 16 regulates the inadmissibility of interference with privacy, family life and correspondence, as well as the inviolability of the home. The Law does not provide for issues related to the protection of identity.

Article 16 of the CRC considers unlawful attacks on the honor and reputation of children to be inadmissible and declares their right to protection from such interference. A similar norm is reflected in

Article 27 of the Law “On the Rights of the Child”. This article also limits the scope of children’s right to honor and dignity by linking the honor and dignity of the child with education. In this regard, the mentioned norm needs to be reformulated.

The dissertation notes that the CRC establishes freedom of expression and the right to information in Articles 13 and 17. While Article 13 establishes the right of children to freedom of expression and access to any information, Article 17 regulates the obligations of states to ensure access to that information. The Law on the Rights of the Child, while abandoning the term “freedom of expression”, recognizes freedom of thought, conscience and religion (Article 14) and freedom of information (Article 15).

The third paragraph, entitled “Problems of applying international norms on the protection of children's social, economic and cultural rights to national practice”, notes that the CRC specifically and in detail addresses the social, economic and cultural rights of children. The Preamble to the Convention warns States Parties to ensure these rights of children. At the same time, Article 4 states that States Parties shall, where necessary, take measures within the framework of international cooperation to the fullest extent of their available resources in relation to economic, social and cultural rights, i.e. the Convention does not accept the claim that these rights cannot be implemented due to a lack of sufficient resources.

Articles 28 and 29 of the CRC, which regulate the right of the child to education, stipulate that states must provide free and compulsory education to all children, declare secondary education in various forms, general and vocational education open to all children, make higher education open to all, require states to properly organize education by using all appropriate means, educational and vocational information and guidance to all children, reduce school dropout rates, and apply school discipline in accordance with the honor and dignity of the child.

Article 31 of the CRC concerns the right of the child to rest, leisure, play and recreational activities, and to participate in cultural and artistic life. It should be noted that the right to engage in sports is most commonly used among recreational activities. Everyone has the right to engage in physical activity to express their identity, both

individually and in a group. The steps taken in raising awareness of the vulnerability of children in the world of sports and the need to protect their rights are commendable. Many charters, recommendations and acts seek to raise awareness in the world of sports and emphasize that every child has the right to participate in sports, regardless of the results and achievements they can or want to achieve.

The International Charter of Physical Education and Sport, adopted by UNESCO in 1978, aims to include persons with disabilities, protect children, promote development and peace through sport, and protect the integrity of sport from doping, violence, manipulation and corruption.¹

In the conclusion section of the dissertation, the results obtained as a result of the research are defined in 10 paragraphs:

1. The Law “On the Rights of the Child” mentions two principles for the protection of children’s rights: ensuring the best interests and equality. However, many principles of international law for the protection of children’s rights have been ignored. Considering that the introduction to the Law states that it “determines the basic principles of state policy regarding children”, it would be more correct to list the principles in a separate article, or in Article 3, which reflects the “state policy on the protection of children”. As for which principles are envisaged, based on the general and specific comments of both the CRC and the Committee on the Rights of the Child, we consider it appropriate to include the following in these principles: equality and non-discrimination, best interests, respect for the views (opinions) of the child, and the principles of survival and development.

2. Regarding equality, which is the main principle for the protection of children's rights, it should be noted that it is expedient to eliminate the inconsistency between Article 25 of the Constitution of the Republic of Azerbaijan and Article 6 of the Law “On the Rights of the Child”. Thus, with the amendments made to the Constitution in 2016, the word “national affiliation” in Article 25

¹ Winkler, S. Children and sports: the right to engage in play and recreational activities // Sports Law, Policy & Diplomacy Journal – 2024. Vol. 2, No. 1, – p. 71.

was replaced with the term “ethnic affiliation”. However, the expression “national affiliation” continues to remain in Article 6 of the Law. Making the appropriate change is more expedient both from the point of view of legal regulation and from the point of view of applying a single terminological apparatus.

