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**PARTICULAR ISSUES
OF THE SOURCE BASE RESEARCH ON THE PROTECTION
OF THE CHILDREN'S RIGHTS IN THE U.S.**

Olena Ryhina

*Ivan Franko National University of Lviv,
1, Universytetska Str., Lviv, Ukraine, 79000,
e-mail: Olena.ryhina@lnu.edu.ua
ORCID ID: 0000-0002-8366-3365*

The article examines the source base of the children's rights protection research in the United States. The scientific research in the area of the children's rights protection in the U.S. is valuable because of its important scientific significance. However, for the completeness, comprehensiveness and objectivity of the research, we must conduct a scientific analysis of the components of the basis of the study.

In our opinion, the specifics of historical and legal research require the study of sources on the basis of which the object of study was legally regulated in the different periods of time.

The peculiarity of the source base of the study on the protection of the children's rights is due to the constitutional status of the United States as a federal state. This feature led to the combination of the federal and local legal regulation, as well as organic combination of the statutory and precedent legal regulation. Therefore, the laws and court decisions were worked out to disclose the above issues. The U.S. Supreme Court in its decisions took the global trend of liberalizing criminal penalties of the juvenile defendants.

In this paper we applied the methods of complex analysis and systematization to comprehensively cover the problem of the pluralism of approaches to the interpretation «source of law».

Keywords: source of law, children's rights, protection, legal act, judicial precedent.

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The basis of the research sometimes is understood as information about the historic process, event or phenomenon. The source base consists of the sources system upon which historical knowledge is based and includes the sources created because of human activity [1, p. 86].

As R. P. Lutsky notes, the term «source of law» in the general theory of law has several meanings. This concept is ancient, thought it was introduced by the Roman historian Titus Livius (64/59 BC – AD 12/17). As he stresses, the Laws of the Twelve Tables were one of the fundamental sources of Roman law – the source of all public and private law.

The term «source of law» covers the certain range of the determinants contributed to the emergence and development of law, predetermined the very content of law. In the material sense, the «source of law» is the system of social and economic relations, in an idealist sense – the system of views and ideas that influenced the formation and functioning of the law. The most common is the interpretation of the term «source of law» as a way of external expression and consolidation of the rules of law.

R. P. Lutsky singles out seven sources of law in the general theory of law: (1) legal acts; (2) legal treaties; (3) international treaties; (4) judicial precedents; (5) legal customs; (6) legal doctrines; (7) religious and legal norms [3, p. 19].

However, as N. M. Parkhomenko notes, for the English Common law (that influenced the development of the American law) is characterized by the separation of the formal and material sources of law. The term «formal sources of law» is interpreted as «the will and power of the state, which is exercised by the courts» (only judicial precedents), and the term «material sources» (legislation, judicial precedent, opinions of lawyers) – the much broader category [4, p. 133].

The USA is a federal state with the federal law and of the law each separate states. Federal law is created at the national level and applies to the entire territory nation (all 50 states and the District of Columbia), and U.S. territories. The U.S. Constitution is a basis for federal laws and other legal acts; it establishes the systems of the bodies government power and the basic rights of every citizen. Individual state law has of each separate U.S. state and is applicable in that state [8].

The U.S. Constitution consists of the seven articles and 27 amendments. The Bill of Rights (1791) included the first ten amendments to the U.S. Constitution. Separate constitutional amendments proclaiming the common rights and freedoms of persons shall naturally relate to the rights and freedoms of the child. It is the freedom of speech and the freedom of religion according to the 1-st amendment. It is the protection against an unreasonable search and seizure according to the 4-th amendment. The 5-th amendment provides the legal rights, such as the right to be tried before a court and grand jury, the right not to be tried for the same crime twice, and the right to avoid self-incrimination. The 6-th amendment provides several protections and rights to an individual accused of the crime. The 8-th amendment protects the people from being subjected to cruel and unusual punishment. However, it was not always and not in all cases recognized that these rights and freedoms belong to the child, especially in criminal proceedings [30, p. 25].

Federal legal regulation covers a range of the most important issues of national importance, which should be regulated in the territory of each state equally. The U.S. Congress came to decide that certain issues of protecting the rights of the child should be regulated by the federal laws.

