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ELEMENTS TO BE TAKEN INTO ACCOUNT WHEN ASSESSING THE CHILD'S BEST INTERESTS

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The article focuses on the elements that are considered in determining the child's best interests. Examples of various sets of elements to be taken into account when assessing the best interests are given, attention is also paid to the issue of the conflict of some of them with each other.

The rights of the child are indivisible, universal and inalienable. Children, by virtue of their immaturity, need special protection and care, including legal protection. As one of the most widely ratified human rights instruments in history, the Convention on the Rights of the Child enshrines all relevant child rights: civil, political, economic, social and cultural. Most of the Sustainable Development Goals until 2030 are related to the rights of the child: eliminating poverty, access to education, healthcare, clean water, gender equality, non-discrimination and others.

The decisive role in strengthening legal guarantees for the protection of the rights and interests of the child is played by the principle of ensuring the best interest of the child, as enshrined in the Convention on the Rights of the Child. Along with other principles, the principle of ensuring the best interest of the child, forming the conceptual basis of the Convention, forms the standard of a child-friendly society, in compliance with which each child will be able to develop harmoniously, realizing all his abilities.

To strengthen a child-friendly society, the legislator, government, entrepreneurs, associations and members of the community must evaluate the impact of their decisions and activities on children. When making decisions or any actions regarding a child, planning his activities, his interests should always be taken into account. Putting a child's interests first, among other things, also means listening to the child and taking his opinion into account.

The application of this principle is associated with a number of problems due to the uncertainty of its content, which varies depending on each individual case. On the one hand, this determines its flexibility, which allows you to adapt to the special circumstances and situation of each child. On the other hand, it causes certain difficulties: how much the decision or action will comply with the principle of ensuring the best interests of the child with the freedom to choose some elements that determine the best interest to the detriment of others.

In literature, the principle of ensuring the best interests of the child has been criticized. For example, concern was raised about what criteria should be used in determining what is the best interest of the child. Some noted that it cannot be attributed to a viable standard because it is too difficult to relate it to cultural traditions or social realities [1, p. 58].

The Committee on the Rights of the Child, in its General Comments, has proposed a non-exhaustive, non-subordinate list of elements that could be considered in assessing the best interests of any decision-maker who has to determine the best interests of the child [2, p.15-21]. The list is open, which provides the opportunity to add new elements that meet each specific situation, or to exclude the proposed ones that do not meet the best interest in a particular case.

The Committee proposed to include the following elements:

- the views of the child;
- the personality of the child;
- maintaining a family environment and maintaining relationships;
- care, protection and safety of the child;
- vulnerable position;
- the right to health;
- child's right to education.

Guidelines on justice in matters related to the participation of child victims and witnesses of crime [3] see protection, harmonious development and the right to participate as elements of ensuring the best interest of the child.

In some states, the concept of best interest is self-explanatory, while national legislation of others, on the contrary, clarifies the content of the elements defined in the Guidelines [4, p. 5]. For example, in South Africa, this is done through the Children Act 2005, which defines elements of best interest as the nature of the relationship

between parents, between parents and children, the ability of parents to satisfy mental and spiritual needs, etc. In any case, regardless of the approach taken by the state the main goal is to ensure the best interest of the child.

When using each element, the individual characteristics of the child must be taken into account. These primarily include age, gender, degree of maturity, experience, belonging to a particular minority, the presence of physical, sensory or intellectual disabilities. The sociocultural environment in which the child or children are located (for example, the presence or absence of parents, the child's living with or separately from them, the quality of the relationship between the child and his family members or carers, etc.) is also important. In this case, the principle of ensuring the best interest appears in conjunction with the principle of non-discrimination. For any reason, the decision should not be influenced by the origin, race, gender or socio-economic status of the child.

For example, US law provides for factors that should not be considered in determining best interest. Thus, the Connecticut Law states that when determining the best interest of a child, the socioeconomic status of the parents should not be taken into account, and Idaho prohibits discrimination based on the disability of one of the parents. In California and Iowa, in determining the best interest for Native American children, steps must be taken to preserve unique tribal and values [5, p. 3].

An important point in making decisions is the fact that the best interest is not always the interest of one child. Accordingly, in determining the best interests of participating States are obliged to take into account not only the individual situation of each child, but also the interests of children as a whole group [6]. In this case, when determining the best interest of a group of children, one should be guided by the same elements as when deciding on one child.

The difficulty in applying the principle of ensuring the best interest of the child in practice is due to the fact that its individual elements are often incompatible or even contradict each other. For example, the child's right to «preserve the family environment and maintaining relations», and the «protection and safety» of the child, in cases where family relations do not meet the interests of the child, or the child's right «to information» and «privacy» can be conflicting. If a conflict arises, it is necessary to weigh all the elements and be guided by the ones that are most in the best interest of the child at this stage.

Of course, when assessing the best interests, one should not forget that this is a dynamic concept, because the child is constantly changing, therefore, it is necessary to carry out appropriate adjustments. When making a decision, you need to remember that it is not final and can change in the long term, even if you have taken into account all the needs of the child as correctly as possible [7, p. 81]. In addition to the fact that the child is changing, the surrounding reality is changing, new social relations appear (for example, the rapid development of information and communication technologies and the emergence of the problem of protecting the rights of the child in the digital environment). For this reason, at each stage of development, in determining the best interest, different elements will be of great importance, and their list will expand.

Thus, elements of a child's best interest are important in overcoming difficulties in law-making and law enforcement practice. However, it should be noted that a closed list of such elements would not meet the conditions for the rapid development of society, the emergence of new areas of social relations, and also would not guarantee an individual approach to each individual child and situation. Therefore, the list of elements proposed by the Committee on the Rights of the Child needs to be taken into account and bear in mind its flexibility and the ability to add new elements that are more relevant in a particular situation.

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