“LEGAL STATUS OF THE CHILD (THEORETICAL AND PRACTICAL PROBLEMS)”

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CONTENT

INTRODUCTION

The urgency of the topic under study: The global political, socio-economic transformations of the 21st century, along with the positive results, have reduced the living standards of a significant part of the population in many countries; meanwhile, the most vulnerable sections of the population have suffered the most. The actual condition of children is several times worse than that of adult citizens[1].

From the beginning, a child who is not protected by the state, society and family is not able to develop harmoniously, physically, mentally and intellectually as a law-abiding citizen. The lack of legal basis of "The right of the child" has a devastating effect on the development of a normal society of democratic orientation. In this regard, the modern domestic policy of the state has undergone significant development during the international legal reforms in the field of child protection at the end of the 20th century.

Reforms in the field of child protection are primarily aimed at combating ruthlessness, eliminating orphanhood, building a healthy society, helping children with disabilities, refugee children, and the formation of a citizen capable of being an independent individual, a person of free will, whose activities will be built on the best ideals of public life.

The fact that the status of children is unorganized, it causes a great public reaction. That is why in recent years, in many countries, not only scientists, but also politicians, public figures, and the media have turned their attention to issues related to the situation of

[1] We can see confirmation of this fact in many International organizations and in national reports concerning the child.

children in society. The urgency of the problems that arise in public relations, naturally, leads to attempts to find a possible solution, to find out the causes of negative phenomena, to determine the mechanism of their elimination. One such attempt is the definition of the legal status of a child in any civilized society[2]. Strengthening the rights of the child at the constitutional level, discussing issues related to the child through the prism of International legal bases, constitutional values, principles and norms play an important role in bringing stability to public relations, realizing the rights and freedoms of human beings, including socially vulnerable groups.

Describing the tendencies of the development of the legislation of the modern states on the problems of research, let us mention the supremacy of the International law in the formulation of the legal policy in the field of protection of motherhood, fatherhood and childhood by the state.

Nowadays, the issue of the legal status of the child in the Republic of Armenia is becoming more and more important due to the need for the integration of the Republic of Armenia into the family of European countries and the fulfillment of the country's commitments. A strong united Europe interested in expanding multilateral bilateral ties is in Armenia's interest. The orientation towards the European model, including economic and social policy, will not only allow for an effective policy of change in the Republic of Armenia, but will also contribute to the closer rapprochement of Armenia and the European Union, our most important strategic partner in the long run.

The Constitution of the Republic of Armenia was adopted on July 5, 1995. As a primary tool for the legal regulation of public and political life, in turn, it needs guarantees of implementation. The amendments to the Constitution of the Republic of Armenia, which were adopted in November 27, 2005, and in 2015 as a result of the

[2] The terms child “legal position” or “legal status” are used interchangeably in this dissertation.

December 6 referendums, are used in terms of believing in European values, ensuring democratic developments, guaranteeing the protection of human rights and freedoms. The reforms make it necessary to reflect on the institution of the legal status of the child, to analyze the changes made in the state in the direction of enshrining and protecting the rights and freedoms of the child in the state; to reveal the bases and procedure of the legislative, executive-judicial bodies of the state power, as well as the order of respect, ensurance and guarantee of the rights of the child of the society.

However, a common position on the legal status of the child has not yet been formed in domestic law, and the necessary theoretical foundations have not been established. Therefore, the institution of the legal status of the child needs a comprehensive study and scientific understanding.

The state of the topic in study and its theoretical basis: For centuries, the multidisciplinary issues concerning the child have been the subject of study by major representatives of legal and political thought.

Domestic jurisprudence has already gone the way of separating special subjects of constitutional law, which testifies to the need to improve the mechanism for ensuring the realization of human rights and freedoms. Moreover, if the legal status of certain special subjects of law, such as the disabled, pensioners, servicemen, etc., mainly leads to enhanced protection, unfortunately, the status and level of protection of the legal status of the child as a normative-legal fix and child rights, freedoms and legal interests, especially in developing and poorly developed countries, is not yet systematic. Moreover, the theoretical basis of the research is available, as the concept of legal status of a person is sufficiently developed and studied in the legal science[3].

[3] See: **L. N. Lnisimov** *The Constitutional status of Soviet citizens and the system of its guarantees*. M., 1979; **N. A. Bogdanova** *The system of science of constitutional law*. M.: Jurist, 2001; **N. V. Vitruk** *Fundamentals of the legal status of the individual in a socialist society*. M.: Science, 1979; **V. A. Kuchinsky** *Personality,*

Along with the establishment of state guarantees for the protection of human rights and freedoms, the basic law of almost all states, the Constitution, gives everyone their own rights - the right to protect their own freedoms, with all the forms not prohibited by the law. The peculiarity of the legal entity, little life experience, dependence on parents or other legal representatives lead to the fact that children do not have a real opportunity to defend their rights as effectively as adults. Therefore, it is necessary to increase the level of legal protection of the legitimate interests of the child by the state and society. In any case, the child should be considered one of the first to receive social protection and assistance, as constant care for children is a mandatory condition for the preservation and development of the people and the state. From this it is clear how important it is to implement a mechanism for the creation and provision of comprehensive measures to protect the rights and freedoms of the child.

Thus, the choice of the topic of the dissertation research is conditioned by the need to solve both theoretical and practical problems that arise in the process of developing and realizing the legal status of the child, in connection with the consolidation, maintenance and protection of their rights. The territorial boundaries of the study are determined mainly by the study of the legal status of the child in the Republic of Armenia, many post-Soviet countries, various European countries, the United States and other countries.

In order to better protect the rights and legitimate interests of the child, theoretical understanding is needed with the full set of legal norms currently regulating the status of the child. Such norms are included in the modern understanding of laws in various spheres (constitutional, international, family, civil, labor, criminal, civil proceedings, criminal proceedings, etc.), but these acts are not in an organic systemic connection, which sometimes leads to

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freedom, law. M., 1978; **N. I. Matuzov** *Law and personality* // General theory of law: Course of lectures. Nizhny Novgorod, 1993; **V. A. Patyulin** *State and personality in the USSR*. M., 1974 and others.

contradictions and uncertainties in the normative-legal regulation of public relations with the participation of the child.

The dissertant believes that the basis for the formation of a complex inter-branch legal institute, such as the legal status of the child, are the relevant definitions of the Constitution of each state (domestic law in relation to the provisions of the Convention on the Rights of the Child)[4]. In this complex normative structure, the constitutional norms, predetermining the meaning and content of the legislation regulating the relations with the participation of the child, are specified in the norms of different branches of law: thus ensuring the implementation of constitutional provisions, implementation of basic international legal norms and principles.

The work carried out a comprehensive analysis of norms related to family, civil, labor and other areas of law, which are directly related to the rights of the child, without which the main provisions of many international legal acts cannot be implemented, the effectiveness of the use of the democratic, humanitarian potential of the legal systems of many countries has been assessed. The need for such an analysis was dictated by the realization of the interconnectedness of the constitutional-sectoral legislation, the mutual influence on each other, taking into account the fact that the sectoral legislation, specifying the norms of the state Constitution, creates a set of additional guarantees for protection of children's rights and freedoms. In this regard, the author presented proposals on the development of administrative, civil, criminal means arising from the legal status of the child, which are closely related to the provision of a general constitutional mechanism for the protection of the rights of the child.

The core of the legal status of a child is that the constitutional status is a complex category that reflects as a basis, and contains norms that fix the legal status of any subject of law in society. However, the separation of the constitutional status of the child does

[4] **"Convention on the Rights of the Child"** (adopted by the General Assembly of the United Nations on November 20, 1989) / / Collection of international standards and norms of the United Nations in the field of juvenile justice.

not exclude the discussion of the provisions of the norms concerning the child from the point of view of the whole legal system of the state. And in that sense, a comprehensive study of the legal status of the child will allow only a more extensive, unified, internal coordination, coordinated complex exercise of freedoms and responsibilities, as well as the real and effective protection of the rights and legitimate interests of the child.

Thus, the theoretical-practical urgency of the study of the constitutional basis of the legal status of the child at the present stage is objectively conditioned by the following circumstances:

First, the constitutional situation of each state, the characteristic feature of which is its tendency to enter the world territory, determines the need to bring the norms of national law in line with international documents. Here, first of all, it refers to the fulfillment of the international obligations undertaken by the state, the level of the UN Convention on the Rights of the Child ratified by it, the level of observance of the implementation of international documents, and agreements on minors.

Second, the constitutional enshrinement of the legal status of the child and the addition of provisions on it are of particular importance in the period of unsustainable development of society (of course, we are talking about developing, poorly developed countries, although no state is guaranteed by economic, social and psychological crisis), because children are one of the least protected categories in the socio-economic and moral-psychological relations of the population.

Third, the provisions of the basic law of the country, the Constitution, which define the status of the child, should become a fundamental basis for the design of the system of relations between state authorities, local self-governmental bodies, non-governmental organizations. The need to create legal levers to involve various civil society institutions in the process of ensuring the rights, freedoms and legitimate interests of the child has arisen.

