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INSTRUMENTS OF PUBLIC ADMINISTRATION IN THE FIELD OF PROTECTION OF CHILDREN'S RIGHTS AND INTERESTS DURING THE ARMED CONFLICT: INTERNATIONAL EXPERIENCE

The article considers foreign experience in the field of application of public administration instruments for protection of the rights and interests of a child during armed conflict, as well as the key concept of "public administration instruments". The experience of using public administration instruments in the field of child protection during the Spanish Civil War (1936–1939), World War II (the experience of Great Britain), and the Rwandan genocide (1994) is studied.

Keywords: public administration tools, child protection, armed conflict.

Statement of the problem. "Every war is a war against children," said Eglantine Jebb, founder of Save the Children [1]. Protecting children during the war is an extremely important task, as they are the most vulnerable to the consequences of conflict. The war poses a direct threat to their lives, health, and psychological well-being, and can also violate their right to education and security. Children witness cruel realities. The armed conflict affects their mental health, education and development, as many of them lose their homes, loved ones and safe environment. During an armed conflict, child protection becomes particularly important, and public administration must use various tools to ensure their well-being.

We are interested in the foreign experience of states' use of existing public administration tools in the field of protection of the rights and interests of children during armed conflict, which can be used to improve existing domestic mechanisms.

Analysis of recent research and publications. A number of national legal scholars have been engaged in the study of the institution of protection of the rights and interests of the child during armed conflict. Specialist S. O. Magda studied the protection of children's rights during armed conflict in the context of international humanitarian law. She was of the opinion that Ukraine needs to quickly implement the norms of international humanitarian law into the current legislation [2, p. 89].

Researcher S. Saukh conducted a study in the field of illegal deportation (displacement) of children during armed conflict. He analysed the illegal deportation (transfer) of children from the perspective of a war crime and a crime against humanity. The author examined the problems of qualifying the deportation of children in its international legal dimension, taking into account the provisions of the Rome Statute. The need for proper qualification of the deportation of children as a war crime and a crime against humanity in national legislation is relevant for bringing perpetrators to criminal liability [3, p. 287].

Scholars N. M. Krestovska and L. R. Nalyvaiko covered the issue of the legal status of the child during armed conflict. They stated that children need special enhanced protection, taking into account the peculiarities of child development. They also determined that mechanisms for protecting children's rights during martial law are provided for by both national and international law. At the same time, if one of the parties fails to fulfil its obligations, the mechanism for their implementation in practice becomes significantly more complicated or ineffective [4, 5].

However, to date, there is no research on foreign experience in the field of public administration instruments for protecting the rights and interests of children during armed conflict, which makes the topic under study in this article relevant.

The purpose of the article is to study the foreign experience in the field of application of public administration instruments for the protection of the rights and interests of a child during armed conflict.

Summary of the main material. It is advisable to start with a description of the key concept of "public administration" and its instruments.

According to O. V. Kuzmenko, "public administration is the activity of public administration to meet the general public interests of society" [6, p. 22].

Researcher K. L. Bugaychuk believes that "public administration is a systemic organising, power and administrative activity of public authorities and local self-government bodies regulated by laws and other normative legal acts, which is aimed at streamlining their organisational structure, planning, preparation, development and implementation of management decisions, organisation of the management apparatus, implementation of documentary, informational, personnel, psychological support of their daily activities in order to achieve socially beneficial results.

Scholars generally consider public administration as: a) a way of realising the public interest as the interest of a certain social community united within the territory of the state; b) a mechanism for implementing state policy; c) the activities of public authorities (or state and local self-government bodies) aimed at achieving public goals [8, p. 221].

Thus, V. Kolpakov defines the content of public administration as the activity of a public administration entity aimed at exercising public powers and using the means of management, providing administrative services, participating in the relations of responsibility of public administration entities, applying measures of influence for violation of the rules established by public administration [9, p. 101].

Public administration instruments should be understood as an external expression of groups of administrative actions of public administration entities that are homogeneous in nature and legal nature, implemented within the limits of compliance with the competence defined by law in order to achieve the desired public result [10, p. 324].

