
THE BASIC PREMISES OF IMPROVEMENT OF METHODOLOGICAL TOOLS TO DEVELOP LEGAL REGULATION IN THE AREA OF CHILD PROTECTION IN RUSSIA

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The article is devoted to the justification of the wide use of scientific approaches and methodological tools within the legislative activity, particularly in the area of protection of children's rights. The article defines the scheme of scientific and methodical provision of legal regulation in this area as well as the essential directions of its legal regulation. Legal regulation on protection of the rights of the child involves study of mechanisms of such regulation, of instruments used in these mechanisms from a theoretical and practical point of view, as well as the formation of the program of action for the development of a legal mechanisms to protect the rights of the child with a list of appropriate measures. Contemporary international legal documents are based on the recognized importance of the full provision by the states of implementation of internationally recognized guarantees in this area. The perspectives of development of legal regulation in the area of protection of child's rights lies generally in the frames of international legal policy in this area but strongly provides the respect of the national interests and the promotion of Russian legal and conceptual models which are sometimes even more appropriate, effective and progressive than their foreign analogues (1).

Key words: scientific and methodical provision, methodological tools, children's rights, protection of children's rights, methodology, methods, legislative basis.

Legislative activities and legal regulation are based on the legal traditions of the society, an integral part of which are the achievements of the legal science. The preparatory work at legislative reform, as a rule, expresses the conduct of an integrated theoretical-legal justification for special items and objects of legal regulation. Such a justification, in turn, can not ignore the existing conceptual approaches, typical for the general theory of law and other legal sciences.

Legal regulation on protection of the rights of the child involves study of mechanisms of such regulation, of instruments used in these mechanisms from a theoretical and practical point of view, as well as the formation of the program of action for the development of a legal mechanisms to protect the rights of the child with a list of appropriate measures at the legislative, programmatic, managerial and executive levels required to provide its efficiency.

Urgency, scientific and practical significance of the issue under study is confirmed by the content of a number of scientific debates on issues concerning the protection of children's rights in general, and the extent and forms of participation of the scientific community in the process of improvement of legal regulation in this area.

It seems appropriate to give a few most striking examples of the practical significance of the scientific and methodological support of legislative activities in the area of child's rights protection.

Contemporary international legal documents are based on the recognized importance of the full provision by the states of implementation of internationally recognized guarantees of children's rights, including the rights of the child in the family, his mother and father, on the inviolability of the principle of the priority of children's rights over the rights of other persons (Article 3 of the Convention on the rights of child from 20.11.1989) [12].

September 13, 2013 the official representative of the Ministry of Foreign Affairs of the Russian Federation expressed concern on the will of particular states to «impose to the rest of the international community, their neo-liberal values as universal foundations of life», despite the fact that «aggressive promotion by Western governments of neo-liberal values is carried out on the background of increasingly frequent infringements of socio-economic rights and freedoms of their citizens».

In this regard it seems to be significant to develop an algorithm for the presentation and explanation of the politicians and the public in European and other foreign countries of the complex of arguments justifying and confirming the necessity and legitimacy of the adoption of a series of legislative measures introduced in the Russian Federation in order to protect the rights of children, as well as the position the Russian Federation on the most significant and controversial aspects of legal regulation in this area.

At the same time the position of Russia can not ignore the international instruments existing in the contemporary world.

It seems that the complex theoretical and legal analysis of the problem of protecting the rights of the child must take into account the following aspects:

- 1) the historical and theoretical aspects of the genesis and evolution of the concept of child rights;
- 2) the analysis of the conceptual and categorical apparatus in the explored area;
- 3) the historical and theoretical aspects of legal regulation of relations in the sphere of motherhood, family and childhood, based on the experience of Russia and the international legal practice;
- 4) the comparative analysis of existing theoretical concepts of child rights;
- 5) the compilation of existing legal mechanisms to ensure and protect the rights of the child;
- 6) the formation of legal approaches to the consideration of the child as a special subject of law;
- 7) determining the place of children's rights in the human rights protection system;
- 8) the compilation of the existing forms of legislative recognition of child rights and their protection in the modern constitutional, civil, family, labor, administrative, criminal law of the Russian Federation;
- 9) the analysis of the content and forms of activity of a public authority empowered to protect the rights of the child in the Russian Federation (President, Legislative

