

Issues and Technologies of Enforcement of the Constitutional Status of the Child

Yurij Ilyich Skuratov, Maria Sergeevna Lavrentieva, Evgeny Sergeevich Kuchenin

Abstract: *The article attempts to conduct a comprehensive analysis of the constitutional status of the child in the Russian Federation. It has been established that weak legal protection of the civil and political rights of children, the inability of the child, due to age and immaturity, to independently protect his or her rights, as well as the rise in crimes against minors in Russia, under the conditions of the current legal reality, increase the interest in studying the constitutional status of the child. The purpose of this article is to examine the constitutional status of the child in the Russian Federation, as well as the problems of enforcement of the constitutional status of minor citizens. As a result, it was concluded that the main shortcomings in the statutory regulation of the status of the child lie in imperfect conceptual approaches to its definition and the lack of an integrated nature of such regulation.*

Index Terms: *Constitution, society, constitutional law, constitutional status of the child, minor citizens.*

I. INTRODUCTION

The constitutional status of the child is a complex mechanism composed of rights, freedoms, duties of the child and guarantees of their implementation established by international legal acts, the Constitution of the Russian Federation, federal laws, including the Family Code of the Russian Federation. For full and comprehensive protection of the interests and rights of minor citizens, they must be recognized as freemen, having the right to their opinion and legitimate interests, but at the same time protected and defended by the state. Protecting these interests is the responsibility of parents and other legal representatives, as well as society and the state [1, 2].

The topical issue that arises when considering the status of the child is the absence of adequate enforcement of the rights and legitimate interests of children, which is a significant problem in modern Russia. Particular attention should be paid to the problem of ensuring the rights and interests of children in the field of information security.

Currently, the role of mass media and the Internet is increasing in Russia. It is via them that certain patterns, styles and norms of behavior are disseminated and popularized, and

the image of reality to which one should strive is shaped and introduced into the mass consciousness [3].

In particular, the Internet began to contain a huge amount of information that has a negative impact on the legal consciousness and level of children's legal culture, such as propaganda of legal nihilism, various offenses, crimes, illegal behavior towards the individual, society and state. Such propaganda entails the cultivation of immoral values and priorities. In accordance with the above and other factors, the number of juvenile delinquents is growing at an appalling rate [4].

Also, the weak legal protection of the civil and political rights of children, the inability of the child, due to age and immaturity, to independently protect his or her rights, and the rise in crimes against minors in Russia, increase the interest of researchers in studying the constitutional status of the child.

The problems of defining the constitutional status of the child were explored by M.N. Marchenko and E.M. Deryabina [5], E.I. Kozlova and O.V. Kutafin [6], N.V. Vitruk [7] and others. Children information security issues are discussed in the works of Evplova [8], Nikitin, Kapelkina, Farkhshatov [9] and others. Some aspects of the protection of the rights of the child are raised in the articles by Shilovskaya et al. [2], Tchinaryan et al. [10], Malcev et al. [11].

II. PROPOSED METHODOLOGY

In the process of research, theoretical, general philosophical methods (dialectics, systematic approach, analysis, synthesis, analogy, deduction, observation, modeling), traditional legal methods (formal logical method), as well as methods used in concrete sociological research (statistical and expert evaluations, etc.) were applied. The main method used was the systemic and structural method, which allowed to identify the most pressing issues related to the constitutional status of the child in the Russian Federation, as well as to raising the level of legal and political culture, both of minor citizens and society, and the state as a whole.

By using a combination of the above methods, as well as by applying the generalization method, the general properties, characteristics and shortcomings associated with the implementation of certain standards, including the Federal Law "On basic guarantees of the rights of the child", were identified and a number of measures aimed at consolidating the status of minors, protecting them and enforcing their constitutional rights were conceived.

Manuscript published on 30 April 2019.

* Correspondence Author (s)

Yurij Ilyich Skuratov*, Russian State Social University (RSSU), Moscow, Russian Federation.

Maria Sergeevna Lavrentieva, Russian State Social University (RSSU), Moscow, Russian Federation.

