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**Principles of international law on the protection of children's rights and
interests and their implementation in the legal system of the Russian Federation**

Specialty 5.1.3. Private law (civil) sciences

Abstract of the thesis for an academic degree
of Candidate of legal sciences

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Relevance of the research topic.

The need to solve existing problems in the sphere of protecting the rights and interests of children was already ripe in the middle of the XX century, which led to the signing of a number of international acts which were subsequently implemented in the Russian legal system.

In 2020, the Constitution of the Russian Federation was amended, according to which children received a priority position in the implementation of state policy. The new guidelines laid down in the Basic Law determined the further vector of active lawmaking in the field of ensuring and protecting the rights and interests of children.

From the Conclusion of the Constitutional Court of the Russian Federation No. 1-Z of March 16, 2020, we can draw an unambiguous conclusion that at the present stage, the implementation of the provisions of international treaties at the level of the national legal system should be carried out in constitutionally acceptable ways that correspond to the international legal obligations assumed. Surveys related to the implementation of the basic principles of international law on the protection of the rights and interests of children, to which the Russian Federation is a party, require rethinking and an integrated approach, since the universality of the main international treaties must somehow correlate with the main state policy.

It seems that the gaps associated with the implementation of the provisions of the conventions on the protection of children are primarily due to the fact that science has not developed a unified conceptual framework for the implementation of the basic principles of international law on the protection of children's rights and interests, and the system of these principles is not clearly structured.

It is through identifying, specifying and systematizing the basic principles that a single framework should be developed for implementing the provisions of conventions that should guide participants in legal relations and law enforcement agencies in order to achieve maximum balance and balance between the interests of participants in family disputes, as well as to ensure the best balance between private and public methods of regulating family relations.

The Russian Federation has ratified several universal international treaties on the protection of children's rights and interests that have been adopted over the past few decades. Each of them has its own unique standards that help ensure that all children are protected according to their age, gender, race or nationality. However, the priority principles enshrined in the UN Convention on the Rights of the Child of 1989 serve as the defining vector for all international documents: the principle of non-discrimination (article 2); the principle of the best interests of children (Article 3); the principle of ensuring the child's right to life, survival and development (article 6); the principle of respect for views and children's opinions (article 12).

The issue of the effectiveness of implementing these principles is hotly debated in scientific circles, and many point-to-point studies have been conducted on the content of each of them, but the problem has not yet been solved. Issues related to the development of a system and mechanisms for the effective implementation of objective principles of international protection of children's rights and interests, independent of the norms of positive law and subjective interpretation of the content of these norms, as well as determining the essence and place of these principles in the national legal system, remain relevant.

At present, there is a real need to structure the principles of international conventions on which the system of protecting the rights and interests of children at the universal and national levels is built. In addition, it is necessary to find a balance between objective principles and the subjective component of their implementation.

The material and procedural aspects of implementing the principles of international conventions on the protection of children's rights and interests also require additional scientific understanding in order to form unified theoretical and practical criteria for the effective implementation of child protection within the national legal system.

The degree of scientific elaboration of the research topic.

Many studies have been devoted to the protection and protection of the rights and interests of children related to the practical implementation of certain principles of

international law, with various aspects of the interpretation of definitions and categories contained in the norms of international treaties and in national legal acts.

Some questions concerning the topic of this dissertation were the subject of research by A. Kh. Abashidze, I. N. Bartsits, A. A. Belousova, Y.F. Besspalov, N. A. Greshnova, G. K. Dmitrieva, O. A. Egorova, L. A. Emelina, O. V. Zaitsev, O. Y. Ilyna, A.V. Konovalov, N.V. Kravchuk, N. V. Letova, A. N. Levushkin, A. G. Malinova, A.V. Malko, A.M. Nechaeva, E. M. Pavlenko, T. P. Podshivalov, L. M. Pchelintseva, A.M. Rabets, A. Ya. Ryzhenkov, N. M. Savelyeva, V. V. Subochev, A. E. Tarasova, L. V. Terentyeva, N. V. Trigubovich, L. V. Tumanova, I. A. Umnova-Konyukhova, O. A. Khazova, R. L. Khachaturov, O. I. Tsybulevskaya, G. N. Chebotarev, N. A. Shaikenov, M. L. Shelyutto, N. S. Sherstneva and other scientists.

