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Counteraction violent crime against children normativ regulation: improvement urgency

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The urgency of the article is stipulated by the need to elucidate normative regulation of counteraction violent crime against children as a factor in the effective activities of the relevant state agencies in the conditions of the rule of law principle implementation. It is emphasized that the issue of counteraction child abuse is relevant to several states of the world community and in some cases becomes international. It is concluded that the issue of counteraction violent crime against children should be considered at both national and international level. It is noted that the international instruments (hard law and soft law as well) enshrine the positive obligations of the states, according to which national authorities should regulate relations on ensuring the rights of the child, set up appropriate state agencies, including agencies for counteracting violent crime against children.

Attention is drawn to the fact that the international level of regulation on the whole allows to determine the basic principles of counteracting violent crime against children, and the national level of regulation should be constantly improved, taking into account international trends in this field.

Key words: violent crime against children; regulatory framework; European Court of Human Rights; international regulatory framework, Convention on the Rights of the Child.

Introduction

Such categories as justice, human dignity, human rights and humanism, in general, occupy an important place in modern jurisprudence. Their implementation into national law and practical legal practice require equal and dignified treatment of all persons, regardless of any characteristics, including age. A child is the same person as an adult. All of them (children and adults) possess equal rights. At the same time, there are several caveats to the child.

First, because of age specific characteristics, a child, compared to an adult, requires special protection, as he cannot fully exercise his rights on his own, being in need of legal representatives, such as parents (guardians, etc.). In this context it is necessary to note that there is hardly a nation on the planet whose social norms do not protect the child, do not create a favorable for the protection of the child’s rights regime.

Second, because of the inability to actually exercise one’s own rights in full and clearly understand the consequences of one’s own actions, there arise a question about the adequacy of perception of the child’s rights and legitimate interests by the child’s legal representatives.

The abovementioned facts highlight the issues of the child’s rights protection, in particular, against unlawful acts, including acts of violence.

The rule of law is one of the crucial principles of a civilized society functioning in modern conditions. Today, this principle is recognized by a number of states as the basis for human rights provision, the vector of the society development. As to the European states, the need to recognize the rule of law is a key condition for membership in the Council of Europe.

Based on the mentioned above, it is quite understandable interest of the public as well as the authorities in the states with a democratic regime in having a clear and effective legal basis for the organization and functioning of public authority. This is especially important in cases where the state apparatus may apply coercion to enforce the prescriptions of the legislation. The existence of
the legislative provisions limiting the arbitrariness of public authorities is a preventative measure to avoid arbitrarily pronouncing a young person an innocent person. Even in situations when law enforcement agencies are guided with “good intentions”.

Thus, the issue of legal regulation of counteracting violence against children is of particular relevance and necessitates detailed consideration.

Analysis of recent researches and publications

Counteracting violent crimes against children normative regulation problems is one that is permanently in the focus of legal science. However, as indicated, in particular, by the analysis of scientific sources on the topic under the study, there is no reason to argue that it has been solved.

Some aspects of this topic were studied by Yu. Zavgorodnina (2018), who issued a number of scientific articles dealing with general and theoretical issues of child’s rights protection. Thus, the analysis conducted by Yu. Zavgorodnina (2018) of the national and international normative and legal regulation of the public authorities’ activities on the protection of the rights of the child, as well as the practice of both the national courts and the European Court of Human Rights in matters related to the realization of the rights of the child, and taking into account understanding of the human rights nature and content is crucial in the context of our paper. Thus the European Court of Human Rights’ decisions analyzed by Yu. Zavgorodnina (2018) make it possible to identify the important role of the national public authorities in conducting an effective investigation in child rights violations.

Although, the most researched is the regulation of counteracting crimes against sexual immunity of a child. Thus, D.G Palyanyakho (2013) has analyzed the specifics of the initial and subsequent stages of such crimes investigation and provided recommendations for improving the effectiveness of pre-trial investigation at its various stages, which should help to achieve the objectives of the criminal trial.

E.S. Khyzhniak (2013), having done the typology of sexual crimes and having produced the forensic characteristics of crimes against sexual immunity of the child, substantiated some directions of improvement of these crimes counteraction.


Special mention of the victimology problem of crimes against sexual immunity of a child should be made, as pointed out David Finkelhor and Richard Ormrod (1999), according to whom the factors contributing to the victimization of violent crimes against minors are: anxiety of teenagers about personal autonomy and fears of being accused or not taken seriously; parents’ fears about the negative impact of the justice system on children and the general perception of the fact that non-sexual assaults against young people are anything else but not real crimes.

The scientific article by the team of authors “Sexual abuse of children in Poland - analysis of the cases of 257 persons who have committed sex crimes” is worth mentioning, which aimed to prepare a multidimensional analysis of the profile of juvenile sex offenders. The authors thoroughly analyzed the documentation of forensic sexology, psychiatric and psychological researches, and information on proceedings against 257 offenders and prepared relevant conclusions and recommendations (Heitzman et al, 2014).

Goals of article

The article is aimed at elucidating the importance of the improvement of the regulatory framework for combating violent crime against children to effectively counteract this negative social phenomenon.

Presentation of main material

Given that the issue of counteracting child abuse is relevant to many states of the world community and in some cases becomes international, it is advisable to consider this problems at both domestic and international level.


