

Welfare, a concept that can be adhered into the jurisdictional protection of fundamental rights for childhood.

Every child has the right to the protection measures that his minor condition requires from his family, society and the State.

- Convention on the Rights of the Child, article 19.

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ABSTRACT: *There is a disparity between reality and what the law establishes from the doctrine, although legal norms protect minors, it is a constant question its enforcement, it does not consist of simply analyzing that what the norm establishes is carried out but that its application must be in a broad sense, so that the subject of law, the minor in our case, is benefited in their social, physical and psychological development, we speak of the broader protection for, children and adolescents. In this position, we find the term welfare, which is addressed by the present research with a qualitative approach, with the purpose of explaining it, using analytical, deductive and descriptive methods, subjecting it to a documentary contrast through comparative law and case analysis, establishing its intimate relationship with Human Rights, for this vulnerable group, considered in vulnerable conditions due to their autonomous limiting condition in the exercise of their rights, in that their protection corresponds jointly and directly to the State, parents or those who exercise their care, in order to integrate it as a parameter to consider in the jurisdictional protection of children and adolescents, referring to an effective manifestation of the so-called conventionality control.*

KEYWORD – *Welfare, Conventionality control, Integral protection, To be and Must be, Dignified life, Children, Adolescents, Infant rights*

I. INTRODUCTION

In order to define the term welfare in the strict sense, it is necessary to refer to the general meaning, in addition to the words of Margarita Valdés [1] who said to do so two questions must be addressed, the first of them is to know in the virtue of what circumstances, aspects or characteristics of the life of a person we should attribute welfare to that person and the other is to establish how we should to measure the welfare of people in order to make interpersonal comparisons of welfare possible "(69), for his part, Sanchis [2] states that "the welfare is not a quantitative concept that can be measured in homogeneous units "(158), but the United Nations Children's Fund (UNICEF) [3] concludes that "when measuring and analyzing child welfare you cannot leave aside the voice and opinion of children themselves, that is, we cannot limit ourselves to what we adults think we know "(24), the scientific society [4] alludes that the study of welfare in childhood and teenager is a field that requires research development and advancement, in this position according with various international researchers in the field, indicators on childhood and adolescence should contemplate the use of performance indicators and direct measures of welfare rather than the use of indirect indicators; that have as a subject of analysis and information

the child (instead of the parents, the family or the home); that give priority to indicators of the current welfare of children, rather than indicators of future welfare or fulfillment as adults (diagnosing what happens to their living conditions in the present); that use indicators on their own opinions, their feelings and their own perspective of life, what are usually called subjective indicators.

This assessment that must be undertaken in the same way before a judicial action.

If we refer to a more generic explanation of the concept of welfare, we should start based on the definition of the Royal Spanish Academy [5], who separates the word welfare (*bien – estar*), and jointly gives it three conceptualizations

Set of things necessary to live well, a comfortable life or supplied with everything that leads to having a good time and with tranquility and a state of the person in which the proper functioning of his somatic and psychic activity is made sensitive.

Now, it is difficult, as Bromley [6] stated, to want to give a judicial definition to this term, despite this the doctrine refers to various concepts, for example Malem Señal [7] indicates that welfare is constituted as

Those conditions that are necessary for a decent life and that the State should promote or ensure. It would be not only the State's duty to guarantee the satisfaction of the population's basic needs, but also to take the pertinent measures in order to improve their quality of life (143).

Holder is quoted in Castilla-Peón [8], provides another way of defining well-being as

A positive physical, social, and mental state, not just the absence of pain, discomfort, or disability, which requires that basic needs be met, that individuals have a sense of purpose, that they feel capable of achieving personal goals, and participating in society. It is powered by conditions that include strong interpersonal relationships, inclusive communities, good health, personal and financial security, rewarding employment, and a healthy and attractive environment.

Rivero Hernández [9] takes up Bromley's recognition of Judge Lindley's definition, in the *Re McGrath (Infants)* case of 1893

The child's welfare is not measured only by money or physical comfort. The word welfare must be taken in the broadest sense. Moral and religious welfare must be taken into consideration as much as physical welfare. Neither should bonds of affection be ignored.

