



# **ENSURING THE RIGHTS AND FREEDOMS OF PEOPLE IN UKRAINE**

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**Ensuring the rights and freedoms of people in Ukraine: Scientific monograph**

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The monograph is devoted to the analysis of historical and legal foundations and practical problems of the rights and freedoms of people. It outlines the main stages in the formation of the concept of rights and freedoms of people in Ukraine. Analyzes the notions and types of rights and freedoms of people. The meaning of the subjective right of freedom of creativity was analyzed. Guarantees of children's rights and freedoms were analyzed. Characterized the informational rights of people. An analysis of the protection of the best interests of the child. The work will be of interest to researchers, students, as well as the number of readers who are interested in the protection of human rights.

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**Table of Contents**

<b>PREFACE</b> .....	1
<i>Tetiana Pikovska</i>	
CHAPTER 1. HISTORICAL AND LEGAL CHARACTERISTICS OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE .....	5
1.1. Formation and consolidation of the institution of human rights and freedoms in Ukraine (VI-XV centuries) .....	5
1.2. The Rights and Freedoms of the People in Ukraine in the Era of the New Time (15th – early 20th centuries) .....	16
1.3. Human rights and freedoms in the Soviet period (1922-1991) .....	35
1.4. The development of human rights and freedoms in the first years of Ukraine’s independence (1991-1998) .....	38
<i>Andrii Pravdiuk</i>	
CHAPTER 2. INDIVIDUAL (CIVIL) AND POLITICAL RIGHTS AND FREEDOMS OF THE PEOPLE IN UKRAINE .....	46
2.1. The formation of civil society in Ukraine: issues of theory and practice .....	46
2.2. The place of civil and political rights and freedoms in the system of human rights .....	56
2.3. The right to elect and be elected to bodies of public authority: theory and practice .....	61
<i>Andrii Pravdiuk</i>	
CHAPTER 3. SOCIAL, ECONOMIC AND CULTURAL RIGHTS AND FREEDOMS OF PEOPLE IN UKRAINE .....	76
3.1. The notion and types of social rights and freedoms of people and citizen .....	76
3.2. The Notion and Types of Economic Rights and Freedoms of Individuals and Citizens .....	86
3.3. Understanding and Types of Cultural Rights and Freedoms of People and Citizen .....	94
<i>Yelyzaveta Tymoshenko</i>	
CHAPTER 4. HUMAN RIGHTS AND FREEDOMS IN UKRAINE .....	102
4.1. Relationship between people’s rights to information and right to information .....	102
4.2. Mechanism of security of information rights and freedoms of people in Ukraine .....	114
4.3. Implementation of Legal Security of Information Rights and Freedoms of People from European Union Legislation into Ukrainian Legislation .....	120

**Table of Contents**

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***Natalia Opolska***

CHAPTER 5. RIGHT TO FREEDOM OF CREATION. . . . . 129

    5.1. Subjective right to creative freedom . . . . . 129

    5.2. The right to freedom of creativity  
        in the system of people’s fundamental rights . . . . . 148

***Natalia Opolska, Natalia Chernyschuk***

CHAPTER 6. MECHANISM FOR ENSURING CHILDREN'S RIGHTS  
AND FREEDOMS IN UKRAINE. . . . . 168

    6.1. Structure of the Mechanism for Ensuring the Rights  
        and Freedoms of the Child in Ukraine . . . . . 168

    6.2. The Place of Guarantees in the Mechanism  
        for Ensuring the Rights and Freedoms of the Child . . . . . 172

***Taisa Tomliak***

CHAPTER 7. PROTECTING THE BEST INTERESTS OF THE CHILD . . . . . 208

    7.1. Evolution of the Principle of the Best Interests  
        of the Child in International Law. . . . . 208

    7.2. Protecting the Best Interests of the Child  
        in Civil Proceedings of Ukraine . . . . . 218

    7.3. The Best Interests of the Child in the Practice  
        of the European Court of Human Rights . . . . . 233

**AFTERSPEECH . . . . . 248**

## CHAPTER 6. MECHANISM FOR ENSURING CHILDREN'S RIGHTS AND FREEDOMS IN UKRAINE

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### 6.1. Structure of the Mechanism for Ensuring the Rights and Freedoms of the Child in Ukraine

The effective protection, actual implementation and organized protection of children's rights and freedoms are possible if the mechanism for ensuring children's rights and freedoms operates effectively. This concept has been investigated by many Ukrainian and foreign scientists.

O. Skakun defines the mechanism of security of human rights and freedoms as a system of means and factors that ensure the necessary conditions of respect for all fundamental human rights and freedoms, which are dependent on their human nature<sup>291</sup>. Such a definition is made by I. Slovka<sup>292</sup>.

It is exhaustive in its application to the rights and freedoms of people, but the absence of a definition of the concept of human nature of the child in the legislation prevents the application of this definition to the mechanism of security for the rights and freedoms of the child.

N. Onishchenko defines the mechanism of security of rights and freedoms of an individual as a complex of interrelated, mutually interoperable legal conditions, normative tools and general social conditions that create

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<sup>291</sup> Skakun O.F. *Teoriia derzhavy i prava* : pidruchnyk. Kharkiv : Konsum, 2008. S. 190.

<sup>292</sup> Clovska I. *Mekhanizm zakhystu prav liudyny – osnovopolozhnyi pryntsyyp suchasnoho ukrainskoho konstytutsionalizmu*. *Pravo Ukrainy*. 2001. № 9. S. 15–17.

the proper legal and factual possibilities for full implementation of rights and freedoms by people<sup>293</sup>.

Examining the mechanism of security for the rights and freedoms of the child, it should be noted that in the main it meets the definition given by N. Onishchenko. However, this mechanism has its own specificity, which is manifested in its object. Because of her physical and mental immaturity, the child requires special protection, treatment, including adequate legal protection both before and after birth.

Moreover, children, due to the specific features of their age, are not always able to exercise their rights on their own, and therefore they need special attention from the state and society.

Therefore, the mechanism of security for the rights and freedoms of the child can be viewed as a system of general social and legal factors, means and procedures that, interacting with each other, create the necessary legal and factual conditions for the realization, protection and defense of the rights and freedoms of the child. The aim of this mechanism is to create conditions for the full development of the child, the protection, defense and restoration of violated or revoked rights and freedoms, as well as the formation of a legal culture and legal awareness of each child and the society as a whole.

Scientists identify the main subsystems of the mechanism for ensuring human rights and freedoms: the mechanism of implementation, the mechanism of protection, the mechanism of protection<sup>294</sup>.

Mechanism of protection is a system of legal actions, regulations and legal relations aimed at prevention of violations of children's rights, ensuring lawful behavior of entities in the sphere of the legal status of the child.

O. Zaychuk, A. Zayets and others define that the implementation of rights is the insertion of the legal norm in the activities of entities. And the mechanism of law implementation is the activity of the subject of law, the obliged party, the legislative body, the law enforcement body and the existing legal norms, which regulate their activity. Three basic forms of implementation of the law are distinguished: use, implementation and compliance<sup>295</sup>.

<sup>293</sup> Onishchenko N. *Mekhanizm zabezpechennia prav i svobod osoby. Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkhody, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya.Yu., Tatsii V.Ya., Shemshuchenko Yu.P.* Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 487.

<sup>294</sup> Skakun O. F. *Teoriia derzhavy i prava.* Kharkiv : Konsum, 2008. S. 199.

<sup>295</sup> *Teoriia derzhavy i prava. Akademychnyi kurs : pidruchnyk. za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskiyi.* 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 451.

According to this definition, the mechanism of implementation of the rights of the child is the activity of entities (legislative body, law enforcement body, parents, other persons or the child himself/herself), is designed to enforce and implement the rights and freedoms of the child, and to create measures and factors that can create the conditions for the implementation of the child's rights.

S. Nesinova considers the mechanism of protection of children's rights as a unified system of government agencies and community organizations that, based on current legislation to protect the rights of children without parental care, control, coordinate and directly participate in the prevention, detection and termination of violations of the rights of the disabled by eliminating the causes and conditions of these violations and bringing the guilty persons to legal responsibility<sup>296</sup>.

In our view, the mechanism of protection of children's rights is a dynamic legal phenomenon, which can involve not only state bodies and public organizations, but also other institutions. Moreover, bringing to legal responsibility those guilty of violating the rights and freedoms of the child, in our opinion, is the result of activities aimed at preventing, detecting and stopping violations, so this definition is debatable.

More acceptable, in our view, is the definition of the mechanism of legal protection by O. Nalivaiko, defining it as a dynamic system of legal forms, tools and measures, whose actions and interactions are aimed at preventing violations of people's rights or their restoration in case of violation<sup>297</sup>. The same definition is upheld by O. Negodchenko<sup>298</sup>.

Therefore, the mechanism for the protection of children's rights and freedoms is the interaction of a dynamic system of legal forms, tools and actions that are revealed in the activities of the state authorities and institutions of civil society in the sphere of prevention of violations of children's rights and freedoms, their detection and restoration of the legal statuP.

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<sup>296</sup> Nesynova P.V. Derzhavno-pravovyi mekhanizm zakhystu prav nepovnolitnikh v Ukrainskii RSR (60-i – poch. 80-kh rr. XX st.) : dys. ... kand. yuryd. nauk. Kyiv, 2005. S. 188.