3. The CRC declares that children need special protection both before and after birth. Therefore, the principles of survival and development enshrined in Article 6 of the Convention must be ensured for the period before birth as well. On the other hand, the fact that the CRC does not provide a specific approach to the beginning of childhood has left this issue to the discretion of states. Based on a comparative analysis of the comments of the Committee on the Rights of the Child, we can say that, on the one hand, the Committee recommends that states reduce abortions, while on the other hand, when defining early childhood, it explains this period as “the period from birth to eight years of age.” In this case, the question of whether abortion contradicts the principle of the right to life of children is in question. The same problem exists in our republic, which is trying to implement the provisions of the CRC into national legal regulation. We believe that the moment of the beginning of childhood should also be legally determined. Of course, most rights can be realized from the moment of human birth. In addition, it is constitutionally declared that rights and freedoms belong to a person from the moment of birth (Constitution of the Republic of Azerbaijan - Article 24.II). In this case, it is more correct for Article 1 of the Law “On the Rights of the Child” to define childhood as the period between birth and 18 years of age. However, here, rights arising before birth, such as inheritance, etc., should also be considered as exceptions.

4. Considering the above, the legal regulations on abortion directly contradict the principles of the child's right to survival. Another problem in the national legal regulation related to this principle is that social instructions on artificial termination of pregnancy are considered possible up to the 22nd week of pregnancy. In this regard, while conducting research, we were unable to obtain statistical figures. Thus, although there is information on the number of abortions in different years, we were unable to obtain any concrete

facts on which of them were carried out on the basis of medical instructions and which were carried out on the basis of social instructions. We must openly admit that selective abortions are a characteristic practice for Azerbaijan. In particular, preference is given to boys and cases of abortion when the child is a girl are not uncommon. In such circumstances, the presence of a list of social instructions indirectly creates wide opportunities for selective abortions. In any case, artificial termination of pregnancy can be carried out under the guise of any social instruction (for example, living in a rented house). Furthermore, based on medical criteria, given the presence of fetal vital signs at 22 weeks, as well as the WHO 14-week rule, we consider it more appropriate to abolish the list of social distancing guidelines altogether.

In our research, based on a comparative analysis of foreign countries, we came to the conclusion that in most countries with developed human rights protection, abortion is allowed only on medical grounds. There are even countries around the world that ban abortion altogether. It is not right to ban abortion in general. It is simply necessary to take into account medical indications, not social indications. Only a few of the social indications can be preserved. For example, pregnancy as a result of rape. Only in this case should abortion be allowed in the first trimester (i.e., the period up to the 14th week). As an advanced practice, the legal regulation of Germany can be considered acceptable.

In fact, it would be very unfair to say that no measures have been taken in this area at all. Thus, we can evaluate the fact that the “State Program for Improving Maternal and Child Health for 2014-2022”, which we referred to in the study, assigns to state bodies such measures as raising awareness about the negative effects of abortions on women's reproductive health, as a commendable step.

5. The “right to know and be cared for by one’s parents” in Article 7, Paragraph I of the CRC does not correspond to the content of the right to a name and citizenship. This right is rightfully enshrined in Articles 17-18 of our Law. However, one different point is that Article 18 recognizes the right of a child to know a parent living separately from him. In such a case, it is impossible to interpret the “right to know and be aware of one’s origin” declared in

the CRC under this article. Because the parents living with the child may not be his biological parents. From this point of view, the right of a child to know his origin is a completely different right. It is important that this right finds its expression in national law. True, there is a regulation in the relevant normative acts regarding the provision of information about the child's birth only after he reaches the age of majority and by court decision. However, in order to ensure compliance with international norms and develop appropriate procedural rules, it would be more correct to include the mentioned right in a separate article in the Law "On the Rights of the Child". In addition, the "request of the guardian" regarding this right should be excluded from that article (such a rule is provided for in paragraph 2.9 of the Rules for the State Registration of Civil Status Acts, which, is not the right approach).

