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INTERNATIONAL AND NATIONAL LEGAL ASPECTS OF THE PRINCIPLE OF CHILDREN'S SURVIVAL AND DEVELOPMENT

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ABSTRACT

The formation of the need for the special protection of children and the recognition of their rights came to the fore as a result of the historical processes taking place in the world. In the article, the factors determining the international and national legal protection of the principle of children's survival and development have been studied from various aspects. As a result of the comparative analysis, the article clarified the problems encountered during the application of international and national legal norms in the field of the principle of children's survival and development, and presented suggestions and recommendations.

As a result of the conducted research, in addition to presenting proposals for the elimination of existing practical and legal problems, analyses of the norms of domestic regulation were also conducted.

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Introduction.

Although the principle of survival and development, which is one of the guiding principles of the Convention on the Rights of the Child, is not reflected in the studies of many authors, in our opinion, the principle of development defended by Professor A. Aliyev can be interpreted in the context of protecting children's rights. Back in 1948, the Declaration mentioned the phrase "the opportunity for every person to develop freely and fully his personality" (Article 29). Moreover, the 1986 Declaration on the Right to Development recognizes the right to development as an inalienable right of every person (Article 1) and this right is interpreted as "the right to participate in, contribute to, and enjoy the benefits of economic, social, cultural and political development." By recognizing the human being as the central subject of development, the Declaration recognizes him as an active participant and beneficiary of the right to development. (Article 2) (United Nations, 1986).

International regulatory related to the principle of children's survival and development.

Convention on The Rights of the Child provides broad protection for development of the children. Five articles (Articles 18, 23, 27, 29 and 32) protect eight areas of development (physical, mental, moral, social, cultural, spiritual, personality and talents), and the sixth (Article 6) protects the child's right to life and development. However, the theoretical and practical implications of granting children the right to legitimate development are not clear enough. The term "child development" is

usually understood in a psychosocial sense, focusing on the process of transformation from childhood to adulthood. Such conceptualization of “child development” echoes the concept of children’s “human rights” and leads to a narrow interpretation of the child’s legal right to development, primarily as the child’s right to become an adult. (Noam Peleg, 2013, p. 524).





The well-known potential approach to the developmental principle is appropriately interpreted in the context of child rights. The capabilities approach is a moral theory that focuses on human development and proposes to conceptualize “development” as “freedom” (Noam Peleg, 2013, p. 529).

Noam Peleg proposes a capability approach to children’s right to development. According to her interpretation, children should be able to live a decent life throughout their lives, including childhood, just like adults. The starting point in interpreting children’s right to development must be to conceptualize children as active agents shaping their own lives, and to value their diverse roles and respect the fact that they have different capacities than adults. Incorporating the concept of a capability approach into the context of the child’s right to development can help expand the meaning of the word “development” beyond its current psychosocial concept and expand the right to development as a child right beyond the current understanding of the child. This would allow the child's right to development to be expressed as a separate and specific human right and would create a child's right to growth, rather than simply a need to grow. (Noam Peleg, 2013, p. 541).

Children’s rights to survival and development formed the basis of the Universal Declaration on the Survival, Protection and Development of Children and Plan of Action, adopted at the World Summit for Children held in New York in September, 1990 (United Nations, 1990).

It was recognized that it was necessary to use available resources to achieve the goals set out in the Plan of Action of the World Summit, in particular reducing child and maternal mortality and child malnutrition, and ensuring greater access to basic education (United Nations, 1990).

In general, we consider it appropriate to analyze the following directions regarding the guarantee of this mentioned principle:

-  Protection of health, protection from infectious diseases;
-  Prevention of early marriages;
-  Development of children with disabilities;
-  Protection of the rights of disadvantaged children.

Protection of health, protection from infectious diseases. The particular threat that HIV/AIDS poses to children’s right to life and development is reflected in the General Comment on HIV/AIDS and the Rights of Children of the Committee: “Girls are often subjected to harmful traditional practices, such as early and/or forced marriage, which violate their rights and make them more vulnerable to HIV infection, including often denying them access to education and information. “Effective prevention programs are those that acknowledge the realities of adolescent life while addressing sexuality, providing equal access to relevant information, life skills and prevention interventions” (United Nations, 2003).