Fourth, the foundations of the legal status of the child serve as a theoretical and methodological basis for the development of a long-term state policy in the field of childhood and child's rights protection**.**

The analysis and use of scientific research on the legal status of the child of previous generations will allow for the further development and improvement of science in this direction. It is impossible to imagine what would happen in science if each generation started all over again without using the experience accumulated before. It will be especially relevant in the implementation of reforms, including in the field of law, when the state and society are in dire need of new knowledge, which allow for a clearer regulation of legal relations in the field of protection of the rights of the child.

The subject of research, purpose and problems: The subject of this study is the theoretical and practical foundations of the institute of legal status of the child. The object of research is the concept of the legal status of the child, the elements, the forms of expression, the peculiarities of the legal status of the child in the Republic of Armenia and in many other countries, the basic rights of the child, freedoms, legal interests and responsibilities, normative legal-factual bases.

The subject of study is also the system of legal relations arising in a normative relationship, where the direct or mediated (through legal representatives) subject is the child, the complete set of the child's subjective rights; which is completely diverse and is not included in just one of the existing branches of law.

The subject of study is the set of principles of international law, constitutional norms,, which define the basis of the legal status of the child: to ensure and protect their rights; as well as the norms of different spheres of law, which reveal the specific content of the legal status of the child.

The purpose of the dissertation is to discover the essence of the legal status of the child, to study the issues of legislative

regulation, to formulate the theoretical foundations of this important constitutional institute, to develop scientific guarantees on the development of the institution of the legal status of the child.

According to that, the following issues have been raised in the work:

– To comprehensively analyze the concept of the institution of legal status of the child, the stages of formation and development;

– To identify the problems of public relations with the participation of the child; and the characteristics as an independent type;

– To analyze the international legal bases of the legal status of the child;

– To study the constitutional norms and principles of the legal status of the child;

– To substantiate the importance of the legal status of the child to enshrine the guarantees of the protection of the rights and freedoms of the child as a necessary element of the mechanism for the exercise of constitutional rights;

– To classify the main means of protection of the rights of the child;

– To describe the issues of legal liability of the child and its legal representatives;

– To outline juvenile justice, its development prospects in the Republic of Armenia and in a number of other countries.

The aim of the research is to conduct a comprehensive analysis of the provisions of international documents related to the child, the theory of practice of fixing the legal status of the child on the basis of normative-legal acts of the RA Constitution and other countries, discovering the constitutional-legal meaning of norms contained in different spheres of law, which specify the legal status of the child, the elaboration of proposals on the improvement of the domestic legislation, the practice of its application, in accordance with the international legal and constitutional requirements.

The solution of the following problems contributed to the achievement of the set goals:

– To clarify the apparatus of legal concepts, formulate the initial socio-legal concepts that relate to the subject of study;

– To determine the role of popular principles of international law and norms in the development of the legal status of the child;

– To carry out a systematic analysis of the constitutional norms of the legal status of the child, taking into account the international standards of protection of the rights of the child and the needs of the modern society;

– To identify the peculiarities of the legal status of the child on the basis of the basic laws of different countries and principles of current legislation and norms;

– To analyze the domestic legislation on children, taking into account its peculiarities at different historical times, in order to identify the demand of the society and trends in the further development of the legal status of the child;

– to determine the ways of clarifying the legal status of the child in the sectoral legislation concerning the child, taking into account the personal rights and freedoms of the child, as well as his / her socio-economic rights;

– to study the peculiarities of administrative and judicial protection, paying attention to both the decisions made by domestic courts and the judicial precedents of the European Court of Human Rights;

– to analyze the content of child's responsibilities and the peculiarities of the legal responsibility of the child, as well as his / her legal representatives;

– To outline the ways of establishment and development of juvenile law.

The scientific novelty of the dissertation is that it attempts to reveal the essence, positive and negative aspects of the institution of the legal status of the child, it analyzes the elements of the legal

status of the child, the role of the Constitution in determining them, also here are presented the perspectives of the development of the legal status of the child in the Republic of Armenia and in a number of other countries.

The legal status of a child, in contrast to the legal status of other subjects of law, has a social nature of strict research and coordination. The development of the institution of the legal status of the child requires an appropriate level of political, social, legal culture, especially constitutional culture, raising the level of legal awareness of the society, first of all, the state's respect for the rights and freedoms of the child by the society. We believe that the institution of the legal status of the child requires a serious study both in terms of its basis, principles, means, as well as the mechanism of their application.

The general, private (specific) research methods and ways: The philosophical-methodological basis for studying the subject of the dissertation consists of dialectical, logical, historical-comparative, system-structural analysis, comparative-legal and other methods. The institute of the legal status of the child has been studied by the dialectical method in the general context of historical developments, changes in the state-legal superstructure of the transitional society, international legal developments, constitutional reforms. Taking into account the methodology of philosophical analysis, the concept of the legal status of the child has been studied in the following interrelated ways: etymological, semantic, conceptual (contextual,) and thoughtful. The tools of philosophical analysis have been combined with various methods of studying phenomena and processes. A study and analysis of general professional literature, as well as numerous normative legal acts was carried out. The methods of induction and deduction made the transition from the social status of the person to the legal status of the child, then from the study of theoretical issues of the legal status of the child to the issues of the rights, freedoms and legitimate interests, and vice versa. Both general and specific

methods and ways were used during the study, which allowed to make relevant scientific conclusions. With the help of the historical method, the stages of establishing the institution of the legal status of the child in many countries have been revealed. With the help of the system-structural method, the legal status of the child was studied as an integral part of the general legal status of the person, and at the same time as a set of interconnected components. The basic categories related to the child have been used as a basis for the theoretical understanding of the institute of legal status of the child, which refer not only to the legal, but also to the specific features of psychology, medicine, pedagogy and other sciences. Due to the comparative legal method, the main tendencies of the development of the legal status of the child have been revealed, as well as the peculiarities of the application of this institution in different states. Structural-functional analysis, statistical, sociological and other methods were also used.

The normative-legal, source-informative basis of the research: The normative-legal basis of the study is the RA Constitution adopted in 1995 and amended in 2005, and 2015, also the constitutions of the USSR, CIS member states, European countries, US constitutions, RA international treaties, RA laws, other normative legal acts. The source basis of the dissertation are the achievements of theory of philosophy, jurisprudence, both general theoretical history and state theory of branch legal sciences, history of foreign countries, history of law, history of political and legal doctrines, constitutional law, civil law, administrative law, criminal law and other branches of legal sciences; general, modern history, political science, psychology, pedagogy, sociology, management science, informatics, statistics, as well as the achievements of other sciences. Numerous historical sources, legal monuments, both pre-Soviet and post-Soviet legal and political works have been studied, both current and terminated normative legal acts, printed and electronic information materials on the subject were analyzed. The

Basic Laws of many countries, the stages of formation of the institution of the legal status of a child in different countries, the process of its establishment and development have been studied. Taking into account the historical commonalities of the legal systems of the Republic of Armenia, the Russian Federation, and European countries, the experience of establishing the institution of the legal status of a child in many countries, the historical origins of development, the normative legal-factual bases have been analyzed, also you can find the analysis of the preconditions for the formation and development of the legal status of a child in the Republic of Armenia. The empirical or experimental basis for the research was the study of the experience of the state power institutions of the Third Republic of Armenia, the analysis of the practice of using the means of normal realization of children's rights by the President of the Republic of Armenia, the National Assembly, the government and other bodies, in particular, the process of implementation of separate reform programs of the Government of the Republic of Armenia in this direction, etc.

The substantiation of the research results and credibility: The results of the study are well-founded and credible, as a scientific, comprehensive and impartial analysis of the Institute of Legal Status of the child has been carried out, based on the preconditions for the development of that institution, revealing its potential and development tendencies, taking into account the experience of other states, substantiating the necessity and importance of the institution of the legal status of the child in the protection of the rights, freedoms and legitimate interests of the child.

The scientific novelty of the dissertation research is expressed in:

1) The complex nature of the study of the legal status of the child, both in international law and in the field of constitutional law from the point of view of theory in other branches of law;

2) The importance of establishing the legal status of a child, defining the constitutional meaning of the norms of the sectoral

legislation regulating the child's condition; as a result of which the need for more full use of the constitutional potential in the development of the current legislation increases;

3) The systematic approach to the process of strengthening the legal practice in the field of protection of the norms of the sectoral legislation regulating the status of the child, their rights and legal interests; which will exclude arbitrariness and will promote the uniform application of the law for the benefit of the society and the sustainable development of the state;

4) The content of the constitutional status of the child (as a basis for his/her legal status) the use of his/her main characteristics, which are expressed in a certain amount of subjective constitutional rights, freedoms and responsibilities belonging to the child; as well as by fixing the socio-economic, political and legal guarantees enshrined in the legislation;

5) The rationale for the need to apply international experience in developing child protection structures based on the legal status of the child, which will allow for the improvement of national legislation;

6) To ensure the systematic sequence and hierarchical connection of the principles and norms of international law, provisions of the Constitution norms of sectoral legislation, which to one degree or another regulate the legal relations with the participation of the child;

7) The formulation of specific instructions conditioned by the analysis of the practice of legal regulation of the provisions on the legal status of the child, which will be aimed at eliminating the existing shortcomings; and which are conditioned, firstly, by incomplete compliance with the norms of international law, secondly, by the existence of collision norms in the sectoral legislation on children, and thirdly, by the realities of modern life;

8) The colligaton of the directions of development in the legal system of the legal status of the child, combining it with the achievements of other related sciences, such as philosophy,

pedagogy, medicine, psychology, etc.; in the perspective of discussing the possibilities of developing a new interdisciplinary scientific direction, juvenile (children's) law.