As for federal laws, it should be noted that they are systematized in the United States Statutes at Large – the official source of laws and resolutions passed by the Congress. Currently consists of 54 titles or sections [26].

For example, the murder of a child is considered a particularly serious crime (a first-degree crime) in the United States. The murder of a child has results for the guilty person by the imposition of the most severe punishment – death penalty or life imprisonment [28].

Regarding other issues of protecting the rights of the child, it is a problem of the child labor (second half of the nineteenth and early twentieth centuries). To overcome the problem, the Keating-Owen Child Labor Act (1916) was adopted by the U.S. Congress, which provided for a number of restrictions on the use of child labor [13]. The Fair Labor Standards Act of 1938 is a United States labor law that creates the right to a minimum wage, as well as «time-and-a-half» overtime pay when people work over forty hours a week. It also prohibits the employment of minors in an «oppressive child labor» [5].

Other issues of the federal importance include the issue of fulfilling the parental obligation to support minor children. The Child Support Recovery Act of 1992 and Child Support Recovery Act of 1994 are the federal statutes under which the willful failure to pay a past due support obligation with respect to a child residing in another state is a federal offense [23].

The U.S. legislation at the present stage contains a number of provisions about the non-discrimination of a person. The Multiethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996 are the federal acts that govern the issues on the foster and adopted children involving race, color or national origin [19].

Among other federal problems is the search for missing children. In the twentieth century, the U.S. Congress passed a number of laws preventing child abduction and facilitating the search for missing children. Among the legal acts is the Federal Kidnapping Act (known as the Lindbergh Law of 1932) – which made kidnapping across the state lines a federal crime and stipulated that such an offense could be punished by death [7]. The Missing Children Act of 1982 required the FBI to maintain a register of missing children at the National Crime Information Center for the law enforcement agencies to gain access to search for missing children [16]. The Missing Children Assistance Act was passed in 1984 to address the problem of missing and exploited children, and to assist their families [17].

There is a tendency to unify and «converge the laws» of the states to ensure the most uniform legal regulation in different American states. Therefore, in 1892, the Unified Legal Commission was established as a non-profit, American unincorporated association to bring clarity and stability to the critical areas of statutory law in different jurisdictions where uniformity is desirable and practical. Among adopted acts are the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, the Uniform Transfers to Minors Act [29].

As noted, the protection of the children's rights is also governed by the laws of the American states. For example, Massachusetts became the first state in the United States to regulate the institution of adoption (Massachusetts Adoption of Children Act of 1851) [14]. This Act became a model for adoption laws in many other states [12, p. 157].

But there were other adoption laws. Thus, the Minnesota Act of 1951 provided for the right of adoptive parents to refuse an adopted child who had physical or mental developmental disabilities [21, p. 317].

In 1899, the state of Illinois passed the State Juvenile Court Act – providing for the creation of the first juvenile court in the United States. This Juvenile Court was established in Chicago and considered criminal cases of crimes committed by children and cases of child custody [11, p. 157].

Some laws of the former metropolis by England were applied in colonial times, other laws were taken into account in American laws. During Elizabeth's reign, the issue of helping, or dealing with the poor became a greater one. The Poor Law was introduced in 1601 to address the issue. Pursuant to the Poor Law, the state shall take responsibility for children if parents do not take such responsibility or allow children to beg [24]. The similar legal ideas were taken into Massachusetts Act of 1642, according to which the local magistrates had the right to take children away from bad parents [20, p. 4].

The judicial precedent is an important source of law in the United States and is formed in the decisions of federal and state courts. So, A. Kozlovsky claims about the birth of empirical ontology and the philosophy of pragmatism in the states with an Anglo-Saxon legal system. There, judicial precedent partially replaced a complex law-making mechanism [2, p. 34].

Consequently, American judicial precedents are contained into the decisions of American courts. Article III of the U.S. Constitution establishes the federal judiciary: «The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.» The best-known power of the Supreme Court – a judicial review, or the ability of the Court to declare a Legislative or Executive act in violation of the Constitution, is not found within the text of the Constitution itself. The Court established this doctrine in the case of *Marbury v. Madison* (1803) [6].