Prevention of early marriages. Exceptions in the Convention on the Rights of the Child and national legislation that allow a child to reach the age of majority before the age of eighteen create a risk that States parties will not fulfil their obligations under the Convention in relation to children. However, both the Human Rights Committee and the Committee on the Rights of the Child constantly warn the parties about this. In this regard, the Human Rights Committee, in its 17th General Comment, states that each State party should determine the age of majority taking into account its own social and cultural conditions, however, the age limit cannot remain unreasonably low and, in any case, the obligations of States Parties continue to apply to persons under eighteen years of age. (United Nations, 2013).

The Committee on the Rights of the Child has often noted that care should be taken to determine the minimum age, especially in cases such as marriage, work, military service and giving evidence in court and in this case, the principles of the best interests of the child and non-discrimination should be respected. The minimum age established by the Committee requires special attention as it concerns both the freedom and protection of the child. Today, in some legal systems, children who are considered to have reached the age of majority by marriage lose their rights to protection under the Convention. In order to protect the rights of the child and children, the Committee on the Rights of the Child, in its general comments, mentions and reports the need to raise the age of marriage and specially to eliminate the inequality associated with the age of marriage between girls and boys. In fact, the Committee on the Rights of the Child, in its 4th general comment entitled “Adolescent health and development in the

context of the Convention on the Rights of the Child,” adopted at its thirty-third session in 2003, it also strongly recommends that the legal age of marriage for both men and women, regardless of parental consent, be raised to 18 years for girls, based on existing laws and practices of States parties and where this is appropriate (United Nations, 2003).

If we look at foreign countries, most countries set the age of marriage at 18 years. In some countries the age of marriage is below 16 years. For example, in Iran the minimum age for marriage with parental consent is 13 years for girls and 15 years for boys. However, it states that persons must be 15 years of age for women and 18 years of age for men to marry without parental consent. Similarly, in Equatorial Guinea and Sao Tome and Principe, children can marry at 14 with parental consent, otherwise they must wait until they are 18. There are also states that set the minimum age for marriage above 18 years. For example, in Botswana, Namibia, Nigeria, the age is set at 21 years. In Burkina Faso and Libya, the bride and groom must be 20 years old, while in Algeria the minimum age is 19 years old (What are the minimum marriage ages around the world, as England and Wales raise age to 18?).

In accordance with the UNICEF’s approach, child marriage threatens the lives, well-being and future of girls around the world. Despite a steady decline in this harmful practice over the past decade, child marriage remains widespread, with approximately one in five girls worldwide being married as children. (Child marriage). About 640 million girls and women alive today were married off as children. Almost half of child brides live in South Asia (45 percent), with the next largest share in sub-Saharan Africa (20 percent), followed by East Asia and the Pacific (15 percent) and Latin America and the Caribbean (9 percent) (Is an End to Child Marriage within Reach? Latest trends and future prospects).

In 2016, UNICEF, together with UNFPA, launched the Global Program to End Child Marriage. Designed for young girls at risk of marriage, the program has reached more than 14 million adolescent girls since 2016 through life skills training, comprehensive sexuality education and school attendance support. More than 177 million people, including key social influencers, have participated in dialogue and communication campaigns or other efforts to end child marriage, especially supporting men and boys, as well as adolescent girls (Child marriage).

If we analyze the current situation with early marriages in Azerbaijan, then in our republic there are many facts when girls suffer from such inequality that even Article 176-1 of the Criminal Code defines sanctions for forcing only women and minors to marry. At the same time, the fact that early marriages make up the majority in our country once again confirms this. Thus, according to statistics from the last three years, the number of boys and girls who got married before the age of 18 was as follows: in 2019 – 1 boy, 366 girls; in 2020 – 165 girls; in 2021 – 1 boy, 137 girls. The number of children born to girls under the age of 18 was 2,320 in 2019, 1,917 in 2020, and 1,650 in 2021. For comparison, the number of births in cities has decreased relatively, while in rural areas it has remained virtually unchanged: In 2019, the number of births was 717 in the city and 1,603 in the village, and in 2021 – 494 and 1,156 (Cabinet of Ministers of the Republic of Azerbaijan, 2020). This once again proves that educational measures against early marriages in rural areas should be continued. In general, the gradual decrease in the number of early marriages is associated with increased education in this area. In this regard, the Regulation “Educating young people about the importance of family and marriage, its protection and strengthening, as well as the negative consequences of early marriages and marriages between relatives” is important (Cabinet of Ministers of the Republic of Azerbaijan, 2020). In this area, the activities of the State Committee on Family, Women and Children of the Republic of Azerbaijan deserve attention.