The theoretical-practical significance of the dissertation is that the results of the research can be applied to the scientific study of various aspects of the institute of legal status of the child and the development of theoretical bases, normative legal fixation and regulation of the legal status of the child, during further scientific research, evaluation, elaboration of legislative acts defining the legal status of the child,as well as in teaching of general and special courses of law. The content of the dissertation, the main provisions have been published in the form of scientific articles and reports. The articles were published not only in the Republic of Armenia, but also in the Republic of Georgia, the Russian Federation, the Czech Republic, the Republic of Bulgaria, etc. A number of provisions of the dissertation were presented by the author during seminars and discussions on children's issues.

The structure of the dissertation: The work consists of an introduction, three chapters, which include nine sub-chapters, a summary, a bibliography: a list of normative-legal acts, and all in all professional literature. The dissertation consists of 290 pages.

CHAPTER I
THE GENERAL-THEORETICAL CHARACTERISTICS OF A CHILD'S LEGAL STATUS

1.1 THE CONCEPT AND THE SYSTEM OF A CHILD'S LEGAL STATUS

The various connections between the state, society, and the person, in this case, the child, first of all, is characterized by the study of the legal status of the latter. It is the legal status that reflects on the manifestations of the legal status of a child, including his / her interests, legal interests, relationship with the state, working and social activities, social needs, and all in all, the provision of these by the state and society. And in this sense, the definition of the legal status carries a complete and coordinating nature[5].

In the legal literature, the legal status of a child is characterized as the enshrinement of rights, freedoms and responsibilities legally defined by the state, which is his / her legally formulated factual situation in the society within the norms established by the state's legal acts on minors.

The legal status is factually based on social status, that is, the legal status of the child in the system of public relations, which is enshrined in state law.

The legal status of a child is an integral part-the element of the social status, as the status of a person was being studied at a time

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[1] **N. I. Matuzov, A. A. Vorotnikov, V. L. Kulapov, A.V. Malko** *Theory of state and law*, 3rd ed., Rev. and add., Moscow, Legal. Norm, 2017, P. 231.

[2] **A. A. Popov** *Legal status as a characteristic of the legal person: the concept and phenomenology*, Questions of Russian and international law, Volume 6, No. 11A, 2016, P. 18.

when the law was in its infancy. In this respect, the correlation between social and legal statuses can be viewed only from the latter's social relations' development sowing point of view. There was a social status in primitive society, but not the legal one, because the law had not yet been established[6].

The legal status of a person can be characterized by social norms and relations determined and conditioned by social status. Later, the most important component of it became the legal status, which is the totality of the rights, freedoms and obligations of a guaranteed person accepted by the state[7].

In the course of history, the legal status of the child was significantly changed, for example, in ancient Egypt the right to inherit children was recognized, the priority was given to the eldest son of the family, at the same time, there were established equal inheritance rights for two children of the same sex.

It is noteworthy that in ancient Babylon, under the laws of Hammurabi, family law was first addressed to the issue of the legal status of children[8].

The legal status of a child views him as a subject, involving him/her in the legal system. This gives him a certain right to appear in the relevant legal relations, and to carry certain responsibilities for his/her actions[9].

The terms "legal status" or "legal situation" of a person are almost identical. The legislation, the legal practice, as well as, the

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[7] **A. A. Jafarova** *Correlation of the Social and the Legal statuses of a person*, Editions of the magazine "VESTNIK Krasgau" No. 11, Krasnoyarsk, Russia, 2011, P. 219.

[8] **K. I. Batyr** *Universal history of state and law*, Textbook for universities, Moscow, Bylina, Yurist, 2000, P. 25-33.

[9] **N. I. Matuzov, A.V. Malko** *Theory of state and law*, Saratov branch of the Institute of state and law of the Russian Academy of Sciences, Moscow, Yurist, 2004, P. 182.

international documents on human rights do not differentiate between them, and they apply in the same sense[10].

The word "status" translated from Latin means the condition of something or someone[11].

In the present chapter, we will talk about the status of a child as a person, a citizen, considering him as a separate type of person.

The rights, freedoms, and responsibilities are enshrined in the Constitution of the State or other normative legal acts underlying the legal status of a child. It is natural that this is what mainly determines the legal status of the child in the society, the role in the state, and that this situation may be conditioned by other factors.

The legal status is objectively characterized as a value conditioned by the legal-political system operating in the state, the principles of democracy, the state bases and structures of the given society[12].

It can be said that it is absurd to perceive correctly and discover child's legal status without returning to his/her social bases, in condition of which he/she is being formed and acquires particular functions.

In the course of historical development, the legal status has been manifested in various ways. It is enough to compare the historical types of the state to see the differences. Undoubtedly, it was also conditioned by the political regime of the state[13].

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[10] *General theory of state and law*, edited by **V. V. Lazarev**, Moscow, Yurist, 1999, P. 447.

[11] **N. I. Matuzov, A. V. Malko** *Theory of state and law*, Saratov branch of the Institute of state and law of the Russian Academy of Sciences, Moscow, Yurist, 2004, P. 183.

[12] **N. I. Matuzov, A. V. Malko**, P. 184.

[13] **Anne Peters** *Beyond Human Rights, The Legal Status of the Individual in International Law*, Max-Planck-Institute for Comparative Public Law and International Law Heidelberg, Translated by Jonathan Huston, Cambridge University Press, 2016, P. 57.

In the modern era, the weak social and legal protection of the child, the lack of the necessary system of guarantees, the inappropriate attitude of the state authorities towards the rights and freedoms of the child, his/her life, dignity, honor, property, and, all in all, security are noticeable.

The legal status of the child bears the stamp of the deep crisis (socio-economic, political, religional) in which the states are found as a result of wars, natural disasters, socio-economic and political crises.

This is also due to the objective difficulties and complications created in weakly developing countries, which leave the solution of the issue of the legal status of a minor not properly studied.

The description of the legal status of a child as the legal status of a type of person is relevant in each state; there is a necessity of a clear legal formulation.

All of the above factors are important in the revealation the negative and positive sides of a child's legal status.

Firstly, the legal status of the child is considered in the context of the entire legislation of each state (including the Constitution, as well as the laws, and international legal acts). In this regard, it is important that the domestic legislation be formulated on international legal acts[14].

Secondly, a new concept is formed between the child and the state, considering him/her as a value endowed with unique human peculiarities, prioritizing the principles of equality and guaranteeing the rights of the child in the existing relations between them[15].

Thirdly, the legal status of a child is determined solely on the basis of democratic principles.

Fourthly, there is a transition from the commanding

[14] *Theory of state and law*, ed. **N. I. Matuzov, A.V. Malko**, M., Yurist, 1999, P. 234.
[15] **V. P. Basuk** *Evolution of the concept, legal status of a person and citizen in Russian legal science*, Law and politics, Scientific journal n. 2, Theory, M.5/41/2003, P. 11.

(imperative) method to the permissive-guaranteeing (dispositive) method, which is based on the recognition of the child as an independent person with his/her rights and freedoms in the society.

Fifthly, the elements such as the rights and freedoms of the child, which are based on the respect for the dignity, humanity, democracy and justice of the latter, are brought to the fore.

Sixthly, the clarification of the state concept protection of rights and freedoms by the fixation of the characteristics of the child's responsibility and sentencing.

The legal status of children is also complete in the context of relations with children and society, children citizens and the state, as well as with other social groups.

However, in order to study the legal status of a child, first of all it is necessary to clarify the notions of the “immature” character used in the modern scientific literature. This refers to the concepts used in legal system such as “a child” (“children”), “an adolescent”, “a minor” concepts. To what extent it is expedient to set age standards in law depend not only on the degree of realization of the legitimate rights of a child in accordance with the Constitution of the state, but also on the definition of the extent of his/her responsibility.

Naturally, in the early stages of life, the child is viewed as an object of medical researches, and then, as a worthy individual, is studied by a system of other human sciences. We should not forget that the examination of the legal status of a child is aimed at protecting human potential.

Humanitarians (doctors, educators, psychologists, sociologists, etc.) report the plight of children in modern countries. The significant deterioration of the health of the young generation of the country, as well as the addiction of adolescents regarded as a nature of epidemic, poses a threat to the security of the individual, society and the

state[16]. In recent times, the negative changes in children's health have led to an increase in mortality, which is due to the increase in deviant behavior, chronic diseases, mental disorders, as well as, a decrease in physical development (acceleration). Currently, one in three six-year-olds is not ready for regular schooling. The health condition of schoolchildren is characterized by a number of negative tendencies, such as the mental and physical retardation, the changes happening in the structure and types of diseases[17].