Most administrative law experts characterise public administration instruments by the following features: they are an external expression of the form of administrative activity of public administration; reflect the legal dynamics (administrative activity) of public administration; depend on the content of

competences of public administration subjects; their choice is determined by the specifics of the goal set for a particular object of public influence, which establishes the best effective option for activity.

Thus, public administration tools are mechanisms that are created and implemented by the public administration to ensure a public result.

The Spanish Civil War of 1936–1939 is one of the examples of the usage of public administration instruments in the field of child protection during armed conflict. It was between Republicans and Nationalists. The Republicans were loyal to the government of the left-wing Popular Front of the Second Spanish Republic and consisted of various socialist, communist, separatist, anarchist and republican parties. The nationalist opposition was led by a military junta, in which General Francisco Franco quickly achieved a dominant role. In the autumn and winter of 1936, Madrid was bombed by Francisco Franco's supporters, and women gathered on trains and took their children north to Barcelona. However, there they faced new problems: bread was scarce, and milk and sugar were almost non-existent, as General Francisco Franco had established control over the main agricultural areas of Spain [11, 12].

In 1937, the Spanish Republican Government had a Council for the Protection of Childhood. Its competence included the issue of internally displaced persons (as of January 1937, the number of displaced children was 7 thousand). The International Red Aid organisation also operated during this period, placing 2000 children in "children's colonies" [12].

These colonies were created as orphanages to house and educate young people. However, many children were sent there by their parents, who tried to get them out of the areas of the heaviest bombing.

The Spanish authorities could not cope with providing all the necessary things for children on their own, so they turned to patrons and charitable organisations for help. At that time, typhus was widespread among children. On the initiative of the aristocrat Sir George Young, an emergency department and a hospital were founded in Almeria [13].

At the same time, when General Francisco Franco's army began to advance along the northern coast of Spain, it became necessary to further evacuate children to third countries. The Basque government, supported by the Republicans, appealed to foreign countries to accept the refugee children. Countries such as France, Belgium, Mexico, Switzerland and Denmark took in almost 29000 children in total.

During the Spanish Civil War, the British government also evacuated children. On 21 May 1937, the destroyer Havana evacuated almost 4000 children from Bilbao to Southampton [14].

It is impossible to establish the exact number of children whose parents were killed or who were sent to "children's colonies" or third countries and never saw their families again.

The next historical period that should be taken into account in the context of public administration instruments in the field of child protection during armed conflict is the period of the Second World War.

In 1939, the UK conducted the military operation "Ratcatcher", which aimed to evacuate children en masse to safer areas of the country. Unaccompanied children were evacuated (in the summer of 1939, more than 3 million children were evacuated from London and other cities). Most parents stayed behind to work and help in the war effort.

It was a time of great upheaval for many children, and the transition from one region to another was extremely stressful. Children lined up outside schools and train stations clutching small backpacks with gas masks and a toy each, identified only by name tags. They were then off to visit families they had never met, places they had never heard of, and in some cases, abroad.

The evacuation period officially ended in March 1946 [15, 16].

The armed conflict in Rwanda in 1994 is an example of when state authorities did not use any public administration tools to protect the rights and interests of children during the armed conflict. Instead, this function was assumed by international bodies.

Historically, Rwanda is a country in the eastern part of Africa, with a population of Hutus, Tutsis and Twa pygmies (the latter are the indigenous people of Rwanda). In the nineteenth century, white colonisers came to Rwanda - first the Germans, and after the First World War, the Belgians took over. After the end of the First World War, the Belgians began to introduce passports in Rwanda, which indicated that a person was Hutu, Tutsi or Twa. In the 1960s, the process of decolonisation began among African countries. Rwanda was no exception to this process, and in 1962, the country proclaimed a republic, and the Hutus came to power.