<sup>297</sup> Nalyvaiko O.I. Funktsionalne pryznachennia prava u protsesi zakhystu prav liudyny. *Naukovyi visnyk Yurydychnoi akademii Ministerstva vnutrishnikh sprav*. 2002. № 1. S. 57.

<sup>298</sup> Nehodchenko O. Mekhanizm pravovoho zakhystu. Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkholdy, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya. Yu., Tatsii V. Ya., Shemshuchenko Yu.P. Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 491.

S. Nesinova, examining the components of the mechanism of protection of the rights of minors, noted that they include subjects, objects, normative-legal base, forms, methods, guarantees, and goals<sup>299</sup>.

In our opinion, the structure of the mechanism for ensuring the rights and freedoms of the child, in addition to the above elements, also includes legal education and legal socialization of the child, which have a significant impact on the security of his or her rightP. This issue is discussed in the following subsection.

The subjects, that is, participants in social relations in the sphere of the legal status of the child, due to the richness of the nature of these relations are very diverse. In accordance with the legal rights and duties granted to them perform certain actions, due to which appear necessary legal and factual possibilities for the implementation, protection and defense of the rights and freedoms of the child. This list includes the state authorities and local self-government bodies, their officials, public organizations, law enforcement agencies, educational and health care institutionP. This list is not exhaustive, it can be expanded, differentiate, etc.

The object of social relations in the sphere of the legal status of the child is material and non-material benefits that are necessary for the physical, intellectual, moral, cultural, spiritual and social development of the child.

Regulatory and legal framework includes regulatory assets of a material and processual nature, which stipulate and consolidate the rights of the child, the procedure for their implementation, protection and legal responsibility for their violation. The forms and methods of the mechanism for ensuring the rights and freedoms of the child include the tasks, competence of the relevant authorities, measures and means of legal, preventive, organizational impact. The purpose of the mechanism is to create the conditions for the full development of the child, the protection, implementation and protection of their rights and freedoms, the formation of legal culture and legal awareness of the younger generation.

Describing the main problems that are commonly found in the process of ensuring the rights and freedoms of children in Ukraine, we can assert the overwhelming majority of them are due not so much to the lack of a nec-

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<sup>299</sup> Nesynova P.V. Derzhavno-pravovyi mekhanizm zakhystu prav nepovnolitnikh v Ukrainskii RSR (60-i – poch. 80-kh rr. XX st.) : dys. ... kand. yuryd. nauk. Kyiv, 2005. S. 188.

essary system of State authorities as to the need to implement reformatory changes in the process of their functioning. In this sense, it should be noted that the guarantees of protection of children's rights and freedoms have a legal, economic, political and organizational value.

The mechanism for ensuring the rights and freedoms of the child is a system of interacting general social conditions, legal frameworks, regulations that create the necessary legal and factual conditions for the implementation, protection and defense of the rights and freedoms of the child.

## **6.2. The Place of Guarantees in the Mechanism for Ensuring the Rights and Freedoms of the Child**

The most important factor in the real maintenance of the rights and freedoms of the child, on the order of their recognition, observance and respect, is the guarantee. It is the guarantees of the fundamental rights and freedoms of the child that give all elements of the mechanism of security for the rights and freedoms of the child a real sense, for the possibility of their seamless implementation of protection and defense. The mechanism of security for the rights and freedoms of the child is a prerequisite for the functioning and effective implementation of their guarantee. Therefore, these concepts are interconnected and mutually interdependent.

Conducting a scientific analysis of the guarantees of children's rights and freedoms as a separate social and legal phenomenon, it should be noted that they are a fragile, dynamic element of the mechanism for ensuring the rights and freedoms of the child, which requires improvement.

Problems of human rights guarantees is the subject of constant attention of specialists in the fields of both science and practice. The main reason for this is that human rights and freedoms become a real public value only under the condition that they find a full and uninterrupted implementation in real social relations<sup>300</sup>.

Most scientists, including O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voyevodin and others, suggest the definition of guar-

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<sup>300</sup> Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini : monohrafiia. Za red. N.M. Onishchenko, O.V. Zaichuk. Kyiv : Yuryd. dumka, 2007. S. 70.

antees as a system of coordinated factors (conditions, means) that ensure the actual implementation and universal protection of human rights and freedoms<sup>301, 302</sup>.

S. Lisenkov is of the same opinion, stating that guarantees of human and civil rights and freedoms are the conditions, methods, which ensure full implementation and universal protection of rights and freedoms<sup>303</sup>.

V. Abramov, understands under the guarantees assumed by the state the obligation to create the necessary conditions, appropriate means to ensure the actual implementation and universal protection of the rights and freedoms<sup>304</sup>.

So, these scientific approaches are reduced to the fact that the guarantees – conditions, ways and means, which ensure the actual implementation and universal protection of human rights and freedoms<sup>305</sup>.

In the legal literature there is another approach to this definition.

K. Volinka notes that the guarantees of rights and freedoms of an individual should be understood as a totality of specific regulatory and legal means of a binding nature, due to which the most complete and universal ensuring of effective implementation, protection and defense of rights and freedoms of an individual is possible.

Therefore, the researcher includes in this concept the means that ensure not only the actual implementation and universal protection of human rights and freedoms, but also their protection. However, the understanding of guarantees, as a set of specific legal and regulatory means of a general binding nature, because, in our view, in part, sounds different in the understanding of the system of guarantees.

More appropriate in this aspect is the definition given by O.V. Negodchenok, who states that the guarantees – the totality of individual and subjective factors aimed at the implementation of human rights and

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<sup>301</sup> Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. A.P. Zaiets, V.P. Zhuravskiyi. Kyiv : Yurinkom Inter, 2008. S. 106.

<sup>302</sup> Voevodyn L.D. Yurydycheskyi status lychnosti v Rossyy : ucheb. posobye. Moskva : Yzd-vo Mosk. un-ta, 1997. S. 221.

<sup>303</sup> Lisenkov P.L. Harantyy prav y svobod lychnosti v Sovetskom obshchestve : dys. ... kand. yuryd. nauk. Kyiv, 1976. S. 9.

<sup>304</sup> Abramov V.Y. Prava rebenka y ykh zashchyta v Rossyy: obshcheteoret. analiz : avtoref. dys. ... d-ra yuryd. nauk. Saratov, 2007. S. 23.

<sup>305</sup> Voevodyn L.D. Yurydycheskyi status lychnosti v Rossyy : ucheb. posobye. Moskva : Yzd-vo Mosk. un-ta, 1997. S. 8.

freedoms, to eliminate the possible causes and complications of their failure or improper implementation<sup>306</sup>.

The above scientific approaches differ from the definition given by the first group of scientists (O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voevodin, S. Lisenkov, V. Abramov) by taking into account the need to guarantee the protection of human rights and freedoms, not just their protection and implementation.

The shortcoming in all the above-mentioned scientific approaches, in our view, is the lack of recognition of the need to ensure the improvement of existing rights and freedoms, as a result of which guarantees may have a declarative nature. In our opinion, the definition of guarantees as accepted by the state duties to create the necessary conditions and means for the actual implementation, protection and defense of rights and freedoms, sounds the system of guaranteeing the rights and freedoms of people. Since the Convention on the Rights of the Child, the low Convention of the Council of Europe and the Hague Conference on International Private Law in the field of protection and implementation of children's rights impose on the member states the obligation to develop and expand the national legal framework in accordance with international principles.

P. Rabinovich notes that the expansion of the scope and scope of those rights and freedoms that are already enshrined in the Basic Law is a relatively independent aspect of improvement of guarantees<sup>307</sup>.

A similar approach is expressed by P. Gluschenko, noting that the guarantees of the rights and interests of citizens are economic, political, ideological, and legal tools, which ensure the constant improvement of these rights and interests, their real implementation, and in some cases, effective protection from possible violations<sup>318</sup>.

So, in the legal literature we can distinguish three main approaches to the definition of guarantees of rights and freedoms. The first one, which is supported by the majority of scientists, including O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voevodin, S. Lisenkov, V. Abramov, is to define guarantees as conditions, ways and means that ensure actual

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<sup>306</sup> Nehodchenko O.V. Zabezpechennia prav i svobod liudyny orhanamy vnutrishnikh sprav : orhanizats.-pravovi zasady : avto-ref. dys. ... d-ra yuryd. nauk. Kharkiv, 2004. S. 19.

<sup>307</sup> Rabinovych P. Konstytutsiini harantii prav liudyny i hromadianyna: mozhyvosti udoskonalennia. *Yurydychnyi Visnyk Ukrainy*. 2008. 26 cherv. 4 lyp. S. 8.

implementation and universal protection of human rights and freedoms.

Proponents of the second approach, including K. Volinka, O. Negodchenko reduce the definition of guarantees to the totality of individual and sub-individual factors aimed at the full and universal ensuring of effective implementation, protection and defense of human rights and freedoms.

The proponents of the third approach were P. Rabinovich, P. Glushchenko and others, who believe that guarantees ensure not only the protection, realization and protection of human rights and freedoms, but also their constant improvement.

We share the opinion of P. Rabinovich and P. Glushchenko and believe that the development and improvement of legislation in the field of guaranteeing children's rights is a part of their guarantee. Therefore, the guarantees not only ensure the implementation of the rights and freedoms of the child, but also contribute to their development and improvement.

Analyzing the different approaches of scientists, we believe that the guarantees of children's rights and freedoms should be regarded as a system of integrated socio-economic, political, cultural (spiritual), legal environment, conditions, tools and techniques that ensure the continuous improvement of children's rights and freedoms, protection, actual implementation, and protection in case of violation (cancellation).

