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International legal protection of the right to the education of migrant children

Sh.V. Tlepina¹, R.D. Akshalova², A.E. Ramazan³

¹L.N. Gumilyov Eurasian National University

²L.N. Gumilyov Eurasian National University

³L.N. Gumilyov Eurasian National University

(E-mail: ¹sholpanw@yandex.kz, ²rozaakshalova@mail.ru, ³asselerlankyzy@gmail.com)

Abstract. The education of children from migrant families is a pressing issue, with approximately 36 million school-age children and adolescents among international migrants, a number that continues to rise. Their education is an important long-term strategic priority and an investment in the future of the whole world.

The article examines the problems of the education of migrant children, considers the recommendations for different countries in the field of organizing access of children to preschool, primary and secondary education, the creation of a favorable environment. Special attention is given to issues related to access to education, adaptation in the educational environment, and overcoming language barriers.

The choice of a particular integration model depends on the immigration history of each country. Some integration models contribute to the formation of a multicultural society, while others aim at the complete assimilation of migrants. The selected models of realization of the right to the education of migrant children are reflected in the education system and determine how it will respond to the challenges associated with an increase in the number of children from migrant families in educational institutions.

The study results highlight the necessity of creating efficient policies to safeguard the educational rights of migrant children.

Keywords: international law, international migration, the right to education, access to education, education of migrant children, adaptation and integration of migrants.

Introduction

With increasing migration flows around the world, issues of protecting the rights of migrant children are becoming an integral part of the global debate. One of the key areas requiring immediate attention and research is ensuring that the educational rights of this vulnerable population are effectively protected.

In modern society, children's rights, in particular the rights of migrant children, are protected and ensured by regulatory documents both at the national level and at the international level, which include the 1951 Convention Relating to the Status of Refugees, the 1989 Convention on the Rights of the Child, as well as 1990 Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. Despite this, the level of execution and implementation of the norms of the above international documents differs in all countries that have accepted the obligations. At the same time, the situations associated with providing different levels of education also differ; for example, secondary and basic general education are less protected by law.

It has been proven time and again that education is a key factor in children's development and laying the foundations for a successful future. In early childhood, the acquisition of basic knowledge and skills not only broadens children's horizons, but also forms the basis for their personal and intellectual growth, which gives migrants the opportunity to break out of the circle of constant poverty. The fundamental social skills and ethical values learned through education serve as the foundation for developing responsible citizens and reliable members of society. At school, children learn to cooperate, develop communication skills and respect for the opinions of others, which are important for strengthening social connection and diversity in the future. Meeting challenges in a timely manner, successfully solving problems and seizing new opportunities are just a few of the benefits that education provides to host countries. This process not only strengthens government structures, but also equips societies with the tools needed to effectively respond to the changes that migration brings. Thus, education becomes an integral factor in ensuring that a country is able to better adapt to modern challenges, successfully solve complex problems and use the full potential that migration opens to the nation.

The methods of integration adopted in each country play a decisive role in how the educational system will respond to changes associated with an increase in the number of children from migrated families in schools.

Migrant children entering schools often face language problems. The language of instruction can be a major barrier to the integration of migrant children, even if they are accepted at school and attend classes. Insufficient knowledge of the language of the recipient country may create barriers to their educational adaptation. These language challenges include difficulties in learning material, social communication, and interaction with teachers and peers. Preschool institutions play a significant role in this. Attending preschool institutions helps children come to school with more developed language abilities and improves children's bilingualism [1].

Research methods

This study utilized a variety of methods to examine the protection of migrant children's educational rights. These methods were selected to provide a comprehensive understanding of the topic and to address the specific research questions posed in this study.

A comparative analysis was conducted to evaluate the educational rights and outcomes of migrant children in different regions.

An in-depth analysis of relevant legal instruments at local, national and international levels was conducted to assess the legal framework and policies related to the educational rights of migrant children. This analysis assisted us in evaluating the degree to which current laws are enforced in an effective manner.

General research methods such as induction, deduction, synthesis, and logical reasoning were used to analyze and interpret the data, draw conclusions, and construct a coherent narrative from the available data.

These research methods were complemented by a literature review on the topic, which provided a fundamental understanding of the issues, challenges and gaps in the protection of migrant children's educational rights.