In our opinion, allowing marriage under the age of 18 cannot be considered a very successful practice. That is why the countries of the world have already started to take the first steps in this field. For example, with changes coming into force on 27 February 2023, England and Wales have officially changed the legal age for marriage to 18, meaning 16 and 17-year-olds will no longer be able to marry. (Legal age of marriage in England and Wales rises to 18).

In its General Comment No. 7, “Realizing children's rights in early childhood”, the Committee emphasizes that young children are holders of all the rights set out in the Convention. In considering the rights of young children, the Committee wishes to include all young children, from birth and infancy through pre-school age, and throughout the transition to school.” Accordingly, the Committee proposes the period from birth to 8 years of age as an appropriate operational definition of early childhood (United Nations, 2005).

In this case, many problems arise due to the fact that abortion contradicts the principle of the right of children to life.

As can be understood from the text of Article 6 of the Convention on the Rights of the Child, it does not stipulate when the child's right to life begins. However, the preamble to the Convention emphasizes that, due to physical and mental immaturity, the child needs appropriate legal protection both before and after birth. Thus, the rights provided for in the Convention cover the prenatal and postnatal period.

Development of children with disabilities. In its General Comment No. 9 on the Rights of Children with Disabilities, the Committee notes that the right to life and development is a right that requires special attention in relation to children with disabilities. In many countries, children with disabilities are subjected to various practices that completely or partially violate this right. In addition to being more sensitive to infanticide, some cultures view a child with any form of disability as a bad omen that could "spoil the family line" and, accordingly, a certain member of society systematically kills children with disabilities. These crimes often go unpunished, with the perpetrators receiving reduced sentences. States parties are urged to take all necessary measures to put an end to these practices, including raising public awareness, creating appropriate legislation and implementing laws that provide appropriate penalties for anyone who directly or indirectly violates the right to life and development, which includes access to healthcare serving the development of disabled children (United Nations, 2006).

Protection of the rights of disadvantaged children. Law "on the Rights of the Child" refers to unfavourable conditions as follows: wars, epidemics, natural and ecological disasters, living in low-income families, deprivation of parents (Article 30).

Article 20 of the Convention on the Rights of the Child establishes that children deprived of a family environment have the right to receive special care and assistance, the text of the provision confirms that this right extends to those who are not allowed to remain in this environment for the sake of their interests. Similarly, Article 9 provides that parents should only be separated from their children when it is in the best interests of the child, such as in cases of parental abuse or neglect. Case law under Article 8 of the ECtHR provides that a child may be removed from the family in cases where this is necessary to protect the health and rights of the child. The court leaves the determination of what is in the best interests of the child to the local authority and focuses instead on whether the balance set out in section 8 between conflicting interests is proportionate. In particular, the Court refrains from requiring the removal of a child at risk from the family, but requires that the removal be based on both relevant and sufficient reasons, in accordance with the principle of proportionality (Kilkelly Ursula, 2002, p. 346).

Historically, a protective approach to the rights and status of children has been closely associated with social work. Its emergence coincided with the development of the profession, social workers were often among its leading advocates, and much of the public child welfare work was carried out by social agencies. These historical, philosophical, and organizational connections often influence social workers who support solutions to children's problems by emphasizing the protective and regulatory role of the state. State action is often the most feasible way to provide legal protection for the identity, abilities, or other interests of all children. Leaving the interests of children in the care of their parents depends on their goodwill, resources and strength. Likewise, the legal and political liberation of children to protect their interests requires them to access information and consider available resources. For these reasons, a strong protective role of the state is an opportunity to maximize the value of equality among children and between children and adults (Hegar Rebecca L., 1989, p. 114).