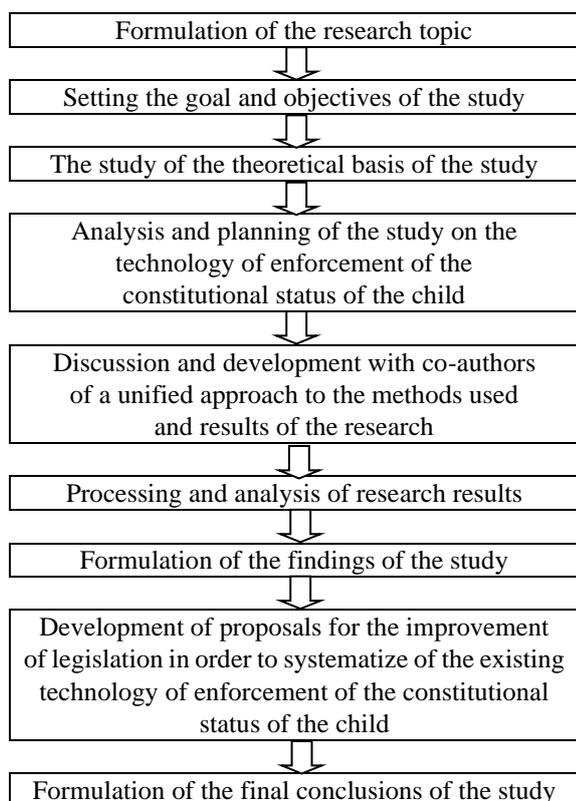
Evgeny Sergeevich Kuchenin, Russian State Social University (RSSU), Moscow, Russian Federation.

© The Authors. Published by Blue Eyes Intelligence Engineering and Sciences Publication (BEIESP). This is an [open access](https://creativecommons.org/licenses/by-nc-nd/4.0/) article under the CC-BY-NC-ND license <http://creativecommons.org/licenses/by-nc-nd/4.0/>.

A. Algorithm

The study of issues and technologies for the enforcement of the constitutional status of the child was based on a linear algorithm. In the course of the study, the authors analyzed the norms of constitutional law, federal legislation, Internet resources that the children have access to and the position of the authors on the problematic issues of the enforcement of the constitutional status of the child. The compilation of information, including statistical data, made it possible to propose measures to protect the constitutional status, to identify methods of influencing violators, to establish the most acute problems of the implementation of the constitutional status of the child. In order to strengthen the legal status of minors, to protect and exercise constitutional rights, mechanisms for improving legislation were proposed.

B. Flow Chart



III. RESULTS

It was discovered that the problems of violence against children in families should be solved with a combination of methods of education and legal impact on the perpetrators, including by upgrading the penalties for violence. Perpetrators must have strictly limited contact with the children after they are released. Control over their behavior must be constant. Research found that in the Russian Federation there are several relevant problems, such as child orphanhood, vagrancy and child crime. The number of homeless children involved in vagrancy is increasing. According to estimates, there are currently about two million such children in Russia. We believe that despite the fact that the constitutional status of the child is secured by the norms of constitutional and family legislation, there are still significant problems with its enforcement. In order to improve the legislation, we propose to carry out measures for:

- 1) improving the environment and assisting minors;
- 2) preventing the transition to the path of crime and ensuring the correction of perpetrators;
- 3) the creation of conditions for the correction of repeated offenders.

There was established the need to statutorily set the age of criminal liability for serious offenses and particularly serious offences at 12 years. In our opinion, this measure will help to reduce the level of juvenile delinquency; and, perhaps, it will frighten teenagers and make them think about what will happen to them after committing the crime.

IV. DISCUSSION

A number of scientists addressed the question of the constitutional status of the child and the problems of its enforcement. On the one hand, this issue is very important in the context of protecting the rights and legitimate interests of children, since children often become objects of criminal offences and child abuse, and on the other hand, children themselves often commit crimes and offenses under the influence of various factors that must be considered.

When considering the concept of the constitutional status of the child, first of all, attention should be paid to the key definition, that of the constitutional status. It seems that, in its most general sense, the constitutional status should be construed as the legal status, which is characterized by a system of legal rights and obligations. In turn, M.N. Marchenko and E.M. Deryabina [5], studying this issue, defines the constitutional status (from Latin Status, meaning position, state) as a set of rights and obligations that determine the legal status of individuals, governmental bodies, international organizations.

Currently, one of the problems associated with shaping the constitutional status of the child is the loss in Russia of the system of state's responsibility for the safe life, development and education of the child that developed over many years [12]. This circumstance will not hesitate to take a toll on the state of the entire Russian society in the near future. The "transfer" to the joint jurisdiction of the Russian Federation and its federal subjects of issues of protection of the family, motherhood, fatherhood and childhood (clause 1 "g" Art. 72 of the Constitution of the Russian Federation), unfortunately, in today's conditions may lead not to increased, double protection of children's rights but to the irresponsibility of both parties. In our opinion, the constitutional status is the combination and community of powers and duties of certain subjects. However, the constitutional status implies not only the existence of rights and obligations, but also certain guarantees and responsibilities. A similar position is held by E.I. Kozlova and O.V. Kutafin [6]. In their understanding, the constitutional status of an individual, including a child, constitutes general legal capacity, guarantees, legal interests, and legal liability. In turn, N.V. Vitruk [7], carrying out a detailed study of this issue, indicates that the constitutional status contains rights and freedoms, legal duties and legitimate interests of an individual.