By combining various research methods, a holistic view of the educational rights of migrant children was created by examining both quantitative and qualitative aspects. The integration of these methods allowed for a comprehensive analysis of the topic, contributing to a deeper understanding of the problems and possible solutions in this crucial area.

Discussion

The right to education is a crucial element for the respect and protection of human dignity. This right is embodied in article 26 of the Universal Declaration of Human Rights [2]. The entitlement to education is a fundamental and one of the utmost essential human rights, but migrant children often face difficulties and problems in realizing this right. Forced migrants who fled their homelands due to persecution or armed conflict, also who chose to move to another country in the hope of improving their social or economic situation, often find themselves in that situation. On the way to getting an education in a new country, they may face a number of obstacles.

Education, like nothing else, can open the door for refugees to full participation in the life of the host country. For ordinary migrant workers and their children, studying in the host country allows them to gain knowledge about the society in which they will live, helps them to adapt and fully unleash their intellectual potential and promotes social integration. Asylum seekers awaiting the decision of the local authorities regarding their future fate need to acquire basic communication skills in the language of the host country. This is especially true for unaccompanied minor children. For illegal migrants, access to basic education brings some stability to life, strengthens their self-confidence and makes them feel a little less pushed to the sidelines of society. The right to education implies the obligation of States to ensure that every person on its territory has access to the services and material resources necessary to acquire at least basic school skills.

International human rights law obliges States to ensure access to education for all people without any discrimination. The principle of non-discrimination applies to all persons of school age residing in the territory of a given State, regardless of their citizenship and legal status. Thus, even illegal migrants and undocumented persons can legitimately demand that their right

to education be respected, and the State is obliged to fulfill this requirement without delay and unconditionally: the law is categorical in this regard. Any discrimination is prohibited, because it would affect the very essence of this right. A prerequisite for the exercise of this right is to ensure equal access to educational institutions.

This point is tightly referred to the universality of human rights. In accordance with the 1951 Convention Relating to the Status of Refugees, individuals recognized as refugees have the right to the protection of their right to education (1951, Article 22). According to article 22 the Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. In addition, States should provide the most favorable treatment in access to education, the recognition of certificates, diplomas and degrees, and the awarding of scholarships [3].

According to article 3.1 of the 1989 Convention on the Rights of the Child in all actions concerning children, the best interests of the child shall be a primary consideration. This also applies to the provision of educational services to all migrants [4].

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990, ensures immigrants working in host country, their children and family members the same treatment as is accorded to nationals of a given country. According to article 30 of the Convention each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused [5].

Considering the regional level there is the European Convention on Human Rights which accepted in 1950. In the article 2 of the Additional Protocol to it affirms that nobody can be refused the right to education. In agreement with the norms of European Union law, minor asylum seekers and refugees should be granted access to education under equal conditions as citizens of EU States. This right can be invoked by anyone who is in the territory of a State party to the Convention, including migrants who do not have an official status. This provision, however, applies only to primary and secondary education [6].

On April 16, 2018, at the Palais des Nations in Geneva, the Office of the United Nations High Commissioner for Human Rights, together with UNICEF and IOM, introduced two interrelated general comments on children's rights within the frameworks of international migration. Comments No. 3/22 (CMW/C/GC/3-CRC/C/GC/22) [7] and No. 4/23 (CMW/C/GC/4-CRC/C/GC/23) [8] were prepared jointly by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child and published on November 16, 2017. General comment 3/22 deals with general principles, while comment 4/23 is a more in-depth study of the links between children's rights within the context of international migration and other children's rights, among them the right to education.

The joint general comments are aimed at promoting better protection of the human rights of children who are in a particularly vulnerable situation in the context of international migration. The specific purpose of these observations includes recommendations for States parties to develop basic guidelines and policies in the field of migration and childhood, as well as appropriate measures aimed at protecting and realizing the rights of children in the context of international migration, including the right to education. The general comments are also intended to facilitate

the interpretation of the relevant provisions of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child and the further implementation of the conventions in national legislation and practice. Regarding the right to education, general comments summarize the practice of Countries participating in international conventions and offer the following recommendations.

Joint General Comment No. 3/22, developed in collaboration with various stakeholders, underwent a comprehensive process that included extensive research, consultations, incorporation of international standards, and interagency collaboration within the United Nations in the context of international migration. One of the key sources in this area is the statement of the Committee on Economic, Social and Cultural Rights on the obligations of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1) [9], which emphasizes that protection from discrimination should not depend on the legal status of a person in the receiving country, and also emphasizes that all children, even those deprived of identity documents, have the right to receive an education [7].