Although following Bromley the best definition was provided in New Zealand, by Judge Hardy Boys, in the case *Walter v. Walter and Harrison* (1981), who states:

Welfare is an all-encompassing word. It includes material welfare, both in the sense of an adequacy of resources to provide a pleasant place and a comfortable standard of living, in the sense of an adequate care to ensure the maintenance of good health and due personal pride. However, although the material must be taken into account, it is a secondary matter. Stability and security, caring and caring and comprehensive advice, a warm and compassionate relationship, which are essential for the full development of the child's own character, personality and talents are more important.

For H.K. Bevan [10], welfare state must be understood in a broad sense, so that "it includes not only the physical and mental welfare of the minor, but also the moral, spiritual and increasingly emotional (affective) welfare", and adds the importance of "the specific circumstances of the case".

Concluding that although there is no universal definition, we have coincidences in the various ones presented, which allows us to point out that this terminology refers applied in the legal area and being about minors, to integrity, external and internal, we can also notice that the concept of well-being highlights that of "decent life", hence the importance of addressing it, for this we refer to three facets: human life, in its bodily forms, and psychic; the social life of the people, from which they carry out works in common; and the life of nature. The correct fulfillment of these three points, make the human being not only to have vital functions, but to live fully, which suggests integrity and dignity, which is linked to the right to human development, although considered that legally does not enjoy a binding character, it does constitute a political commitment and as such, it provides an important framework for action to the creation and implementation of policies and programs, both internationally and nationally, necessary for the enjoyment and protection of all human rights.

II. JURISDICTIONAL PROTECTION OF THE MINOR

It is pertinent to point out that in the aforementioned investigations [11], it is justified that the ownership of children includes the recognition of such rights from the political, philosophical and legal fields (62), before to exposed "The defense and protection of human rights through the jurisdictional means, in which the judicial authorities analyze the lawsuits that are presented to them for alleged violations of fundamental rights and will determine whether in fact there is a violation in a specific case, doing an examination of constitutionality and legality on it "(102) [12], comprehending that the fundamental rights that protect children and adolescents, who enjoy this protection firstly because they are human beings and later because of their condition as minors is said to enjoy special protection, to which correspond specific duties of the family, society and the State. Although the Rights enshrined in the Convention on the Rights of the Child, emanate from the American Convention of Human Rights, it is necessary to refer to the CRC as the main international instrument that protects this vulnerable group, not without also considering the Political Constitution of the United Mexican States (Spanish: Constitución Política de los Estados Unidos Mexicanos) or any supreme homologous instrument of each State in its sovereignty and autonomy, which reaffirm these rights recognized in the various international treaties in which the State is a signatory to identify, create, promote, protect all of rights that serve the best interests of the child.

Bellof Mary affirms [13], that "the CRC represents a lower limit on which the rights of children can (and must) be expanded progressively, but never regressively (92)". It establishes the minimum standard, but also the maximum, regarding the treatment that all minors must receive. Within it, the doctrine of comprehensive protection was established normatively, through which the work of the administrators of justice is delimited to the resolution of conflicts of a legal nature, procedural rights are strengthened and obligations of the State to establish "public policies of integral character that respect the rights and protected rights " are born, In this way, the doctrine has pronounced that

The CRC represents an ethical minimum, since all the countries that signed and ratified it must observe it as a base, of which they cannot be below. In other words, the CRC represents a lower limit on which children's rights can (and must) be expanded progressively, but never regressively.

Bearing in mind that "the judges and all authorities in their respective areas of competence have a responsibility to preserve, through the necessary measures, the protection of children by acting in compliance with the respect of their fundamental rights, recognized in the Magna Carta or an instrument of greater hierarchy in the States and the various international treaties "(160) [14], it is necessary to list the rights to which we refer

Right to life, survival and development

Right of priority

Right to identity

Right to live as a family
Right to substantive equality
Right not to be discriminated
Right to live in welfare conditions and to a healthy integral development.
Right to a life free of violence and to personal integrity
Right to health protection and social security.
Right to the inclusion of children and adolescents with disabilities.
Right to an education
Right to rest and recreation
Right to freedom of ethical convictions, thought, conscience, religion and culture
Right to freedom of speech and access to information
Right of participation
Right of association and assembly
Right to privacy
Right to legal certainty and due process
Right to a healthy environment.
Right and access to safe water.
Right to decent housing.
Right to childhood and adolescence.
Right and access to culture.
Right to identity and registration.
Right to physical culture and sport.