Assembly, the Ombudsman in the Russian Federation and the Ombudsman for Children in the subjects of the Russian Federation, the executive and the judiciary, non-governmental human rights organizations, international institutions);

10) generalization of the international legal aspects of the protection of children's rights and their implementation in the Russian legislation and legal practice;

11) the development of the proposals in the plan for the implementation of the National Strategy of Action for Children for the period from 2015 to 2017 [13], in the draft of the State report on the situation of children and families with children in the Russian Federation and the draft of the Consolidated periodic report of the Russian Federation on the implementation of the Convention on Rights of the Child.

On the basis of the theoretical and legal analysis we may identify the main scientific and methodological aspects of legal regulation and enforcement in the area of child's rights protection, that means:

- 1) to define socio-legal concepts relating to the subject of legal regulation;
- 2) to clarify the conceptual-categorical apparatus used in legal science and legal acts on the problem;
- 3) to consider the historical process of legal regulation of relations in the field of childhood, focusing on the analysis of the situation of children in modern Russian society, on the definition of spheres of life, where the violations of their rights are frequent, and to determine the measures that are to be taken to improve the protection of the rights of the child;
- 4) to reveal the content of the main existing theoretical concepts of the child as a special subject of the law, their rights in the system of human rights and ensure their protection mechanism, legal status, to analyze the legislative provision of children's rights and their protection in contemporary Russian constitutional, civil, family, labor, administrative, criminal law;
- 5) to justify the need to create in Russia a more perfect and coordinated system of child protection and child-friendly justice, as the urgent task of contemporary legal policy of the state;
- 6) to make proposals and recommendations on improving of the legislation and practical realization of children's rights and their protection in Russia.

Scientific and methodical approaches to the legal regulation are reflected in the activities of state authorities of the Russian Federation. This greatly facilitates the implementation of research results of theoretical and applied orientation in the legislative process.

A significant contribution to the improvement of legislation in the Russian Federation is made by the Federation Council of the Federal Assembly of the Russian Federation [9]. The most dense and productive work in the part of the reform of legislation on protection of child rights in Russia is conducted within the framework of the Federation Council Committee on Constitutional Legislation and State Reforms. In particular, with the participation of the Committee was prepared a consolidated overview of Russian legislation on the protection of children's rights, on the basis of which the parliamentary hearings on the topic «Issues of improving legislation in the sphere of protection of children's rights» have been organized.

In these review were noted the following key messages, reflecting the correspondence of Russian legislation and international agreements in the field of protection of children's rights.

Legal regulation of the protection of children's rights in the Russian Federation is based on Article 38 of the Constitution of the Russian Federation [1], according to which the mother and child, the family are under state protection (Part 1), taking care of children and their upbringing — is the equal right and duty of parents (part 2).

Family problems, the protection of the interests of children in the Russian Federation are under the constant attention of lawmakers who are taking action to improve the legislation of the Russian Federation in this area.

The main directions and tasks of the state policy for children and the key mechanisms for its implementation have been identified in the National Action Strategy for Children for 2012 — 2017 years, approved by the Decree of the President of the Russian Federation of 1 June 2012 number 761 [13].

The National Strategy identifies priority actions for the implementation of the state policy in the field of child protection, in particular: the development and adoption of a federal law defining the basics of state family policy; monitoring of the legislation of the Russian Federation in the field of child protection; creation of the legislative framework for the reform of the organization of the social services for the protection of children's rights; improving of the legal framework, enabling the participation of both parents in the upbringing of the child at separate habitation and a number of other aspects.

The Russian Federation is a party to the main international legal acts in the area of child protection, the main of which is the UN Convention on the Rights of the Child of 1989 (entered into force for the USSR September 15, 1990) (hereinafter — the UN Convention) [12]. In 1995 a Family Code of the Russian Federation [4], which reflected the basic provisions of the UN Convention, was adopted.

According to Article 2 of the UN Convention states — Parties shall take all necessary measures to protect the child from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child, child's parents, legal guardians, or family members.

The National Strategy points the task of creating of the state public mechanism for the implementation of the UN Convention, including standards of security and protection of the rights of the child.