The right to education is fixed in articles 30, 43 and 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [5] and in articles 28, 29, 30 and 31 of the Convention on the Rights of the Child [4]. All children should have unrestricted and equal access to all levels of the educational system. This includes primary, secondary and tertiary education, providing every child with the opportunity to receive a meaningful education tailored to their potential and interests. Equality in access to education is the inalienable right of every child, regardless of his origin, social status or other characteristics. This principle supports the idea of inclusiveness, where the educational environment is created to meet the diverse needs and abilities of each child, including migrants, providing favorable conditions for their full development [8].

The Committees urge States to immediately change the current rules and practices that prevent migrant children, in particular undocumented children, from enrolling in schools and other educational institutions. Also, consideration should be given to the prohibition of migration regime checks in schools and the provision of children's personal data to state migration authorities, thus creating a barrier between these institutions. This is due to the fact that the rights of migrant children to education as stipulated in international treaties are violated. In the interests of respecting the right of children to education, States are also recommended to avoid disrupting the educational process during migration procedures, if possible, avoiding situations where children have to change their place of residence during the school year, as well as providing them with assistance to complete compulsory education and a course of study at the time of reaching adulthood [8].

States have an obligation to recognize school certificates and diplomas of migrant children as equivalent qualifications in order to prevent stigmatization and ensure unhindered access to educational opportunities. This action promotes fair recognition of children's efforts and achievements in their educational journey, even when they change their place of residence, and creates conditions for successful social adaptation in the new educational environment [8].

In accordance with the principle of equal treatment, it is incumbent upon states to eradicate any discriminatory practices against migrant children and implement measures that take into account

the gender-specific aspects of their situation to remove barriers within the education system. In other words, as necessary, targeted measures should be taken to organize extracurricular activities to teach the language of the host State, including the provision of teachers and support for children, without discrimination. States are obliged to prevent segregation in education for migrant children by guaranteeing non-discrimination and ensuring equal opportunities. This includes providing assistance for learning a new language, psychosocial support, preventing physical and social isolation, and training teachers to work effectively with multi-ethnic and multicultural groups of students. Such measures aim to ensure equitable and quality education for all children, regardless of their migration status [8].

The countries should take concrete steps to promote intercultural dialogue between migrants and host communities and to prevent xenophobia and all forms of discrimination and related intolerance against children of migrants. Additionally, the inclusion of human rights-related educational topics in the curriculum, such as non-discrimination, immigration, migrant rights, and children's rights, will reduce the risk of xenophobia and other forms of discrimination that may affect immigrant integration in the long run. It helps to prevent discriminatory attitudes [8].

Despite the numerous legal and regulatory documents adopted to protect children's rights, there are also numerous violations of these rights.

The case of a Moroccan national and the State of Spain, which was considered by the UN Committee on the Rights of the Child in 2021, is a case in point. The author's son was born and raised in Melilla, Spain, but was a Moroccan national. The author claimed that the State party had violated her son's rights under articles 2, 3, 28 and 29 of the Convention.

The violation was related to the non-admission of her son to the local elementary school without any explanation, despite the fact that the author had collected all the necessary documents. The following school year, the author applied again to enroll her child in school, but the application was again rejected.

Consequently, the author appealed to higher authorities and the judiciary, but no results were obtained. The author then applied to the Committee on the Rights of the Child. The first appeal was rejected due to failure to exhaust all domestic remedies. In the second appeal, the State party, i.e. Spain, requested to leave the appeal without consideration, as the minor had been admitted to school [11].

Violations occur in Kazakhstan as well. In the capital there was a case when the child of a foreign citizen who does not plan to take Kazakhstani citizenship was given a place only in an evening secondary school, which is a gross violation of the Convention on the Rights of the Child and national legislation on the protection of children's rights.

Results

Despite the existence of a number of international agreements regulating the right of migrant children to education, in practice, host countries face numerous problems and dilemmas.

Firstly, in the interests of its own population, the State may seek to prevent illegal migrants from gaining a foothold in society, which may happen due to their education, and restrict access to already scarce resources only to those foreigners who have a residence permit. At the same time, in the future, the State may be interested in foreign labor due to the aging of its population.