Hammer v. Dagenhart (1918) was a U.S. Supreme Court case that dealt with the federal government attempting to regulate child labor through the Interstate Commerce Clause. The Supreme Court ruled in favor for Dagenhart, nullifying the Keating-Owens act, which attempted to regulate child labor [10].

The Supreme Court decision in Prince v. Massachusetts (1944) upheld a Massachusetts regulation that prohibited boys younger than age 12 and girls younger than age 18 from selling newspapers in the streets and public places, finding it was not in violation of the Fourteenth Amendment's free exercise of religion clause [22].

In case of Thompson v. Oklahoma (1988) the Supreme Court held that the cruel and unusual punishment clause of the Eighth Amendment, applicable to the states by the incorporation doctrine, prohibited the death sentence against a first-degree murderer who committed the offense at the age of fifteen [27].

In case of Roper v. Simmons (2005), there was a decision in which the U.S. Supreme Court held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18 [25].

In case of Graham v. Florida (2010), there was a decision by the U.S. Supreme Court held that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses [9].

In case of Miller v. Alabama (2012), U.S. Supreme Court held that mandatory sentences for life without parole for juvenile offenders, even in cases of murder, were a cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution [15].

In case of Montgomery v. Louisiana (2016), U.S. Supreme Court held that its previous ruling in Miller v. Alabama (2012), that a mandatory life sentence without parole should not apply to persons convicted of murder committed as juveniles, should be applied retroactively [18].

Conclusions. Thus, the peculiarity of the source base of the study of the protection of the children's rights is due to the constitutional status of the United States as a federal state. This feature led to the combination of the federal and local legal regulation, as well as organic combination of the statutory and precedent legal regulation. Therefore, the laws and court decisions were worked out to disclose the above issues. The U.S. Supreme Court in its decisions took the global trend of liberalizing criminal penalties of the juvenile defendants.

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ДЕЯКІ ПИТАННЯ ДОСЛІДЖЕННЯ ДЖЕРЕЛЬНОЇ БАЗИ ЗАХИСТУ ПРАВ ДІТЕЙ У США

Олена Ригіна

*Львівський національний університет імені Івана Франка,
вул. Університетська, 1, Львів, Україна, 79000,
e-mail: Olena.ryhina@lnu.edu.ua
ORCID ID: 0000-0002-8366-3365*

Проведено історико-правове дослідження окремих питань джерельної бази правового регулювання захисту прав дитини в США. Наукові розвідки у галузі дослідження становлення та розвитку захисту прав дитини в США, що прямо чи опосередковано стосувалися досліджуваного об'єкта, підготовані українськими та зарубіжними науковцями та які були використані безумовно є цінними з огляду на їхнє важливе наукове значення, розкриття низки проблемних питань. Однак досягнення повноти, всебічності та об'єктивності дослідження вбачаємо можливим здійснивши ґрунтовний науковий аналіз компонентів джерельної бази дослідження. І специфіка історико-правового дослідження вимагає, щоб джерельна база дослідження була представлена, головню, тими джерелами права, на підставі яких відбувалося правове регулювання досліджуваного об'єкта протягом різних періодів часу.

Розглядаючи питання про джерела права США, доцільно врахувати особливості федерального державного устрою країни, який обумовлює характерні риси системи права та джерел права. Характерно, що в США паралельно діє федеральне право, яке поширюється на всю територію США, а в кожному штаті діє власне право. При цьому положення нормативних актів, ухвалених на території штатів, не повинні суперечити федеральному законодавству.

Судові прецеденти як важливе джерело права в США, передусім відображені в рішеннях вищої судової інстанції країни (Верховного Суду США), своєчасно відображали загальносвітові тенденції еволюції захисту прав дитини, у такий спосіб пристосовуючи американське законодавство до своєрідних еталонів захисту прав дитини. Останні, як було встановлено, закономірно розвинулися внаслідок загальних цивілізаційних процесів лібералізації та гуманізації, зокрема перегляду системи кримінальних покарань, до яких могли бути засуджені особи, котрі вчинили злочини, будучи неповнолітніми.

Ключові слова: джерело права, права дитини, захист, правовий акт, судовий прецедент.

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