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LEGAL COMPOSITION AND ALGORITHMS OF CONVENTION ON THE RIGHTS OF THE CHILD: LEGAL-TECHNOLOGICAL ANALYSIS

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The article is devoted to legal-technological analysis of the Convention on the Rights of the Child on November 20 1989. Its formal and substantive component, the procedure for using the rules and requirements for the creation of legal acts were studied. Particular attention was paid to determining the constituent elements of legal algorithms (personification and model of behavior).

In particular, it was established that the Convention enshrines the basic rights of children in the civil, political, economic, social and cultural spheres. Some of the provisions of the Convention are set out in a recommendatory form (preamble, objectives), most in an imperative form.

The Convention has all the necessary details (name, date of adoption, body of acceptance, date of ratification, optional protocols and status of the Convention - data on signing and ratification).

From the point of view of functionality, the optimal volume of the legal act for disclosure of the established tasks is chosen only in the text of 45738 signs that indicates concentration of the maintenance on the most important provisions.

The text of the Convention is written in clear, understandable and accessible language, in a formal business style (translated into the official language of all member states). The style of the text of the Convention is characterized by the economy of use of speech in the text, coherence and consistency of presentation, expressive and emotional neutrality, completeness, integrity, completeness.

The general characteristics of the legal composition of the Convention indicate its high quality and can be concentrated in the following provisions: clarity, accuracy, simplicity, efficiency, validity, compliance with universal rights and freedoms.

The conducted legal and technological analysis of the Convention emphasizes its fundamental importance among the main international legal acts in the field of definition, realization and protection of the rights and freedoms of children.

Taking into account the analysis of the legal composition and algorithms of the Convention, we can conclude that its provisions are universal and aimed at creating conditions for proper protection of children's rights and freedoms, their physical and psychological development and comfortable coexistence in modern society.

One of the key areas of further legal and technological research of juvenile legislation is to determine the general theoretical justification for its systematization in Ukraine.

Key words: international agreement, model of behavior, rights of the child, legal algorithm, legal composition, legal technology, juvenile legislation.



Introduction. Ensuring the proper level of implementation of the rights of the child is one of the main tasks of the modern state. The implementation of such a task is carried out in strict accordance with national legislation and international standards. In this context, special attention should be paid to fundamental international documents in the field of regulation of the legal status of the child. Of course, the dominant position among such acts is occupied by the Convention on the Rights of the Child as of November 20, 1989. But along with this, the use and implementation of the provisions enshrined in legal acts should be based on a comprehensive analysis of their content, form and connections with other acts. Therefore, issues related to the legal and technological analysis of the legal composition of the Convention on the Rights of the Child are among the topical issues of modern jurisprudence.

Certain aspects of general theoretical research on determining the status of the child in international legal acts were dealt with by O.V. Zubrytska, O.V. Kitayka, N.M. Krestovska, O.V. Maksymenko and others.

The features of the legal composition of legal acts and algorithms in the field of legal formalization were studied by T.V. Kashanina, D.G. Manko, R.I. Radeyko, I.D. Shutak.

Statement of problem. The purpose of the article is to determine the characteristic features of the legal composition and the features of the layout of legal algorithms in the Convention on the Rights of the Child as of November 20, 1989.

Research results. The development of a modern state should be based on a high level of protection and the creation of appropriate conditions for the realization of the rights and freedoms of people, including those who have not reached the age of eighteen. In this aspect, it should be taken into account that the prospects for the existence of humanity are largely based on the state ensuring the maximum possible degree of survival and healthy development of the child. Thus, O.V. Maksymenko points out that "given the importance of the rights and freedoms of the child in ensuring the normal functioning of society, it is worth paying special attention to the rights and freedoms of children. At each stage of social development, the attitude of the state to ensuring the rights of children changes. Modern society requires the creation of a separate system of juvenile justice, for which the provision and protection of the rights of the child will become a priority area of activity. This is due to the fact that the needs of minors are considered by society, the state and people as the most important, and from the point of view of the need to satisfy them - as a priority. They are vital for the very existence and formation of the personality of the younger generation" [4, p. 129].

