

WAR CRIMES AND THREATS AS A PREREQUISITE FOR VIOLATING CHILDREN'S RIGHTS

ВІЙСЬКОВІ ЗЛОЧИНИ ТА ПОГРОЗИ ЯК ПЕРЕДУМОВА ПОРУШЕННЯ ПРАВ ДИТИНИ

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War, war crimes, and military threats are the primary cause of violations of children's rights on a daily basis: the right to life, the right to be with family and family, the right to health, the right to education and personal development, the right to care and protection. Children are one of the most vulnerable and defenseless categories of civilians during armed conflicts, and the phenomenon of war is the most gross violation of children's rights.

The number of children who have lost their parents and become orphans as a result of the war, lost their homes and health, and need social supervision is growing. There is a growing problem of socialisation of children who are studying remotely and do not have contact with their peers or are forced to change their usual environment. All this requires the development and application of additional legal measures by the state and communication with society.

The legal construct "protection of children" acquires a new, symbolic meaning during the genocide of the Ukrainian people and the murder of Ukrainian children. It is impossible to say that all legal mechanisms for the realisation of children's rights are being properly implemented. The fates of millions of Ukrainian families have changed, the bitter statistics of childhood losses are growing every day, Ukrainian children continue to be killed, injured, and separated from their parents. Children need legal support, assistance and a clear mechanism to protect their rights in wartime and post-war. Even in the de-occupied territories, the state authorities are not fully operational, and law enforcement agencies are working with the assistance of international organisations to record all offences and apply all legal mechanisms to bring perpetrators to justice.

It is important to pay attention to and ensure the protection of all children affected by the armed conflict, who are in the temporarily occupied territories and in the area of active hostilities, and who need to be reunited with family members, including the search for, release from captivity, and return to Ukraine of illegally displaced children.

The importance of this study in the context of the martial law regime cannot be overestimated, as there is a need to establish cooperation between all responsible structures – state and local authorities, social services, police, courts, educational and medical institutions – to ensure the realisation of children's rights under martial law. Statistics show that one in three children is a refugee from Ukraine, and one in three children is a refugee within the country, i.e. an internally displaced person.

There is a need to build the right vertical for ensuring and implementing children's rights, and it seems necessary to create a separate ministry that would deal specifically with family affairs, and to establish family courts (as in the European Union). This will facilitate the prompt resolution of child protection issues in an efficient and effective manner. The state must ensure that it fulfils its obligation to take the necessary measures to ensure the protection of children's rights (search for and return to Ukraine of children illegally taken abroad, and, if necessary, establish guardianship and custody). Despite the existence of international legal acts in force during the war, the rights of many children are systematically violated. Ukraine today also needs to improve its legislative framework (a step forward was the ratification of the Protocol to the UN Convention on the Rights of the Child on the Prevention of the Involvement of Children in Armed Conflict). Currently, the six biggest violations related to the involvement of children in war have been identified: killing children, taking children hostage and using them as human shields, sexual exploitation of children, involvement in hostilities, using children not only as soldiers but also as auxiliary personnel, seizing educational institutions and using them as military facilities, locating military infrastructure in them, and involving children in the arrangement of military facilities.

It is impossible to change the geographical neighbourhood, and one must be constantly prepared for threats from an aggressive neighbour. Security and prevention measures are designed to build new long-term rules. War is not a reason to violate the right to education, innovation, and war does not give permission to violate or not respect children's rights. The war helps to see the true values, the real heroes and heroines who, as part of the Armed Forces, ensure the integrity of the state borders, improve the current legislation and never repeat mistakes whose cost cannot be estimated by any material good.

Key words: aggression, hostilities, war, war crimes, military threats, legislation, child, child protection, child rights, right to life, right to be with family and family, right to health, right to education and personal development, right to care and protection, state, legal measures, legal mechanisms, international humanitarian law, socialisation of children.