However, it seems that scientific works devoted to various problematic issues of individual principles of international law on the protection of children's rights and interests are not comprehensive and do not reveal the general problems of the mechanism of their implementation.

The purpose and objectives of the study.

The purpose of the study is to identify the features of the mechanism for implementing the principles of international law on the protection of children's rights and interests, to define their concept and structure, and to develop practical recommendations for improving the effectiveness of the mechanism for implementing international legal principles on the protection of children's rights and interests in national legislation and law enforcement practice.

Research objectives:

- to study the genesis, legal nature and development of the principles of protecting the rights and interests of children in a historical context;
- to reveal the concept of the principles of international law on the protection of the rights and interests of children and to identify ways of their effective implementation in the national legal system;

- determine the structure and identify the main directions of the mechanism for implementing international conventions on the protection of children's rights and interests;

- define criteria for the effectiveness of mechanisms for implementing the principles of international law on the protection of children's rights and interests at the legislative, administrative and judicial levels;

- analyze the main theoretical approaches and concepts to the problems of the extraterritorial effect of national law in the implementation of international principles on the protection of children's rights and interests;

- to study and systematize the decisions of Russian and international courts and organizations in order to identify general rules and main trends in the implementation of the principles that are the subject of the study;

- disclose the content of international principles on the protection of children's rights and interests, taking into account the specifics of the implementation of the provisions of international treaties in the Russian legal system;

- identify the main problems and features of the implementation of international principles on the protection of children's rights and interests in the Russian legal system;

- identify areas for improving family legislation in the field of protecting the rights and interests of children.

The object and the subject of research.

The object of research is legal relations in the sphere of implementation of the principles of protection of children's rights and interests.

The subject of the study is: the mechanism of implementation of the basic principles of international law, enshrined in international treaties on the protection of the rights and interests of children, in the legal system of the Russian Federation; the main characteristics and features of the implementation of the basic principles of the UN Convention on the Rights of the Child in the Russian legal system; law enforcement practice emerging regarding the implementation of the principles of international law on protection the rights and interests of children.

Theoretical and methodological basis of the study.

The complex nature of the study made it necessary to refer to various works in the field of jurisprudence, psychology, pedagogy, etc.

General concepts about the principles of law and the principles of family law were drawn from the works of Y. Bespalov, N. Greshnova, A. Kononov, A. Levushkin, N. Letova, A. Malko, A. Nechaeva, T. Podshivalov, L. Pchelintseva, A. Ryzhenkov, V. Subochev, I. Umnova-Konyukhova, R. Khachaturov, N. Shaikenov, N. Sherstneva et al.

Some aspects of the principles of international conventions on the protection of children's rights and interests were analyzed based on the publications of A. Abashidze, O. Ilyna, N. Kravchuk, A. Tarasova, N. Trigubovich, L. Tumanova, O. Khazova, M. Shelyutto and others.

Studies by I. Bartsits, G. Dmitrieva, O. Egorova, L. Emelina, O. Zaitsev, E. Pavlenko, A. Rabets, L. Terentyeva, O. Tsybulevskaya and others played an important role in considering issues related to the implementation of the principles in resolving family disputes.

Research in the field of psychology and pedagogy by such scientists as M. Basov, V. Belkina, L. Bozhovich, L. Grindheim, D. Dewey, I. Lukyantsev, V. Ruzhenkov and others was of great importance for this study.

The methodological basis of the research is the philosophical dialectical-materialistic method. The research also uses general scientific, formal-logical research methods, namely: generalization and abstraction, analysis and synthesis, induction and deduction, methods of dialectical logic, as well as historical and logical methods.

Among interdisciplinary methods, the author preferred the methods of idealization, the method of a systematic approach, and the method of classification.

Among the private scientific methods, the author uses the historical and legal method, the formal legal method, the law interpretation method, the method of scientific research of intersectoral relations, and the method of comparative law.