6. In addition, both family and criminal legislation "seem to protect the interests of the adopter more" during adoption. Because Article 175 of the Criminal Code criminalizes the dissemination of the secret of adoption against the will of the adopter. Although the Family Code provides for the provision of information related to the adoption to a child when he reaches the age of 10 (Article 130.5), it prohibits the provision of information about this to outsiders without the consent of the adopter (Article 130.2). We believe that it would be more appropriate to add the phrase "against the will of the adoptee" to both of the norms we have mentioned.

7. Another problem with civil rights arises in connection with the right to personal integrity. The content of the right to personal integrity, as established in Articles 8 and 16 of the CRC, does not correspond in any way to Article 12 of our national law. As can be seen, the relevant articles of the CRC are based on other international norms that protect human rights in general. For example, Article 8 of the European Convention. In this case, the fact that the Law "On the Rights of the Child" does not establish such rights as the protection of children's private, family life, and the secrecy of correspondence, thus proves once again that the stereotypes of a paternalistic approach still persist. In addition, the assessment of personal integrity in Article 12 of the Law as purely physical integrity (paragraphs 4-5 of Article 12) itself does not meet the requirements

of the modern era. Therefore, it would be better if the content of that article were re-edited in accordance with the CRC.

In addition, Article 8 of the Convention regulates issues related to the protection of identity, and the study distinguishes four categories of identity: family, biological, political (national) and community identity. It is precisely in the last decade that surrogacy, artificial insemination, as well as adoption, which have emerged as a result of the development of reproductive technologies, that these four categories have necessitated the protection of identity, including the recognition of the right to access this information. The study substantiates the fundamentality of such a right based on various practical examples.

8. Based on the analysis of the CRC and national norms, two different aspects of the right of children to education can be identified: the right to participate in educational processes that are inherently valuable and embody respect for human rights; the right to access educational institutions, i.e. access to education. Although childhood is of particular importance, the first part of the right applies throughout life. In the context of the topic, more attention has been paid to the second part. This is because a number of prerequisites must be in place for children to participate fully and unhindered in educational processes. In short, unlawful restrictions or violations of other rights also create obstacles to children's access to education. At the same time, access to education depends on how national education systems are organized and whether education policies are successful.

In order to ensure the accessibility and affordability of education, the CRC requires that primary education be free and compulsory, that attendance at schools be assisted, and that measures be taken to reduce the number of children dropping out of school, the first requirement of which is reflected in Article 22 of the Law on the Rights of the Child. In order to implement the second requirement, we can mention the prohibition of truancy as a legal response. However, the issue of liability measures to be applied in case of violation of such a prohibition is in question. Until 2016, Article 189 of the Code of Administrative Offenses established a fine of 100 manat for the absence of a child from school for more than 7 days

without an excuse. However, currently, no such sanction is provided. We believe that preventing truancy of children from school will not be as effective as any fine. Because there are various socio-economic reasons for exclusion from compulsory education (early marriage, forced labor, etc.). The elimination of these reasons can ultimately result in the full realization of children's right to education. In this regard, we consider it appropriate to abolish the fine provided for in the Code of Administrative Offenses. We should also note that fining with a small amount for an act that is dangerous and risky for the future, such as truancy, is itself an unfair approach. In fact, truancy should be considered a form of neglect of children and should be criminalized, as is the case in many foreign countries (Great Britain, many states of the USA).

9. Based on the experience of foreign countries and reports of international organizations, it can be concluded that in most countries the age of marriage is set at 18 years. Taking into account the comments of the Committee on the Rights of the Child, we consider it appropriate to eliminate the norm on reducing the age of marriage to no more than 1 year in our republic. We can justify this position with statistical indicators on early marriages in our country, facts of suicide and death of girls in early marriages, as well as reports on the experience of relevant state bodies on this issue. As an interesting and fair experience, it would be appropriate to note the recent changes in the United Kingdom, according to which, starting from February 2023, 16 and 17-year-old teenagers in England will not be allowed to marry, even with the consent of their parents.

