

LEGAL PROTECTION OF CHILDREN'S RIGHTS IN KOSOVO

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Abstract

Fundamental human rights and freedoms are at the core of any legal system in developed and developing democracies. One of the key rights in the catalogue of human rights are undoubtedly the children's rights. The international system of human rights, and the national systems, give great importance to guaranteeing of the children's rights. Following the establishment of Kosovo state institutions, the evolution of fundamental human rights and freedoms required the necessity of time. The integration of the Convention on the Rights of the Child into the Constitution, which is directly applicable, provides the basis for sufficient legal regulation to guarantee the children's rights. Kosovo legal system guarantees the effective protection of human and children's fundamental rights and freedoms, even though Kosovo is not a signatory to these international instruments. Despite the efforts that have been made and continue to be made in Kosovo regarding the implementation of legislation in force, the situation in practice is still unsatisfactory and children continue to be discriminated against in various areas.

Keywords: human rights, children's rights, legal protection of children's rights, judicial protection of children's rights.

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1. Introduction

The concept of human rights is related to the notion of the state and positive rights in which the main place is given to the individual and respect for his/her dignity is considered to be above the good of the group and the state. The definition of children's rights has evolved, from the broader human rights movement to other developments in the social, educational and psychological fields in the last 300 years. This includes the impact of state institutional support for compulsory education in schools, for educational development, protection of the child without parental care, protection of the child during in family housing, etc. Effective protection of human rights and freedoms can be ensured if these are directly provided for, protected and guaranteed by the Constitution of the country. The Constitution of Kosovo, similar to most other constitutions, contains the catalogue of human rights, namely the child that is enshrined in its second chapter. The Constitution of Kosovo is the basic legal act and fundamental human rights and freedoms are its foundation. Kosovo, in addition to the Constitution, where the rights of the child are a constitutional category and where the Convention on the Rights of the Child is a constitutional norm, has also adopted special legislation (*lex speciales*) for the protection of children's rights. The Law on Child Protection aims to supplement the legal and institutional framework in implementation of the Constitution, the United Nations Convention on the Rights of the Child, international acts operating in this field, as well as the legislation in force.

2. Material and methods of work

During my studies I have utilized various scientific and professional resources, including university texts, scientific papers and articles, analyses, domestic constitutional and legislative acts and international acts on public law. The study was conducted with various scientific methods, which are typical for scientific research in the social sciences and humanities, respectively public law.

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3. Discussion

3.1. International protection of children's rights

International law recognized only the rights of states, not their citizens². Interest in the international protection of human rights dates back to the founding of the United Nations and came into light as a reaction to the atrocities of World War II³. International structures and standards for the promotion and protection of human rights were developed towards this end, mainly through the United Nations, the United Nations Charter and the Universal Declaration of Human Rights⁴.

3.1.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights is the first comprehensive human rights instrument to be proclaimed by the United Nations General Assembly on 10 December 1948. The Declaration highlights in particular the fundamental human rights and freedoms that were brutally violated during World War II. This instrument has had a profound impact on the development of regional and global standards for the general or specific protection of human rights, as well as on the design of more than 20 important human rights instruments which together constitute the international human rights standard⁵. A host of the most important documents in the field of human rights that have been adopted and later have been inspired and based on the goals and principles of the Universal Declaration of Human Rights⁶.

3.1.2. Convention on the Rights of the Child

The human rights of children and the standards to which all governments must act in the exercise of these rights for all children without distinction are fully enshrined in an international human rights treaty, the Convention on the Rights of the Child. The Convention is the most universally accepted instrument of children's rights in history. It was adopted by the United Nations General Assembly on 20 November 1989 and was ratified in a short time by 61 countries of the world⁷. This Convention established universal legal standards for the protection of children against neglect, abuse, and exploitation, and it guarantees to them fundamental human rights in the civil, economic, social and cultural spheres⁸.

3.1.3. European Convention on Human Rights and its Protocols

The European Convention on Human Rights (ECHR) is an international treaty, adopted in 1950 by the Council of Europe, which entered into force in 1953. This act obliges the signatory parties to adhere to the provisions of the Convention⁹. The Convention has undergone several amendments, and has given impetus to the creation of many other Council of Europe conventions. Although this instrument is not directly related to children's rights, it guarantees for them, as for all individuals, the recognition and respect of fundamental rights of an individual, economic, political, social and cultural

² Gregory, W., *Human Rights in Theory and Practice*, New Jersey & London, 1995, p. 129.