The principles are at all times are mandatory to apply in an imperative manner, the essential peculiarity of a process in which minors are involved (150) [15]. The fourth article 4° of the Political Constitution of the United Mexican States (Spanish: Constitución Política de los Estados Unidos Mexicanos) relating to the family and within which the principle of the best interests of the minor is also mentioned, the general objective of protecting this is, in itself, an end legitimate and also imperious. The Supreme Court of Justice of the Nation (SCJN) in Mexico reiterates that this regulatory principle of the regulation of the rights of the child is based on the very dignity of the human being, on the characteristics of children, and on the need to promote their development, taking full advantage of their potential. In the same sense, it should be noted that to ensure the prevalence of the best interests of the child, the preamble to the Convention on the Rights of the Child establishes that they require special care, and in the American Convention it states that they must receive special protection measures. The prevalence of the best interests of the child must be understood as the need to satisfy all the rights of children, which obliges the State and radiates effects in the interpretation of all the other rights of the Convention when the case refers to minors. Likewise, the State must pay special attention to the needs and rights of children, in consideration of their particular condition of vulnerability.

The jurist D'Antonio [16], points out that "the right of minors presents as its most outstanding distinctive note the protective character, which guides all its norms and belongs to the essence of this branch of law", also described by Mendizábal Osés [17], "as a singular right, eminently protective, which aims at the integral protection of the human being, from its conception until it reaches, after its birth, the full capacity to act, which begins with the legal age, to integrate him harmoniously and fully into social coexistence ”.

The particularity of the subject of this discipline, is to be fully developed in its biological, psychological and consequently in the social aspects, it makes the right of minors imbued with a tuitive orientation that is present at all times and that becomes, at the same time, in an interpretive principle. Thus, the applicable criterion is established when there is doubt in elucidating the normative sense, and must be in favor of what is the most favorable or beneficial for the minor (pro homine). Let us take as an example the right to food, the objective of which is not only to provide food to the child, but also in doing so meet the criteria of welfare, that protects it without affecting any other right that is linked to it, such as the right to health.

There are two ways for the protection of rights in the Mexican territory, the first one, carried out through the jurisdictional means, in which the judicial authorities analyze the lawsuits that are presented before them for alleged violations of fundamental rights and they will determine if in fact there is a violation in a specific case, making an examination of constitutionality, control of conventionality and legality on it, the other way, is through non-jurisdictional organizations, who are responsible for the protection of rights, in the case of Mexico they are divided into two main channels: on one hand, there is the National Human Rights Commission (CNDH), and on the other hand, there are the commissions in the states (102) [18]. In the case of Mexico, the Supreme Court of Justice of the Nation is the highest body for jurisdictional protection of fundamental rights and in the Political Constitution it indicates the amparo trial as one of the means of defense contemplated to carry out this activity, while Migallón and Melgarejo [19] express that “the amparo has worked in our country as a way to go from the simple enunciation of human rights to a procedural instrumentation to avoid their violations. It has been, in fact, the jurisdictional mechanism for the protection of rights par excellence” (143).

III. CONCLUSION

To express the inexistence of a universally accepted definition of Welfare, as a substantive concept that expresses all the rights that satisfy the principle of the best interest of the minor, from an applicative but non-limiting perspective, for those who exercise substantively and / or adjectively the right of this vulnerable group called children or adolescents, it is clear that this applicative behavior refers to the minimum and non-negotiable parameters in which an adequate and complete protection of the minor must be considered.

Building special protection of the various problems, applying effective regulatory mechanisms, referred to as legal and comprehensive protection of minors, the fundamental rights of children and adolescents must be understood in a broad sense, including in general terms the material, moral, religious and the bonds of affection that are essential for the full development of the child's own character, personality and talents, giving importance according to the specific circumstances of the case.

Locates the international Treaties and the Political Constitution identifying this pressing right, of which several individual rights corresponding to the good physical and psychological development of minors are detailed.

Distinguish the fundamental rights that understand the concept of child welfare for their development, starts from a premise of the obligation of protection and care, of which, although it is true that the State is the main guarantor of these rights, also corresponds to the family, this coadjuvant and obligatory duality applying the broadest protection of facts and rights for children and sons and daughters, the exact obligation to provide medical assistance, healthy and nutritious food, adequate clothing, integral hygiene, assistance in education, school activities, leisure, cultural activities, decent housing, among others.

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