It has been proven that the modern secondary school has a negative impact on children's health, and the innovations (colleges, etc.), are accumulating the shortcomings of the traditional school, by reinforcing this negative impact. During school, the number of healthy schoolchildren is reduced by 3-4 times. The deterioration of health and mental cognitive impairments are more common among students in secondary vocational educational institutions than among students in secondary schools who are more resistant to stress[18].

The changes in children's health, of course, affect their status in the family and society. However, in any case, every child, including a disabled person, has certain rights from the day of birth in accordance with the constitutional principle of the inalienability of the fundamental human rights and freedoms.

The UN General Assembly adopted the Declaration of the

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[16] For more information, see: **A. A. Baranov, V. R. Kuchma** and others. *Methods of research of physical development of children and adolescents in population monitoring*. Moscow; Union of pediatricians of Russia, 1999; **V. R. Kuchma** *Theory and practice of children and adolescents at the turn of the Millennium*. Moscow: NTSD RAMS, 2001; *Education in the field of health and health promotion among children, adolescents and youth in Russia* / ed. by **L. K. Demin and IL. Demina**. Moscow, 1999; **S. V. Berezin**, **K. S. Lisetsky** and others. *Prevention of adolescent and youth drug addiction*. Moscow: Publishing house of the Institute of Psychotherapy, 2001; **B. Taite** *Unique homeopathic doctor's clinic*. SPb., 2002, etc.

[17] UNICEF – THE STATE OF THE WORLD'S CHILDREN 2019, Statistical Tables, P. 147-149, https://data.unicef.org/resources/dataset/sowc-2019-statistical-tables/.

[18] L. P. Makarova, L. G. Buynov, N. N. Plakhov *Hygienic foundations for the formation of culture of healthy lifestyle of schoolchildren*. Gigiena i Sanitaria (Hygiene and Sanitation, Russian journal) 2017; 96(5), P. 463-466.

Rights of the Child19 on November 20, 1959, which focused on the protection of the rights of a child in many countries.At present, in many countries of the world, the protection of children's rights remains relevant and is gaining more scientific and experimental significance in the legal field. Only by thoroughly understanding these problems it will be possible to develop effective mechanisms for solving them.

In this connection, the research of the legal status of a child becomes up-to-date in order to reveal the methodological approach to its definition, to unify all legal normative acts, scientific assessments-comments dedicated to the researched topic, that is needed to work out a common direction of systematization, which in turn will allow assessing the level of a child's care by the state and society. In order to deepen the analysis of the legal status of the child in the sectoral legislation, we consider it necessary to apply the achievements of various social sciences in the field of anthropology. We are talking about the content of the terms such as "a child" ("children"), "an adolescent", "a minor" in demography, family, pedagogy, culture, sociology, psychology, pediatrics and other sciences.

No less important is the solution to the problem under study in terms of a specific historical stage that determines the socio-cultural development of the society, conditioned by the socio-economic development.

And finally, one should not ignore the theories of human rights that are currently considered relevant - the socialization of the

[19] The Declaration of the rights of the child proclaims the equal rights of children in the field of upbringing, education, maintenance, physical and spiritual development, regardless of race, color, native language, religious, political or other beliefs, national origin, social origin, property, birth, etc.the Declaration calls on parents, public organizations, and governments to recognize the rights of children and to fully promote their implementation. In many States, the principles of the Declaration of the rights of the child are enshrined in the constitutions and documents of various state and public organizations. Declaration of the rights of the *child*. Proclaimed by General Assembly resolution 1386 (XIV) of 20 November 1959. See*: International conventions and declarations on the rights of women and children: Collection of universal and regional international documents* / Comp. Korbut L. V., Polenika SV, 1998.

individual, which already include components of various scientific directions.

Concepts such as “a child” (“children”), “an adolescent”, “a minor” are widely used in the scientific literature.

"Children" is the plural of the word child. From an etymological point of view, it has several meanings, but the following are of interest for this research: boys at an early age, as well as adolescent boys and girls. Children are sometimes called the younger, growing generation of people[20].

There is no misunderstanding in the definition of “children” by a number of specialists (pediatricians, psychologists, psychiatrists, sociologists, pedagogues, socio-medical experts). For example, in sociology, the term "children" means a group of people with special needs, interests, socio-psychological characteristics, mainly under the age of 18[21].

Defining the concept of "children", it should be noted that from a legal point of view, we are talking about adulthood, means the children less than 18 years of age[22].

It is mentioned both in international law and in national legislation, such as the Convention on the Rights of the Child, the Constitution of States, the Family Code, the Civil Code, and so on.

The Convention on the Rights of the Child views children as a special demographic group that are in need of a social protection system, a way of life, a child in need of favorable conditions for the healthy and harmonious development of each individual. In its turn, “the state proceeds from the principles of preparation of the child for a full life in the society, the development of social and creative activity in him/her, high moral qualities, patriotism, as well

[20] See: *Encyclopedic dictionary* / Under the editorship of **B. A. Vvedensky**. T. 1. Moscow: Bolshaya Sovetskaya enciklopedia, 1953.
[21] **V. Gvishiani** *Concise dictionary of sociology*, Moscow: Mysl, 1989. P. 159.
[22] See: *Great Soviet Encyclopedia*: In 30 Volumes. Moscow: Soviet encyclopedia, 1969-1978.

as, the priority of educating him as a citizen." The child is under the patronage and protection of the state and society[23].

The "adolescents" are children of adolescence. There are no significant misinterpretations in the definition of "adolescents". However, the chronological boundaries of these heights are often determined differently. In psychiatry, 14 to 18 years old is considered adolescent, and in psychology, adolescence is considered to be 10-11 to 14-15 years old[24].

The following age periodization occurs in pedagogical literature: childhood from birth to 1-2 years, preschoolers from 3 to 6 years old, junior school age from 6 to 10 years old, which concludes the childhood stage. Then, adolescence is followed by 11-14 years old, the high school adolescent stage is studied separately, which includes children aged 15-18 years, and girls reach adolescence 2 years earlier than boys[25].

It should be noted that scientists offer different ways to consider the age adjustment of children. For example, some scholars distinguish the following: childhood - up to 1 year of life, preschool (nursery) - from 1 to 3 years, preschool - from 3 to 7 years, junior school - from 7 to 12 years, average school (adolescent) from 12 to 14 years old, high school (early adolescent) from 14 to 18 years old26. According to the international experts of the World Health Organization, adolescence is considered to be two very important stages: the pubertal stage (10 to 15 years old) and the stage of social maturation (16 to 20 years old). In these stages, sexual development ends before reaching puberty, and child's psychological processes are

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[23] "***Convention on the Rights of the Child"***, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, Preamble.

[24] https://en.wikipedia.org/wiki/Adolescence; ***Rosen D. M.*** *Who is a child? The legal conundrum of child soldiers* // Connecticut Journal of International Law, 2009–2010, Vol. 25, P. 96.

[25] For example, S.: *Small medical encyclopedia* V. 6-Tomakh/ "Medical encyclopedia". M., 1991-1996 on.

[26] *Great Soviet Encyclopedia*: In 30 Volumes. Moscow: Soviet encyclopedia, 1969-1978; *Encyclopedia of land rents* . boiler. B. The Clatter. Vvedensky. Moscow: Great Soviet encyclopedia, 1953.

replaced by the characteristic behavior of adults, there is a transition from socio-economic dependence to relative dependence on adults [27].

The term "adolescent" is not objectively defined by the norms of international domestic law. The content of this concept reveals the legal practice in the field of social work. Law enforcement agencies (institutions) describe a teenager as a person aged 14-18 who is able to work legally. For example, according to Article 1 of the RA Law on the Rights of the Child "Anyone under the age of 18 is considered a child, except in cases when he / she acquires legal capacity following with the law or is recognized as viable earlier".

It is also provided by the RA Labor Code, which is defined by Article 17, Clause 2.2. "Persons under the age of fourteen may be involved in cinematography, sports, theater, concerts, circuses, television, radio creation (creative work) (or) performance, with the written consent of one of the parents or the adopter or guardian or trustee." which should not harm their health and morals, nor should it interfere with education and security, as well as the "employees" are also considered to be persons aged from fourteen to sixteen years, working under an employment contract with the written consent of one of the parents or adoptive parent or guardian. "People between the ages of fourteen and sixteen can only be involved in temporary work that does not harm their health, safety, education or morals".

This period of age development of children is based on the psychological principle proposed by A.N. Leontiev, according to which each stage of mental development is characterized by a certain leading type of activity, which is closely related to the place of the child in the system of public relations[28].

Speaking of the variety of definitions of age groups of children, it is necessary to mention one element that is important for legal research. If not all, then most languages did not initially mention the chronological age of a person as much as his or her social status.

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[27] **M. N. Larina** *Medical care for teenagers* / / First regional. No. 13, 2002.
[28] **A. N. Leontiev** *Activity, consciousness, personality*. Moscow: Politizdat, 1975.

L. S. Vygotsky, D. B. Elkonin, L. I. Bozhovich found that the peculiarities of adolescence and the fluctuations of the latter significantly vary depending on the level of development of society[29].