The regional international level represented, in particular, by the results of the Council of Europe’s activities is quantitatively larger. It includes the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (2007). The practice of the European Court of Human Rights, which is a constituent of the Convention for the Protection of Human Rights and Fundamental Freedoms and is the source of law in Ukraine should be added to this list.

The international instruments (both hard law and soft law) enshrine the positive obligations of the states, according to which national authorities should regulate relations on ensuring the rights of the child, set up appropriate state agencies, including agencies for counteracting violent crime against children.

Particularly important for countering violent crimes against children is Art. 19 of the Convention on the Rights of the Child (1989), under which States Parties are required to take all necessary legislative, administrative, social and educational measures to protect the child against all forms of physical and psychological violence, insult or abuse, lack of care or negligent and cruel treatment and exploitation, including sexual abuse by parents, legal guardians, or any other person who cares about the child. Herewith Part 2 of Art. 19 of the Convention specifies a list of such measures, including in particular, effective procedures for the development of social programs aimed to provide the necessary support to the child and the persons, taking care about the child, as well as other forms of prevention realization, detection, notification, referral, investigation, treatment and other measures in relation to the cases of
child abuse mentioned above and, where necessary, to initiate legal proceedings.

At the regional level, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 is an important remedy for the protection of the rights of the child. Although this international treaty does not directly address child's abuse, it is an important means of combating this negative phenomenon. Natural character, inalienability, fundamentality are inherent human rights. Accordingly, States Parties recognize and commit themselves to protect the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, regardless of various factors, including age. Accordingly, it also concerns the protection of the rights of minors. For example, an analysis of the decision of the European Court of Human Rights in the case of M.C. v Ukraine contains the following important regulatory provisions:

- while inquiring violent crimes against a child the positive obligation of the state is to conduct an effective investigation;
- investigation of violent crimes against a child should take place in the shortest possible time;
- the child's interests are paramount when considering child cases (European Court, 2017).

The case of the European Court of Human Rights “Siliadin v. France” (European Court, 2005) is illustrative in the context of this study. The situation considered by the Court was as follows. The applicant’s relative, a Togolese national, had brought the latter to France. The girl was a little over 15 and half years old at the time. At the same time the parents agreed that their daughter worked out the money spent on the trip to France. It was anticipated that the applicant would subsequently be entitled to permanent residency and be able to complete general education. In 1994, a relative “passed” the girl to another family to help a pregnant woman with household chores and she had come to live with that family. After the baby was born, the girl was left and further help in the family. In doing so, Siliadin worked without the days off seven days a week, only being able to attend religious services one day a week. She didn’t get any money for help. Only twice did the mother of the mistress of the house give Siliadin about 500 francs. Siliadin lived with this family, and lived on there. First she slept on the mattress in the room with the children of the owners, and then on the cot. Her responsibilities included helping the homeowner, cooking, washing and cleaning clothes, cleaning the house, and caring for children; collecting them in kindergarten, dressing, babysitting, and more. The applicant started working about 7 hours. 30 minutes daily. The situation described lasted for several years. At the same time, the applicant’s family promised to settle the issue of the legality of her stay in France.

Only the petition of a neighbor of the applicant’s family to the Committee against Modern Slavery allowed the situation to change. The Committee on Modern Slavery appealed to the prosecutor’s office for the exploitation of the child, using her vulnerable position for more than three years and residing of Siliadin in conditions degrading human dignity. At the time of applying to law enforcement agencies, France's criminal law did not provide for liability for trafficking in human beings (the statutory provisions contained in the Criminal Code were too vague and ambiguous, and did not meet the requirements of the legal certainty), so the criminal charges against the man and woman where the applicant stayed were rejected by the court. At the same time, within the framework of civil suit, it was decided against the couple to pay the applicant EUR 33,000 as a debt for the work done.

The applicant was not satisfied with this decision and required the criminal prosecution of the spouses. However, due to the prescriptions of the legislation, the public authorities could not prosecute the spouses.

The European Court of Human Rights (2005) noted that, in the light of current rules and trends in this area, the positive obligations of Member States under Article 4 of Convention for the Protection of Human Rights and Fundamental Freedoms should be regarded as requiring punishment and effective prosecution of any actions aimed at the spread of slavery and the use of forced labor. The Court emphasized that children and other vulnerable persons, in particular, have the right to the protection of the State in the form of effective restraint against such serious violations of their personal integrity (European Court, 2005).

The detailed description of the decision of the European Court of Human Rights stipulates the issue of correlation of law and the law in the public authorities’ activities. Thus, the criminal law did not provide for liability for acts committed by spouses (there was only civil liability), the European Court of Human Rights recognized the violation of the rights of the child by failing to fulfill a positive obligation by the state - to create effective criminal legislation that would properly protect a person from slavery or forced labor. Therefore, not only what is enshrined in the law is declared illegal. The case introduced is an additional argument of the necessity to rethink contemporary forms of violence and the exigency for more active law-making activities by public authorities in this area.

The abovementioned decision raises the issues of interaction between national and international law, including in the sphere of countering child trafficking, the use of forced child labor, etc.

**Conclusion**

In a democratic, law-based state, state bodies must act in accordance with the regulations stipulating the importance their activities regulation. Given that the issue of countering the crime against child goes beyond national boundaries and requires active international cooperation, the legal and regulatory framework for the organization and functioning of public authorities to combat child abuse must be considered at two levels: international and national. And if the international level of regulation in general allows us to identify the basic principles of combating violent crime against children, then, the national level of regulation should be constantly improved, taking into account international trends in this area.

**References**