Among the reasons why children end up in unfavourable conditions, the "painful" experience of our republic was noted – the Karabakh war. The impact of the Armenian-Azerbaijani conflict on children can be divided into two stages. The first stage is the stage of departure from places of residence. Everyone knows that these children, who try to travel for days and move from one place to another, do not sleep during this period and suffer from unbearable conditions. This is a gross violation of children's right to rest, which is the first part of the right to rest enshrined in Article 31 of the Convention on the Rights of the Child. The second stage includes the process of resettlement of internally displaced persons in camps and subsequent processes. In these camps, multiple families were often forced to stay together in tents. And here, the inability of children to sleep and rest due to poor living conditions again led to a violation of the first part of this right. The lack of conditions also led to a violation of their right to leisure, which is the second part of this right. Children living in tents do not have their own place, toys

and the opportunity to play, which led to a violation of the third part of the right - the right to play (Baku State University, 2021, p. 61).

The current situation regarding the implementation of international norms related to the right to life and development in the Republic of Azerbaijan.

The fifth and sixth joint reports of Azerbaijan submitted to the committee list the measures recently implemented in our republic to ensure the principle of pure survival and development. Among them, the “State Program for Improving Maternal and Child Health in the Republic of Azerbaijan for 2014-2020”, approved by the Decree of the President of the Republic of Azerbaijan dated on June 13, 2014, should be noted. In connection with the implementation of the State program, based on WHO recommendations, international criteria for live birth were adopted and their implementation began on January 1, 2015 (Collegium of the Ministry of Health of the Republic of Azerbaijan, 2014).

As we know, the right to life in international law is understood in a narrow and broad sense. In the narrow sense, the right to life includes the refraining of states from depriving people of life. More specifically, a narrow view of the meaning of the right to life would prohibit arbitrary detention followed by summary execution, but the obligation of a state to take measures to alleviate malnutrition would not exist. In the same manner, if the right to life is understood narrowly in international human rights law, the failure to reduce infant mortality in the context of child protection will not raise concerns about this right. It is commendable that the right to life of children in Azerbaijan is accepted in a broad sense and includes both the negative obligations of the state and the positive obligations related to the protection of children's life and health. According to the Law “On the Rights of Child”, the activity of the state to ensure the child's right to live and develop can be explained in some directions (Articles 8-11 of the Law):

- raising children in a healthy environment;
- protection of children's life and health;

For the comprehensive development of every child, his right to be educated according to national and universal values, based on humanism and moral principles is recognized by the Law. In order to protect this right, the state first of all accepts the family as the main core of the society and takes it under its special protection. However, considering that it is not possible for every child to grow up in a family environment, the state has taken under its protection children who do not have parents (guardians), as well as those who are deprived of parental care (Article 17 of the Constitution of the Republic of Azerbaijan). In addition to the family, educational institutions are also recognized as the environment in which a child is brought up by law, and the state exercises the main powers for the creation and operation of such institutions through its officials (Article 11 of the Law).

Protecting the life and health of children includes ensuring environmental safety, providing children with quality food and clean drinking water, including compulsory dispensation of children. In addition, the Law prohibits children from working in many fields, which serves to protect their health and develop in the right direction. For example, nightclubs, bars, production, transportation, sale and storage of alcoholic and energy drinks, tobacco products, toxic drugs, etc., which have a negative impact on children’s moral perfection (Article 9.3 of the Law).

Discussing the impact of climate change on the realization of children's rights, some authors state that the socio-economic rights of children are violated in countries that are sensitive to changes in temperature and precipitation due to climate change.

For example, due to increased water scarcity and loss of livelihoods and food security due to changing environments, children may have less access to an adequate standard of living, education and health care. Where natural disasters occur more frequently and intensely, children face the risk of learning disruption, injury, displacement and death. If you pay attention to the explanations of the authors who list cases where climate change affects children, you can see that children’s rights to health are violated more often. Two of the three reasons listed below are directly related to health protection:

- climate change threatens the health of children, who are a more vulnerable group due to the spread of various diseases;
- children are directly affected by natural disasters, which are becoming more frequent and intensifying. Infant mortality is high in events such as floods, strong winds and landslides. During these disasters, children also experience psychosocial disruption and emotional trauma, which can have long-term consequences for their health and well-being (Oliver C. Ruppel, Christian Roschmann and Katharina Ruppel-Schlichting, 2013, p. 352-353).

Conclusion.