Rwanda's – first leader was President Gregoire Kabibanda, whose policies included discrimination against Tutsis. This led to massive flight of Tutsis to neighbouring countries. In 1987, the Rwandan Patriotic Front was created to defend the interests of the Tutsis. However, the conflict between the

peoples was never resolved, and on the night of 6-7 April 1994, the genocide of the Tutsi people in Rwanda began. Hutu representatives killed not only Tutsis, but also those Hutus who refused to go over to their side. All victims were killed, including a large number of children. Due to the lack of information, the Tutsis could not escape, as they did not know how and where to go [17].

In 1994 on June 27, the International Committee of the Red Cross (ICRC), the United Nations Children's Fund (UNICEF) and the International Federation of Red Cross and Red Crescent Societies issued a joint statement on the evacuation of unaccompanied children from Rwanda (Joint Statement) [18].

The above-mentioned organisations have stated that the massacres that took place in Rwanda and the direct consequences of the war have affected thousands of children who were left without effective protection in their country. The evacuation of children in danger to countries outside Rwanda took place. Such evacuations are organised in situations of acute danger for both the children and those seeking to help them. Due to the imminent threat to life, it is not always possible to follow normal procedures. Nevertheless, every effort should be made to ensure the survival and protection of children, to meet the needs of unaccompanied children and to trace their families. Placing children with family or relatives is usually the best way to meet their needs.

The aim of the Joint Statement was not to delay life-saving evacuations, but to emphasise the importance of family unity and keeping records of all evacuated children who are separated from their parents or family members, and to highlight important factors to consider when determining the destination and care of children after evacuation.

The Joint Statement also stated that unaccompanied children are children who are separated from both parents and are not in the care of adults who are responsible for them by law or custom. It is interesting to note that the joint statement emphasised that such children should not be referred to as "orphans". The status of an orphan always requires careful verification. Although some of the children came from orphanages in Rwanda, past experience in similar situations has shown that many, if not most, alleged orphans have living parents. Some parents may have entrusted their children to the orphanage as a safety measure or to ensure adequate food and shelter.

In particular, international organisations have emphasised that the concept of family in Central

Africa is much broader than in industrialised countries.

One of the objectives of the Joint Statement was to actively search for the relatives of the remaining children in order to reunite separated children with their family members.

Evacuation, reception and care should be planned with the aim of reuniting children with their families as soon as possible. It should be made clear to the guardians or foster parents that the aim is to return the child to the family as soon as the situation allows.

Children in emergency situations could not be adopted. As most unaccompanied children are not orphans, they need appropriate temporary care with the aim of eventual reunification with their families, not adoption.

Staying with relatives in extended family units is a better solution than complete separation from the child. Serious efforts to trace family members are necessary before a child is considered suitable for adoption, and may not be possible in emergency situations. Adoption should not be considered unless a "reasonable" time has elapsed (usually at least two years), during which all possible measures have been taken to locate the parents or other surviving family members.

The Joint Statement included a mechanism for mandatory child registration. Regardless of whether it was possible to register the child before the emergency evacuation, full registration and documentation should be carried out as soon as the child arrives in a safe place. For each unaccompanied child, a personal file should contain personal and family data with photographs, preferably in black and white. The file should also contain full information about the organisation and persons to whom the child is being handed over (one copy should be retained by the child, one copy should be kept the institution to which the child is being handed over, and the original file should be sent to the International Committee of the Red Cross Central Tracing Agency in Geneva or any ICRC office to centralise the data and facilitate future tracing and family reunification). To this end, the ICRC will provide this information to family members and relevant institutions in Rwanda and other interested countries in accordance with its standard procedures.

Thus, in the situation in Rwanda, the systematic registration of unaccompanied children evacuated in emergencies made it possible to track them, inform stakeholders accordingly, and facilitate family reunification [18].

According to the Ministry of Local Administration of Rwanda, the genocide committed against the Tutsis in 1994 resulted in the deaths of 1 074 017 people. The main victims were children and young people under the age of 24, who accounted for 53.7 % [17].