The developmental recurrence and the notion of opportunities and characteristics of different aged individuals is closely related to the system of age stratification (or stratification) that exists in society, that is, the system of organizing the interaction of age layers (strata).

There is a correlation between the individual's age and social opportunities. The Chronological height, or rather the level of the development of an individual, directly or indirectly determines his/her social status, the nature of his/her activity, as well as, the range of social roles, etc. The gender-age division of labor largely determines the social status, self-awareness and level of ambition of members of the respective age group.

Age serves as a criterion for taking or giving up this or that social role and this connection can be both direct and indirect (for example, temporary, necessary for education, without which one cannot occupy a certain social position). In one case, the age criteria are legal (school age, civic adulthood), in other cases, the actual ones (for example, the age of marriage), and the degree of age criteria, as well as the degree of delimitation in different societies, is quite different in different areas of activity. In general, the stage of maturation is determined by the combination of different factors (socio-economic, biological, psychophysiological, national, ethnocultural, etc.). And in different legal spheres it is different, which is mostly predetermined by the peculiarities of the relations regulated by law[30].

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[29] **L. S. Vygotsky** *Pedology of the adolescent. The problem of age* / / Collected works: in 6 volumes. Moscow, 1984. Vol. 4. Pp.5-220 , 244-269; **D. B. Elkonin** *Selected psychological works*. M., 1989; **L. I. Bozhovich** *Stages of personality formation in ontogenesis* / / Selected psychological works, M, 1995.

[30] For more information, see: **A. V. Zaporozhets** *Mental development of the child*: Election. the course of studies. works in 2 volumes. M., 1986; **I. S. Kon** *Psychology of early youth*. Moscow, 1989; **A. E. Lichko** *Adolescent psychiatry*. L., 1981; **A. N. Leontiev** *Selected psychological works*: in 2 volumes. Moscow, 1993.; **P. H. Massen** *Development of the child's personality*. Moscow, 1987.

The term “minor” refers only to law; it is not used as a scientific concept in other scientific fields. From a legal point of view, “minors” are the persons who have not reached the age of full legal capacity. For example, in V. Dali’s dictionary, a person under the age of 21 is considered a minor[31].

In the legislation of the Republic of Armenia, the term “minor” is mainly used for children aged 14-18, and for children under 14, in particular, the RA Civil Code enshrines the grouping “minors (teens)”[32].

An analysis of the provisions in the scientific literature has shown that there are currently differentiated and unified ways of defining the concept of "child".

Moreover, the differentiated definition is based on the enumeration of the main empirical characteristics of the concept “a child”; it is accepted that “a child” is a human being in the process of development from birth to 10 years old, which is also claimed in medical-social-psychological researches. Then comes the concept of “an adolescent”, although many scholars point out that childhood age limits, both medically and socially, have risen from 11 to 18 years old [33].

The unified definition, formulated as an attempt at a generalized approach to the concept of “child”, implies that a “child” is a person less than 18 years of age (adult age). As already mentioned, this definition first appeared in the Convention on the Rights of the Child, and then the same definition found its usage in the legislation of many countries.

Thus, in contrast to jurisprudence, most of the social sciences

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[31] **V. I. Dal** *Explanatory dictionary of the living great Russian language*. T. Z. M., 1980, P. 444.

[32] For example, "RA Civil code", articles 23, 24,29,30,309 etc., adopted by RA National Assembly 05.05.1998.

[33] **L. Spivakovskaya** *Psychotherapy: game, childhood, family*. Tula: EKSMO-Press, Vol. 1. 1999; 2. 2001.

are based on the registration of childhood based on the registration of psychophysiological features. For example, it is stated that modern psychological science does not use concepts such as generalized norms (age, gender, etc.). Therefore, one can agree with the findings about the absence of absolute boundaries between heights, as the general patterns of child development, depending on the child's living conditions, which fluctuate in great extent[34].

From the point of view of this research, the most interesting is the adolescent stage (the adolescence), which is often called a "difficult" age, or in J. J. Rousseau's words, is the "second birth". And it is not accidental that this age is really difficult, both for the children, as well as for the parents, teachers, public institutions, law enforcement agencies. During this period, significant changes take place both in child's body and mental world, which play an exceptionally important role in the further development of the human as a person, which brings many difficulties[35].

The stages of age and adolescence are correlated with sexual, civic and social developments, when the greatest difference between the real and social "I" is observed at the age of 13-14. On the one hand, this the classic difficult age, which is accompanied by the maximum differences between the adolescent's behavior, his self-esteem, on the other hand, this age is considered "flexible", that is why it is favorable for different influences, and it is important that these influences are not socially negative.

In families where the adolescent's known independence is recognized, the nature of the demands on him or her changes over time, in which case the juvenile usually develops and matures naturaly and normally. Otherwise, he begins to "conquer" his/her independence through various means, including impermissible

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[34] **L. V. Zankov** *Experience of psychological study of schoolchildren as part of pedagogical research* / / Questions of psychology. 1971. #2. P. 23-37.

[35] *Dictionary of Literary Themes and Motifs*, Volume 1, By **Jean-Charles Seigneuret**, Greenwood PG, London, 1988, P.4.

means. The intelligent giving of a well-known independence to a teenager has nothing to do with being completely out of control, because it is during this period that a sense of responsibility is formed. And in that case, as it will be mentioned later, the peculiarities of this or that age stage, passing through the prism of constitutional provisions, find their expression in legal norms[36].

The approach of accepting a child as a subject of law presupposes the study of the process of an upbringing of a child, of his / her development as a person.

The society has always faced the problem of preparing the child for maturation. It is different when in the earlier stages of historical development this kind of a problem was not the onliest, when the child was directly involved in occupations, taking into account the resulting physical abilities. Helping adults, he mastered the tools, work activities, the necessary knowledge, skills, and at the same time, the child had access to the relationships that existed in the work process between adults. Such a way to prepare for adulthood based on physical ability can be found not only in the depths of centuries or cultures, but also in the present time. A century and a half ago, many children of the villagers, having led an "adult" working life since childhood, had neither a school nor, accordingly, a pre-school childhood.

Along with the development of social production, the improvement of work tools, the preparation of maturity could not have been successful if the education of children had not become a problem of a special science, as pedagogy.

The demand for such training was constantly growing, which would mean that the stage of the child's general education was

[36] **A. Miller** *Illegal behavior of minors: Genesis and early prevention.* Kyiv, 1985; **X. Ramming** *Teenage and youthful age: problems of formation of personality.* M., 1994; **D. Snyder** *Survival Course for teenagers.* Moscow, 1995; **E. Erikson** *Childhood and society. One thousand nine hundred ninety two*; He is. Identity: youth and crisis (TRANS.) Moscow: Progress, 1996.

increasing. It turns out that adolescence is the result of profound socio-economic transformations of recent times, which were marked, in particular, by the establishment of public schools and the development of the right to education.

Thus, the socio-psychological profile of an adolescent is predetermined not so much by biological as by social factors of life. However, it's the adoption should not lead to the neglection of the research on the complex processes of reconstruction that take place in adolescent's organizm, which, of course, leave a mark on the whole process of its development[37].

The analysis of the more complex age development of adolescence shows that when further developing the legal status of a child, it is necessary to take into account the peculiarities of their mental world and behavior, which, respectively, has conditioned the peculiarity of the legal status of minors.

The above judgments are necessary to discuss the role of socialization in the formation of an individual's (legal-social) status. Although the process of socialization of an individual can take place throughout a person's life, it is accepted in science to associate the concept of "socialization" mostly with a specific stage of human age (childhood, adolescence), respectively, with the characteristics of individual development at that stage[38].

In the system of psychology, the two terms "individual development" and "upbringing" are used, which researchers suggest to consider as synonyms of the word "socialization". Without going into a detailed analysis of these positions, let us mention that we are talking about the process of "an individual's entry into the social environment", "his assimilation of the social experience", "communication with the system of social relations", etc. And indeed,

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[37] See: **Dambach Mia**, *"The child's consultation and consent in adoption"* Challenges in adoption procedures in Europe: Ensuring the best interests of the child, Joint Council of Europe and European Commission Conference, brochure conference proceedings, Strasbourg, 2009.

[38] For more information, see: **I. S. Kon** *Child and society,* Moscow, 1988.

in modern science (social psychology, sociology) socialization usually means the process of assimilation of exemplary forms of behavior, psychological mechanisms, social norms and values by an individual, which are necessary for the successful self-expression and self-development of the individual in a given society[39].

Experts in the field of family[40] and demography note that despite the wide range of formal structures involved in the process of socialization of the individual, so far in this area priority is given to a special institution of society - the family[41]. For example, according to T.Parsons, because the human individual is not “born”, but "prepared" through the process of socialization, the family becomes a necessity"[42].

The family is a social institution and, at the same time, a social mechanism of human reproduction. The concept “family” in the family hierarchy includes the relationship between wife's husband, parents and children, adults and children and it is based on these relationships, a small group whose members are related to the common life, by mutual responsibility and mutual assistance [43].