The specificity of guarantees of the fundamental rights and freedoms of the child is that they function through a system of bodies that are focused on protecting the interests of the child, other various factors that are combined in the category of the mechanism for ensuring the rights of the child. The efficiency of functioning of the mechanism reflects the level of guaranteeing the rights and freedoms of the child. The functional purpose of the guarantees is to ensure the conditions for the implementation, protection and defense of the rights of the child.

The actual environment for guaranteeing the rights and freedoms of the child is the political, economic, social, and legal spheres of society, that is, guarantees of the rights and freedoms of the child have a material meaning, since they function in the real everyday life of the child.

Sometimes in the literature, the concept of «guarantee» is equated with the category of «security», which is incorrect. Since guarantees are only the conditions, conditions, means and ways of ensuring the rights and freedoms of the child. But «maintenance» is the creation of conditions

for the realization of rights and freedoms, their protection and protection, which includes the restoration of the violated (accused) right.

In this respect we should take into account the opinion of V. Abramov. Abramov, who argues that guarantees, together with protection and defense, are one of the ways to ensure subjective rightP. The legal protection of the rights and freedoms of the child is indissolubly linked to the guarantee (a general concept, which means a set of guarantees)<sup>308</sup>.

Scientists use various criteria to classify guarantees. For example, V. Pogorilko distinguishes two categories of guarantees: general and special. General guarantees – guarantees that cover the entire set of objective and subjective factors aimed at the practical implementation of the rights and freedoms of citizens, the elimination of possible causes and obstacles to their non-performance or improper performance, the protection of rights against violationP. Special (legal guarantees – legal tools and means by means of which the rights and freedoms of citizens are realized, protected and defended, violations of rights and freedoms are eliminated, the violated rights are renewed<sup>309</sup>. The same classification is suggested by O. Zaychuk, A. Zayets, N. Onischenko, and others<sup>310</sup>. S. Bobrovnik also points out that guarantees are divided into general and special<sup>311</sup>.

In our view, the main criterion for the classification of guarantees of children's rights and freedoms is the features of that area of social relations, which is the basis for the functioning of the guarantees. Widely used is the classification of guarantees depending on the spheres of activity of society. They include social and economic guarantees, political, spiritual and legal guarantees.

Basic in ensuring the rights and freedoms of the child are social and economic guarantees.

O. Skakun indicates that social and economic guarantees are the uniformity of social and economic space, free movement of goods, services, financial assets, freedom of economic activity, Recognition and equal protection of all

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<sup>308</sup> Abramov V.Y. Prava rebenka y ykh zashchyta v Rossyy: obshcheteoret. analiz : avtoref. dys. ... d-ra yuryd. nauk. Saratov, 2007. S. 23.

<sup>309</sup> Konstytutsiine pravo Ukrainy / red. Pohorilko V.F. Kyiv : Nauk. dumka, 1999. S. 221.

<sup>310</sup> Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskiy ta in. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 95–110.

<sup>311</sup> Bobrovnyk P.V. Rol suchasnoi derzhavy u zabezpechenni prav ta svobod liudyny. Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini / red. N.M. Onishchenko, O.V. Zaichuk. Kyiv, 2007. S. 65.

forms of ownership, social partnership between the people and the state, the employee and the employer, protection of competition in business activities<sup>324</sup>.

Some authors divide this type of guarantees into social and economic guarantees. V. Pogorilko notes that economic guarantees of constitutional rights and freedoms of citizens – the method of production, economic order of society, which must ensure the continued growth of productive on the basis of recognition and protection of various forms of ownership of the means of production; socially-oriented market economy; economic freedom of people and their associations in choosing the forms and performance of business activities<sup>325</sup>.

I. Magnovsky points out that social guarantees are those basic measures of social nature, which are aimed at increasing the effectiveness of the mechanism of implementation of the rights and freedoms of citizens of Ukraine, as well as of those persons who stay in the state on legal grounds<sup>312</sup>.

The monitoring of children's rights and freedoms reveals significant violations of children's rights, which were committed both by the parents and by the members of the governing bodies and state guardianP. It is not the intentional failure to fulfill the duties of the parents, but the service negligence of the officers, who do not ensure proper protection of the rights of children in public institutions.

Often the causes of violations of children's rights and freedoms are inadequate implementation by state authorities in places of law designed to protect the rights and freedoms of minors, The lack of operational control on the part of the ministries is also a reason for the inadequate enforcement by state bodies of the requirements of the legislation aimed at protecting the rights and freedoms of minors.

A significant obstacle in guaranteeing a child's right to be raised in a family is the lack of a complete registration of orphans and children deprived of parental care. According to O. Medvedko, in one third of the regions there are no child welfare offices at the district and city children's services, which are required to conduct the registration<sup>313</sup>.

Children abandoned by their parents are kept for a long time in hospitals, orphanages or children's institution. And the services do not take mea-

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<sup>312</sup> Novykova N. Prokuratura – na zakhysti prav nepovnolitnikh. *Visnyk prokuratury*. 2008. № 4. S. 44.

<sup>313</sup> Medvedko O. Z liuboviu ta turbotoiu do ditei. *Visnyk prokuratury*. 2018. № 5. S. 4.

tures to identify children, register them and transfer them for reinstatement. At the same time, Ukrainian parents search for a child for reinforcement for years and cannot find her because she is not registered.

A problem in today's society is that not always the family, which is supposed to contribute to the physical, spiritual, intellectual, cultural and social development of the child, can become a hostile environment for the child, where they do not oppose but contribute to the commission of offences, crimes and other crimes by their minor children<sup>314</sup>.

Criminologists note that recently a significant number of crimes have been committed by fathers together with their children<sup>315</sup>.

Failures of family education, in the literal sense of its absence, indicate a violation of a child's right to family education, which is guaranteed to every child<sup>316</sup>.

Guaranteeing the rights of children in the social and economic sphere is directly proportional to budgetary funding. Each child has the right to property, to an adequate standard of living for her physical, intellectual, cultural, moral and social development. To guarantee the implementation of these rights today increased social payments for the care of children, including children of orphans and children, The system of payments to adoptive parents and custodial fathers has been expanded, as well as the system of paying for the services of adoptive fathers and custodial fathers.

However, practice shows that in some cases social and economic guarantees are declarative in nature. It is striking that the rights of the child are often violated by the officials who are obliged to ensure the implementation of the rights of the child.

Children's residential and property rights are violated. The number of claims to declare invalid the agreements on the sale and purchase of children's housing is growing rapidly. It is not only the money and property of the children that is the subject of infringement. Their land plots are sold or otherwise illegally used. For example, in Vinnitsa region, the head of the

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<sup>314</sup> Myronenko V. Pravovi zasady zakhystu prav dytyny, yaka perebuvaie u konflikti z zakonom. *Visnyk prokuratury*. 2008. № 5. S. 32.

<sup>315</sup> Pleshakov V.A. Krymynolohycheskaia bezopasnost y ee obespechenye v sfere vzaymovlyaniya orhanytsyonnoi prestupnosti nesovershennoletnykh : dys. ... d-ra yuryd. nauk. Moskva, 1993. S. 71–72.

<sup>316</sup> Myronenko V. Pravovi zasady zakhystu prav dytyny, yaka perebuvaie u konflikti z zakonom. *Visnyk prokuratury*. 2008. № 5. S. 3.

## CHAPTER 6

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village council leased 2.6 hectares of land to businessmen, which was left to a boarding school pupil after the death of his parents<sup>317</sup>.

In addition, local authorities do not ensure the rights of boarding school graduates to housing. Most of them do not have it, but they are not registered in the housing register.

In the process of ensuring the rights and freedoms of the child, the level of protection of the child's health is important. The state guarantees free qualified medical assistance in state and communal health care institutions, contributes to the creation of safe living conditions and healthy development of the child, rational nutrition, formation of skills for a healthy way of life<sup>318</sup>.

Despite the measures taken in recent years, there is an increase in the number of chronic, socially significant diseases, decreased indicators of physical development, Increase in mental abnormalities, borderline conditions, reproductive system disorders, an increasing number of children belonging to the groups of high medical and social risk. The number of chronically ill children increases by 2.5 times during their school years<sup>319</sup>.

The health deterioration is based on a whole complex of social and economic causes, among which the inadequacy of the current system of medical care for children and adolescents, the deterioration of the quality of food, technological disruptions are not the least important, The lack of effective educational programs for developing a culture of health in children and children from socially disadvantaged families is one of the reasons for the decline in the volume and quality of preventive programs in the outpatient and hospital health care system, the increase in stressful situations, the inadequate system of psychological and pedagogical support for children from socially disadvantaged families and the lack of effective educational programs for the formation of a culture of health in children.

One of the factors contributing to the deterioration of children's health is an impaired health of children.

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<sup>317</sup> Medvedko O. Z liuboviu ta turbotoiu do ditei. *Visnyk prokuratury*. 2018. № 5. S. 5.

<sup>318</sup> Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. S. 6.

<sup>319</sup> Zabezpechennia prav ditei v Ukraini. Okhorona materynstva i dytynstva : parlam. slukhannia 7 cherv. 2005 r. Informatsiine upravlinnia VRU.

