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TO THE QUESTION OF CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHTS AND FREEDOMS OF THE CHILD IN THE RUSSIAN FEDERATION

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ABSTRACT

Child is a small citizen of his country, a tiny, but very significant part of society. Protection of his rights, freedoms and legitimate interests is the main task of the state. His physical and spiritual development, social and legal security, his worldview, attitude of his parents, their substitutes and the state depends on what his life will be before the age of majority. The formation of the child's personality is the basis for the formation of the personality of an adult person. The issues of constitutional and international legal regulation, protection and ensuring the rights and freedoms of children in the modern world, the process of creating a single mechanism for their implementation, the need to create a special legal status of the child as an essential element of society and the state are considered in this article.

KEY WORDS

Rights and freedoms of the child, ensuring the survival, protection and development of children, juvenile justice, the legal status of the child.

In legal state, the child plays an integral role. Despite the fact that child is given of certain rights and freedoms at birth and the fact of his birth secures these rights for him, any child has very vulnerable legal needs. The child's mental, physical, moral, political, and intellectual development cannot fully allow him to ensure the proper realization of his rights and freedoms. In this regard, the state is a single legal mechanism, thus, it should take care of ensuring the rights of the child. In turn, such competence of the state will allow creating a really functioning regulatory framework, enforcing the existing letter of the law in order to form the full legal status of the child as a member of society.

In accordance with the current legislation of the Russian Federation, the legal status consists of the position of its subject endowed with a set of rights and obligations by the norms of law. Such definition justifies the legal status of the person and citizen, but not a child. The above concept cannot fully formulate his legal status due to the particular specificity of the object under consideration.

According to L.N. Degtyaeva, the status of the child provides for a special aspect that belongs to certain categories of citizens, which include pensioners and handicapped people. The general legal status of a person is the basis of status as a whole. In this regard, the legal status of this category may have its own specifics, due to the presence of additional rights and obligations, benefits or restrictions [1].

We agree with the opinions of the authors N.I. Matuzov and A.A. Vorotnikov who believe that one of the tasks of legal science is the improvement of statuses [2].

Currently, many politicians, journalists, scientists, including public are seriously puzzled by the legal status of children not only in Russia but also abroad.

It should be noted that Chapter 2 of the basic law of the state is the guarantor of the rights and freedoms of citizens, including the protection of the family, maternity and childhood by the state (art. 38) [3]. In our opinion, at the present stage of development of the Russian Federation, the legal status of the child is directly dependent on social family support and forces and means of the state for ensuring the realization of protection of his rights and interests.

It seems that the above provisions guaranteeing the rights and freedoms of a person and citizen do not have proper regulation of the problem. Thus, in the regulatory and legal framework of the Russian legislation, up to the present, there is still no single legal act

providing the constitutional and legal realization of the rights and freedoms of the child.

According to Vorobyov E.D., a child, as a physically and mentally immature creature, should remain under scrutiny and control of the state and be provided with help, getting at the same time in the area of public concern [4].

In March 2009, being the President of the Russian Federation, D.A. Medvedev said that in Russia there is no system for the protection of childhood that corresponds to the norms of today. At the same time, he noted that Russia cannot do without it. After 10 years, such a system has not yet been created. In today's world, children are at even greater risk than before, cases of abuse of the rights and freedoms of the child have become more frequent, children's homelessness is increasing every year, drug addiction and alcoholism have swept over modern society, material distress encourages parents to violate the rights, freedoms and legitimate interests of children or simply abandon them. Under these conditions, the existing legal norms cannot compensate for the need to create a single effective legal mechanism for regulating the constitutional rights and freedoms of children.

The tasks of protecting the rights and freedoms of children, both for the Russian Federation and for other countries of the world, are of top priority today. Degtyareva L.N. rightly speaks about this issue. In her opinion, society will need to create an effective mechanism for the legal regulation of constitutional rights and legal interests of minors [1, p.4].

Note that it is impossible to implement the observance of human rights without observance of the child rights. This statement of contemporaries is true and the international legal system has learned it well. Despite the fact that Russia ratifies international legal acts in this field, the dominant number of them remains formal, with no due effect throughout its territory.

According to O.A. Bondarenko, the existing kind of mechanism for the implementation of the constitutional rights and freedoms of the child is intended to implement the system of interrelated elements that have structural differences and can affect, as well as a set of forms, techniques, methods and socio-legal factors that can stimulate the transition of the constitutional rights and freedoms of the child from formalization to the actual use of them [5].