As the marriage and becoming a parent receive a social status, a moral and legal legitimacy, and with it a public and state support, the family acts as a powerful social institution. In cooperation with all spheres of public life (first of all, with the economy, politics, law, ideology, culture), the “family” is constantly changing. At the same time, its development is relatively independent.

The constitutions of almost all countries of the world enshrine the role and significance of the family, as well as the provisions on

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[39] See: *Encyclopedic dictionary* / Under the General editorship of **G. V. Osipov**, M., 1995. P. 686-688.

[40] See: **Diez-Picazo L., Gullon A.** *Sistema de derecho civil. Derecho de Familia. Derecho de succesiones*. Tecnicos. Madrid, 2006, P. 88.

[41] See: **Albaladejo M.** Compendio del derecho civil. Edisofer S. L. Madrid, 2004, P. 691.

[42] **T. Parsons** *Bales R. Fanily, Socialization and Interaction Process*. L., 1955. P. 16.

[43] A family is a small group based on marriage or consanguinity, whose members are connected by common life, mutual moral responsibility and mutual assistance. See: *The Great Soviet encyclopedia*: in 30 volumes. Moscow: Soviet encyclopedia, 1969-1978.

social, economic and legal protection of the family by state bodies. For example, according to the Constitution of the Republic of Armenia the family, as the natural and basic cell of society, the basis for the preservation and reproduction of the population, as well as the motherhood and the childhood are under the special protection of the state.

With the change of the social status of the family, its socio-economic, reproductive, socio-cultural, socio-psychological and other functions have also been significantly changed. There has been a steady decline in the role of the family in the upbringing, development, and physical health of children. Recently, other social structures (educational institutions, non-formal organizations, non-governmental groups, as well as the mass media) along with the family became important factors in the upbringing and socialization, the impact of which on the family system should not be underestimated.

Many economists, ethnographers and sociologists have tried to find out the connection between marriage, birth rate and family breakdown with economic processes. According to some sociologists, "the need for children is a social-psychological characteristic of a socialized individual, which is reflected in the fact that without children, and their required existence, the individual as a person suffers"[44].

During the development of the society and the state, the economic function of the family disappears. During the development of the natural economy of individual families, the conflict of birth rate was resolved within the family, it needed labor, at the same time, the needs of children, the economic reasons for giving birth to children played a big role. The children were economically "profitable" for the family, first as workers and heirs, and later as caregivers of parents in old age. In other words, the economic motivations for childbirth

[44] See, for example: **I. Kon**. *Edict. Op.,* P. 267.

prevailed.

The direct connection between the birth rate and the demand for children and the development of economic life is also observed through the analysis of historical and cultural literature. The modern attention to the issues of protection of the rights of the child, the originality of the “childhood worship” has their prehistoric origins. It is evident from the evolution of attitudes toward infant mortality. The infant homicide (infant suicide) of he possible society can be a natural productivity condition.

Because the child was mentally and physically helpless, he often became the object of ritual murder, or sacrifice. An example is Plato's “ideal” state, where not only children with physical disabilities but also children born to “bad parents” were eliminated[45]. Spartan customs justified the death of such a child, whose “life is not necessary for him/her or the state”[46]. Studies of folk songs of different nations allow discovering the so-called “cradles of the dead”[47]. It can be assumed that they were an effective tool for the ancient “demographic policy”, which was either a means of “condemning” a sick, weak child, or a test of his “survival”, the freedom of life. It is a well-known fact that in the Armenia until the 18th century there was a belief in medical science that a child should not be cured until he is 2 years old, because he is still under the control of God or nature. All of this reflects the fact that for centuries children, like other types of property, have traditionally been considered inseparable from adults. The right of children to self-determination was not accepted, they were only given a dependent status.

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[45] **Plato**. *Collected works in 3 volumes* / Translated by A. N. M. Yegunov, 1971, P. 461.

[46] **Plutarch. Moralia**: *Essays.* Moscow: EKSMO-Press, Kharkiv: Folio, 1999.

[47] For more information, see: **V. V. Savchuk** *Death lullabies: sentence, trial or shore?* / / Proceedings of the international conference "Child in the modern world: philosophy of childhood". SPb., 1991. T. I., P. 23.

The historical development of culture in the perception of the child led to a radical revolution. Based on the humanistic worldview, the child, endowed with the advantage of time, begins to become a symbol of life, creativity, salvation, the embodiment of angelic purity, simplicity and cleanness[48]. There are crucial preconditions for addressing the issues of child development and upbringing of a new person. It is obvious that the early stages of the history of the struggle against infant mortality and the development of capitalism are interconnected, which is discussed in a number of studies [49].

Such is the evolution of the attitude towards the child according to modern culturologists.

In the last two centuries, the best thoughts of mankind have explored the problems of the child, recognizing his special social status, viewing him as an individual with his own interests and rights[50].

The development of the theory of the legal status of the individual, human and civil rights and freedoms is connected with the change of the state and society's attitude towards the child as a person, an independent social subject, which is reflected in the works of many great scholars of the 19th and 20th centuries[51].

In particular, the famous anatomist and pedagogue P. F. Lesgaft noted that one of the characteristics that determine the degree of development of society and moral qualities may be the degree of tolerance expressed in upbringing.

The scientist has defined the most important thing in the process of upbringing: "to give the child the opportunity to do

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[48] See: **V. Abramenkova** *Children's sanctity* / / Pedagogy, new century. No. 1 (5), 2001.

[49] **I. S. Sluchanko** *Infant mortality*, Moscow, 1976, P. 18.

[50] For more information, see: **L. V. Kuznetsova** *Development of a new ethics in relation to the child in the XX century* \ \ Actual problems of modern childhood, Vol. Y1, Moscow, 1999, P. 57-70.

[51] **Gerison Lansdown**, *Civil Rights of Children in the Family*, 4(2) Child Care in Practice 138 (1997); **Tomas Englund et al.,** *Education as a Human and a Citizenship Right – Parents' Rights, Children's Rights, or…? The Necessity of Historical Contextualization*, 8(2) Journal of Human Rights 133 (2009).

everything on his own, to express himself independently, adults should not run away from him/her and should do nothing for their personal comfort and pleasure, but from the very first day of birth, should always be treat him/her as a person, with full recognition of the inviolability of that individual"[52].

A pedagogue P. F. Kapterev, in 1906's report "On the Parental Circle" on the "Moral Development of Children", figuratively stated: "Children are not donkeys burdened with responsibilities, but individuals whose responsibilities, like those of adults, go hand in hand with their rights".

That is why even the youngest children should be treated with care, caution, and respect for their human individuality, not to violate their rights.

Parents need to be aware of their attitudes towards their children, perform their duties without raising their voices, reprimanding them, without anger or convulsions, and calmly demand from their children to perform their duties upon them. The family, built on these principles, will prepare a fertile ground for the development of children's civil, in the future a stubborn fighter for the inviolability of his personal and civil rights, resilient to all kinds of oppressors[53].

As we can see, the scientist, in fact, gives the definition of the basis of the legal status of the child, that is, the unity of his rights and responsibilities.

The fighter for civil rights or the enemy will grow against any oppressor only if his responsibilities are equal to his rights. Later, the "obligation of responsibility" will be mentioned by the pedagogue A. S. Makarenko: "Children are the meaningful cells of life, that's why they should be treated as friends, citizens, and we should see and respect

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[52] **P. F. Lesgaft** *School types. Family education of a child and its significance.* (Anthropological study). Part 2. SPb., 1890.
[53] **P. F. Kapterev** *Elected. PED. Op.,* M., 1982, P. 232.

their rights and responsibilities, the right to happiness and responsibility”[54].

A psychologist-pedagogue P. Blonsky paid attention to respecting the patterns of the child's development, his/her personality, needs and interests, need for education and upbringing[55].

The difference between the traditional and modern views of adults in their relations with children has been shown figuratively and accurately by psychologist A. B. Orlov, who suggests to replace the principles of traditional relations between the adult world and the inner world of children with new ones: the principles of equality, the dialogue, the coexistence, the freedom, the co-development, the unity, and, all in all, with the acceptance[56].

Based on the above, today we can confirm with some certainty that the peculiarities of an individual's development, the upbringing of minors, the many judgments about it, the comments that children are “underdeveloped adults”[57], find their direct or indirect expression both in the Convention on the Rights of the Child and in the legislative systems of many countries.This testifies to the existence of a deep internal connection between the law, first of all the Constitution, the “upbringing of the growing generation”, the basic principles and the process of which is guided by the state.

The Constitution, as the basic law of the state, is an example of human behavior in all spheres. In principle, pedagogical science, pursuing the same goal towards the child, contributes to the implementation of constitutional provisions in accordance with the ideas acquired through upbringing. On the other hand, the status of

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[54] Cyte. by: **A. S. Makarenko** *Collected essays in seven volumes*. T. Z M., 1961, P. 445.
[55] See: **P. P. Blonsky** *Selected psychological works*. Moscow: Prosveshchenie, 1964.
[56] **A. B. Orlov** *" If...you won 't be like children... ".* Humanistic psychology of childhood and educational perspective for the third Millennium//World of education, #4, 1996, P. 72-75.
[57] Cyte. by: **F. Dolto** *On the side of the child. On the side of the adolescent* / Trans. from FR. SPb.; Moscow, 1997.

a child, in the broadest sense of the word, brings him/her to life, depends, respectively, on the upbringing of those who are expected to treat the child as one brought up with respect, his/her status, that is, individuals and legal entities. In recent years, new debates over the phenomenon of childhood have begun to erupt between domestic and foreign scientists.