All of these concepts, as well as many others, which give us an idea of the essence of constitutional status, focus on two points of view. The first one notes that the constitutional status is identified with such basic concepts that are primarily inherent in the science of constitutional law, such as general legal capacity, guarantees, legitimate interests and legal liability. The second point of view assigns the leading role to the constitutional status as a set of rights and freedoms guaranteed by the Constitution of the Russian Federation, as well as established duties, thereby establishing a definite position for both the individual and individual subjects. Without denying the accuracy of either premise, it becomes obvious that the constitutional status is a multidimensional and voluminous concept. An analysis of the above views on the constitutional status of the child suggests that it is directly associated with the institution of citizenship, which is provided for by a number of international and domestic legal acts. Thus, for example, in accordance with Art. 8 of the Convention on the Rights of the Child, the member states undertake to respect the right of the child to preserve his or her individuality, including citizenship, name and family ties, while not allowing unlawful interference [11]. With this in mind, in legislation, citizenship is considered as the basis for preserving the child's individuality, his relations with his family, other small social groups with which his or her socialization process is associated.

Moreover, it is through citizenship that it is possible to form a stable connection between an individual and the state. In this connection, I.V. Getman-Pavlova [13] fairly points out that the main prerequisite for the observance of human rights and freedoms, as well as the relevant obligations of the state to protect and ensure them, is precisely the institution of citizenship. Based on the foregoing, it follows that only through the institution of citizenship between the state and the child does a strong and stable legal relationship arise in space and time, giving the parties the right to the full use of all the benefits arising from their mutual rights and obligations. It is noteworthy that in the international practice there are two main ways of acquiring citizenship for children: the "soil principle", when citizenship is determined by the place of birth, and the "blood principle", when citizenship is determined by the citizenship of parents. It is the conflict of these principles that gives rise to situations where a child may be deprived of the right to acquire the citizenship of any state. The legislation of the Russian Federation regulating citizenship issues combines these principles, but the main principle is the "blood principle" [5].

Thus, it is necessary to summarize that the institution of citizenship is of great importance in determining the constitutional status of a child, therefore the possession of citizenship of another state or its absence may entail a number of consequences for the child in the territory of the Russian Federation, for example, restriction or absence of a number of powers, which citizens of the Russian Federation possess. Turning to the direct study of the constitutional status of the child, it is necessary to define the concepts of "child" and "minor". In paragraph 1 of Art. 54 of the Family Code of the Russian Federation "a child is a person under the age of eighteen years (majority)." It is important to note that persons recognized as legally competent before they reach the age of majority are also children. Based on the above, we

can conclude that the legal concept of the term "child" is incompletely and imprecisely defined in the Russian Federation, and its legal status is not fully defined [14]. It is noteworthy that to solve this problem, a legislator adopted a federal law of 29.12.2010 No. 436-FZ "On protection of children from information harmful to their health and development". However, despite the measures taken by the legislator, the media raise daily questions about the cruelty of minors, as well as about various groups and communities urging children to commit suicide [4]. For example, in early 2017 the so-called game "Blue Whale" which called for children to commit suicide was widely discussed. According to statistics, in the period from 2015 to 2016 alone, 160 children died from this game [15]. The solution to this problem is seen in increasing the preventive activity by the government bodies of the Russian Federation [8]. For example, an effective preventive measure of influence is the regular informing of the population about measures to counteract violations in the field of information security of children through publications in the media, posting information on the Internet, holding various seminars and lessons with children about the dangers of such information, etc. [9]. To sum up the above, the specificity of the constitutional status of the child is due to the fact that children are a rather complex and vulnerable category, since, initially having equal rights with the others, they actually have much less opportunity to exercise them. Thus, the analysis of this issue that has been carried out allows the authors to conclude that the specificity of the legal status of minors is generally recognized. By including the concept of "minor" in the laws, the legislators of countries and the entire international community established a legal boundary between minority and majority, thereby creating an autonomous demographic group of people who have specific rights and obligations. The need to create such an autonomous group is dictated by the need for special legal protection for minors, due to the psychophysiological and social qualities of the personality of children and adolescents [10]. A minor is defined as a person who has not reached a certain age, with which the law associates his or her full legal capacity, i.e. the full implementation of subjective rights and legal obligations proclaimed by the Constitution and other laws of the country. The legal protection of minors should be understood as a system of normative legal acts establishing the legal status of minors as participants in public relations (rights, duties, guarantees of rights and duties) and securing the basis for organizing the activities of the system of bodies for working with minors and protecting their rights and legal interests.

