

УДК 342.922-053.2/.6(477)

CITIZENSHIP, PRINCIPLES OF RIGHTS AND LIBERTIES, BASIC RIGHTS AND DUTIES OF JUVENILES AND THEIR GUARANTEES AS THE MAIN ELEMENTS OF THEIR ADMINISTRATIVE AND LEGAL STATUS

Katherine MUZYKANT,
Postgraduate, Sumy State University

SUMMARY

This article considers administrative and legal status of juveniles in Ukraine, that contains the main elements such as rights and obligations, citizenship, basics of rights and freedoms and their guarantees. During the consideration of this problem have been studied different elaborations of scientists of this problem and also have been analyzed the Constitution of Ukraine, laws and other legislative acts that regulate this question. Citizenship as the foundation determines the scope and nature of the rights of juveniles that in turn are that factor that forms the basis of administrative and legal status of juveniles in Ukraine.

Key words: citizenship, basics of rights and freedoms of human and citizen, main rights and obligations of the juveniles, guarantees of rights and obligations of juveniles in Ukraine.

АННОТАЦИЯ

В статье исследуется административно-правовой статус несовершеннолетнего гражданина Украины, основными и определяющими элементами которого являются права и свободы, гражданство, основы прав и обязательств и их гарантии. В ходе рассмотрения данной проблематики проводится исследование отдельных разработок ученых по данному вопросу, а также анализируется Конституция Украины, законы и другие нормативно-правовые акты, которые регулируют данный вопрос. Гражданство как точка опоры определяет объем и характер прав несовершеннолетнего лица, которые, в свою очередь, являются основным фактором, формирующим основу административно-правового статуса несовершеннолетних в Украине.

Ключевые слова: гражданство, основы прав и свобод человека и гражданина, основные права и обязательства несовершеннолетнего, гарантии прав и обязательств несовершеннолетнего в Украине.

The Preamble. Ukraine is a sovereign, independent, democratic, social legal state. The Constitution of Ukraine Article 3 proclaimed a human, his/her life, honor and dignity, safe and secure the highest social value in the State, its content and direction are determined by right and liberties of humans and their guarantees. That Article 3 of the Basic Law of our country establishes obligations of the State towards its citizens: State responsibility for its actions towards individuals and identifying the main duty of this State as affirm and ensure human rights and freedoms [1, p. 5].

Proclamation in Chapter 2 of the Constitution of Ukraine Rights, Freedoms and Duties of Man and Citizen is the factor state recognition of human values as the basis of the state building.

Modern science examines the idea of legal doctrines and legal documents that fixes such doctrines and formed some leakage that made the current legal status of a person. These leaks can be called freedoms that are conditions of human existence; inseparability of freedom of equality; Human Rights as a system of spiritual and material goods that required normal human life; and also desire for personal autonomy and freedom of self-determination [2, p. 7-8].

Based on the Convention on the Rights of the Child that was ratified by Ukraine in 27 of February 1991 by Resolution

of the Verkhovna Rada of Ukraine mankind must give children all the best what it has, reliably provide childhood. It guarantees development of full citizens in future. Also this Convention proclaims the principle of equality of responsibility of the both parents and caregivers in the upbringing of the child, establishes the obligation of the State to care and to ensure the rights and freedoms of the child [3]. The Constitution of Ukraine based on equality of all children regardless of origin, social status and birth out of wedlock.

Review the components of administrative and legal status of juveniles their rights and obligations were the subject of scientific research by lots of scientists such as M.Gurenko, E.Lukasheva, S.Kotaleychuk, A. Berezhnov, T. Zavorotchenko and others.

The purpose of the article. The purpose of this article is to study the administrative and legal status of juveniles in Ukraine through the lens of his rights and freedoms, citizenship, principles of rights and liberties and their guarantees. Accordingly with the goal this article has such tasks:

- Characterization of concept of the Ukrainian citizenship and acquiring the citizenship of Ukraine by children,
- analysis of the constitutional principles of the rights and freedoms of the child,

– studying of the main rights and duties of the child in Ukraine,

– characteristic of guarantees of rights and freedoms of the child.

During the analysis of questions that are subjects of this studying were used such scientific methods as Synthesis and Analysis and also such a juridical method as analysis and interpretation of legal norms.

Conclusions. Basic fact is that all rights and obligations of the person are crucial central elements in consideration of administrative and legal status of juveniles. Proceeding from general concept of citizenship we can make the conclusion that State belonging of the person is the critical component in distribution of the complex of rights and obligations on such a person.