Information base of the study.

The information base of the dissertation research consists of normative legal sources of the Russian Federation, individual legal acts of pre-revolutionary Russia, the USSR, the RSFSR, universal and regional international legal acts on the rights of the child; materials of the practice of the United Nations human rights treaty bodies, in particular the Committee on the Rights of the Child and the Committee on Human Rights; judicial practice The Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the practice of courts of general jurisdiction and arbitration courts of the Russian Federation.

Validity and reliability of the research results.

The degree of validity and reliability of the results of the study is ensured by using a wide range of sources, the choice of which is determined by the purpose, objectives and methodology of the study, and is confirmed by an extensive analysis of doctrinal approaches, the study of scientific works, a thorough analysis and generalization of the practice of courts of various levels, as well as decisions of international bodies and organizations.

The scientific novelty of the dissertation research.

In the course of the work, the concept of principles of international law on the protection of children's rights and interests in the system of principles of family law is clarified, the concept of a single mechanism for their implementation in the national legal system is proposed, and the nature of interaction between various aspects of the principles under consideration at the legislative, administrative and judicial levels of their implementation is studied.

Provisions that are submitted for defense and have a scientific novelty.

1. The concept of principles of international law on the protection of the rights and interests of children is clarified, which are proposed to be defined as a set of basic fundamental principles that are value orientations and determine the main directions for protecting the rights and interests of children at the intersectoral level through an effective mechanism for implementing the norms of international treaties in the national legal system.

The application submitted for defense corresponds to point 3 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

2. The study identifies several ways to effectively implement the principles of international law on the protection of children's rights and interests in the national legal system:

- constitutionalization of the principles of international conventions by embedding them in the basic law of the State, which makes them generally binding on all legislative, administrative and judicial bodies, and significantly increases the degree of effectiveness of their implementation at all levels of the national legal system;

- reform of legislation by introducing amendments and additions to existing normative legal acts, as well as by developing and adopting new normative legal acts, which avoids contradictions between national and international law;

- implementation of the principles of international conventions through the development of various programs and strategies, which makes it possible to identify the main problems and develop priority areas in a timely manner, choose ways and forms of implementing the principles of international conventions in the interests of children, and carry out intersectoral interaction between bodies of various branches of government at the federal, regional and local levels;

- ensuring priority protection of children's rights and interests in the process of law enforcement, which allows for more flexible regulation of specific legal relations, regardless of changes taking place in society.

The application submitted for defense corresponds to points 3 and 4 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

3. The implementation of the principles of international law on the protection of the rights and interests of children is considered in the dissertation as a single mechanism, which is carried out within the framework of complex intersectoral interaction and unity of the legislative, administrative and judicial levels:

- the legislative level includes the legislative activity of state bodies, as well as the activities of other state bodies and organizations, non-profit structures, social

institutions of civil society, individuals, carried out in order to ensure the fulfillment of international legal obligations and aimed at improving and bringing the norms of national legislation in line with the principles of international law on the protection of the rights and interests of children;

- the administrative level includes the establishment and regulation of the activities of national bodies and organizations performing functions related to ensuring the implementation of international legal obligations, as well as coordination between national and international bodies and organizations, civil society institutions and individuals, in order to ensure the effective implementation of the principles of international law on the protection of the rights and interests of children;

- the judicial level includes activities to implement the international principles on the protection of children's rights and interests in the framework of specific disputes before national and international courts. This level also covers the development and implementation of adequate and accessible procedural procedures and rules aimed at protecting the procedural rights and interests of children in accordance with the principles of international law.

Any level of implementation mechanism should be understood from the point of view of an integrated approach, which includes not only the activities of specific bodies and organizations, but also a set of methods, approaches and tools that make it possible to properly integrate the principles of international law on the protection of children's rights and interests into the national legal system of the State.

The application submitted for defense corresponds to points 3, 9 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

4. The main feature of the implementation of the principles of international law on the protection of the rights and interests of children, which allows us to substantiate the conceptual unity of these principles, is the presence in each principle of both substantive (essential) and procedural (procedural) structural elements that determine the interdisciplinary nature of the principles, expand the scope of their implementation beyond one branch family law, and allow the principles to be applied to various

disputes affecting the rights and interests of minors, regardless of the legal nature of the regulated relationship.