V. CONCLUSION

For the first time at the legislative level, the state policy on the interests of children was enshrined in the Federal Law of 24 July 1998 No. 124-FZ "On the basic guarantees of the rights of the child". Recently, active work has been done to create new specialized bodies for working with minors.



For example, more and more often there are proposals on the establishment of the institution of the Commissioner for Children's Rights in the Russian Federation. In certain regions of the Russian Federation such an institution has already been introduced.

The law creates a mechanism for civilized resolution of conflicts between participants in public relations. However, in relation to the child, it does not adequately take into account his or her specificity.

In this case, the needs of social practice cause the need for a higher level of systemic enforcement of legal norms [2]. Since the basis of the juvenile law is the legal status of the child, laid down primarily by the Constitution of the Russian Federation, therefore, we are talking about the proximity of the juvenile law to constitutional law, the derivative nature of its norms. We should take into account the opinion of A. B. Vengerov that "if the sanctions of constitutional norms are in other legal acts, this does not mean that these norms do not apply to constitutional law" [16].

The identified problems require the updating of current legislation, including the adoption of a federal law on the rights of the child, the development of a federal concept of juvenile prevention and juvenile justice, and the creation of a system of public bodies ensuring a safe life and development of children in Russia.

These questions were not raised in the framework of the study carried out, but may become the ground for further research.

REFERENCES

1. M.O. Buyanova. (2014). *Legal Encyclopedic Dictionary*. Moscow: Prospekt.
2. A.L. Shilovskaya, M.A. Volkova, S.J. Starodumova, R.R. Lenkovskaya, A.A. Neznamova. (2018). On Correlation between the Means of Protection of Rights in Family Law and Civil Law. *International Journal of Civil Engineering and Technology*, Volume 9, Issue 10, pp. 1686–1694.
3. L.V. Glazkova, N.S. Grudinin, E.F. Kadnichanskaya, V.M. Karpenko, E.I. Mayorova, S.N. Churilov. (2015). *Crime in the Russian Federation and the Moscow metropolis: state and countermeasures*. Monograph. Moscow, RSSU Publishing House.
4. V.M. Alekseev. (2017). Qualification of propaganda of exclusivity, superiority or inferiority of a person as extremist activity. *Young Scientist*, No. 5, pp. 275–278.
5. M.N. Marchenko, E.M. Deryabina. (2015). *Legal Studies: Textbook*. Moscow: Prospekt.
6. E.I. Kozlova, O.E. Kutafin. (2013). *The constitutional law of Russia: a textbook (3rd edition, revised and extended)*. Moscow: Prospekt.
7. N.V. Vitruk. (2008). *General theory of the legal status of the individual*. Moscow: Norm.
8. N.Yu. Eyplova. (2000). *Legal awareness of youth: Theoretical and sociological aspects*. Abstract of thesis for the degree of candidate of legal sciences. Volgograd.
9. P.V. Nikitin, A.V. Kapelkina, I.V. Farkhshatov. (2015). Current problems of individual's information security. *International Student Scientific Journal*, No. 6, pp. 48-56.
10. E.O. Tchinaryan, M.S. Lavrentieva, I.Y. Nikodimov. (2018). Legal Aspects of Socially Significant Diseases Prevention among Children and Young People. *Journal of Pharmaceutical Sciences and Research*, Volume 10, Issue 12, pp. 3194-3197.
11. V.A. Malcev, S.J. Starodumova, A.S. Kurbanov, S.P. Stepkin. (2018). The ECHR judgements on protection of the rights to respect for private and family life. *Opcion*, Volume 34, No 85, pp. 1824-1836.
12. I.V. Filimonova, V.V. Bedenkov. (2016). The issue of raising the level of legal culture of youth in Russia. *Modern Legal Counsel*, No. 2, pp. 33 – 51.
13. I.V. Getman-Pavlova. (2015). *International Law 2nd rev., revised and extended*, Textbook for academic bachelor degree program. Moscow: Urait.
14. N.V. Vasilyeva, N.S. Grudinin. (2012). Constitutional and legal framework for the protection of motherhood and childhood in the Russian Federation, The Reporter of the Faculty of Law and Juvenile Justice of RSSU. *Faculty of Law and Juvenile Justice of RSSU*, No. 8, pp. 42-60.
15. G. Mursalieva. (2016). Groups of death. *Novaya gazeta*, 51, pp. 2–5. Available: <https://www.novayagazeta.ru/articles/2016/05/16/68604-gruppy-smerti-18>.
16. A.B. Vengerov. (2003). *Theory of state and law*. Moscow: Spark.