³ Puto, E., *Comparative Constitutional Law*, Tirana, 2008, p. 85.

⁴ Lawrence, F., *The Internationalization of Human Rights by David P. Forsythe*, Boston College Third World Law Journal, Volume 13., 1993, p. 189.

⁵ Saliu, K., *Constitutional Law*, Prishtina, 2004, p. 212-215; Terzić, Z., *International Documents on Human Rights*, Sarajevo, 1996, p. 32; Vega & Weissbrodt, *International Human Rights Law*, University of Pennsylvania press Philadelphia, US, 2007, p. 25; Universal Declaration of Human Rights, 1948, Article 1-15.

⁶ Gruda, Z., *International Protection of Human Rights*, Prishtina, 2010, p. 35.

⁷ Convention on the Rights of the Child, 1989, Article 1-12.

⁸ Asbjorn, E., *From Human Rights to the Rights of Men, Women and Children, Introduction-Universal Declaration of Human Rights, A Common Standard of Achievement*, Prishtina, 1999, p. 642-646.

⁹ European Convention on Human Rights, 1950, Article 1.

nature, which are protected by the European Court of Human Rights¹⁰.

3.1.4. Convention no. 182 of the International Labour Organization “Worst Forms of Child Labour, 1999”

Since its inception, the action of the International Labour Organization (ILO) has been based on setting a minimum age for admission to employment, as a limit to define and regulate child labour. Thus, the ILO set standards for the minimum age in various sectors - industry, agriculture, non-industrial employment, fishing, underground work, etc. During the 1990s, there was a great deal of concern in the international community about the problem of child welfare in general and child labour in particular¹¹. In the context of this concern and great worldwide attention, the ILO in 1999 prepared and adopted the Convention on the Worst Forms of Child Labour (Convention No. 182). Convention No. 182 urges ratifying States to take effective and prompt action to ensure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

3.2.1. Integration of international legal standards for human rights in Kosovo legal system

In Kosovo, human rights and freedoms were brutally violated on a massive scale until 1999, when Kosovo was liberated and placed under international civilian and military administration. Following the establishment of state institutions of Kosovo, the evolution of fundamental human rights and freedoms required the necessity of time. The Constitution of Kosovo throughout its text includes important provisions related to the protection of fundamental human rights and freedoms. The spirit and letter of this constitution has embodied the most well-known and advanced international standards in the field of human rights and fundamental freedoms¹². Human rights and freedoms, guaranteed by international instruments, are guaranteed by the Constitution, are directly implemented in the Republic of Kosovo, and have priority in case of conflict, over the provisions of other laws¹³. But in addition to the Constitution, the legislation in force reflects the most advanced international human rights standards.

3.2.2. Constitutional protection of children’s rights in Kosovo

The integration of the Convention on the Rights of the Child into the Constitution, which is directly applicable, provides the basis for sufficient legal regulation to guarantee the children’s rights. The Constitution of Kosovo guarantees children: to enjoy the right to protection and care necessary for their wellbeing; children born out of wedlock have equal rights with those born in marriage; every child enjoys the right to be protected from violence, maltreatment and exploitation; actions concerning children, undertaken by both public and private institutions, shall be in the best interest of the children; every child enjoys the right to regular personal relations and direct contact with his or her parents¹⁴.

3.2.3. Law on Child Protection - *Lex specialis*

The development of the child protection function derives from the special interest of the society, respectively the social community to ensure the reproduction of the population which can be achieved in addition to the childbearing function and training of children and youth, for taking over

¹⁰ Hasani & Čukalović, *Commentary on the Constitution of Kosovo*, Prishtina, 2013, p. 83.

¹¹ A Practical Guide to ILO Convention No.182, 2011, p.17.

¹² Constitution of Kosovo, 2008, Articles 21-56.

¹³ Ibid, Article 22.

¹⁴ Ibid, Article 50.

the role in society and work¹⁵.

The Republic of Kosovo, in addition to the Constitution where children's rights are a constitutional category, has also adopted special legislation (*lex speciales*) for the protection of children's rights. The Law on Child Protection aims to supplement the legal and institutional framework, pursuant to the Constitution of the Republic of Kosovo, the United Nations Convention on the Rights of the Child, international acts operating in this field, as well as legislation in force. The law contains a series of institutional measures which must be taken by the responsible institutions in the implementation of the protection of children's rights¹⁶. The law also provides for a large number of institutions that deal with the realization of children's rights, and guaranteeing that the adopted norms on children's rights are implemented and respected in our country. Within the Assembly of the Republic of Kosovo, there is a Parliamentary Commission for Human Rights, Gender Equality, Missing Persons and Petitions. The Office of the Prime Minister has an Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues which is the main mechanism within the governing institutions and whose mission is to draft policies on human rights and children's rights, as well as coordinate activities for monitoring the implementation of these policies.