At the level of risk to people the first place is occupied by air pollution. In cities with a high level of air pollution the incidence of diseases of the cardiovascular system, respiratory system, nervous system, malignant diseases, tuberculosis and other diseases exceeds the level of incidence in cities with low pollution by 20-40%. Particularly affected are children, whose body is more sensitive to the adverse effects of environmental factors. Immunodeficiencies increase, which is one of the causes of increased level of infectious impairment. Decreased health level is typical for all ages of the child's life.

The above-mentioned examples testify to a certain declarative nature of guaranteeing the rights of the child to the protection of health. The state is obliged to create the necessary conditions for the realization of the right to a safe home.

Among the substantive tensions of the possibility of improving the guarantees of human rights and freedoms of a citizen, developed by a group of Ukrainian scientists, is the expansion of the scope of these rights and freedoms. In this regard, it is assumed that the state must take all measures to ensure the rights and freedoms of people<sup>320</sup>.

In our opinion, in order to strengthen and effectively implement the guarantee of children's right to health protection and a safe environment it is advisable to adopt the Law «On the requirement to use air purification systems in children's institutions». After all, a lot of time children spend in children's institutions, air purification in which has little positive impact on the overall health of children. Today there are many systems of ionization of the air, which significantly reduce the level of air pollution in the premises.

While investigating the problems of social and economic guarantee of children's rights, it is necessary to pay attention to children living in rural areas. After all, the law does not provide that a child who lives in a rural area has a comparatively lower opportunity to use modern science and technology, and is often dragged by their parents to excessive labor.

Rural schools do not have enough teachers because young professionals do not want to work there due to the low socio-economic level of life in rural areas. Many Ukrainian villages do not have health care facilities, which is a real violation of children's rights.

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<sup>320</sup> Rabinovych P. Konstytutsiini harantii prav liudyny i hromadianyna: mozhlyvosti udoskonalennia. *Yurydychnyi Visnyk Ukrainy*. 2008. 26 cherv. 4 lyp. S. 8–9.

## CHAPTER 6

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As a consequence of these shortcomings in the mechanics of securing children's rights, the rights of children living in rural areas are comparatively better secured than those of children living in the city. In spite of all kinds of incentives, young professionals do not want to go to work in the countryside. To solve this problem it is necessary to develop more effective state welfare programs, raise the level of wages for people working in the countryside, provide decent housing, provide benefits to pay for services, transportation, etc.

The difficult economic situation in the country hampers the implementation of many social and economic programs aimed at guaranteeing the rights of children. Lack of funding for educational institutions and health care institutions hampers their effective functioning. Various restrictions on the granting of long-term soft loans for housing, objects of long-term use do not allow fathers to provide conditions for a harmonious, all-round development of their children. Any positive changes in the sphere of social and economic guarantees of children's rights and freedoms are possible only under conditions of stabilization of the economic situation in Ukraine.

Political guarantees are important for the implementation of children's rights.

O. Zaychuk, A. Zayets and other the political guarantees include the activity of the state, representation of political interests by the institutions of the political system, the presence of actually functioning institutions of indirect and representative democracy, the ability of the population to appeal to special state bodies for protection of their rights, etc.

We believe that political guarantees of children's rights are aimed at ensuring the proper standard of living for the child, at creating conditions for the implementation of the rights and freedoms of the child<sup>321</sup>.

The current Ukrainian society is experiencing major changes in the system of political guarantee of the rights of the child.

The National Action Plan for the Implementation of the UN Convention on the Rights of the Child is of great importance, The aim of the National Plan for the Implementation of the United Nations Convention on the Rights of the Child is to ensure the optimal functioning of a comprehensive system for the protection of children's rights in Ukraine and the National

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<sup>321</sup> Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskiyi. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 106.

Programme for the Development of National Promotion of Children in Ukraine (2006-2016), Every Child Needs a Homeland of his or her Own.

The President of Ukraine is the guarantor of the children's rights and freedoms. With the aim of providing appropriate conditions for the realization of the civil, economic, social and cultural rights of children in Ukraine, the year 2006 was declared the Year of Protection of Children's Rights; the year 2008 was declared the Year of Protection of Children's Rights. The Year of Support for National Reinforcement and Other Forms of Family Education.

In 2011, the institution of the President in charge of children's rights was introduced, which ensures that the President of Ukraine exercises constitutional powers to ensure observance of the constitutional rights of children and that Ukraine fulfills its international obligations in this area.

As of 2019 we can state the positive tendency of national strengthening, which is formed due to the planned state policy and successful reform of the system of care and treatment, which was carried out in our state and was supported by every government, starting from 2006.

The activity of community organizations aimed at the protection of children is of great importance in the sphere of political guarantees.

Community organizations are not only a tool of self-organization of different branches of society, aimed at protection and realization of rights and freedoms of citizens, but, first of all, a channel for representation of the whole spectrum of public interests in interrelations between citizens and power<sup>322</sup>.

In Ukraine there is a nationwide public organization Children's Protective Service, which was the initiator of the information campaign «The Child is Watching You. Keep them out of Syria's debt»<sup>323</sup>.

A community-based organization, the Foundation for the Protection of Children's Rights (FPCCR), is actively involved in the protection of children's rights. This organization together with the International Children's Rights Protection Organization (Netherlands) since 2006 implements the project «Creation of the Framework for Implementation of the Juvenile Justice System in Ukraine: Model Courts and Pedagogical Aspect»<sup>324</sup>.

<sup>322</sup> Levchuk K.I. Hromadski orhanizatsii Ukrainy: stvorennia ta diialnist (1985-1996 rr.): Monohrafiia. Vinnytsia : PP "Edelweis i K", 2009. P. 4.

<sup>323</sup> Vseukrainska hromadska orhanizatsiia "Sluzhba zakhystu ditei". URL: <http://zakon1.rada.gov.ua>.

<sup>324</sup> Vseukrainska Fundatsiia "Zakhyst Prav Ditei" (VFZPD). URL: <http://www.children-ukraine.org>.

## CHAPTER 6

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The activity of the All-Ukrainian community organization «Magnolia» is of great importance for solving the problem of neglect and homelessness among children, which is aimed at searching for missing children and the parents of those children whose identity is being established (homeless children, abandoned children, children staying in hospitals)<sup>325</sup>.

The Community Organization «Committee for the Protection of Children's Rights» directs its activities toward solving problems related to social and psychological, spiritual, medical and legal aspects of children's lives. The organization includes physicians, psychologists, educators and lawyers who work directly with children and their parents<sup>326</sup>.

The Kyiv-based charitable foundation, The League for Foster Families, helps protect children's rights to live with their families. The League for Foster Families holds the annual round table, joint activities of state and public organizations for the implementation of the right of the child to live in a family, Provides assistance in the conduct of Christmas «Summer School» – a form of improving the educational potential of foster parents and rehabilitation of children in foster families and others.

There are many other community organizations in the field of child protection in Ukraine. It is not uncommon for community organizations to unite children in order to protect their rights<sup>327</sup>.

There are many other community organizations in Ukraine that protect children. It is not uncommon for community organizations to unite children in order to protect their rights.

Among them, as already noted, an important place is occupied by the All-Ukrainian Children's Parliament, which was created through a questionnaire survey of schoolchildren in the capital and several other cities of Ukraine. Today the Association of Children's Parliaments of Ukraine was founded, which includes many organizations that were created on the model of the Children's Parliament, the Chernivtsi Children's Council, The Kirovograd Oblast Children's Parliament, the Zaporizhia Oblast Children's Parliament, the Maybutniye Slavutich Youth Rada, the Union of Children's Organizations of Sevastopol, the Gymnastics Association

<sup>325</sup> Vseukrainska hromadska orhanizatsiia "Mahnoliia. URL: <http://www.ukrprison.org.ua>.

<sup>326</sup> Hromadska orhanizatsiia "Komitet spryannia zakhystu prav dytyny". URL: <http://magnolia.org.ua>.

<sup>327</sup> Hromadska orhanizatsiia Kyivskiy blahodiyniy fond "Liha pryiomnykh simei". URL: <http://www.adic.org.ua/coalition/>.

of Ukraine and the Association of Children's Organizations of Ukraine. Sevastopol, the Zhytomyr Children's Parliament, the Children's Parliament of Vyshgorod, the Lviv Children's Parliament and otherP. Ideally, this organization should cover all settlements and involve children from villages and cities of Ukraine in decision-making processes<sup>328</sup>.

In our opinion, these community organizations are important for ensuring children's rightP. Children's community organizations enable children to take an active part in public life, exercise their political rights and collectively uphold their interests. Community organizations in the field of protection of children's rights actively reflect on existing problems, evaluate the actions of the authorities, speak out on the gaps in legislation, highlight the main shortcomings in the implementation of children's rights in practical life.

The activity of public organizations in the field of protection of children's rights has not been respected by scholars. The legal literature mainly investigates the activities of public authorities in the field of protection of children's rights and freedoms. In our opinion, the active functioning of public organizations acts as a controller of public authorities, a certain crushing force that stimulates the improvement of the work of public authorities, aimed at ensuring the rights and freedoms of the child.

The next type of guarantees for ensuring the rights and freedoms of the child are spiritual guarantees, the basis of which are the spiritual values of society, its legal, cultural, social awareness.

Spiritual guarantees of children's rights and freedoms are a system of spiritual values of society, the basis of which is the recognition of the child as an active subject of the rights and freedoms due to her, The main goal of the school is to promote children's cultural and intellectual development and to form a system of spiritual values and ideological orientations based on respect for Motherland and for human rights and freedoms.