Війна, військові злочини, військові загрози щоденно є першопричиною порушення прав дитини: права на життя, права бути з сім'єю і родиною, права на здоров'я, права на освіту і розвиток особистості, права на турботу і захист. Діти – одна з найуразливіших та беззахисних категорій цивільного населення під час військових конфліктів, а явище війни – це найбільш брутальне порушення прав дитини.

Зростає кількість дітей, які через війну втратили батьків та залишились сиротами, втратили частково або повністю житло, здоров'я, потребують соціального нагляду. Зростає проблема соціалізації дітей, що знаходяться на дистанційному навчанні та не контактують з однолітками або вимушені змінювати звичне оточення. Все це вимагає формування та застосування додаткових правових заходів від держави та комунікації з суспільством.

Правова конструкція «захист дітей» набуває нового, символічного значення під час геноциду українського народу і вбивства українських дітей. Неможливо стверджувати, що належно реалізуються усі правові механізми, щодо реалізації прав дітей. Змінилися долі мільйонів українських сімей, щодня гірка статистика дитячих втрат зростає, українських дітей продовжують вбивати, травмувати, розлучати з батьками. Діти потребують правової підтримки, допомоги та чіткого механізму захисту власних прав у воєнний та повоєнний час. Навіть на деокупованих територіях не запрацювали в повному обсязі органи державної влади, а правоохоронні органи працюють з допомогою міжнародних організацій, щоб зафіксувати всі правопорушення та застосувати усі законні механізми притягнення винних до юридичної відповідальності.

Важливо приділити увагу і забезпечити захист всім дітям, які постраждали внаслідок збройного конфлікту, знаходяться на тимчасово окупованих територіях і в зоні активних бойових дій, потребують воз'єднання із членами сім'ї, включаючи розшук, звільнення з полону, повернення в Україну незаконно переміщених дітей.

Важливість цього дослідження в умовах дії правового режиму воєнного стану важко переоцінити, оскільки існує необхідність налагодити взаємодію між всіма відповідальними структурами – органами державної та місцевої влади, соціальними службами, поліцією, судами, освітніми, медичними закладами, щоб забезпечити реалізацію прав дітей в умовах дії правового режиму військового стану. Статистичні

показники фіксують, що кожна третя дитина є втікачем з України, кожна третя дитина є втікачем всередині країни, тобто внутрішньо переміщеною особою.

Виникає необхідність вибудувати правильну вертикаль забезпечення та реалізації прав дитини, необхідним, видається, формування окремого міністерства, яке б опікувалося саме сімейними справами, утворити сімейні суди (на прикладі країн Європейського Союзу). Це сприятиме швидкому вирішенню питання захисту прав дитини – дієво і ефективно. Держава має забезпечити виконання зобов'язання, щодо необхідних заходів забезпечення захисту прав дітей (розшук, повернення в Україну дітей, незаконно вивезених за кордон, при необхідності встановлення піклування та опікунства). Не зважаючи на існування й міжнародних правових актів, що діють в умовах війни, права багатьох дітей систематично порушуються. Україна сьогодні потребує і вдосконалення законодавчого поля (кроком вперед була ратифікація протоколу до Конвенції ООН про права дитини «Про запобігання залученню дітей до збройних конфліктів»). Наразі виокремлено шість найбільших порушень, пов'язаних з темою залучення дітей до війни, це – вбивство дітей, захоплення дітей в заручники та використання як «живий щит», сексуальна експлуатація дітей, залучення до участі у військових діях, використання дітей не лише як солдатів, а й як допоміжний персонал, захоплення навчальних закладів і використання їх як військових об'єктів, розташування в них об'єктів військової інфраструктури, залучення дітей до облаштування військових об'єктів.

Змінити географічне сусідство неможливо, до загроз з боку агресивного сусіда необхідно бути постійно готовими. Заходи безпеки та заходи попередження покликанні вибудувати нові довгострокові правила. Війна – не причина для порушення права на освіту, інновацій, війна не надає дозволу для порушення чи не дотримання прав дітей. Війна допомагає побачити справжні цінності, справжніх героїв та героїнь, які у складі ЗСУ забезпечують цілісність державних кордонів, удосконалити діюче законодавство та більше ніколи не повторювати помилок, вартість яких, не можливо оцінити жодним матеріальним благом.