Furthermore, in the Office of the Prime Minister, in the Office of Good Governance, there is a Child Rights Officer. The Human Rights Unit operates in each Ministry, and within some of these units a child rights officer has been appointed. Also, in 30 municipalities of the Republic of Kosovo, a child rights officer was appointed¹⁷. The Government of Kosovo has also established the Inter-Ministerial Committee for Children's Rights which is a very important mechanism for the protection and promotion of the rights of the child in Kosovo, in order to place the child at the centre of Government efforts¹⁸.

3.2.4. Children's rights protected by other laws

The Republic of Kosovo, in addition to the Constitution and the special law for the protection of children's rights, has adopted a number of other laws which define in their provisions aspects of the protection of children's rights, depending on their scope, such as:

*Law on the Protection from Discrimination*¹⁹; *Law on Family*²⁰; *Law on Protection against Domestic Violence*²¹; *Law on Social and Family Services*²²; *Law on Health*²³; *Law on Pre-University Education*²⁴; *Law on Vocational Education and Training*²⁵; *Law on Preschool Education*²⁶; *Law on the Protection of Breastfeeding*²⁷; *Law on Inheritance*²⁸; *Juvenile Justice Code*²⁹; *Law on the Social Assistance Scheme*³⁰; *Law on Labour*³¹; *Law on Execution of Penal Sanctions*³².

3.3. Challenges in the realization of Children's Rights

The state of Kosovo pays special attention to the protection and realization of children's

¹⁵ Robaj, A., *The legal nature of social insurance in Kosovo in the spirit of the EU integration*, Journal of Liberty and International Affairs, Vol. 5, No.1, 2019, p. 100.

¹⁶ Law on Child Protection, 2019, Articles 25-33.

¹⁷ Strategy and National Action Plan on Children's Rights in the Republic of Kosovo, 2009-2013, p. 19.

¹⁸ Decision of the Government of Kosovo, No.07/46, 2008, establishing the Inter-Ministerial Committee on the Rights of the Child.

¹⁹ 2015, Article 1.

²⁰ 2006, 2019, Article 1.

²¹ 2010, Article 1.

²² 2007, 2012, Article 1.

²³ 2013, Article 1.

²⁴ 2011, Article 1.

²⁵ 2013, Article 1.

²⁶ 2006, Article 1.

²⁷ 2015, Article 1.

²⁸ 2006, Article 1.

²⁹ 2010, Article 1.

³⁰ 2007, 2012, Article 1.

³¹ 2010, Articles 2 and 7.

³² 2013, 2017, Articles 1-2.

rights. Even countries with the highest levels of democracy continue to face challenges in enforcing legislation on children's rights. Although the protection of children's rights is one of the main goals of society, they still face many problems. Children's rights which are guaranteed by International Conventions as well as by the Constitution and laws are nothing if these rights are not applied in practice or in everyday life, and in fact the lack of practical application of the provisions is equal with their non-existence.

3.3.1. Implementation of legislation on children's rights

Children's rights are very important both for children and for society as a whole. Just as it has been fought for human rights, it has been fought for the children's rights too. The biggest struggle is not only the recognition of these rights but above all the respect and implementation of children's rights in society. The legal infrastructure is generally in line with European and international standards, but there is still a problem with its implementation in practice³³. Effective law enforcement reflects on the effective implementation of human rights. Despite the efforts that have been made and continue to be made in Kosovo regarding the implementation of the legislation in force, the situation in practice is still not good and children continue to not exercise their rights and to be discriminated in various areas.

3.3.2. The rights of children with disabilities

The legal integration of children with disabilities in basic education schools certainly made it possible to reverse a wrong mentality that had dominated in our society for many decades, regarding their education only in special schools³⁴.

But despite legal guarantees, the situation of children with disabilities in Kosovo remains dire. They continue to face difficulties in the field of education such as: providing support for transport, at school they also face inadequate school infrastructure, small number of professional staff and personal assistants of support teachers, etc. Even in the field of health, children with disabilities face difficulties in terms of exercising the right to quality and free health services because they do not always have the opportunity to be provided with free medicines and other equipment that would improve their health, free movement and life with dignity.