Spiritual guarantees include availability of ideological plurality, prohibition of religious and racial hostility, general accessibility and free education, access to information, freedom of literary, artistic, scientific and other types of creativity.

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<sup>328</sup> Prava dytyny: vid vytokiv do sohodennia : zb. tekstiv, metod. ta inform. materialiv / avt.-uporiad.: H.M. Laktionova. Kyiv : Lybid, 2002. S. 39.

## CHAPTER 6

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The recognition of the child as an active subject of due rights and freedoms, a member of civil society, is enshrined in Art. Article 9 of the Law of Ukraine «On Protection of Childhood», which states that every child has the right to freely express his or her personal opinion, form his or her own views, develop his or her own social activities, receive information that corresponds to his or her age ...<sup>329</sup>.

Sociological research shows that children most often complain about the violation of the right to express their opinion, to have their own views and opinions, and the right to leisure time, to quality medical care, protection from intrusion into personal life, education, development of talents, protection from cruelty, oppression, brutal behavior, etc.<sup>330</sup>.

Moreover, in recent years social pathology has increased in Ukraine: the number of young people suffering from alcoholism, substance abuse and drug addiction is increasing<sup>346</sup>.

Scientists say that the problem of child alcoholism and drug addiction is the result of the excessive advertising of alcohol in the media, especially on television. This is a systemic nationwide problem that could lead to the degeneration of the nation in just a few decades. Children's and youth educational and spiritual organizations require substantial state support to encourage young people to live a healthy lifestyle<sup>331</sup>.

According to doctors, the practice of drinking beer and other drinks containing alcohol (rum-coli, long drinks, etc.) by children is widespread and their sale to children is not prohibited. Lawyers and practitioners have voiced the need for a legislative decision to prohibit the sale of alcoholic beverages to children<sup>332</sup>.

Instability in the state, inappropriate functioning of the family as a social institution, have caused the problem of child neglect to worsen. All of this indicates a crisis in the education of the younger generation<sup>333</sup>.

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<sup>329</sup> Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

<sup>330</sup> Zabezpechennia prav ditei v Ukraini. Okhorona materynstva i dytynstva : parlam. slukhannia 7 cherv. 2005 r. Informatsiine upravlinnia VRU. URL: <http://portal.rada.gov.ua>.

<sup>331</sup> Dytiachyi alkoholizm – ne stilky medychna, skilky zahalnodержavna problema. *Siversshchyna*. 2007. 12 lyp. S. 8–9.

<sup>332</sup> Alkhimova D. Orhany prokuratury – na zakhysti prav ditei. *Visnyk prokuratury*. 2008. № 5. S. 22.

<sup>333</sup> Holub Yu. Problemy zakhystu prav ditei u rehioni. *Visnyk prokuratury*. 2008. № 4. S. 25.

Investigators say that it is necessary to return children to their families and children's institution P. Children do not have the right to play because the system of children's clubs has been destroyed – all of them have been sold out, and private garages, parks or high-rise buildings have grown up in the place of many sports grounds<sup>334</sup>.

Children are not protected from the negative influence of television, cinema and video products that promote violence and an immoral way of life.

There is no rigid position of state control authorities in the sphere of television, radio and press, which do not take measures to limit the wide distribution of such products.

That is why an effective, purposeful state policy in the sphere of education of the young generation is necessary. It is necessary that the entire society became aware of the urgency of the problem of educating children, their formation as a person and the serious consequences of the inadequacies of this process.

An important role in the system of guarantees is taken by legal guarantees.

P. Rabinovich points out that legal guarantees – the limits of their implementation enshrined by legal norms, ways of specification; legal facts associated with their security, procedural forms of exercising the rights and freedoms, measures of interest and incentives to stimulate their legal implementation<sup>335</sup>.

We believe that legal guarantees of children's rights and freedoms are ensuring the competence of state bodies and officials in the field of protection of children's rights, It is the establishment of liability for violations of the rights and freedoms of the child and the legally established procedure for protecting the violated or cancelled rights and freedoms of the child, and the right to receive qualified legal aid.

Most scholars subdivide legal guarantees depending on the presence of the fact of the violation of rights and freedoms to the guarantee of protection, guarantee of protection. Protection and realization of the rights and freedoms (the state before the occurrence of violation of the right) are ensured by the guarantee of protection. And after the occurrence of violation or cancellation of rights or freedoms, guarantees of protection

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<sup>334</sup> Prysiazhniuk V. Chy zatyshno ditiam pid krylom zakonu. *Visnyk prokuratury*. 2009. № 1. S. 44.

<sup>335</sup> Rabinovych P.M. Prava liudyny i hromadianyna u Konstytutsii Ukrainy: (do interpretatsii vykhidnykh konstytuts. polozhen) Kharkiv : Porohy, 1997. S. 189.

ensure the restoration of the legal status and prosecution of the guilty persons,<sup>336, 337, 338</sup>.

The system of legal guarantees for the protection of children's rights and freedoms includes the Unit for Human Rights of the Verkhovna Rada of Ukraine, which exercises parliamentary control over the observance of human and civil rights and freedoms and the protection of the rights of every person on the territory of Ukraine and within its jurisdiction. The existence of this legal institution has a positive impact on improving the mechanism of ensuring the rights and freedoms of the child.

The scientific community is discussing the feasibility of introducing the position of a Commissioner for Children's Rights in Ukraine: over the past decade, such institutions have appeared in many countries, including the Russian Federation. The proponents of the introduction of this position argue for the shortcomings of the mechanism for ensuring the rights and freedoms of children and the underdevelopment of the system of institutions for the social protection of children<sup>339</sup>. Opponents argue that the legislation significantly expands the powers of bodies that protect the rights and interests of children. In addition, Ukraine has adopted a number of legislative acts that define the legal basis for the activities of government agencies and institutions to protect the rights and freedoms of children and prevent their violations.

Analyzing the mentality of the modern Ukrainian society, as well as taking into account the fact that many professionals who work with children, as a result of the, old" system of self-education, do not recognize the current expansion of children's rights, do not consider the child as an active subject of rights, equal rights member of society. It should be noted that the introduction of the position of the Commissioner for Children's Rights could have a significant impact on the level of imple-

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<sup>336</sup> Skakun O.F. *Teoriia derzhavy i prava* : pidruchnyk. Kharkiv : Konsum, 2008. 656 s.

<sup>337</sup> *Prava, po kotorym sudytsia malorossyiskyi narod ... / yzd. pod red. y s prylozh. yssled. o sem Svode y o zakonakh, deistvovavshykh v Malorossy prof. A.F. Kystiakovskoho*. Kyiv : Unyv. typ. (Y.Y. Zavadzskoho), 1879. 1065 s.

<sup>338</sup> Volynka K.H. *Mekhanizm zabezpechennia prav i svobod osoby: pytannia teorii i praktyky* : avtoref. dys. ... kand. yuryd. nauk. Kyiv, 2000. S. 12.

<sup>339</sup> Volynets L.P. *Prava dytyny v Ukraini: problemy ta perspektyvy*. Kyiv : Lohos, 2000. S. 48–72.

mentation of children's rights and freedoms. The number of violations of children's rights indicates the need to introduce such an institution, which would deal exclusively with issues related to the protection of children's rights and the special training of personnel in the field of ensuring children's rights.

An important element of the system of legal safeguards is juvenile justice, which provides for the protection of children who are in conflict with the law. The development of a special system of justice for minors is envisaged by the Concept of Reform of Criminal Justice of Ukraine. It is aimed at using special procedures of juvenile justice, which allow to take into account the rights and interests of children. Criminal cases in which the defendants are insane shall be heard by a court collegially, with the participation of people's assessors or juries<sup>340</sup>.

In our opinion, the penal system for minors must be improved. The establishment of juvenile justice will contribute to the prevention of juvenile delinquency, the emergence of effective ways of responding to children's delinquency and protection of children who are in conflict with the law. As long as the main means of influence on immature offenders is punishment, the situation with regard to child abuse will not change for the better.

The study enables us to conclude that guarantees of children's rights and freedoms should be regarded as a system of coordinated socio-economic, political, cultural (spiritual), legal conditions, means and methods that ensure the constant improvement of children's rights and freedoms, protection, actual implementation and protection when they are violated (rescinded).

The system for guaranteeing children's rights and freedoms in Ukraine requires improvement. The development of the law, strengthening the implementation and expansion of children's rights is part of their guarantee. So, the guarantee is not only to ensure the implementation of the rights and freedoms of the child, but also to contribute to their development, improvement. Therefore, it is necessary to constantly expand the scope, scope and possibilities of implementation of the enshrined rights and freedoms of the child, as well as to increase the effectiveness of their guarantee<sup>341</sup>.

<sup>340</sup> Konstytutsiine pravo Ukrainy / red. Pohorilko V.F. Kyiv : Nauk. dumka, 1999. 733 s.

<sup>341</sup> Nalyvaiko O.I. Teoretyko-pravovi problemy zakhystu prav liudyny : avto-ref. dys. ... kand. yuryd. nauk. Kyiv, 2002. S. 7.

## CHAPTER 6

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Legal protection of the rights of the child is a legal phenomenon, for which the rights and freedoms of the child lose their meaning and significance. The peculiarity of the protection of the rights of the child is its social and legal nature. It lies in the uniqueness of the child as a human person. During childhood, people's minds form the main values and attitude. This period is also characterized by particular dependence, inertia, the possibility of abuse or exploitation by other. That is why the child requires effective legal protection of her rights and freedoms, especially when she finds herself in unfavorable circumstances, when her rights or freedoms are violated.