10. Although Article 25 of the said Law does not directly reflect the right to play, there is a more progressive regulation. Thus, the child is given independence in choosing out-of-school leisure and activities in accordance with his/her interests and abilities. Taking into account the fact that the child is not an adult and the risk of showing increased interest in harmful games, the legislator defines two tasks for both parents and state authorities: on the one hand, to take measures to prevent the child from being exposed to negative influences during his/her leisure and free time (for example, to prevent a tendency to virtual games); on the other hand, to determine free and preferential rules for the use of spaces to exercise the right

of children to rest. In this regard, we believe that although the right to play is recognized in the doctrine, the national legal regulation has demonstrated a more correct legal approach, which is in line with international norms.

The right of children to play should be understood in two senses. First, it is the right to participate in the game itself, which does not have to be productive. Second, it is the implementation of other aspects such as psycho-physical and mental development, social inclusion, etc. through the game. Among such aspects that have been widely used recently, the right to engage in sports should be noted. However, we should not forget that although engaging in sports, which is intended as an entertainment activity, acts as an element of the right to play, the involvement of children in sports competitions goes beyond the boundaries of this right. "Physical education and sports work with children", which is reflected in the legislation of both ours and most states, should be interpreted more in the context of their right to health. When children participate in sports competitions, the attitude towards the issue changes. We should also emphasize that many parents view sports as a source of competition, prestige and income. In recent times, problems such as violence, ignoring the child's opinion, separation of children from their parents, doping, etc. have also become widespread, which violates children's rights. Therefore, more needs to be done to promote sport and its social function of improving children's health and social inclusion.

The main provisions of the dissertation are reflected in the following scientific works of the applicant:

1. Uşaqların təhsil hüququ: hüquqi və təcrübi problemlər // 7th International Education and Innovative Sciences Congress, – Baku: – 12-13 of May, 2023, – pp. 350-354.
2. The place of children's rights in the human rights system: a brief theoretical-historical analysis of the concept of the child // 9.Uluslararası Erciyes Bilimsel Araştırmalar Kongresi, – Kayseri: – 17-18 iyul, 2023, – s. 411-419.
3. Uşaq hüquqlarının müdafiəsi sahəsində regional normalar və mexanizmlər: müqayisəli təhlil // Qanun elmi hüquq jurnalı, – 2023. № 11 (349), – s. 49-61.

4. Uşaq hüquqlarının müdafiəsi üzrə beynəlxalq hüquqi prinsiplərin milli hüquqda təsbiti və yerinə yetirilməsi // Azərbaycan Vəkili jurnalı, – 2023. №1 (22), – s. 55-63.
5. Uşaqların sosial, iqtisadi və mədəni hüquqlarının müdafiəsi üzrə beynəlxalq normaların milli təcrübəyə tətbiqi üzrə problemlər // Azərbaycan Hüquq Jurnalı, – 2023. № 2, – s. 53-66.
6. Uşaq hüquqlarının müdafiəsi sahəsində beynəlxalq hüquq normalarının nəzəri-tarixi təhlili // Azərbaycan Hüquq Jurnalı, – 2023. № 3, – s. 85-93.
7. Child's Right to Privacy: Directions of Application of International Norms to National Practice // Scientific and Theoretical Almanac Grani, – 2023. № 26 (5), – pp. 37-42.
8. International and National Legal Aspects of the Principle of Children's Survival and Development // International Journal of Innovative Technologies in Social Science, – 2024. № 2 (42), – pp. 251-265.
9. Uşağın baxışlarına (fikirlərinə) hörmət prinsipinə dair beynəlxalq müddəaların milli təcrübəyə implementasiyası // “Elmi inkişaf: uğurlar və çağırışlar” gənc tədqiqatçıların I r espublika elmi konfransı, – Naxçıvan: – 15-16 aprel, 2024, – s. 135- 140.



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