In addition to measures aimed at reforming of the legislation of the Russian Federation in respect of the protection of the rights and interests of children, according to the National Strategy we may name the ratification of the European Convention on the Exercise of Children's Rights, adopted by the Council of Europe on 25 January 1996 (the Russian Federation signed a 10 May 2001 but it has not entered into force for the Russian Federation) [3].

Also it seems relevant to take measures on the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 [2], which sets uniform standards in the field of preventing and combating any manifestations of sexual violence against children, in-

cluding domestic violence, different forms of international legal cooperation in this sphere and provides a set of measures for victims of sexual violence (Russian Federation ratified the Convention with reservations (Federal Law of May 7, 2013 № 76-FZ «On the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual abuse» [7]).

According to the Foreign Policy Concept of the Russian Federation, approved by President of the Russian Federation of February 12, 2013 [8] (hereinafter — the Concept), the highest national security priority is security of individuals, society and the state. In this regard, as one of the goals of the Concept was declared the comprehensive protection of the rights and legal interests of Russian citizens and compatriots living abroad, upholding in various international formats of Russian approaches to the subject of human rights. Subparagraph «N» of the point 39 of the Concept speaks of the need to expand the legal framework for international cooperation in order to increase the level of protection of rights and legal interests of Russian children living abroad.

The Russian Federation is a party to the Hague Conventions:

1) «On the Civil Aspects of International Child Abduction», 1980 [10], it entered into force in Russia on 1 October 2011. (Russia acceded to the Convention with a reservation established in the Federal Law of May 31, 2011 № 102-FZ «On Accession of the Russian Federation to the Convention on the Civil Aspects of International Child Abduction» [5]);

2) «On the Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children» in 1996 [11], entered into force in Russia on 1 June 2013. (Russia acceded to the Convention with reservations and declarations to the regulation of issues related to the implementation and protection of the rights of children and parents, judicial and administrative authorities (Federal Law of June 5, 2012 № 62-FZ «On Accession of the Russian Federation to the Convention on jurisdiction Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children» [6]).

That means that the perspectives of development of legal regulation in the area of protection of child's rights lies generally in the frames of international legal policy in this area but strongly provides the respect of the national interests and the promotion of Russian legal and conceptual models which are sometimes even more appropriate, effective and progressive than their foreign analogues.

NOTES

- (1) The article was written within the frames of scientific research according to the Task for the topic «Scientific and methodical maintenance of legal mechanisms of realization and complex protection of the rights of children in modern Russia», conducted by the Federal State Budget Educational Establishment «Peoples' Friendship University of Russia» (structural division — Law Institute) for the period of 1st January 2015 — 31st December 2015. Registration number in the Russian Federal Ministry of Education and Science: 3301.

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ОСНОВНЫЕ ПОЛОЖЕНИЯ СОВЕРШЕНСТВОВАНИЯ МЕТОДОЛОГИЧЕСКОГО ИНСТРУМЕНТАРИЯ ДЛЯ РАЗРАБОТКИ ПРАВОВОГО РЕГУЛИРОВАНИЯ В ОБЛАСТИ ОХРАНЫ ДЕТЕЙ В РОССИИ

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Статья посвящена обоснованию широкого использования научных подходов и методологических инструментов в законодательной деятельности, в частности, в области защиты прав детей. В статье определена схема научного и методического обеспечения правового регулирования в этой области, а также основных направлений его правового регулирования. Правовое регулирование защиты прав ребенка включает в себя изучение механизмов такого регулирования, инструментов, используемых в этих механизмах с теоретической и практической точки зрения, а также формирование программы действий для развития правовых механизмов для защиты прав ребенка со списком соответствующих мер, предусмотренных в современных международных правовых документах на основе признанных важности полного обеспечения со стороны государств для реализации международно признанных гарантий в этой области. Перспективы развития правового регулирования в области защиты прав ребенка лежат, как правило, в рамках международной правовой политики в этой области, которая строится на уважении национальных интересов и способствует продвижению российских юридических и концептуальных моделей, которые иногда даже более целесообразны, эффективны и прогрессивны, чем их зарубежные аналоги (1).

Ключевые слова: научно-методическое обеспечение, методические инструменты, права детей, защита прав, методология, методы, нормативно-правовая база.

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