The structural elements of each of the principles are not limited to the subject matter of any one branch of law, which determines the State's obligation to ensure an appropriate level of implementation of international principles on the protection of children's rights and interests within the national legal system as a whole.

The application submitted for defense corresponds to points 2 and 3 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

5. The thesis substantiates the extraterritorial effect of national law in the implementation of international principles on the protection of children's rights and interests outside the national legal system, which allows us to ensure a balance between different approaches to them without losing national identity.

The extraterritorial effect of national law is realized through the application of conflict-of-laws bindings based on the personal law of an individual (citizenship and permanent residence), the principles of close connection and the choice of the most favorable law, as well as through the operation of national public policy as a basis for restricting the application of foreign law to minor citizens of the Russian Federation temporarily located, but not domiciled abroad.

The application submitted for defense corresponds to points 10 and 31 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

6. As a condition for the implementation of the principles of protecting the rights and interests of children in law enforcement practice, the dissertation proposes the definition of special material and special procedural limits of judicial discretion.

Special material limits of judicial discretion are legally significant circumstances that must necessarily be established during the consideration of the case and reflected in the reasoning part of the court decision, if it directly or indirectly affects the rights and interests of a minor (for example, mandatory assessment of the short - and long-term consequences of dispute resolution for the child; mandatory reflection in the reasoning part of the decision court analysis of the best interests of the minor).

Special procedural limits of judicial discretion are legally significant procedures that are mandatory when resolving a legal dispute that directly or indirectly affects the rights and interests of a minor (for example, the mandatory appointment of a lawyer to protect a minor whose rights and interests are affected by a judicial dispute; the introduction of special mechanisms for hearing children and taking their opinions into account).

The application submitted for defense corresponds to points 22, 25 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

7. It is proved that the minor age is a ground of discrimination, and therefore it should be included in the general list of grounds for discrimination.

The dissertation distinguishes the forms of discrimination based on the minor age:

- depending on the degree of differentiation between the interests of a child and an adult, explicit and implicit discrimination is distinguished;
- depending on the level of differentiation between the interests of a child and an adult, formal (at the legislative level) and actual (at the law enforcement level) are distinguished.

The dissertation clarifies the concept of hidden age discrimination against children, which is subjective-evaluative, not obvious rules or measures based on the manifestation of differences, exceptions, restrictions or preferences based on the minor age, which seem neutral or do not have any intention to discriminate, but have a hidden discriminatory effect, expressed in diminution recognition, use or exercise of children's rights and freedoms on an equal basis with adults.

The application submitted for defense corresponds to points 9 and 10 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

8. In the course of the study of the main theoretical approaches to the problems of implementing the principles of international law on the protection of the rights and interests of children, the concepts of "legitimate interests of the child" and "best interests of the child" are separated and clarified.

The legitimate interests of the child are legally significant circumstances of a moral and material nature (defined by the state as general standards) that are imperatively fixed in the norms of law and can have a physical and mental impact on all minors without any exception. The legitimate interests of the child are correlated with the interests of society, are protected by the state regardless of the individual characteristics of the child and are the basis for stable regulation of family legal relations.

The best interests of the child are specific legally significant *потребности* moral and material needs, which are determined taking into account the individuality of the child or a group of children, are not limited to legally significant circumstances peremptorily fixed in the norms of law and consist in creating the most favorable short- and long-term conditions that affect the normal physical, mental, spiritual, cultural and moral development of minors.

The application submitted for defense corresponds to points 9 and 10 of the passport of the scientific specialty 5.1.3. "Private law (civil) sciences".

The theoretical and the practical significance of the study.

The theoretical significance of the study lies in the fact that the formulated conclusions complement and develop the ideas available in the family and other branches of law about the mechanism for implementing the principles of international law on the protection of the rights and interests of children, including an integrated approach to the mechanism for implementing the basic principles of the UN Convention on the Rights of the Child of 1989.