Studying the forms of protection of children's rights, it is advisable to examine the relationship between the disputed concepts, particularly important is the concept of "protection" and "protection". O. Nalivaiko notes that "protection" is the consequence of "protection", without protection there would be no protection, because the latter exists due to the process of protection itself, initiates it and is a residual method. On the other hand, protection occurs where and when the problem of protection arises, which in practice leads to problems in the separation of these categories. P. Rabinovich argues that the protection of human rights is the end result of proper regulation, implementation, protection and defense of legally enshrined abilities of people to own, use and dispose of certain benefits necessary for their existence and development<sup>342</sup>.

A whole range of non-legal factors (economic, political, social, demographic, intra-psychological) influences the legal protection of people's rights, which determine the nature, intensity, orientation and ultimate effectiveness of protection of people's rights.

By summarizing these scientific positions, we can recognize that the protection of the child is a broader concept than her protection, because it includes not only measures aimed at eliminating violations of the rights and freedoms of the child, but also their protection, implementation and regulation.

The relationship between the notion of "protection" and "protection" remains very relevant. Many scientists in their research turned to their definition and interpretation.

<sup>342</sup> Rabinovych P.M. Prava liudyny (iurydychna zakhyshchenist). Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkhody, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya.Yu., Tatsii V.Ya., Shemshuchenko Yu.P. Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 281.

Some authors, including Z. Makarova and N. Bolotina, believe that the term “protection” is broader than the term “protection”, noting that the concept of protection of rights includes their protection. Others, investigating the protection of rights and freedoms, conflate it with protection. This situation has arisen because these concepts are close in their meaning, but they must be distinguished<sup>343, 344</sup>.

Most of the authors, including V. Abramov, V. Vedyakhin, M. Matuzov and others, believe that “protection” protects only the actions provided for in the law, when the right of the individual is violated<sup>345</sup>.

We share the views of P. Rabinovich, who points out that the protection of human rights and freedoms is the restoration of the violated legal status, bringing the offenders to legal responsibility. And the protection of human rights and freedoms is carried out by taking steps to prevent the violation of rights and freedoms. The scientist notes that the term “maintenance of human rights and freedoms” includes three elements: promotion of implementation (through positive influence on the formation of their general social guarantees), protection of rights and freedoms, and protection of human rights and freedoms<sup>346</sup>.

Article 1 of the Law of Ukraine “On Child Welfare” enshrines the general definition of child welfare – a system of state and public actions aimed at ensuring a full life, universal education and development of children and protection of their rights. Therefore, the legislation also provides that “protection” is a broader concept than “protection”<sup>347</sup>. One of the shortcomings is the lack of legislative definition of the protection of children’s rights and freedoms.

Summarizing the existing scientific positions, it can be noted that the protection of children’s rights is a totality of measures aimed at preventing violation. Implementation is a positive impact on the

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<sup>343</sup> Makarova Z.V. Zashchita v rosyiskom uholovnom protsesse: poniatye, vydy, predmet y predely. *Pravovedenye*. 2000. № 3. S. 21.

<sup>344</sup> Bolotina N.B. Pravo sotsialnoho zakhystu: stanovlennia i rozvytok v Ukraini. Kyiv : Znannia, 2005. S. 38.

<sup>345</sup> Matuzov N.Y. Pravovaia sistema y lychnost. Saratov : Yzd-vo Sarat. un-ta, 1987. 293 s.

<sup>346</sup> Rabinovich P.M. Prava liudyny i hromadianyna u Konstytutsii Ukrainy : (do interpretatsii vykhidnykh konstytuts. polozhen). Kharkiv : Porohy, 1997. S. 9.

<sup>347</sup> Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

formation of safeguards, creating conditions for the implementation of the rights and freedoms of the child. Protection of children's rights and freedoms is a response to violation of children's rights: liquidation of the violation, restoration of the legal status, bringing the perpetrators to legal responsibility.

The source in the system of protection of children's rights and freedoms is the rule of law. They occupy a special place in the system of protection, because they regulate the procedure of actions of the state bodies, officials, physical and legal persons in the sphere of protection of the rights of the child, consolidate the possibility of using state coercion.

The Ukrainian legislation in the field of legal protection of children is based on the CG<sup>348</sup>, the UN Convention<sup>349</sup> on the Rights of the Child<sup>350</sup>, the CCU<sup>351</sup>, the Law on the Protection of Children.

These laws and regulations are aimed at improving the social protection of children, including orphans and children deprived of parental care, and improving the state system of care. The positive impact of legislation in the sphere of social and legal protection of children is evidenced by indicators of national reinforcement: The number of children placed in foster families and family-type children's homes increased sixfold and the number of orphans and children without parental care in residential institutions decreased by 40%<sup>352</sup>.

Moreover, a number of amendments were made to the Law of Ukraine «On State Assistance to Families with Children», which stipulates the provision of state financial assistance in connection with pregnancy and pregnancy, with the birth of a child, in case of adoption of a child, assistance in taking care of the child until he or she reaches three years of age, for children over whom guardianship or custody has been established, as well as assistance for children of single mothers.

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<sup>348</sup> Konstitutsiia Ukrainy .Verkhovna Rada Ukrainy. OfitP. vyd. Kyiv : Parlamentske vydavnytstvo, 2007. 64 s.

<sup>349</sup> Konventsiiia OON pro prava dytyny : ratyfikovana Postanovoiu Verkhovnoi Rady Ukrainy vid 27 liut. 1991 № 789-XII. Kyiv : Stolytsia, 1997. 31 s.

<sup>350</sup> Naukovo-praktychnyi komentar do Simeinoho kodeksu Ukrainy / za red. Ye.O. Kharytonova. Vyd. 2-he., dopovn. Kharkiv : Odissei, 2008. 558 s.

<sup>351</sup> Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

<sup>352</sup> Kotliar A. Zapiznile do yuvileiu. *Dzerkalo tyzhnia*. 2009. 28 lystop. 4 hrud. S. 14.

Therefore, analyzing the Ukrainian legislation in the field of protection of children's rights and freedoms, it is worth noting the presence of positive changes<sup>353</sup> that are of social and legal nature. In our view, a number of problematic issues remain, which indicate the need to improve the legislative provision for the protection of children's rights. There are provisions in legislation that «do not work» or do not fully comply with the Convention on the Rights of the Child.

In recent years, measures are being taken to strengthen the guarantee of the right of the child to contact. Article 16 of the Law of Ukraine «On Amending Certain Legislative Acts of Ukraine to Ensure the Protection of Children's Rights» stipulates that parents, other family members and parents, including those who live in different countries, must not interfere with one another in exercising a child's right to contact them<sup>354</sup>.

Problems can arise when a child, exercising her right to contact, stays abroad and one of the parents or parents prevents her return.

Another novelty of the legislation is the establishment of the difference in the age between the parent and the child of not more than 45 years, prescribed by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine regarding reinstatement»<sup>355</sup>.

In N. Karpachova's opinion, the provision is unconstitutional and violates the principle of equality of citizens. The Constitutional Court recognized that the difference in the age between a parent and a child, established by the CCU, is mandatory for all persons who want to strengthen a child, and in fact concerns the possibility of strengthening a child of a certain age, and therefore it does not violate the constitutional principle of equality of citizens before the law. Moreover, the reinforcement grants the reinforcing parents the rights and obligations in relation to the adopted child to the extent that the parents have in relation to the child, and the reinforced children – the rights

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<sup>353</sup> Pro derzhavnu dopomohu simiam z ditmy : Zakon Ukrainy vid 21 hrud. 1992 № 2811-XII (zi zminamy i dopovnenniamy). *Holos Ukrainy*. 1992. 16 hrud.

<sup>354</sup> Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo zabezpechennia zakhystu prav ditei : Zakon Ukrainy vid vid 21 trav. 2009 № 1397-VI. *Uriadovyi kurier*. 2009. 12 cherv.

<sup>355</sup> Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo usynovlennia : Zakon Ukrainy vid 10 kvit. 2008 № 257-VI. *Uriadovyi kurier*. 2008. 24 kvit.

## CHAPTER 6

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and obligations in the very extent that the children have in relation to their fathers<sup>356</sup>.

The scientific community is not interested in discussions aimed at solving this problem. They also state that the increase in the age difference (more than 45 years) necessary for strengthening will not be in accordance with the interests of the child. People close to this interval can have a whole range of problems typical of young children who do not contribute to the proper care and supervision, all-round development of an orphaned child or a child deprived of parental care. An analysis of foreign experience shows that the maximum allowable difference in age between the person being strengthened and the person being strengthened is no more than 45 years, but the difference of 30-35 years is established in the majority of countries. That is why it is inadvisable to increase the maximum difference in age between the parent and the child he or she wants to strengthen<sup>357</sup>.

In our opinion, considering the important social and economic situation in Ukraine and the number of children deprived of parental care, it is unreasonable to focus on the developed countries where the conditions of care and material support for such children are much better. The age restrictions for child care providers affect the number of people who have the right to care for a child. This, in turn, increases the number of children who can exercise their right to be educated in a family<sup>374</sup>.