Ключові слова: агресія, бойові дії, війна, військові злочини, військові загрози, законодавство, дитина, охорона дитинства, права дитини, право на життя, право бути з сім'єю і родиною, право на здоров'я, право на освіту і розвиток особистості, право на турботу і захист, держава, правові заходи, правові механізми, міжнародне гуманітарне право, соціалізація дітей.

The Second World War left a bitter trace, with the number of civilians killed in action, tortured in Nazi concentration camps, starved to death, wounded and disabled, and civilian casualties almost twice as high as the losses in military units directly involved in the fighting. According to various sources, the number of military casualties is close to 25 million, and civilian casualties are almost 47 million, including many children. Over the past decade, armed conflicts and civil wars have killed 2 million children, and another 6 million have been seriously injured or disabled. Many others, orphaned or separated from their parents by war, have experienced severe emotional turmoil in their struggle for survival.

In the second half of the 20th century, many documents were signed to protect civilians from military threats. But the sad experience of post-war armed conflicts in Asia, Africa and South America, and now in Ukraine, has revealed another feature – the involvement of children. During the fighting in Sudan, Peru, and other countries, the international community recorded the involvement of children in combat as combatants. This was a direct impetus for the adoption of a separate UN protocol. Children are included in a separate category of subjects of international humanitarian law. It took almost 10 years to develop the relevant documents, and in 2000 a separate optional protocol to the UN Convention on the Rights of the Child on the involvement of minors in armed conflict was adopted. Ukraine ratified it in 2004.

The legal status of a child is his or her rights and obligations, as well as other elements: citizenship, legal personality, legal guarantees, legitimate interests, legal responsibility, general status relations necessary for the child's comprehensive development, and the legal status that reflects the child's position in interactions with other subjects of law. According to Article 1 of the Law of Ukraine "On Protection of Childhood", a child affected by hostilities and armed conflicts is a child who, as a result of hostilities or armed conflict, was injured, contused, mutilated, subjected to physical, sexual, or psychological violence, abducted or illegally taken outside Ukraine, involved in military formations or illegally detained, including in captivity [1].

The status of a child affected by hostilities and armed conflicts is granted by the guardianship and custody authority at the place of registration of the child as an internally displaced person. The procedure for granting the status of a child affected by hostilities and armed conflicts is determined by the Cabinet of Ministers of Ukraine. In accordance with paragraph 6 of the Procedure for Granting the Status of a Child Affected by Military Actions and Armed Conflicts, the child's legal representative or, if the child is unaccompanied by parents or persons in loco parentis, his or her relatives (grandparents, aunts, uncles, adult brother or sister), stepfather, stepmother, or a representative of the guardianship and custody

authority shall submit the necessary documents to the Service for Children's Affairs [2].

An effective decision was the adoption by the Verkhovna Rada of Ukraine of the Resolution "On the Appeal of the Verkhovna Rada of Ukraine to the UN Human Rights Committee, the UN Committee on the Rights of the Child, the International Court of Justice in The Hague, the UN High Commissioner for Refugees on the violation by the Russian Federation of international treaties and conventions and on the inadmissibility of transferring children – citizens of Ukraine, abducted and forcibly transferred to the aggressor state, other countries or within the occupied territories of Ukraine, to the families of Russian citizens." Also, the Verkhovna Rada of Ukraine appealed to the UN Human Rights Committee, the UN Committee on the Rights of the Child, the International Court of Justice in The Hague, the UN High Commissioner for Refugees with a demand to take immediate decisive steps to protect children – citizens of Ukraine in order to prevent the transfer of children – citizens of Ukraine, abducted and forcibly transferred to the aggressor state, other countries or within the occupied territories of Ukraine, for adoption to families of Russian citizens; return of children – citizens of Ukraine, abducted and forcibly transferred to the aggressor state, other countries or within the occupied territories of Ukraine, to the territory controlled by Ukraine.