Acquiring the citizenship of Ukraine by the individual that doesn't attain the age (majority) is carried out by the general rules mentioned in the Law of Ukraine «About citizenship»:

- by birth,
- by territorial origin,
- as a result of acceptance or renewal of the citizenship,
- due to adoption or establishment of a child custody or trusteeship,
- due to citizenship of Ukraine of one or both parents of the child,
- due acknowledgment of paternity or maternity,
- other reasons are provided by international agreements [4].

Acquiring the citizenship of Ukraine by birth includes several key points – reasons.

Firstly, it is acquiring the citizenship of a child if one of her/his parents is a citizen of Ukraine.

Secondly, the acquisition of citizenship of the child when both her/his parents are stateless and have permanent residence in the Ukraine. The main condition in this case is the fact that after the birth a child was not given another citizenship.

Thirdly, the acquisition of citizenship of a child that has foreign parents that have a permanent residence in the Ukraine. The main condition in this case is the fact that a child wasn't given a foreign citizenship.

Fourth, the acquisition of citizenship of a newborn baby which was found on the territory of Ukraine and her/his parents are unknown.

Fifth, the acquisition of Ukrainian citizenship of a child if one of her/his parents has a refugee status and if the child wasn't given a foreign citizenship. But if the child was given a citizenship of that parent who has a refugee status the child has the right to take the Ukrainian citizenship.

Acquiring the citizenship of Ukraine by territorial origin includes submission of relevant applications by guardians and tutors of the child that was born on the territory of our country but didn't acquire Ukrainian

citizenship by birth and has refugee status or foreign citizenship but only if this child asks for the termination of foreign citizenship.

Acquiring the citizenship of Ukraine due establishment of a child custody or trusteeship or adoption by married couple that both are citizens of Ukraine or one of them is such a citizen occurs after the court decision about adoption or establishment of a child custody or trusteeship comes into legal force regardless of the place of permanent residence of spouses.

Acquiring the citizenship of Ukraine by a child who's only one of parents has the Ukrainian citizenship takes place at the request of that parent who is a citizen of our country.

Acquiring the citizenship of Ukraine of a child due to the determination of maternity or paternity if one parent is or was a citizen of Ukraine occurs regardless of place of birth and residence of the child.

For a full and comprehensive disclosure of the concept of administrative and legal status of juveniles we need to pay attention on main principles of rights and freedoms of this category of people on the territory of our country. These principles are established by regulatory legal acts on national and international level.

The most important principle of rights and freedoms of a person is naturalness and inalienability of these rights and freedoms. Naturalness of rights and freedoms hasn't clear and unambiguous legislative consolidation. Because of this scientists take different approaches to this concept. In jurisprudence natural law is determined as a concept that means set of principles, rights and values that are dictated by the nature of a human and because of this doesn't depend on legislative recognition or non-recognition in a particular state [5, c. 19].

At the constitutional level inalienability found its expression in Articles 21 and 22 that fix the sanctity and inability cancellation rights enshrined. This means that rights and freedoms of persons including children is inseparable from an individual – their carrier and don't depend on the state and society. At its core it is the inability to voluntary renunciation of the subject from established rights and transformation of rights and freedoms on the object of giving, removal, exclusion or deprivation [1]. Now disputes are maintained over inalienable such a right as a right to life conceived but unborn child (Under the established practice of abortion that are legalized on the territory of our country). And also in these disputes have an important place inalienable individual life (because of the euthanasia - deprivation of life of terminally ill by their will, this practice is not legalized by Ukrainian legislation).

Equal rights and freedoms of juveniles based on the total equality of rights and freedoms of a man and a citizen that is fixed in the Constitution of Ukraine expressed in formal primary equal terms in the implementation

of relevant rights and freedoms. There is a need for positive discrimination (special measures of positive support, special measures to protect the rights) because of the inability of non-discrimination provide factual not formal equality protected rights of certain categories of the population – children.

Indivisibility, interdependence, interdependence of human rights brings to the fore the problem of connectedness rights of juveniles and other categories of people that which implies the conclusion of the impossibility of legal proceedings consolidation, change and development rights and freedoms of juveniles separately from following categories.

The universality of human rights and freedoms of juveniles fully revealed through some basic concepts.

Firstly, it's versatility that means formally equal amount of rights and freedoms of persons that don't not attained the majority without their discrimination and also substantial versatility that based on the universality of content of juvenile rights and freedoms.

Secondly, it is spatial versatility that means children have a certain amount of rights irrespective of the territory on which it is.

Thirdly, overall universality that means the problem of protects and secures the rights and freedoms of juveniles is not just an internal matter for individual state but appears on the international level.

The balance of the rights and freedoms of juveniles is the principle that is not fixed in the legislation of Ukraine and that means establishing the limits of fundamental rights of juveniles according to the public interests basing on the principle «permitted that is not prohibited by law».

Administrative rights and responsibilities of juveniles are contained in the Constitution of Ukraine, Codes and Laws of Ukraine and also other legislative acts of our country.

