

Universal Declaration of Human Rights: realisation of child's rights to life and health care in the Constitution of the Republic of Belarus

Abstract

The article is devoted to the analysis of the norms of the Universal Declaration of Human Rights, 1948 and the Constitution of the Republic of Belarus concerning the right of the child to life and the rights of the child to health care. The purpose of the study was a comprehensive description of the above institutions, where the child is a special subject of constitutional and legal relations. This work aims to compare the norms of the Constitution of the Republic of Belarus concerning the rights of the child to life and health care with the provisions of the Declaration of Human Rights, as well as to determine their conformity. The constitutional right to life and the right to health protection are two complementary institutions, implemented on the basis of constitutional norms on the relevant rights of citizens and the rights of children subject to special protection in accordance with international human rights obligations.

Keywords: human rights, child's right to life, child's right to health.

Modern society is characterized by a widespread and universal proclamation of natural and inalienable human rights and freedoms. This required a great historical path, beginning with indifference to childhood life in the Middle Ages, and only in the twentieth century children were recognized as an object of special attention and protection from the whole world community. This was facilitated by the United Nations Convention on the Rights of the Child, adopted in 1989 and ratified by most countries of the world, including the Republic of Belarus.

It was only in the 20th century when the world community came to the need to develop and implement the legal confirmation of the rights of the child as an independent subject of legal relations – related primarily to protection of the child's life and health. In this respect, establishment and development of legal provisions on the right of the child to life and the right to health care – envisaged by the legislation of the Republic of Belarus – represent an interest.

Human life and health – as objects of legal protection – have passed a long historical path before being enshrined in the Constitution of the Republic of Belarus.

The historical and legal analysis of the development of provisions relating to international consolidation of the need for legal protection of children's life and health shows that the Universal Declaration of Human Rights, 1948 [1] refers to the global fundamental act upon which the Constitution of the Republic of Belarus is based. For example, Article 8 of the Constitution of the Republic of Belarus stipulates that 'the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith' [2].

This work aims to compare the norms of the Constitution of the Republic of Belarus concerning the rights of the child to life and health care with the provisions of the Declaration of Human Rights, as well as to determine their conformity.

The preamble of the Declaration of Human Rights emphasises that all human rights are universal, indivisible, interdependent and interrelated – thereby proclaiming the absence of discrimination by age. Article 2 of the Declaration of Human Rights reads: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind' [1].

The right to life is the fundamental right of every person and belongs to the category of personal constitutional, inalienable rights. Article 24 of the Constitution of the Republic of Belarus fully complies with Article 3 of the Declaration of Human Rights: 'Everyone has the right to life' [2] – which well confirms this fact. By saying 'everyone', the Constitution of the Republic of Belarus also means a child.

According to the constitutional provisions, rights and freedoms of a person must act as a guide in activities of the state, its bodies and officials – as enshrined in Article 2 of the Constitution of the Republic of Belarus: 'The individual, his rights, freedoms and guarantees to secure them are the

supreme value and goal of the society and the State' [2] – hence the main guarantors of observance of human rights are envisaged on the constitutional level.

The modern understanding of the term 'health' is defined in the Constitution of the World Health Organisation and is widely used by specialists of different fields of activity. It reads: 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' [3]. Although the Declaration's principles do not directly address the children's right to health, this is manifested in every principle of the Declaration – implying protection of their physical, mental and psychological health. For example, Article 25 of the Universal Declaration of Human Rights establishes a provision when everyone has the right to a standard of living adequate for the well-being of himself and of his family – including food, clothing and housing.

There is no doubt that protection of housing rights is an integral part of the right to life and the right to health care. Article 48 of the Constitution of the Republic establishes the right of citizens of the Republic of Belarus to housing which can be granted to citizens who are in need of social protection free of charge. Moreover, Article 21 of the Constitution of the Republic of Belarus states that 'everyone has the right to a decent standard of living, including appropriate food, clothing, housing and a continuous improvement of conditions necessary to attain this' [2]. This right is secured to everyone, thereby emphasising the absence of any age discrimination. Moreover, it is proclaimed that the state shall guarantee the rights and freedoms of citizens of Belarus envisaged by its international obligations.

In our view, the Declaration of Human Rights has an important provision that maintenance of people's well-being must be ensured in the event of sickness, disability or lack of livelihood in circumstances beyond their control [1]. The provisions on the right to medical care and social services – enshrined in the Declaration of Human Rights – are envisaged by the Constitution of our country. An important feature of the Constitution of the Republic of Belarus is that citizens of the Republic of Belarus are guaranteed the right to health care, including free treatment at state health care institutions (Article 45) [2]. At the same time, the state acts as a guarantor of the availability of medical care for all citizens. Comparison of the provisions of constitutions of the Republic of Belarus, the Federal Republic of Germany, the Austrian Republic and Sweden [4] shows that guarantees of the kind are not envisaged by Western European

legislators – which speaks of a more progressive approach to protecting children's health in the constitutional provisions of the Republic of Belarus. This fact confirms the legislator's interest in resolving the issues of improvement of the modern demographic situation and is one of the directions for the practical implementation of this problem in the state.

At the same time, an analysis of the international situation shows that global problems related to children's survival are not yet resolved: children with acquired immunodeficiency syndrome, refugees, displaced persons, children in prison, in the zone of an armed conflict and other critical situations. With this in view, the above-mentioned global problems pose new challenges for health authorities and bodies of legal regulation of children's rights to life and health care [5]. Proceeding from this, the Constitution of the Republic of Belarus guarantees the right to social security in the event of illness and disability (Article 47) [2]. The Constitution-guaranteed opportunities for the use of health facilities, development of physical culture and sports and measures to improve labour protection are the principles of health care, including of children.