It should be noted that the Convention on the Rights of the Child declares that children need special protection both before birth and after birth. Therefore, the principles of survival and development established in Article 6 of the Convention must be ensured for the period before birth. On the other hand, the fact that the Convention on the Rights of the Child does not provide a specific approach regarding the beginning of childhood has left this issue to the competence of the states. Based on the 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 the reduction of abortions to the states, while on the other hand, while giving the definition of early childhood, it explains this period as “the period from birth to eight years”. In such a case, the issue of whether abortion contradicts the principle of the right to life of children is questioned. The same problem exists in our republic, which is trying to implement the provisions of the Convention on the Rights of the Child into the national legal regulation. We believe that the beginning of childhood should be determined by law. Of course, it is possible to realize most rights from the moment a person is born. In addition, it is constitutionally declared that rights and freedoms belong to a person from the moment of his birth (Article 24.II of the Constitution of the Republic of Azerbaijan). In this case, it is more correct that Article 1 of the Law “On Rights of Child” defines the period between birth and 18 years as childhood. But here rights such as inheritance etc. arising before birth should be considered as an exception.

REFERENCES

1. Child marriage. <https://www.unicef.org/protection/child-marriage>.
2. Comprehensive international report on the violated rights of Azerbaijani internally displaced persons. Baku State University, 2021, p. 118.
3. Declaration on the Right to Development, 04 December 1986. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>.
4. Hegar Rebecca L. The Rights and Status of Children: International Concerns for Social Work // International Social Work, 1989, Vol. 32, No. 2, pp. 107-116.
5. Is an End to Child Marriage within Reach? Latest trends and future prospects. https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/?_gl=1*_qzw8zd*_ga*MTQ1OTY2ODUwNC4xNjU4OTQ5MTc5*_ga_9T3VXTE4D3*MTY4MzIzMDQyMC43Ni4xLjE2ODMyMzA0MjAuMC4wLjA.
6. Kilkelly Ursula. Effective Protection of Children's Rights in Family Cases: An International Approach // Transnational Law & Contemporary Problems, 2002, Vol. 12, No. 2, pp. 335-354.
7. Legal age of marriage in England and Wales rises to 18. <https://www.gov.uk/government/news/legal-age-of-marriage-in-england-and-wales-rises-to-18#:~:text=The%20age%20of%2018%20is,forced%20marriage%20in%20our%20society>.
8. Noam Peleg. Reconceptualising the Child's Right to Development: Children and the Capability Approach // International Journal of Children's Rights, 2013, No. 21, pp. 523-542.
9. Oliver C. Ruppel, Christian Roschmann and Katharina Ruppel-Schlichting. Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility. Nomos Publishers, 2013, 1016 p.
10. Regulation on the importance of family and marriage among young people, in order to protect and strengthen it, to raise awareness about the negative consequences of early marriage and marriage between relatives. Approved by Resolution No. 213 of the Cabinet of Ministers of the Republic of Azerbaijan dated June 23, 2020. <https://e-qanun.az/framework/45254>.
11. Resurrection criteria. It was approved by the decision No. 46 of the Collegium of the Ministry of Health of the Republic of Azerbaijan dated October 29, 2014 <https://e-qanun.az/framework/28606>.
12. UN Committee on the Rights of the Child (CRC). General Comment No. 3, 2003, CRC/GC/2003/3, para. 11 <https://www.refworld.org/docid/4538834e15.html>.
13. UN Committee on the Rights of the Child (CRC). General comment no. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4 <https://digitallibrary.un.org/record/503074>.
14. 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, paras 3 and 4 <https://www.refworld.org/docid/460bc5a62.html>.
15. UN Committee on the Rights of the Child (CRC). General Comment No. 9, 2006, CRC/C/GC/9, para. 31 <https://www.refworld.org/docid/461b93f72.html>.

16. United Nations General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (article 31). http://ipaworld.org/wp-content/uploads/2013/11/IPA-Summary-of-UN-GC-article-31_FINAL1.pdf.
17. What are the minimum marriage ages around the world, as England and Wales raise age to 18? <https://www.standard.co.uk/news/uk/minimum-marriage-age-worldwide-england-wales-raise-limit-18-civil-partnership-b1063349.html>.
18. World Declaration on the Survival, Protection and Development of Children. Agreed to at the World Summit for Children on 30 September 1990. <http://www.un-documents.net/wsc-dec.htm>.
19. World Summit for Children, 29-30 September 1990, New York, United States. <https://www.un.org/en/conferences/children/newyork1990>.