3.3.3. The role of the judicial system in the protection of children's rights

Consequently, we note that the role of the courts is very important in protecting the children's rights against inequalities and in opposition to discriminatory practices, and it is crucial in resolving violated or denied rights. When conducting court proceedings, and in making decisions concerning children, the courts are obliged to take into account the best interests of the child, as provided for in international acts³⁵ and domestic acts³⁶. The Law on Courts, in the internal organization of the Basic Court and the Court of Appeals, provides for Juvenile Departments which have the competence to put on trial criminal offenses committed by juveniles, or for criminal offenses when juveniles are victims³⁷.

However, the situation in practice is reflected in the problems in the protection of children's rights by the judiciary. Courts, in most cases, fail to process cases within a reasonable time, such as cases of child custody of one parent, payment of alimony, contact with the parent, cases of compensation for damage in traffic accidents, etc.

³³ Istrefi, R., *Introduction to the legal System in Kosovo*, Prishtina, 2019, p. 373.

³⁴ Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities, 2009, 2016, Article 1.

³⁵ Convention on the Rights of the Child, 1989, Article 3.

³⁶ Constitution of Kosovo, 2008, Article 50.

³⁷ Law on Courts of Kosovo, 2018, Article 6, par.6.

3.3.4. The role of the Ombudsperson in the protection of children's rights

The Ombudsperson in its organizational structure has established the Department for the Protection of Children's Rights and closely monitors and protects the children's rights. The Ombudsperson uses its mechanisms through which it aims to draw attention to the violation of human and children's rights and requests from the responsible authorities to take measures to restore the violated rights³⁸. The Ombudsperson has identified that the situation of children with disabilities in Kosovo continues to remain dire. In this regard, the Ombudsperson reiterates the need to take action, including also material support, namely the allocation of adequate budget to improve the situation of children with disabilities, so that they fully enjoy their rights. Finally, the role of the Ombudsperson is indisputable and extremely important, almost crucial in protecting the children's rights, both in terms of identifying violations, protecting them and in terms of contributing to improving the legal framework.

3.3.5. The perspective of children's rights in Kosovo

International reports, in particular the European Union Progress Report on Kosovo, have emphasized that the implementation of Kosovo positive right to the rights of the child should be a key priority of the competent Institutions.

At the same time, the EU Progress Report states that the government funds a range of services for children in situations of violence through partnerships with civil society and international donors. However, due to economic difficulties, the state does not fully fund these services. As a result, these services find support from foreign donors to fill this gap. According to some research, it is assumed that the total number of children with disabilities is about 15,000, while of these only about 877 pupils attend school. From this it is clear that the participation of children in education is very low, which means that the current level of education of children with disabilities still does not guarantee satisfactory rights for these children. Despite the positive steps that have been taken in a short time in the state life of the Republic of Kosovo, and international assistance and support in the field of human rights in general, and children in particular, there are still many problems in the daily life as well as obstacles and challenges in respecting and protecting them. Fulfilment and full implementation of international standards in the protection and observance of the rights of the child has lagged, especially for children with disabilities. The political, economic and social circumstances that are in Kosovo, also affect the development of its youth, which is affected by poverty and unemployment. These conditions affect children and youth to perform hard work, to be exposed to various forms of exploitation, as well as to often be in conflict with the law.

4. Conclusions

Kosovo legal system guarantees the effective protection of human and children's fundamental rights and freedoms. The direct implementation of key international human rights instruments and special constitutional provisions on child protection are indicative of this. Specific is especially the fact that Kosovo, although not a signatory to these international documents in the field of human rights in general and children in particular, has unilaterally decided to respect the provisions that provide for them, as well as to implement to the letter the obligations arising from them.

The rights of the child which are guaranteed by International Conventions, as well as by the Constitution and laws, are nothing if these rights are not applied in practice or in everyday life, and in fact the lack of practical application of the provisions is equal to their non-existence. Despite the efforts that have been made and continue to be made in Kosovo regarding the implementation of the legislation in force, the factual situation is still unsatisfactory, and children continue to not exercise their rights and to be discriminated in various areas. Problems, obstacles and challenges in respecting

³⁸ Law on the Ombudsperson, 2015, Article 2; Article 16.

and protecting them in everyday life are many, especially the most significant problems appear in the provision of services for children, especially those with disabilities. The above mentioned indicators show that evident results have been recorded in this regard, however, much remains to be done so that the guaranteed children's rights are tangible by them.