Therefore, in our opinion, the establishment of age limits for parents (amendments to the Code of Criminal Procedure for enhancing the protection of children's rights during child enhancement, namely Article 210, Article 211, Article 220) is a certain limitation of their abilities. It is unacceptable to limit the number of persons who want to adopt a child by strict age boundaries and the number of children who can exercise the right to be educated in a family. Also, Article 211 of the CCU needs to widen the difference in the age between the child and the child's parent.

Another legislative shortcoming in the sphere of social and legal protection of children, in our view, is the problem of legal regulation of

<sup>356</sup> Litni liudy ne zmozhut vsynovyty nemovlia. Informatsiine ahentstvo UNIAN. Prava liudyny. URL: <http://human-rights.unian.net/ukr>.

<sup>357</sup> Proekt Zakonu pro vnesennia zmin do Simeinoho kodeksu Ukrainy (shchodo posylennia zakhystu prav ditei pry usynovlenni) : vysnovok holov. nauk.-ekspert. upr. vid 31.03.09. URL: <http://gska2.rada.gov.ua>.

preventive detention of children. Representatives of the United Nations Children's Fund (UNICEF) in Ukraine repeatedly addressed this problem.

Fatal accidents or significant health impairment of children after vaccination became common. There is no unequivocal expert opinion on what caused the health deterioration. However, a certain number of parents refuse to have their children's chemotherapy. In addition, there are a large number of children in Ukraine who do not want to be brushed with brushes due to their health condition. In particular, these are children who suffer from allergic diseases and others.

Problems arise when parents receive a refusal to admit children to kindergartens, and sometimes to school. Article 15 of the Law of Ukraine «On Protection of Population against Infectious Diseases» stipulates that children who have not received prophylactic vaccinations in accordance with the vaccination calendar are not allowed to visit children's institutions.

For example, the Kharkiv kindergarten refused to accept the child without all the required delays. The mother of a three-year-old girl appealed to the court. She refused to provide her child with any kind of treatment and now she has a problem: they refuse to accept her daughter into the children's institution. The head of the school says that they do not have the right to take children without cheeks to school<sup>358</sup>.

In addition, cases of significant health damage and death of children after vaccination were common. In many cases, the exact cause of the diseases was not found. It was found that the vaccine that caused the death of a schoolboy from Kramatorsk A. Tymoshenko. It was found that the vaccine that killed the school boy from Kramatorsk A. Tishchenko was not certified.

A comprehensive forensic medical examination involving 12 leading physicians of the Academy of Medical Sciences of Ukraine confirmed that Tishchenko's death was caused by his vaccination against measles and rubella. There is a direct causal link<sup>359</sup>.

As a result of such incidents, many parents began to refuse to have their children brushed.

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<sup>358</sup> Klochko L. Tryrichna divchynka sudytsia z dytyachym sadochkom cherez shchepлення. URL: <http://www.newsru.ua>.

<sup>359</sup> Henprokuror: ekspertyza pidtverdyla, shcho shkoliar Tyshchenko pomer vid shchepлення. Informatsiine ahentstvo UNIAN vid 19.09.08. URL: <http://www.interfax.com.ua>.

## CHAPTER 6

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Often parents in children's institutions are asked to apply for prophylactic brushes and in case of complications they are responsible for it. In our opinion, this way of solving the problem is unacceptable. Parents are not responsible for the consequences of vaccinations. Moreover, due to the combination of negative factors, many children's health deteriorated after vaccination.

The CG (Article 24, Article 53)<sup>360</sup> stipulates that all citizens have equal constitutional rights and freedoms, everyone has the right to education. The Law of Ukraine «On Childhood Protection» (Article 3)<sup>361</sup> also establishes the equality of children, regardless of the ... health status. Article 19 of the law stipulates that every child has the right to education. The state guarantees accessibility and free of charge pre-school, full general secondary and other education.

Article 19 of the law<sup>362</sup> stipulates that every child has the right to education. The state guarantees accessibility and free of charge pre-school, full general secondary and other education. The relevant provisions enshrined in the Law of Ukraine , «On pre-school education»<sup>363</sup>. The Law on Secondary Education and the Law on General Secondary Education.

Since the state guarantees the right of every child to health care, as well as the equality of all children, any form of discrimination related to the state of health is unacceptable.

At the same time, we should note the threat of epidemics due to mass rejection of vaccinations, which is also a violation of the right to health protection. Parents have the right to choose forms and methods of treatment, prevention of diseases in children and be well aware of the risks of withdrawal from vaccinations.

To avoid mass rejection of parents in prophylactic treatment of children it is necessary to exercise more stringent control over the quality of

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<sup>360</sup> Konstitutsiia Ukrainy / Verkhovna Rada Ukrainy. OfitP. vyd. Kyiv : Parlamentske vydavnytstvo, 2007. 64 s.

<sup>361</sup> Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30 St. 142.

<sup>362</sup> Pro doshkilnu osvitu : Zakon Ukrainy vid 11 lyp. 2001 № 2628-III. *Uriadovyi kurier*. 2001. 8 serp.

<sup>363</sup> Pro zahalnu seredniu osvitu : Zakon Ukrainy vid 13 trav. 1999 r. № 651-XIV : (iz zminamy, vnesenyi zghidno iz Zakonom Ukrainy vid 4 cherv. 2008 r. № 309-VI. *Vidomosti Verkhovnoi Rady Ukrainy*. 2008. № 27/28. St. 253.

vaccines, to conduct treatment exclusively in children's hospitals after a comprehensive examination by qualified specialists of the child's health status and in the presence of one of the parents.

When diseases or other reasons are found that may not be preventive treatment, it is inappropriate to exclude such a child from visits to children's institutions.

To solve this problem, in our opinion, it is necessary to create specialized children's institutions, which will be able to visit children who have not received preventive treatment due to their health condition or the parents' opinion. Specialized pre-school, general education institutions must comply with all legal requirements and special attention must be paid to children's health and the elimination of possible epidemic diseases. For this purpose it is necessary to provide them with appropriate specialists and medical staff.

Under the conditions of the creation of specialized pre-school, general education institutions, children who have not been deprived of education will be able to exercise the state's guaranteed right to access to pre-school, complete general secondary education. And the state will be able to guarantee the right to health protection, including the threat of epidemics, by exercising appropriate control in specialized institutions.

So, in our opinion, one of the ways to solve this problem could be to amend Article 15 of the Law of Ukraine, on protection of the population from infectious disease. We propose to put the second paragraph of Article 15 as follows: Children who have not received prophylactic vaccinations according to the vaccination calendar can visit specialized child care centers created for children who do not receive prophylactic vaccination. If prophylactic treatment of children is carried out in violation of the established terms, due to medical contraindications, if the epidemic situation is favorable at the decision of the consilium of appropriate doctors, they can be admitted to the appropriate children's institution and visit it.

At the same time, this problem requires much more in-depth development and can be the subject of further research in the field.

In our opinion, improving the legislation is not enough to ensure the rights of the child. Without the implementation of legal norms in the practical life of the child, parents, other persons, government agencies, community organizations, etc. Legislation is in the plane of declarative.

## CHAPTER 6

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In our view, the main forms of protection of the child are the state-legal protection of the rights and freedoms of the child and protection of the rights of the child on the part of the civil society.

On one hand, the state must create effective guarantees of protection of the rights of the child, perform social functions, especially in the sphere of health care and social security.

But on the other hand, the child is born, grows and develops in the social environment. The implementation of the rights and freedoms of the child is inevitably transformed through the civil society. The child's capacity for self-protection is very low. That is why a child's share depends on the community in which she is born and grows up. This is not only the parents (persons who replace them), teachers, educators, physicians, and the whole society, part of which is the child. Therefore, the protection of children's rights on the part of the community is also important.

Therefore, depending on the specifics of the subject of legal protection, protection of the rights of the child is divided into legal protection of the state and protection of the rights of the child on the side of the civil society.

These forms are interdependent and interconnected. In the context of building a democratic, law-based state and civil society, this approach is particularly relevant.

T. Pashuk notes that the state-legal protection is carried out in the process of jurisdictional activity (i.e., in the order of solving a legal dispute), the result of which is the application of any kind of state action, including renewal actions, actions of legal responsibility, actions of attribution (termination), actions of interdiction<sup>364</sup>.

The essence of the state legal protection of the rights and freedoms of the child is that the child, the rights and freedoms of which have been violated, the parents, guardians, etc. can apply for protection of the rights of the child to the state or other competent authority, which is authorized to take the necessary steps to restore the violated right, stop the offense, impose compensation for the offense and punish the perpetrator.

It is manifested in the activities of government agencies, officials, parents, or the child himself/herself in the application of economic, legal and other means of protecting the rights of the child, in order to restore

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<sup>364</sup> Pashuk T.I. *Pravo liudyny na efektyvnyi derzhavnyi zakhyst yii prav ta svobod* : avtoref. dys. ... kand. yuryd. nauk. Lviv, 2006. S. 13.

the violated (incurred) right, put an end to the offense, offset the incurred school. The result of the state legal protection of the rights of the child may be the application of any kind of state coercion.

In our opinion, we can distinguish the following general features of the state legal protection of children's rights: exists until the child reaches adulthood, occurs after the violation (cancellation) of the rights of the child, determines the means of protection, enshrined in the rules of law, has intergalactic nature, has a regulatory, caring and renewal character, and makes the rights of the child from the declarative to the real.