On the other hand, migrants justifiably want to become full members of society, striving to participate in its life and social integration, and education plays a key role in this process. And if States can decide on the allocation of financial resources at their discretion, they must unconditionally fulfill the obligations to provide support and protection that they voluntarily assumed by becoming parties to international human rights agreements. Access to elementary or basic education should not be restricted – this is a fundamental human right, and it must be respected in all circumstances.

Practice shows that some refugees, unable to return to their homeland, remain living in the host country. In this regard, the State authorities at the national and local levels should take preliminary measures and develop an educational policy that takes into account the cultural characteristics of migrants and promotes their early integration into society and employment [10].

In this regard, the issue of finding a balance between meeting the educational needs of young migrants and the different legal status of citizens of the relevant State and migrants with regard to access to education is of paramount importance. In particular, it is recommended to provide migrants with the opportunity to learn the language of the host country as soon as possible after their arrival on its territory.

Conclusion

In light of all the above, there are the following conclusions:

- the rights of migrant children to education are enshrined in international law;
- children should be able to attend school and this should not depend on their migration status. It is essential to remove legislative barriers that prevent migrant children from attending school;
- it is important to ensure that immigrant families have access to early education. There is a need to contribute the development of bilingualism for children who do not speak the host language at home. It aims to help children of immigrant families to integrate into the host country.
- teachers should be prepared to do their jobs in the context of ethnocultural diversity, as well as before starting their teaching activities and during the course of their work;
- to improve educational opportunities for children from immigrant families, it is important that educational authorities and institutions focus on combating discrimination, improving curriculum content, training teachers, and developing majority language learning programs.

It is extremely important to achieve universal recognition of the right of migrant children to education as an inalienable human right, and not just one of the tasks within the framework of State activities. Both the country's governing bodies and local authorities, as well as the school authorities, should realize this and take appropriate measures.

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Tlepina Sh.V. approved the final version of the article for publication;

Akshalova R.D. made significant contributions to the concept or design of the work; collection, analysis or interpretation of the results of the work and agreed to be responsible

for all aspects of the work, appropriately examining and resolving questions related to the reliability of the data or the integrity of all parts of the article, edited the text of the manuscript;

Ramazan A.E. carried out an analysis and synthesis of literature data, wrote the text and/or critical revision of its content, analyzed and summarized the research results, edited the text of the manuscript and designed the manuscript.

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Ш.В. Тлепина¹, Р.Д. Акшалова², А.Е. Рамазан³

¹Л. Н. Гумилев атындағы Еуразиялық ұлттық университеті

²Л. Н. Гумилев атындағы Еуразиялық ұлттық университеті

³Л. Н. Гумилев атындағы Еуразиялық ұлттық университеті

Мигрант балалардың білім алу құқығын халықаралық құқықтық қорғау

Аңдатпа. Мигранттар отбасынан шыққан балаларға білім беру өзекті мәселе болып табылады, себебі халықаралық мигранттар арасында мектеп жасындағы балалар мен жасөспірімдер саны 36 миллионға жуық және бұл көрсеткіш жылдан жылға өсуде. Олардың білімі бүкіл әлемнің болашағына маңызды ұзақ мерзімді стратегиялық басымдық және инвестиция болып табылады.

Мақалада мигранттар отбасыларынан шыққан балаларға білім беру, олардың білім алу құқықтарын халықаралық құқық контекстінде қорғау мәселелері қарастырылады, мигранттар отбасыларынан шыққан балалардың мектепке дейінгі, бастауыш және орта білімге қол жеткізуін ұйымдастыру саласында әртүрлі елдер үшін ұсыныстар, оларды оқыту, бейімдеу және қолайлы орта құру тәсілдері қарастырылады. Білімге қол жеткізу, білім беру ортасында бейімделу және тілдік кедергілерді жеңу мәселелеріне ерекше назар аударылады.

Интеграцияның нақты моделін таңдау әр елдің иммиграциялық тарихына байланысты. Кейбір интеграциялық модельдер көпмәдениетті қоғамның қалыптасуына ықпал етеді, ал басқалары мигранттарды толық ассимиляциялауға бағытталған. Таңдалған мигрант балалардың білім алу құқығын қорғау модельдері білім беру жүйесінде көрініс табады және оның білім беру мекемелеріндегі мигранттар отбасыларының балаларының көбеюіне байланысты қиындықтарға қалай жауап беретінін анықтайды.