Articles 4, 5, 7, 9 of the Declaration of Human Rights implicitly result in recommendations to states on the need to protect health: prohibition of slavery, torture, cruel treatment and punishment, arrest, detention and expulsion, arbitrary interference with privacy and family life, arbitrary assault on immunity dwellings [1].

Meanwhile, it should be noted that Article 25 of the Universal Declaration of Human Rights does not mention directly human – including child's – rights. For example, in defining the right to care for maintaining health, provisions of the Declaration use such a broad concept as 'everyone'. The use of this 'everyone' concept emphasises that the interpretation of the provisions under review makes it possible to attribute this right to the rights of every person regardless of age – which refers the content not only to adults' rights but also to the rights of children.

The study of the Declaration of Human Rights shows that the role of the family as the main guarantor of the child's life and health is noted for the first time in an international legal act. Its Article 16 reads: 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State' and, according to Article 25, 'Motherhood and childhood are entitled to special care and assistance' [1]. Accordingly, the need to protect the mother and child is recognised at the international level, while the society as a whole and the state act as the guarantor of their rights.

Article 32 of the Constitution of the Republic of Belarus also envisages special protection for the family and motherhood. At the same time, the Constitution of the Republic of Belarus obliges parents and persons substituting them to take care of the child's health [2].

The importance and necessity of special legal protection of an employed minor is also envisaged by the Constitution. Workers are guaranteed healthy and safe working conditions (Article 41), while minors have the right to equal remuneration for work of equal value (Article 42). Moreover, it is emphasised that 'no child shall be subjected to cruel treatment or humiliation or engaged in work that may be harmful to its physical, mental or moral development' (Article 32) [2].

Without specifying age limits of the child, Article 32 of the Constitution guarantees young people the right to their spiritual, moral and physical development which is an integral part of the right to health care [2].

It should be noted that – in times when the Declaration of Human Rights was being prepared – industrial interference in the environment and its littering, as well as deterioration of the state of ecological systems were less critical for the human health and were not reflected in the Declaration of Human Rights for the above reasons. At the same time, according to the Constitution of the Republic of Belarus, the right of citizens to health care is secured by measures to improve the environment (Article 45), 'everyone shall have the right to a conducive environment and to a compensation for the loss or damage caused by violation of this right' (Article 46). The right to receive information on the state of the environment – guaranteed by Article 34 – can be realised, if necessary, as the right to preserve life and protect health.

According to Art. 1 of the Constitution, the Republic of Belarus as a unitary democratic social legal state, protects its independence and territorial integrity, constitutional order, ensures law and order, including by recognizing the rights, human rights and freedoms as the highest value. A person, his rights, freedoms and guarantees for their realization are the supreme value of society and the state (Article 2 of the Constitution of the Republic of Belarus). At the same time, the state is the guarantor and responsible for creating conditions for free and dignified development of the individual. Thus, everyone, regardless of age, has the right to life (Article 24 of the Constitution of the Republic of Belarus) and a decent standard of living (Article 21 of the Constitution of the Republic of Belarus).

In accordance with Art. 182 of the Marriage and Family Code, all children have equal rights, irrespective of origin, race, nationality, citizenship, social and property status, sex, language, education, attitude to religion, place of residence, state of health [6]. Equal and comprehensive protection is enjoyed by children born in and out of wedlock. When analyzing the legal status of a child in the Republic of Belarus, the following elements should be singled out: 1) the citizenship of children; 2) the principles of the legal status of children; 3) rights, freedoms and duties; 4) legal capacity and capacity; 5) guarantees of the rights of the child, means and ways of their protection. It should be noted the following peculiarity that the Constitution of the Republic of Belarus also uses the terms «everyone» or «citizen of the Republic of Belarus» to designate the constitutional legal status, thereby affirming that underage citizens of the Republic of Belarus have equal rights with adults. The period of childhood has a time limit, respectively, and the legal status of the child is limited by time. In the legislation of the Republic of Belarus, it exists from the moment of birth until reaching adulthood. The child is an independent subject of constitutional law. The basis of its isolation from the mass of other individuals is based on age criteria. In the category of «child», it is necessary to emphasize the predominant role of the definition of the «legal status of the child», since the specificity of real relations with his participation is such that their content is formed primarily by the will of other subjects (legal representatives, government bodies, public organizations). In the Republic of Belarus, the rights of the child and their protection are provided by local executive and administrative bodies, the prosecutor's office and the court, which in their activities are guided by the priority of protecting the interests of children. Also, state bodies support the activities of public associations and other non-profit organizations that promote the protection and realization of the rights and interests of the child. Thus, the peculiarities of the legal status of the child in the Republic of Belarus are: protection by the state at the constitutional level of childhood, the state is the main guarantor of the rights of the child, the will of other subjects of legal relations in the exercise of children's rights, as well as the age criteria when protecting and guaranteeing the rights of the child by the state.

Conclusions

1. The Declaration of Human Rights and the Constitution of the Republic of Belarus recognise the child as a subject of the right to life and the right to health care who has all the rights of an adult.
2. The child's right to life and right to health care are interrelated and interdependent. The Constitution of the Republic of Belarus guarantees physical, mental and psychological health – which meets the provisions of the Declaration of Human Rights.
3. Under the Constitution of the Republic of Belarus, three institutions are declared the main guarantors of the child's rights to life and health care: the family, the society and the state.
4. Unlike constitutions of Western European countries, the Constitution of the Republic of Belarus stipulates a provision on the protection of the child's health, with a guarantee of receiving free medical care in state institutions. A provision of the kind confirms the Republic of Belarus' interest and concern – as a state – in development of the younger generation and improvement of the demography, at the constitutional level.

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