O. Nalivaiko notes that the means of protection of rights are substantive and procedural rules and procedures that are used by jurisdictional authorities at the request of an authorized person for prima facie restoration of their violated (accused) right. The entire arsenal of means of protection is divided into protective actions and responsible action<sup>P</sup>. Means of protection – these are means of legal action, which are used by the competent authorities in relation to the obliged persons or offenders for the purpose of restoration of the violated (accused) human right and liquidation of the existing offense<sup>365</sup>.

In order to protect their rights (in case of violation), a person may use the law-permitted coercive actions or appeal to the competent authorities or organizations (state or international) with a request to restore the violated right.

The CCU legislatively enshrines the right of a child to appeal to court on his or her own. In spite of the current trend of transforming a child from a protector and protector from the family, society and government into an active participant in the life of the civil society, It is necessary to take into account the age peculiarities of the child, because up to a certain age the child can not actively participate in the protection of their rights, requires special legal protection<sup>366</sup>. Therefore, not only the parents, persons in their place, the government and the authorities, but also the whole society must participate in the protection of her rights.

The state must create effective guarantees of protection of children's rights, perform social functions, especially in the sphere of health care and social security.

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<sup>365</sup> Nalyvaiko O.I. Funktsionalne pryznachennia prava u protsesi zakhystu prav liudyny. *Naukovyi visnyk Yurydychnoi akademii Ministerstva vnutrishnikh sprav*. 2002. № 1. S. 58–60.

<sup>366</sup> Naukovo-praktychnyi komentar do Simeinoho kodeksu Ukrainy / za red. Ye.O. Kharytonova. Vyd. 2-he., dopovn. Kharkiv : Odissei, 2008. S. 146.

## CHAPTER 6

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Protection of children's rights on the part of the civil society is no less important than state legal protection. Scientists note that the problem of the child in civil society has two main aspects: the participation of institutions of civil society in the development and implementation of juvenile policy, the implementation of its legal foundations; the participation of the child in the life of civil society. In the context of international juvenile law, one of the principles of which is to ensure the participation of the child in social processes, children are treated as a significant member of the civil society, the nature of socialization, education and training of which directly determines the future of any society and its state<sup>367</sup>.

A community is a form of society's self-organization, which reflects the sphere of non-powerful (private) relations determined by the interplay of individual and collective needs and interests, which are determined by the realization of individual freedoms and decisively influence the formation of social relations and social values.

The peculiarity of the formation and implementation of policy in the field of protection of children's rights lies in the fact that it has historically always been initiated from below – from the institutions of the civil society, and also from non-governmental organizations and local self-government bodies<sup>368</sup>.

The church is an important institution of civil society that has played an important role in the recognition and consolidation of children's rights and freedoms throughout history<sup>369</sup>.

In many countries around the world, including the U.S., France and the Federated States of America, child protection societies have been a driving force behind the adoption of the first laws protecting children from abuse.

Non-religious organizations are the leaders of the most progressive political and legal means of protecting children's rights<sup>388</sup>.

Today in Ukraine, there are a lot of public organizations, the main purpose of which is to protect the rights and freedoms of children. These are

<sup>367</sup> Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

<sup>368</sup> Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

<sup>369</sup> Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

the Children's Protection Service, the Committee for the Protection of Children's Rights, and the International Non-Governmental Organization for Every Child in Ukraine, Youth Community Organization, Youth AlteraTiva, Youth Community Organization, Club, Children's and Youth Organizations, Nova Xvile and otherP. They have a significant impact on the level of implementation and protection of children's rights. The role of community organizations in the mechanism of ensuring children's rights will be discussed in the next section.

The family is an important institution of civil society. In recent years the number of biological and social siblings and neglected children has increased in the country. Loss of moral values of a certain part of the population, low standard of living, abuse of alcohol and drugs and a number of other negative factors contribute to the increase of cases of deprivation of parental rights.

An equally important problem is violence against children in families. Physical punishment of children is an issue for our society and has historical reasons. No one pays special attention when fathers educate their child, giving up on the "usual groping". The situation when fathers systematically beat their children is particularly dangerous. In Poland, the national debate over the prohibition of the "male child" emerged in 2008 following the death of 3.5-year-old Bartk, who had been mauled to death by his mother's friend. Polish scientists recognized that this was not just the tragedy of one child – it was a plague on society<sup>370</sup>.

Child abuse is not uncommon in Ukrainian familie. A common case was when the father, who had been on the psychiatric register since childhood and had a criminal record for drug trafficking, put his 14-year-old daughter Natalia on a lantern and tried to drive her around the village. In this way he wanted to get her to work on the plot<sup>371</sup>.

The main causes of violent actions against children and adolescents include mental illness of parents, disrespect for the child's personality, low level of legal culture and legal awareness of the society. The results of a survey of children on domestic violence conducted by the Kharkiv Center for Women's Studies show that children who witness violence not only

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<sup>370</sup> Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

<sup>371</sup> Karpiuk H. "Lantsiuhove" vykhovannia. Dzerkalo tyzhnia. 2008. 26 veresnia.

want to protect the victim or leave the house, but some of them are ready to commit suicide and some of them are ready to kill the perpetrator. This is not surprising, since more than 80 percent of the insecure perpetrators come from dysfunctional families<sup>372</sup>.

In order to eliminate such a negative phenomenon as child abuse, which is historic, it is necessary for the whole society to become aware of the severity of the problem.

In effort to solve the problem of domestic violence, in March 2017 the Verkhovna Rada ratified the Law “On Combating Domestic Violence”, which proposed a new approach (using European standards) to combat this negative phenomenon in society. The new law was enacted on September 7, 2018. Domestic violence, according to the law, means any physical, sexual, psychological or economic violence, as well as threats to commit such actions.

People are recognized as victims irrespective of whether they live together with their criminals or not (fiancés, girlfriends, former girlfriends, mother, father, children, their fathers, brothers, sisters, unhappy parents, guardians, parents-in-law, their children, stepchildren, children-in-law, other parents up to a binary relationship, persons who have lived together or are living together as a family but are not in a relationship, their children and grandparents) and persons who live together (any other parents, people who are linked by a joint household, have joint rights and duties). The injured child is not only the one who has been the victim of domestic violence, but also the witness of such violence.

If any kind of domestic violence is committed, the victims have the right to file a corresponding complaint (notification) both to the police authorities in the place of their residence (stay), as well as to the legislative committees of rural and rural councils, bodies of care and treatment, educational institutions (if the victims are children), health care institutionP. In order to receive protection, it is enough to apply to any of these bodies.

An indispensable element of modern Ukrainian society is mass media. They play an important role in the protection of children’s rights because they direct public attention to violations of children’s rights, informing

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<sup>372</sup> Liudyn D. Potribno vnesty zminy do zakonodavstva, yaki spryiatymut nedopushchenniu propahandy nasylstva. *Yurydychnyi Visnyk Ukrainy*. 2009. 17–23 zhovt. S. 3.

the public about the enshrined rights of the child, the possibilities of their implementation.

Summarizing the peculiarities of the protection of children's rights and freedoms on the part of the civil society, we can conclude that it is characterized by the following features: It exists in conjunction with the state legal protection of the rights and freedoms of the child, requires that the rights and freedoms of the child be upheld in public conscience, can be exercised in a procedural form and expressed in the form of public condemnation, provides for the protection of both recognized rights of the child and formally not enshrined (moral) rights, is an important incentive to improve the security of children's rights and freedoms by state legal institutions. In our opinion, the interaction between the state and society is very important for the protection of children's rights and freedoms.

Formation of spiritual values in public conscience on the protection of children's rights is possible only on the condition of cooperation of all institutions of civil society and effective state-legal influence. Thus, the functioning of public associations for the protection of children's rights encourages legislators to develop new draft laws, the development of safeguards in the field of protection of children's rights.

The state can protect only recognized rights enshrined in legal acts. Not all interests of the child have legal protection, which is necessary for the implementation of legal protection. It is difficult to establish and secure at the state-legal level such important interests of a child as the need for a father's love, or a happy family. Only the society can have an influence on the provision of such needs of the child. Judgment, as a reaction to certain actions of parents, guardians and other persons, is also an important aspect of protecting the rights of the child.

It should be noted that lawmakers also recognize the importance of influencing the protection of children's rights on the part of the civil society. For example, paragraph 3 of Article 151 of the CCU stipulates that parents have the right to choose the forms and methods of education, except for those that contradict the law and the moral principles of society<sup>373</sup>.

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<sup>373</sup> O. Komysyiakh dlia nesovershennoletnykh : Dekret Sovnarkoma RSFSR ot 14 yanv. 1918 h. *Sbornyk zakonenyi RSSFR*. 1918. № 16. St. 227.

## CHAPTER 6

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friends, mother, father, children, their fathers, brothers, sisters, unhappy parents, guardians, parents-in-law, their children, stepchildren, children-in-law, other parents up to a binary relationship, persons who have lived together or are living together as a family but are not in a relationship, their children and grandparents) and persons who live together (any other parents, people who are linked by a joint household, have joint rights and duties). The injured child is not only the one who has been the victim of domestic violence, but also the witness of such violence.

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An indispensable element of modern Ukrainian society is mass media. They play an important role in the protection of children's rights because they direct public attention to violations of children's rights, informing the public about the enshrined rights of the child, the possibilities of their implementation.

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Depending on the specifics of the subject of legal protection, protection of children's rights is divided into: legal protection by the state and protection of children's rights on the part of the civil society. These forms of protection of children's rights and freedoms are interdependent and mutually reinforcing.

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