At a meeting of the UN General Assembly in 1996, a report by the Secretary-General's expert, Machelle Gras, on the impact of armed conflict on children was presented. The report noted that children who survived armed conflict were unable to reach the potential they had before the war began and drew attention to the need to address the problem of rehabilitation and assistance to children, emphasising that they suffer psychological and physical trauma, become victims of sexual violence, become orphans, lose social and cultural ties or become soldiers. This report became the basis for the establishment of the Monitoring and Reporting Mechanism to document grave violations against children in situations of armed conflict [19, 20].

Conclusion

Children are the most vulnerable group in society during armed conflict. The protection of children during armed conflict is one of the main tasks of a state that is a party to armed conflict. It is the instruments of public administration that become the mechanisms created and implemented by public authorities to ensure the rights and interests of every child. The article examines both international and non-international armed conflicts, namely the Spanish Civil War, World War II and the Rwandan genocide. One of the main instruments of public administration in the field of protection of children's rights and interests, which was provided during the above conflicts, was the evacuation of children during the ongoing armed conflict. In the case of Rwanda, this mechanism was introduced and implemented not by the Rwandan authorities, but by international organisations. In all of the conflicts analysed, evacuations were carried out to save the lives of as many children as possible. First and foremost, children were evacuated, not necessarily accompanied by their legal representatives. In all cases, the goal was to reunite the evacuated child with his or her family after the end of the armed conflict.

However, based on the analysed armed conflicts, it can be concluded that states begin to introduce any public administration instruments in the field of protection of children's rights and interests while already in armed conflict, which may result in a situation where national

legislation lacks a comprehensive approach to child protection in war, which affects the effective protection of children's rights.

The main areas for further research are the search for possible other instruments of public administration in the field of protection of the rights and interests of children during armed conflict, as well as the mechanisms for their implementation in national legislation.

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ІНСТРУМЕНТИ ПУБЛІЧНОГО АДМІНІСТРУВАННЯ У СФЕРІ ЗАХИСТУ ПРАВ ТА ІНТЕРЕСІВ ДИТИНИ ПІД ЧАС ЗБРОЙНОГО КОНФЛІКТУ: ЗАРУБІЖНИЙ ДОСВІД

Досліджено зарубіжний досвід у сфері застосування інструментів державного управління для захисту прав та інтересів дитини під час збройного конфлікту.

Метою статті є вивчення зарубіжного досвіду у сфері застосування інструментів державного управління для захисту прав та інтересів дитини під час збройного конфлікту.

У статті використано історико-правовий метод, метод системного аналізу та метод систематизації.

Проаналізовано ключове поняття «інструменти державного управління» та його основні ознаки. Діти є найуразливішою групою суспільства під час збройних конфліктів. Захист дітей під час збройного конфлікту є одним із головних завдань держави, яка є стороною збройного конфлікту. Інструментами державного управління стають створені та реалізовані органами державної влади механізми забезпечення прав та інтересів кожної дитини.

Розглянуто як міжнародні, так і неміжнародні збройні конфлікти, а саме: громадянська війна в Іспанії (1936–1939 рр.), Друга світова війна (досвід Великої Британії) та геноцид у Руанді (1994 р.). Одним із основних інструментів державного управління у сфері захисту прав та інтересів дітей, який забезпечувався у зазначених конфліктах, була евакуація дітей під час збройного конфлікту, що триває. Крім того, у ситуації у Руанді цей механізм був запроваджений і реалізований не владою Руанди, а міжнародними організаціями. У всіх проаналізованих конфліктах проводилася евакуація, щоб врятувати життя якомога більшої кількості дітей. Евакуацію проводили переважно для дітей, необов'язково в супроводі будь-кого з їхніх законних представників. У всіх випадках метою було воз'єднання евакуйованої дитини з її сім'єю після закінчення збройного конфлікту.

Проте на основі аналізованих збройних конфліктів зроблено висновок, що будь-які інструменти державного управління у сфері захисту прав та інтересів дитини держави починають застосовувати вже під час збройного конфлікту. В результаті може виникнути ситуація, коли в національному законодавстві немає комплексного підходу до захисту дітей під час війни, що позначається на ефективному захисті прав дітей.

Ключові слова: *інструменти державного управління, захист дітей, збройний конфлікт.*

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