Thus, the results of the study expand academic knowledge about the subject of research and create the foundation for further research on the development of the most optimal and effective model of the mechanism for implementing the principles of universal treaties in the field of protecting the rights and interests of children at the national level.

The practical significance of the study is determined by the need to determine the direction of improving family legislation in the field of protecting the rights and interests of children.

The paper provides specific recommendations for making additions to the Family Code of the Russian Federation, namely, it is proposed to supplement article 57 of the Family Code of the Russian Federation with the following paragraph: "Taking into account the opinion of a child who has reached the age of fourteen is mandatory when considering any issues affecting his rights and interests."

To solve the problem of determining hidden age discrimination, it is proposed to establish the concept of hidden discriminatory actions. The differentiation between the concepts of hidden discriminatory actions and legal restrictions aimed at protecting the rights and interests of minors, as well as at achieving legitimate goals necessary in a democratic society, is aimed at developing the provisions of Article 79 of the Constitution of the Russian Federation.

The dissertation proposes to distinguish and normatively fix the moment of the emergence of the child's right to life, survival and development, as a biological condition for the continuation of the human race – from the moment of birth, which recognizes the physical separation of the fetus from the mother's womb; the moment of the emergence of the right to survival and decent development, as a condition for present and future existence and well-being a child - from the moment of conception, both in utero and with the use of reproductive technologies.

It is proposed to expand the category of cases falling within the exclusive jurisdiction of Russian courts, disputes affecting the rights and interests of minor citizens of the Russian Federation who are not domiciled in a foreign country, although temporarily residing abroad, regardless of the citizenship of their parents, by introducing amendments and additions to article 30 of the Civil Procedure Code of the Russian Federation (Exclusive jurisdiction) and Article 412 of the Civil Procedure Code of the Russian Federation (Refusal to enforce a foreign court decision).

The results of this study can also be used in training courses on family law, civil law, private international law and civil procedure law.

Approbation of the results of the dissertation research.

The dissertation was completed and discussed at the Department of Legal Support of the Market Economy of the High School of Law of the IPACS RANEP.

The results of the dissertation research are reflected in the reports presented at international and All-Russian scientific and practical conferences: II International Scientific and Practical Postgraduate Conference in memory of V. F. Yakovlev (December 2, 2022); International Conference Sessions and "Public Administration and Development of Russia: Civilizational Challenges and National Interests" (May 19, 2023); Postgraduate Legal Forum GAUNG "Transformation of Russian Law: Trends, Guidelines, Solutions" (June 14, 2023); VII International Forum on the Law of the Sea (June 22, 2023); 66th Annual Meeting of the ICSID and the Russian Association of International Law "International Law in Modern Geopolitical Conditions" (June 29, 2023); III International Scientific and Practical Postgraduate Conference in Memory of V. F. Yakovlev (December 15, 2023); Second Central Asian International Legal Forum "Law as a basis for Regional Economic Integration" (June 14, 2024.).

List of the author's publications.

The main conclusions and provisions of the dissertation research were published by the author in the following scientific journals, included in the list of leading peer-reviewed journals and publications recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation:

1. Surdina, A. I. The basic principles of the UN Convention on the Rights of the Child and the problems of their implementation in the Russian legal system / A. I. Surdina // Notarial Bulletin. – 2022. – No.12 – P. 57-64.

2. Surdina A. I. Principles of protection of children's rights: concept, essence and place in the system of principles of Russian law / A. I. Surdina // Power of Law. – 2023. – No. 3(55) – P. 351-364.

3. Surdina, A. I. Criteria for the maintenance and implementation of parental rights in relation to minor children in the philosophy of John Dewey / A. I. Surdina // State Service. - 2023. - Vol. 25, No. 4(144) - P. 24-30.

4. Surdina, A.I. On the issue of the extraterritorial effect of national law in the implementation of the priority principles of the UN Convention on the Rights of the Child / A. I. Surdina // Law and Management. – 2024. – No. 7 – P. 22-29.

The structure of the dissertation is determined by its goals and objectives and consists of an introduction, three chapters, nine paragraphs and a conclusion.