For the first time, the need to protect the rights of the child was mentioned in the Geneva Declaration on the Rights of the Child at November 26, 1924. Subsequently, its prescriptions formed the basis for the creation of the 1959 Declaration of the Rights of the Child. In this regard, its principles proclaimed that the child, as a creature physically and mentally immature, needs special care, legal security and protection, and this should not depend on whether he was born or is still in the womb. The next step towards the development and reform of international legislation in the field of the protection of the children rights and freedoms was the adoption of the 1989 Convention on the Rights of the Child. Russia became the country that ratified this Convention on September 15, 1990, thereby undertaking to prioritize ensuring the rights and freedoms of the child. However, the Constitution of the Russian Federation, adopted in 1993, proclaimed only guarantees of human and civil rights and freedoms, without securing the rights of children, which are still governed by international law.

The provisions of Part 4, Article 15 of the Constitution of the Russian Federation provide that the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than those provided by law, then the rules of the international treaty shall apply. Over the 29-year period, since Russia ratified the Convention on the Rights of the Child, the vast majority of its normative acts have been brought into line with international standards. This made it possible to further initiate the settlement of family law.

The ratification of the Convention served as a platform for the creation of the Family Code of the Russian Federation in 1995, the provisions of which in a certain sense are aimed at protecting the rights and freedoms of the child (p.11). Thus, the legislator has introduced to some extent the legal status of ensuring the protection of the rights and freedoms of children within the framework of criminal, civil and other codes.

The Family Code of the Russian Federation was the beginning of the creation of legislative acts, provisions of which are designed to protect the constitutional rights and freedoms of the child and which in force in Russia at present. Among them are the following federal laws ensuring the rights of the child: "On the Basic Guarantees of the Rights of the Child in the Russian Federation" 1998, "On the protection of children from information harmful to their health and development" 2010, Decree of the President of the Russian Federation "On additional measures to ensure the rights and protection of the interests of minors of the Russian Federation" 2011, "On the basis of the system for the prevention of neglect and juvenile delinquency" 1999, "On additional guarantees for social support for orphans and children left without parental care" 1996, "On guardianship and trusteeship" 2008 and others. We believe that, in essence, these are formally valid legal acts that do not have a wide legal application.

From September 2009 in Russia, in accordance with the Decree of the President of the Russian Federation No. 986, the constitutional rights and freedoms of the child should be protected and ensured by a new official, namely the Commissioner under the President of the Russian Federation on the rights of the child. Within 2 years since the adoption of the law, the children's ombudsman appeared in every region of Russia. The competencies of the indicated official are not legally enshrined in the Constitution or in any other legal act. His functions are minimized — send requests and receive answers to them. There is no talk about any effective regulation and ensuring the constitutional rights and freedoms of children. The children's ombudsman does not even have the ability to protect the constitutional rights and freedoms of children, which again indicates a formal attitude to the existing problem. Since 2015, it has become possible to assign the duties of a regional children's ombudsman to an ombudsman for human rights in the constituent entity of the Russian Federation. The formalism of the decisions made in the field of the rights and freedoms of the child does not leave indifferent.

Contrary to the provisions of the Convention, which establish the inalienability of the child's right to life and ensure their maximum survival and healthy development by all countries that ratify it (art. 6) and the right to benefit from social security (art. 26), in 2016, the children's ombudsman of Perm Krai supported a regional law that does not entitle mothers to receive regional childbirth allowance due to the fact that they raise children without fathers. In her opinion, a woman should not give birth to children from irresponsible fathers, and the state should not support them in this. The financial aspect is one of the main at the birth and upbringing of the child, the decision of Ombudsman for Children's Rights to refuse material assistance once again emphasizes the predominance of the external form over its content. The financial insecurity caused the dominant number of cases when mother abandons the child. Without the necessary state support, including being on parental leave, it is impossible to ensure the healthy development of the child (Article 6 of the Convention), provide him with the necessary standard of living for his spiritual, physical, mental and social development (Article 27 of the Convention) including providing the child with the opportunity for cultural and creative activities, leisure and recreation (Article 31 of the Convention). The state, guarding and protecting the rights of each child to a decent life and the inalienable right to live with their parents, must first of all solve this problem.

The constitutional rights and freedoms of the child in Russia are not regulated and not protected; the absence of a single legal document regulating the constitutional rights and freedoms of the child leads to the fact that they are properly provided only by the provisions of the Convention, but not by constitutional norms.