It is worth highlighting the threats to children who find themselves directly in the zone of military conflict. The risk of direct involvement of children in hostilities. That is, when children are involved in firefights and battles (purely military). Ammunition exposure – when there is a risk of coming under shelling, sniper fire, destruction of houses and industrial structures, injury or death due to explosive devices and getting into minefields. Involvement in hostilities – as combatants, medical or service personnel.

About 1.5 million children in Ukraine are affected by the armed conflict. These are displaced persons, those who remained in the gray and frontline areas, and residents of the occupied territories. The military, volunteers, police, and civil-military administrations have evacuated about half a million children from the conflict area. It is impossible to count the number of children who faced the armed aggression of a neighboring country, suffering physical and mental trauma, injuries, and sexual violence [3].

To improve Ukrainian legislation in the field of child protection, it is necessary to analyze the legislation of countries that are in martial law or recovering from war. The basis of Israel's security is the Civil Defense Law of 1951, which obliges all types of buildings (residential, educational, industrial) to be equipped with shelters and bomb shelters. The state also conducts advertising campaigns and annual drills designed to convey important information, such as how and how long

it takes for students to get to bomb shelters after the alarm sounds. During such exercises, children independently search for public shelters closest to their school or home, learn first aid, etc. The EU Council adopted a strategy for the EU to strengthen the protection of children's rights in crisis or emergency situations, including during armed conflict. The conclusions were considered due to systematic and gross violations of children's rights by the Russian occupiers in Ukraine. The relevant document on the European Council website states that during armed conflicts, children are one of the least protected categories of the population.

The modern constitutional and legal policy of Ukraine should be created on a par with international legal standards in the field of children's rights, take this important issue more seriously, consistently and timely take into account new legal facts that will help improve the mechanism of legal regulation in the field of children's rights. In modern legal science, the problem of the legal status of children affected by the military aggression of the Russian Federation against Ukraine is the least studied [4].

From the first days of the war, the Presidential Office, together with the Ministry of Social Policy, with the support of UNICEF, created a chatbot on Telegram called "A Child is Not Alone" for the convenience of citizens. Any Ukrainian citizen who was in the country could apply for a temporary placement of a child in need in a family. Over 600 days of war, about 20,000 Ukrainian citizens submitted applications to the chatbot. They were sent in-depth information about this form of placement. If people confirmed their desire, they were asked to provide more detailed information and fill out a questionnaire, which was then processed by the children's services. They were also offered online training on how to communicate with a child and possible psychological problems, etc. After that, if a child was found who needed a temporary placement,

the children's service (throughout Ukraine) contacted the family and transferred the child to them. More than two thousand children were placed in families in this way.

The Cabinet of Ministers of Ukraine established the Coordination Headquarters for the Protection of Children's Rights in Time of War, which will coordinate the work of central and local executive authorities and local self-government bodies to evacuate, create safe conditions and ensure the rights of children during martial law: orphans, children deprived of parental care, who are under the age of 18 and reside or are enrolled in various types of institutions, including children with disabilities; children who do not have this status but reside or are enrolled in various types of institutions.

The Law of Ukraine "On Protection of Childhood" is the main law of Ukraine that regulates the rights of children in times of war. The law stipulates that children cannot be involved in armed conflict and that the state takes all measures to prevent this.

The state has also granted children the right to free legal aid. In addition to free primary legal aid (legal information and legal advice), children have the right to free secondary legal aid, which consists of protecting and representing their interests in courts and other state bodies, as well as drafting procedural documents. It is provided by lawyers of legal aid bureaus and attorneys. The services of lawyers and attorneys are paid for by the state.

These problems are impressive and confirm that we are moving in the right direction and modernizing our legal system. However, in the context of martial law, which has been introduced throughout the country, it is extremely difficult to fulfill the functions assigned to the state to ensure the protection of children's rights, and it is especially important to address the issue of effective reintegration and restoration of children's rights, which can be achieved by implementing nationwide targeted programs.

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