In recent years, new debates over the phenomenon of childhood have begun to erupt between domestic and foreign scientists[58].

The childhood, as a special social phenomenon, became the object of internationally published scientific research[59].

The childhood is defined in them as a stage of human life, a special social phenomenon, and children as a special socio-demographic group of the population, from birth to 18 years of age, which has its unique needs, interests and rights, but is deprived of opportunities to protect them.

Within the social phenomenon of childhood we understand a social phenomenon that determines the place of children and their role in the given state and society, the state's, society's and adult's attitude level towards children, and the creation of sufficient and fair conditions for children's life and development, first of all, for the protection of the rights of every child through the development and implementation of an adequate state social policy[60].

In these research works emphasize the importance of childhood as an explanation of a social phenomenon, and emphasize the need for systematic, interdisciplinary research in the field of childhood problems, scientific research based on the integration of various scientific branches.

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[58] **S. N. Shcheglova** *Sociology of childhood.* Moscow: Institute of youth, 1996, P. 37.
[59] *In recent years, scientists from different countries have devoted their work to the study of children's topics.*
[60] **E. M. Rybinsky** *Childhood as a social phenomenon.* Moscow: RDF research Institute of Childhood, 1998, P. 42.

The combination of vital, mental and social inseparable connection in a person not only can, but also must become the philosophical-pedagogical basis on which the new branch of science will emerge - juvenology or the science of childhood.

In our opinion, in this case we can only talk about the status of the child as an independent social entity, and the childhood, being a certain age in a person's life, can only be an object of protection by the state, which is no less important[61].

The analysis of economic research on this issue shows that children are viewed in them as exclusively consumers and object of law enforcement, socialization and upbringing. Their position in society is assessed only from the point of view of adults' perception of the problem. Such an attitude towards children turns into an unconscious deprivation of their real opportunities and rights[62].

As a result, it is automatically concluded that adults, representing all institutions of society, place children in a lower social status.

The expert survey conducted by scientists in the fields of family sciences, law, economics, psychology, sociology, demography is of interest. In the range of reasons for the low effectiveness of the social policy for the sake of childhood interests, together with the lack of clear ideas about it (33%), 20% of the respondents mentioned the insufficient development and functionality of the legal framework, the lack of funds for the implementation of that policy[63].

The findings of the survey indicated a worrying difference between the child as an independent value, status, and the actual

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[61] See: **L. M. Nechaeva** *Legal protection of childhood in the USSR.* Moscow: Nauka, 1987.

[62] See: **E. B. Breeva** *Research of qualitative characteristics of children in the modern world: methodological aspects.* The author's abstract dis.... doctor. economy, science. Moscow, 1997.

[63] Problems of formation of the state social policy in the interests of children (analysis of the questionnaire survey and materials of the "round table") / Actual problems of childhood: The Legal Clinic of GSU, Armenia, 2018.

condition of the child. It was itself manifested in the annual decline in the standard of living of children, the deterioration of their physical and mental health, the "children in special, difficult conditions", ie orphans, the disabled, the socially disabled, the lawbreakers, the drunkards, drug addicts, refugees, victims of national conflicts and ecological disasters, and in the increase of the number of victims of violence, etc. The state has, in fact, left the children in a serious crisis, the consequences of which are unpredictable, and the prospects for a settlement are unclear.

It seems obvious that in the conditions of “socialized” childhood, the ideology of upbringing and strategy, the policy of social development of the child, as well as the ensurance of his/her rights and the renewal of the protection system, as well as the the need to include the whole scientific complex about man in the definition of “children” have grown.

The search for new directions for solving the problem is also conditioned by the most important human-creating function of modern society. The proposed task, in addition to defining the legal status of the child in modern states for the purpose of legislative improvement, presupposes: civil agreement in society, civilized cooperation between society and state structures, it can not be limited by only national frameworks.

Thereby:

1. Most of the social sciences are characterized by differentiated approaches to childhood, which is noticeably being changed depending on the level of development of society. The differentiated definition of “a child”, which follows from the data of medical-social-psychological research, leads to the enumeration of the main empirical characteristics. The adolescent age group is the most important age group (stratum) in the process of socialization in the real relations of the macro-micro-social environmental relations. The integrated definition is used in the state legislative system as an

analogue of the term “minors”. In fact, an attempt is made to generalize the search concept. A “child” is a citizen (person) who has not reached the age of maturity (mostly 18 years old or in some countries at a different age).

2. The level of development of a person, assumed by chronological age, directly or indirectly determines his/her social status. However, in any case, there is some “reduction” of the social status of the child compared to the adult, while, according to the international legal acts and Constitution, they are equal, and moreover, the social and legal status of the child, in terms of high, special protection, should be big.

3. The difference between physiological (sexual) and mental (socio-moral) maturation, ie being the second after the first, requires high legal protection of the child's interests (as the highest way of the ensurance of social protection), which is necessary for his normal development and socialization.

4. The data of all social sciences, without any exception, testify the current state of crisis, ie the reduction in the number of children, the deterioration of physical and mental health, the decline of living standards, etc., especially in weakly developing countries.

5. From the point of view of humanities, the evolution of the attitude of the society towards the child was expressed in the necessity of accepting the social subject as an independent social value.

1.2. THE ISSUES OF A LEGAL SETTLEMENT IN PUBLIC RELATIONS WITH THE PARTICIPATION OF A CHILD

The approach to the concept of the legal status of the child in society has been formed over the centuries. The attitude towards children, first of all as a passive object of parental care, gradually acquires a new quality, and in the mass consciousnessis growing th approach that the childis simply a non-dependent being, first of all, from the environment[64].

It is obvious that a child is an individual; his/her ability to live in society is most determined by his/her multifaceted development, giving him/her opportunity to express his/her abilities.

One of the most important ways to create such an opportunity is to provide the child with appropriate rights, freedoms, securing their guarantees, which makes the child an independent subject of legal relations.

According to the Article 3 of the Constitution of Republic of Armenia, a person is the highest value in the Republic of Armenia. The inalienable dignity of a man is the inalienable basis of his/her rights and freedoms. The respect and the protection of fundamental human and civil rights and freedoms are the responsibilities of public the authority. The public authority is limited to the basic human rights and freedoms of a citizen as a directly applicable right.

According to the Article 10 of the Constitution of the Kingdom of Spain, the principles of fundamental rights and freedoms recognized in the Constitution are interpreted in accordance with the Universal Declaration of Human Rights, the international treaties ratified by Spain and the agreements relating to them.

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[64] See: **Walkerdine Valerie.** Developmental psychology and the child centered pedagogy. In: Henriques J. (ed.). *Changing the Subject*. London: Methuen. 1984. pp. 153-202.

In this case, it should be taken into account that in the legal regulation of this or that public relations, the general, and the specific ones that are presented with their sources, also contain the principles of Constitution.

They define the subject-object nature of those relations, as well as the requirements for their content[65].

As it is known, the participants in legal relations are the entities that are the bearers of the rights and responsibilities provided by law, or their associations. The concepts such as “subjects of law” and ‘subjects of legal relations” are fundamentally close in their meanings. But at the same time, there are significant differences between them. In particular, N. I. Matuzov points out that the infants, young children, and the mentally ill people, being special subjects of the law, are not subjects of the majority[66] of legal relations, while minors of limited (incomplete) working age are, as a rule, not only of law but also the subjects of legal relations.

However, if infants or newborns are not subjects of a legal relationship, their place in the relationship must be determined, as the person as an individual can only be a subject of a legal relationship, but not an object. He played the last role only during the slavery system.

Despite the fact that there is a great variety of public relations regulated by different norms in the society, within the framework of this work, we are interested in the legal relations regulated by the norms of law, ie public relations with the participation of children[67].

In order to complete the research, it is essential to discuss the specifics of social relations with the participation of the child.

In the process of its formation, public relations go through

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[65] **R. O. Khalfina** *General doctrine of legal relations*, Moscow, 1973, P. 31.
[66] *Theory of state and law.* Course of lectures / edited by **N. I. Matuzov, A.V. Malko**, Saratov, 2004, P. 395.
[67] See more: **M. N. Marchenko** *Problems of the theory of state and law*: Textbook. Moscow, 2018; *Theory of state and law*. Course of lectures/edited by **N. I. Matuzov and A.V. Malko**. Moscow, 2004.

several successive, interconnected stages: social relations, close relations, which is followed by public relations[68].