The result of global trends to strengthen and protect children's rights was the Convention on the Rights of the Child (hereinafter referred to as the Convention), which was adopted by Resolution № 44/25 of the UN General Assembly as of November 20, 1989. The UN Convention on the Rights of the Child is an agreement between countries that sets out how the government of each country should care for children. This Convention was ratified by Resolution of the Verkhovna Rada of Ukraine № 789XII (78912) of February 27, 1991 and entered into force for Ukraine on September 27, 1991 [2]. In addition, the Ukrainian Parliament ratified the Optional Protocols to the Convention on the Rights of the Child, which have since become part of national legislation. By signing the Convention, Ukraine undertook to ensure the implementation and protection of children's rights in accordance with international standards.

When conducting a legal and technological analysis of the Convention, it is necessary to establish the features of its legal composition. According to D.G. Manko, "the legal composition of a legal act reflects the style of presentation of the material and the legal constructions that were used in this. The legal composition of a legal act is the features of the construction, presentation and role in the legal regulation of a socially significant prescription that is expressed in a legal act. The legal composition of a written legal act consists of the following components: content, form, functionality, language" [5, p. 92].

Taking into account the above, the legal composition of the Convention (text in translation, ratified by the Verkhovna Rada of Ukraine) is characterized by the following provisions:

- 1) The Convention is concluded in the form of an international treaty on the recognition, implementation and protection of the rights of the child in the participating states;
- 2) the main purpose of the Convention is to create by the States Parties, within their jurisdiction, appropriate conditions for the existence and development of the child. To this end, States Parties shall respect and ensure all the rights set forth in the present Convention for each child, without discrimination of any kind, irrespective of the child's race, colour, sex, language, religion, political or other opinion,



national, ethnic or social origin, property, health or birth of the child, his or her parents or legal guardians or any other status. To take all necessary measures to ensure the protection of the child against all forms of discrimination or punishment on the basis of the status, activities, expressed views or beliefs of the child, the child's parents, legal guardians or other family members;

3) the structure of the Convention consists of a preamble, three parts and 54 articles. Optional protocols are integral parts of the Convention. All elements of the structure are set out in a logical sequence - from general provisions to specific rights and obligations;

4) the preamble to the Convention clearly defines the list of international legal acts on the basis of and in development of which the Convention was concluded, in particular the Geneva Declaration of the Rights of the Child of 1924 and the Declaration of the Rights of the Child, adopted by the General Assembly on November 20, 1959, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as the statutes and relevant documents of specialized agencies and international organizations dealing with issues of children's well-being;

5) the Convention uses the norms of both soft law and hard law;

6) the main provisions of the Convention were set out using various types of legal algorithms, in particular: general legal algorithms; legal algorithms that are implemented through action; legal algorithms expressed in substantive legal norms; legal algorithms of independent legal procedures; written legal algorithms; legal algorithms of hard and soft law;

7) the Convention enshrines the fundamental rights of children in the civil, political, economic, social and cultural spheres;

8) some of the provisions of the Convention are set out in a recommendatory form (preamble, objectives), the majority in an imperative form;

9) the Convention has all the necessary details (title, date of adoption, body of adoption, date of ratification, optional protocols and status of the Convention - data on signature and ratification);

10) from the point of view of functionality, the optimal volume of the legal act has been chosen to disclose the established tasks (a total of 45,738 characters in the text), which indicates the concentration of the content on the most important provisions;

11) the text of the Convention is written in a clear, understandable and accessible language, designed in an official business style (has a translation into the state language of all participating states). The style of the text of the Convention is characterized by the economy of the use of speech means in the text, coherence and consistency of presentation, expressive and emotional neutrality, completeness, integrity, and completeness.

The general characteristics of the legal composition of the Convention indicate its high quality and can be concentrated in the following provisions: clarity, accuracy, simplicity, efficiency, justification, compliance with universal rights and freedoms.

In general, positively assessing the text of the Convention, one should pay attention to one rather important point: such juvenile duties as the type and measure of appropriate behavior of the child are absent from the Convention.

In this context, one should agree with N.M. Krestovska that "supplementing the category of the child's rights with the category of its duties will ensure the completeness and fullness of the child's legal status, the affirmation of the child's independence as a subject of law, and its successful legal socialization" [3, p. 413].