Bibliography

I. Books and articles

1. Robaj, A. (2019). *The legal nature of social insurance in Kosovo in the spirit of the EU integration*, *Journal of Liberty and International Affairs*, Vol. 5, No. 1.
2. Marek, P. (1999). *Çka janë të Drejtat e Njeriut (What are human rights)*. Warsaw.
3. Gregory, W. (1995). *Human Rights in Theory and Practice: A Selected and Annotated Bibliography, with a Historical Introduction*, Metuchen, New Jersey & London: Scarecrow Press, and Pasadena, CA & Englewood Cliffs, NJ: Salem Press.
4. Lawrence, F. (1993). *The Internationalization of Human Rights by David P. Forsythe*, in *Boston College Third World Law Journal*, Volume 13.
5. Asbjorn, E. (1999). *Nga të Drejtat e Njeriut deri tek Drejtat e Njerëzve, Femrave dhe Fëmijëve, Hyrje -Deklarata Universale mbi të Drejtat e Njeriut, Standardi i Arritjes së Përbashkët (From Human Rights to the Rights of Men, Women and Children, Introduction - Universal Declaration of Human Rights, A Common Standard of Achievement)*, Prishtina.
6. Hasani, E. & Čukalović, I. (2013). *Komentari i Kushtetutës së Kosovës (Commentary on the Constitution of Kosovo)*, Prishtina.
7. Istrefi, R. (2019). *Hyrje në Sistemin Ligjor në Kosovë (Introduction to the Legal System in Kosovo)*, Prishtina.
8. Vega, C. & Weissbrodt, D. (2007). *International Human Rights Law*, University of Pennsylvania press Philadelphia, US.
9. Puto, E. (2008). *E Drejta Kushtetuese e Krahasuar (Comparative Constitutional Law)*, Tirana.
10. Terzić, Z. (1996). *Međunarodno Dokumenti o Ljudskim Pravima (International Documents on Human Rights)*, Sarajevo.
11. Saliu, K. (2004). *E Drejta Kushtetuese (Constitutional Law)*, Prishtina.
12. Gruda, Z. (2010). *Mbrojtja Ndërkombëtare e të Drejtave të Njeriut (International Protection of Human Rights)*, Prishtina.

II. International legal acts

1. Universal Declaration of Human Rights, (1948).
2. European Convention for the Protection of Human Rights and Fundamental Freedoms, (1950).
3. Convention on the Rights of the Child, (1989).
4. ILO Convention "Worst Forms of Child Labour" No. 182, (1999).

III. Internal legal acts

1. Constitution of the Republic of Kosovo, (2008). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>.
2. Law on Child Protection, (2019). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20844>.
3. Law on the Protection from Discrimination, (2015). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>.
4. Law on Family, (2006, 2019). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2410>.
5. Law on Protection against Domestic Violence, (2010). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2691>.
6. Law on Social and Family Services in Kosovo, (2007,2012). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2447>.
7. Law on Health, (2013). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8666>.
8. Law on Pre-University Education, (2011). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2770>.
9. Law on Vocational Education and Training, (2013). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8676>.
10. Law on Preschool Education, (2006). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2401>.
11. Law on the Protection of Breastfeeding, (2015). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11228>.
12. Law on Inheritance in Kosovo, (2006). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2407>.
13. Juvenile Justice Code, (2010). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2698>.
14. Law on the Social Assistance Scheme, (2007, 2012). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2460>.
15. Law on Labour of Kosovo, (2010). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735>.

16. Law on Execution of Penal Sanctions, (2013, 2017). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8867>.
17. Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities, (2009, 2016). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2620>.
18. Law on Courts, (2018). Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>.
19. Law on Ombudsperson, (2015). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10922>.
20. A Practical Guide, No. 182, (2011). Available at: https://www.ilo.org/pardev/partnerships/civil-society/parliamentarians/WCM_S_172685/lang-en/index.htm.
21. Decision of the Government of Kosovo, No. 07/46, (2008). Available in Albanian only at: <http://www.kryeministri-ks.net/repository/docs/>.
13. Strategy and National Action Plan on Children's Rights in the Republic of Kosovo, (2009-2013). Available at: <https://www.yumpu.com/en/document/read/35088606/strategy-and-national-action-plan-on-childrens-rights-in-the->.