Зерттеу нәтижелері білім беру саласында мигрант балалардың құқықтарын қорғауға бағытталған тиімді саясатты әзірлеу қажеттілігін көрсетеді.

Түйін сөздер: халықаралық құқық, халықаралық көші-қон, білім алу құқығы, білім алуға қолжетімділік, мигрант балалардың білімі, мигранттардың бейімделуі және интеграциясы.

Ш.В. Тлепина¹, Р.Д. Акшалава², А.Е. Рамазан³

¹*Евразийский национальный университет имени Л.Н. Гумилева*

²*Евразийский национальный университет имени Л.Н. Гумилева*

³*Евразийский национальный университет имени Л.Н. Гумилева*

Международно-правовая защита образовательных прав детей-мигрантов

Аннотация. Образование детей из семей мигрантов является актуальной проблемой, поскольку среди международных мигрантов насчитывается около 36 миллионов детей и подростков школьного возраста, и эта цифра продолжает расти. Их образование является важным долгосрочным стратегическим приоритетом и инвестицией в будущее всего мира.

В статье рассматриваются проблемы образования детей из семей мигрантов, защиты их образовательных прав в контексте международного права, рассматриваются рекомендации для разных стран в области организации доступа детей из семей мигрантов к дошкольному, начальному и среднему образованию, подходы к их обучению, адаптации и созданию благоприятной окружающей среды. Особое внимание уделяется проблемам доступа к образованию, адаптации в образовательной среде и преодолению языковых барьеров.

Выбор конкретной модели интеграции зависит от иммиграционной истории каждой страны. Некоторые интеграционные модели способствуют формированию мультикультурного общества, в то время как другие направлены на полную ассимиляцию мигрантов. Выбранные модели реализации права на образование детей-мигрантов находят отражение в системе образования и определяют, как она будет реагировать на вызовы, связанные с увеличением числа детей из семей мигрантов в образовательных учреждениях.

Результаты исследования подчеркивают необходимость разработки эффективной политики, направленной на защиту прав детей мигрантов в области образования.

Ключевые слова: международное право, международная миграция, право на образование, доступ к образованию, образование детей-мигрантов, адаптация и интеграция мигрантов.

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Сведения об авторах:

Тлепина Ш.В. – заң ғылымдарының докторы, профессор, Л.Н. Гумилев атындағы Еуразия ұлттық университеті заң факультеті халықаралық құқық кафедрасының меңгерушісі, Қ. Сәтпаев көш., 2, 010000, Астана, Қазақстан.

Ақшалова Р.Д. – философия докторы (PhD), Л.Н. Гумилев атындағы Еуразия Ұлттық Университеті заң факультеті халықаралық құқық кафедрасының аға оқытушысы, Қ. Сәтпаев көш., 2, 010000, Астана, Қазақстан.

Рамазан А.Е. – Л. Н. Гумилев атындағы Еуразия Ұлттық Университетінің халықаралық құқық кафедрасының 2 курс магистранты, Қ. Сәтпаев көш., 2, 010000, Астана, Қазақстан.

Тлепина Ш.В. – доктор юридических наук, профессор, заведующая кафедрой международного права юридического факультета, Евразийского национального университета имени Л.Н. Гумилева, ул. К. Сатпаева, 2, 010000, Астана, Казахстан.

Ақшалова Р.Д. – доктор философии (PhD), старший преподаватель кафедры международного права юридического факультета Евразийского национального университета имени Л.Н. Гумилева, ул. К. Сатпаева, 2, 010000, Астана, Казахстан.

Рамазан А.Е. – магистрант 2 курса кафедры международного права Евразийского национального университета имени Л. Н. Гумилева, ул. К. Сатпаева, 2, 010000, Астана, Казахстан.

Tlepina Sh.V. – Doctor of Law, Professor, Head of the Department of International Law, Faculty of Law, L.N. Gumilyov Eurasian National University, K. Satpayev str., 2, 010000, Astana, Kazakhstan.

Akshalova R.D. – Doctor of Philosophy (PhD), senior lecturer at the Department of International Law, Faculty of Law, L.N. Gumilyov Eurasian National University, K. Satpayev str., 2, 010000, Astana, Kazakhstan.

Ramazan A. E. – 2nd year master's student of the department of international law of the L. N. Gumilyov Eurasian National University, K. Satpayev str., 2, 010000, Astana, Kazakhstan.



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