When revealing the features of the composition of legal algorithms in the Convention, one should take into account their legal nature. In this regard, D.G. Manko notes that "a legal algorithm is a legal construction of a binding expression of will enshrined in a legal act, which clearly regulates who, in what order and what must do or refrain from actions, or the extent of deprivation or endowment of certain values of such a person. Analyzing the specified concept, we can distinguish the following features: enshrined in a typical legal act (soft or hard law), legal construction, binding expression of will, personification, model of behavior, legally significant consequences. The features of expressing the construction of a legal algorithm in the text of a legal act are associated with the need to accurately reflect its constituent elements. A legal algorithm has its own structure, which consists of personification, model of behavior and a meaningful connection between them. An important feature is the inextricable

connection of the elements of the structure of the legal algorithm, which form a logical, consistent integrity in which the order of actions is formulated" [5, pp. 109-110].

Personification is a terminological construction that is formalized in the text of a specific article or in another element of a legal act and reflects a person (or a group of persons) who must perform an act or fulfill the obligations assumed in accordance with the procedure established by the text of the legal act.

According to the provisions of the Convention, the main personification element is the "States Parties", because it is they who act as parties to the Convention, sign it, accepting the main obligations, and ratify (or join, accept or in the order of succession). In turn, secondary personification elements are: national state or private institutions dealing with social security issues, courts, administrative or legislative bodies of the countries that have become parties to the Convention and have fulfilled all the necessary conditions for the implementation of the provisions of the Convention into current legislation.

In turn, a model of behavior in the context of studying the constituent elements of a legal algorithm is a terminological construction that is formalized in the text of a specific article or in another element of a legal act and reflects a certain sequence of actions (actions or inactions) that a person specified in the personification part of the legal algorithm must or may commit.

Some models of behavior are expressed in a recommendatory form (preamble, objectives), most - in an imperative form (articles of the Convention).

For example, Article 3 of the Convention states that "States Parties undertake to ensure to the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, guardians or other persons legally responsible for him or her, and to this end shall take all appropriate legislative and administrative measures" [2].

In the specified part of the article we can identify the personification element - the participating states and the model of behavior - providing the child with such protection and care as are necessary for his well-being, etc. The meaningful connection between personification and the model of behavior reflects the relationship between them, which is based on interdependence and consistent, logical interdependence.

The conducted legal and technological analysis of the Convention emphasizes its fundamental importance among the main international legal acts in the field of defining, implementing and protecting the rights and freedoms of children.

In this aspect, one should agree with the opinion of T.O. Titova, who notes that "The Convention on the Rights of the Child is the newest international treaty in the field of human rights, a comprehensive analysis of its provisions is of interest for clarifying the further development of international human rights standards enshrined in previous international legal documents on human rights. These standards are important for a general understanding of the nature of human rights and freedoms and for the full implementation of obligations to implement and observe these rights. A child must know his rights in order to grow up as a full-fledged personality who will use his rights for the benefit, and not to the detriment of himself and society. Adults must know the rights of the child in order to help in their implementation, and respect them" [6, p. 13].

Conclusions. Taking into account the analysis of the legal composition and algorithms of the Convention, we can conclude that its provisions are universal in nature and are aimed at creating conditions for the proper provision of the rights and freedoms of children, their physical and psychological development and comfortable coexistence in modern society.

Of course, mechanical accession to an international act does not automatically give the effect of regulating relations. This is painstaking and complex work that the state must carry out at all levels.

Today we can point to some problematic points. In particular, A.V. Dhakal notes that "observance of children's rights in Ukraine is ensured by the increasing awareness of society about these rights; by the creation of state institutions and institutes to provide assistance to minors in the exercise of their rights. However, many problems have not yet been resolved, which have become more acute over the years; the system of protection of children's rights in Ukraine remains uncoordinated; responsibility is divided between different ministries and departments, and cooperation between them is ineffective. These problems can only be solved by optimizing the functioning of central and local executive bodies, coordinating the activities of state and public structures, and close cooperation between government officials, scientists, and the public" [1, p. 106].



In our opinion, effective systematization of legislation should be added to the above-mentioned ways of solving the problems of compliance with and creation of appropriate mechanisms for the implementation of children's rights. Today, a huge number of legal acts have been adopted in this area, many of whose provisions require clarification, removal of outdated material, and elimination of conflicts. Therefore, bringing the domestic regulatory framework into an appropriate state is a guarantee of implementing the main provisions of global standards in the juvenile sphere.

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