Almost the full range of fundamental rights is fixed at the constitutional level. Basing on the classification of these right by S. Kotaleyчук we can divide such rights on [6, c. 9]:

1. Physical rights. Physical rights and freedoms of children fixed on the Article 52 about equality of children in their rights regardless of their origin and unacceptability of violence against children. Also these rights include Articles 25, 27, 28, 29, 49, 50 that proclaim such rights as right to life and to the protection of life and health, right to have citizenship and a name, prohibition of abuse and hard punishment or punishment that degrading.

2. Economic rights. Economic rights of juveniles are fixed in Articles 41 and 46 of the Constitution of Ukraine and proclaim right to use and dispose of property and the right to social security/

3. Cultural rights. Cultural rights of juveniles cover Articles 53, 35, 34, 23 of the Constitution and proclaim the right to education and to free development

of personality, the right to freedom of opinion and expression, freedom of expression and beliefs, freedom of belief and religion [1].

4. Political rights. Analyzing the Law of Ukraine «About youth and children NGOs» that defines youth organizations as «association of citizens aged from 14 to 28 years whose purpose is to carry out activities for meeting and protection their legal social, economic, creative, spiritual and other interests», and children's NGOs as «association of citizens aged from 6 to 18 years purpose is to carry out activities for implementation and protection their rights and freedoms, creativity, satisfaction of self-interests that are not contrary to law and social development as full members of society» we can make a conclusion that such rights don't have a political nature but only cultural content depending on the purpose of the creation of such organizations [7].

The interconnection of rights and duties of a man and a citizen reflects the balance for mutual existence of the state and society, their understanding and agreement. This contributes to a more optimal regulation of social relations and as a result promote of life of citizens.

The duty of the person is legally enforceable and legally guaranteed the requirement to individual behavior. The duty is a necessary means with the help of which legal effect is carried out on the public relations [8]. Responsibilities can be divided into constitutional (that are fixed in the Constitution of Ukraine) and usual (established by other legal acts of the State). Also very important if the classification of duties depending on the nature of their performance: positive and negative. Positive obligations are built on implementation of active operations to ensure a certain right. Negative duties are the direct prohibition of certain acts that is a passive behavior for maintenance from committing of actions that may hinder or obstruct the realization of the implementation of certain rights.

The most important areas of life of a person are related to the duties of a man and a citizen that are fixed in the Constitution of Ukraine. Although the Basic Law of the state not directly mentioned duties of minors but through the analysis of legal acts governing the general legal status of children including their administrative and legal status we can identify those duties that directly or indirectly relating to persons who are under 18 years old.

The obligation to comply with the Constitution of Ukraine and laws of our country apply to all citizens and non-citizens, adults and children. But as we say earlier the duty can be not only positive but negative we need to pay attention on prohibitive duties for people who are under 18 years old. According to the Article 7 of the Law of Ukraine «About youth and children NGOs» such a prohibition although indirect is a creation of youth and children's organization which activities would have a political nature: «...unable to form and to join the polling units» [7].

The duty of defending the homeland, independence and territorial integrity of Ukraine directly cannot apply to underage because children can't be recruited to the military service. But for determining the number, training, degree of suitability, determination of the question about the health conditions children undertake to do the following: reckoned to some recruiting station in legally defined terms (after 17 years old), visiting institutions of medical examination by a decision of the Commission, compliance with the order of preparation for military service [9].

The obligation to obtain the full secondary education is established by the Constitution of Ukraine, Convention of the Rights of the Child, the Law of Ukraine «About education». A feature of this duty for minors is that it is provided by parents (guardians, trustees of the person) and the State.

Such an obligation as a childcare applies children not only as an object of care but also as the subject. Namely basing on the Article 156 of the Family Code of Ukraine juvenile parents have the same obligations as adult parents [10].

Such general constitutional responsibilities as protection of cultural heritage, not harming the environment, respect for the dignity of other people have no essential basic features concerning people younger than 18 years.

Legal duty acts like a component of optimal interaction between state and citizen for optimal functioning legal institutions, maintaining stability in society, for the development of this society. Legal obligations of juveniles can be defined as a guarantee of the rights of this category of population. At the same time legal responsibilities should be considered in two aspects: obligations of juveniles towards the state that we already highlighted and obligations of the state towards children for the most comprehensive and full protection of their rights and interests. Responsibilities of the state are defined by the law as objectively determined behavior of public authorities for guaranteeing the rights and freedoms of a man and a citizen. In civil society relationship between the citizen and the state based on principles of social cohesion and equal opportunities because of this ensuring the rights and freedoms of a man and a citizen plays an important role - impact on the further progress of theoretical opinions of existing social order and their practical realization. Guarantees are represented mainly as legislative and institutional mechanisms for the protection of human rights – normative legal acts (Constitution and laws of Ukraine, international treaties, ratified by the Verkhovna Rada of Ukraine, and other regulations in the field of human rights) and subjects of human rights activities in our country (people of Ukraine, local communities, government agencies, local governments, political parties, etc.).