Today, the Convention on the Rights of the Child is the main effective tool in achieving the rights of children, even though there are a lot of legal acts in various states that contain provisions to ensure the rights and freedoms of the child. The Convention on the Rights of the Child positions it as an individual who has not only physiological rights (for example, the right to life), but also, as far as possible, right to know his parents (art. 7), freely express his opinions (art. 11), to think freely, act according to conscience and choose the religious direction for yourself (art. 14), have access to information that would contribute to his social, spiritual and moral well-being, as well as support the healthy physical and mental

development of the child (art. 17), in case of his mental or physical inferiority, the child should not be deprived of anything, his life should be full and dignified, he should not lose self-confidence or lose his dignity and living conditions should facilitate his dynamic participation in the life of society (art. 23) [6].

According to the provisions of the Convention on the Rights of the Child, regardless of origin, color, race, sex, language, religion, none of the children can be subjected to discrimination either by parents or their substitutes or by other family members.

But the annual statistics of infringements on the rights and freedoms of the child claims the opposite. Every year the number of crimes and offenses committed against children, the predominant part of which is committed by his relatives, increases. Infringement on the rights and freedoms of the child is the main problem of civil society that takes the scale of the disaster.

Every day, many children around the world are exposed to hazards that impede their growth and development. They are subject to incalculable suffering, being the victims of war and violence or victims of negligence, cruelty and exploitation [7].

In the first nine months of 2018, 917 children were killed by criminals in our country.

The Investigative Committee of the Russian Federation made public the horrendous statistics that during these months nearly 15.5 thousand criminal cases were opened regarding crimes against minors. According to statistics from the investigative department, most crimes are committed against minors aged 15-17 years old - the number of victims was 5225. Among children aged 11 to 14 years there are 3640 victims, 6-10 years old - 1647, under age 5 - 789, under one year - 374 [8].

As previously emphasized, Russia is a country party that ratified the Convention on the Rights of the Child, but according to the statistics above, it has not been able to translate into reality all prescriptions of Convention. The imperfection of the Russian legislation in the sphere of protection of the rights and freedoms of the child leads to constant encroachment on their rights and freedoms. It is impossible to protect children without having legal resources to protect them. It is absolutely obvious that Russia is not yet able to protect a child from engaging in illicit trafficking in narcotic drugs and psychotropic substances (p. 33), from sexual violence (art. 34), from restricting or depriving children of their liberty by abduction or sale (art. 35), from any form of exploitation that can harm the welfare of the child (art. 36).

Despite the considered provisions of the international legal document, children are endangered every day, and Russia, on the basis of the statistics provided, is not able to ensure the protection of their constitutional rights and freedoms at the proper level.

The negative impact on the child by an adult affects his consciousness, leads to disregard of established and generally accepted norms and rules, devalues the rights and freedoms of other people in his consciousness, as a result of which the child himself becomes the subject of offenses and crimes.

According to the data of the Ministry of Internal Affairs of the Russian Federation, a total of 1490.9 thousand crimes were recorded during the period from January to September 2018, 57.8% of which were committed by repeat offenders, 32.5% by persons who were intoxicated and 3.7% by juveniles [9].

The above information once again shows how children and their constitutional rights and freedoms, without proper security and protection of the state, can easily become both an object and a subject of criminal acts and offenses, and the main task of the state is to ensure the safety and security of their constitutional rights and freedoms.

Child is innocent, vulnerable and fragile human being. The legal relationship between the child and the state entails the latter's obligation to protect the constitutional rights and freedoms of the child while ensuring their regulation. The child should not ask for the protection of his constitutional rights and freedoms, which have not yet been recognized as natural and inalienable, and should be protected.

Summing up, it should be noted that the child is the same link in society and the state as an adult citizen, and the recognition of his constitutional rights and freedoms, their consolidation at the legislative level in full measure and the endowment of his special legal

status - long overdue and inevitable necessity, as well as the creation of an effective legal mechanism for regulating the constitutional rights and freedoms of the child. The lack of a special legal status of the child, the formal adoption of laws and the introduction of conditional posts that are not able to protect the child speaks about the need to reform the legislation in this area.

Thus, it seems appropriate to reorganize certain provisions and legal norms that currently have reference prerequisites. The purpose of making certain changes will be the settlement of the processes of constitutional rights and freedoms of a child. In turn, we propose to give an opportunity to subsequently consolidate the informative proposals in the separate legislative act.

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