Having regard to safeguard the rights exactly of juveniles we cannot disagree with the classification of features of this guaranteeing by T. Korzh-Ikaeva. This classification is based on the fact that basis of administrative - legal provision is to establish the limits of childhood [15, p. 4]. Articles 31 and 32 of the Civil Code of Ukraine sets 18 years as the age adulthood criterion and also reinforces the concept of a young age person - individual who is under 14 years [11]. The Code of Ukraine of Administrative Offences contains a reference to age of adolescence and also of those elements of the classification features of administrative and legal support of rights and freedoms of a child as administrative capacity limitation of juveniles special order their responsibility for administrative offenses (the Article 13) [12]. Establishing special procedures for handling administrative cases with children is the next feature guaranteeing their rights and freedoms basis of which is Article 48 of the Code of Administrative Proceedings of Ukraine that establishes a limited administrative procedural capacity of persons under 18 years age and also a special order of interrogation of adolescent or young age witnesses, etc [13]. Also T. Korzh-Ikaeva highlights a significant impact of international law as a guarantee that on the legislative level is fixed by the Article 9 of the Constitution of Ukraine that proclaimed international treaties in force that were ratified by the Verkhovna Rada of Ukraine are part of the national legislation of our country [1].

We cannot agree with the opinion of T. Zavorotchenko about should act not only guarantees secured by the law but also guarantees that determined by other social norms: moral norms, ethic norms, corporate rules, regulations, customs and others. Guarantees cannot in isolation from other social norms sufficiently create favorable conditions for the full protection of rights and freedoms even if legal guarantees would be stable and secured by the state [14, p.6].

Thus, we can conclude that citizenship as a fulcrum determines the amount and nature of the rights and obligations of a child which, in turn, is the main factor that forms the basis of administrative and legal status of juveniles in Ukraine.

List of reference links

1. Конституція України : Офіційне видання / Верховна Рада України. – Київ : Центр учбової літератури, 2010. – 80 с.
2. Гуренко М.М. Зародження та становлення ідеї гарантій прав і свобод людини і громадянина у ліберальній теоретико-правовій думці: Монографія / М.М. Гуренко. – К., 2000. – 167 с.
3. Конвенція ООН про права дитини від 20.11.1989 [Електронний ресурс] / ООН. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/995_021.
4. Про громадянство : Закон України станом на 16.12.2012 року [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/2235-14>.

5. Права человека : Учебник для ВУЗов / Под ред. Е.А. Лукашевой. – Москва, 1999. – 269 с.
6. Коталейчук С.П. Теоретико-правові проблеми правового статусу неповнолітніх в Україні та забезпечення його реалізації як один із основних напрямів діяльності міліції : автореф. дис. ... канд. юрид. наук : спец 12.00.01 «Теорія та історія держави і права; історія політичних і правових учень» / С.П. Коталейчук. – Київ, 2004. – 19 с.
7. Про молодіжні та дитячі громадські організації : Закон України станом на 06.01.2011 № 281-14 [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/281-14>.
8. Бережнов А.Г. Права личности и некоторые вопросы теории. – М. : Изд-во МГУ, 1991. – 142 с.
9. Про військовий обов'язок і військову службу: Закон України № 2232-12 станом на 11.08.2013 [Електронний ресурс] / Верховна Рада України. – Режим доступу : Сімейний кодекс України № 2947-14 станом на 04.08.2013 [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/2947-14>.
10. Цивільний кодекс України станом на 11.10.2013 [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon0.rada.gov.ua/laws/show/435-15>.
11. Кодекс України про адміністративні правопорушення № 80731-10 станом на 01.01.2014 [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon1.rada.gov.ua/laws/show/80731-10>.
12. Кодекс адміністративного судочинства України № 2747-15 станом на 11.08.2013 [Електронний ресурс] / Верховна Рада України. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/2747-15/page>.
13. Заворотченко Т.М. Конституційно-правові гарантії прав і свобод людини і громадянина в Україні : Автореф. дис. ... канд. юрид. наук: 12.00.02 / Т.М. Заворотченко. – Київ, 2002 – 18 с.
14. Корж-Ікаєва Т.Г. Адміністративно-правове забезпечення прав і свобод неповнолітніх : Автореф. дис. ... канд. юрид. наук: 12.00.07 / Т.Г. Корж – Ікаєва. – Київ, 2008 – 20 с.