The emergence of public relations is followed by the actual relationship, the participants of which do not yet fully realize themselves as parties of public relations; and here having relations with each other, as a rule, is accidental. According to Yu. I. Grevtsov public relations is one of the forms of "mature social activity" of at least two parties (individuals), which is formed by them in order to meet their current needs. The subject matter of such relations is narrower than in actual relations. In order to become a subject of public relations a person should at least be able-bodied. The realization of such a relationship is based on the joint interaction of the parties, as well as on the joint control over the order of their interaction and the latter is enshrined by the law[69].

It is based on the conclusion that children are more likely to appear in factual relationships than in public ones; this conclusion does not correspond to the widely held view that actual relationships between two subjects are already public relations, as these entities operate in a social environment[70].

To summarize the above, we rely on the view that children can act as participants in such relationships even when they are objectively deprived of the ability to meet their current needs or the control provided by adults. In this case, they also participate in public relations as directly, as in a mediated way (for example, through their legal representatives) and only the legally established

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[68] For more information, see: *Public relations. Questions of theory*. Moscow, 1981, P. 15; **S. F. Kechechyan** *Relations in a socialist society*. Moscow, 1958, P. 188; **Yu. I. Grevtsov** *Problems of the theory of legal relations*. L., ed. Leningrad state University, 1981, P. 6.

[69] **Yu. I. Grevtsov** *Essays on the theory and sociology of law*. SPb., 1996. P. 152; **Yu. I. Grevtsov** *Problems of the theory of legal relations*. L., ed. Leningrad state University, 1981, P. 62.

[70] *Theory of state and law*. The textbook for legal high schools and faculties. Under the editorship of **V. M. Karelskogo and V. D. Perevalova**, M.: Izd. NORMA-INFRA-M group, 1998, P. 345.

order of interaction of the parties determines the correction of the peculiarities of the child's physical and mental “misunderstanding”.

The difficulty of a child's participation in public relations is explained not only by his/her “immaturity of social activity”, but also by the lack of a norm of law that would fix or define the necessary scope of authority for him/her.

In the legislation of almost all countries, the child has traditionally been accepted as part of the family, and childhood is inseparable from the parents, from motherhood to fatherhood. In other words, the parents (their successors) are regarded both factual and legal representatives of their children. When an adult acts in a legal relationship not only on behalf of himself but also on behalf of his children, then their overlap of interests is preconceived. The rights of the child are institutionalized mainly through his or her family legal status. At the same time, it is necessary to take into account that the constitutions and legal practice protected by the state with the help of the state protects the interests of the child in the form of responsibilities that is caring for their children, educating them instead of their parents, or alimony obligations to their children and in case of sale or privatization of own property, through the constitutional definition of special protection of children's interests; thus recognizing to some extent the autonomy and independence of the minors. This approach requires a review of the legal status of the child as a subject of legal relations.

Then there is the need to define the concepts of eligibility applicable to the child. Significant changes are currently being made to the assessments of many basic definitions, but the definitions of “eligibility”and “functionality” have not changed significantly[71].

The 1925 “Encyclopedia of State and Law” considered jurisprudence only as the ability to be a subject of law [72]. According G. F. Shershenevich, the ability to acquire rights, that is, to be a

[71] https://en.wikipedia.org/wiki/Capacity_in_English_law.
[72] *Encyclopedia of state and law*. Vol. 1, Moscow, 1925, P. 794.

subject of rights and responsibilities, is called competence, and the ability to establish relations independently through legal action is called capacity. The eligibility presupposes the existence of competence. The eligible must be competent, while the competent may not be eligible[73]. Thus, the child, being fully endowed with jurisdiction, may, for example, be the subject of the inherited property rights or obligations owed to him or her in his or her favor, but he or she can neither buy or sell, nor to sign contracts.

Both terms are familiar to the civil legislation of the Republic of Armenia, the Kingdom of Spain, as well as to many other countries. The jurisdiction arises not earlier than the moment a person is born: "It is not the embryo but the newborn has an influence on the legal relationships, and in some countries that influence is attributed to the time when he/she was still in the embryonic state"[74].

Taking into consideration the fact that a person's physical and mental maturity occurs after a certain period of time from his/her birth, in the early period of his/her existence, the child is completely helpless, without the intervention of other people, he/she is, in fact, doomed to death. The necessary assistance in the society can be organized in two ways: it (the assistance) becomes the responsibility of the parents or of other legal representatives, and is given directly, or by the society, the state where the child is born[75].

In the study of legal theory, as well as in the work of nationalism, there was almost no news. The same should be said about eligibility, which is understood as the ability of a citizen to receive civil rights through his/her actions, to create civic

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[73] **G. F. Shershenevich** *Textbook of Russian civil law*. SPb., 1914, P. 46. *A course in civil rights*. Tula: Autograph, 2001.

[74] **Mohammad Taqi Rafiei**, Ph.D, *A Legal Jurisprudential Deliberation on Lineage and Inheritance of the Pre-Implantation Embryo,* Int J Fertil Steril. 2012 Jan-Mar; 5(4): P. 245–258.

[75] RA legislation, like, for example, French legislation, does not require that a child at the time of its birth is considered not only alive, but also capable of life, or, as is done in Spanish legislation, that the born being has a human image. In the modern sense, a child is defined as a human being, in the light of pronatalist studies, its appearance (birth) is recorded with the first breath and at a weight of at least half a kilogram.

responsibilities for him/her[76].

However, let's try to look at these and other concepts in a slightly different way. Any ability is itself a certain human condition. In a generally accepted sense, it is the grace, the quality and the feature given to him/her by nature, which in its turn gives him/her a certain opportunity[77]. In terms of legal matters, it is about the possibility of becoming a subject of law. On the other hand, neither the law nor any other act defines, and can exercise jurisdiction, in this respect it is difficult to agree with the definition of jurisdiction as a unique subjective right. It is different when jurisdiction is a precondition for the right to have specific subjective rights, moreover, a mandatory precondition, without which the subjective right becomes meaningless[78]. That is why according to the Article 20 of the RA Civil Code:

1. The ability to have civil rights and to bear responsibilities (civil jurisdiction) is recognized equally for all citizens,

2. The right of a citizen arises at the moment of his/her birth and terminates with his/her death [79].

Therefore, according to the RA legislation, a child becomes endowed with the rights from the moment of birth.

The Roman private law was known as the institute of citizens' legal capacity and functionality. Children under the age of 25 were recognized as children, they were consisted of two groups: children (impresseres) and teenagers (puberes minores). Infants are also divided into two groups: "infants", ie children up to 7 years old, infantide majores, ie boys from 7 to 14 years old, and girls from 7 to

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[76] **S. N. Bratus** *Subjects of civil law.* Moscow, 1950. P. 5.; **S. N. Bratus, O. S. Ioffe.** *Civil law.* Moscow, 1967. P. 25, Commentary to the Civil code of RSFSR / Under the editorship of **E. A. Plasic**, **O. S. Ioffe** M., 1970. P. 34; *Dictionary of civil law*/ Under the editorship of **V. V. Zalessky**, M., 1997. P. 240 et al.

[77] https://en.wikipedia.org/wiki/Capacity_(law).

[78] *Introduction to Spanish Private Law: Facing the Social and Economic Challenges*, By **Teresa Rodriguez de las Heras Ballell**, Routledge-Cavendish, Published October 6, 2011, P.54.

[79] Further, see the *"Civil code of the Republic of Armenia"*, adopted by the national Assembly of the Republic of Armenia on 05.05.1998.

12 years old. Young children were allowed to enter into transactions for the acquisition of rights (for example, the acquisition of property), and as for children under 7 years of age, they were incapacitated. The adulthood was reached at the age of 25, or on the basis of imperial privilege it could be recognized at an earlier age - 18 for girls and 20 for boys [80]. Its inalienability is a necessary feature of the legal capacity of individuals. The jurisdiction can not be renounced, it can not be transferred to someone else, and finally, it is impossible to deprive of jurisdiction even in court. At the same time, the Article 25 of the RA Civil Code envisages restriction of a citizen's eligibility for the cases prescribed by the law. It seems that, unlike a legal entity, citizens can not be endowed with general and special rights, as it is the only one for them, and to some extent, being an abstract concept, the citizen's rights do not differ in terms of the nature of the regulated relations[81].

As for efficiency, according to the Article 24 of the Civil Code of the Republic of Armenia, the ability of a citizen to acquire and exercise civil rights through his/her actions, to create civic responsibilities and to fulfill them (civil functionality) fully arises from the moment he/she becomes an adult, ie eighteen years old. This enshrinment emphasizes the no less important feature of its functionality - its dynamics.

Consequently, functionality is included in the variety of concepts, the core of which is again the ability of the citizen. However, here it is no longer a completely natural trait, but a willingness to perform certain actions, the ability to fulfill the obligations assumed by law. The existence of such a capacity is no longer abstract, it is “connected” with the possibility of acting; it is not infinite, but is limited by the law.

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[80] *Roman private law*: Course of lectures /Under the editorship of **H. M. Hutus**; Bylina, 1994. Pp. 54-55.

[81] On the special legal capacity of legal entities, see: **V. V. Kudashkin** *Special legal capacity of civil law subjects in the scope of the General ban* / State and law, # 5, 1999, P. 53.

The normative-legal enshrinement of capacity is, in this case, one of the most common, universal means of regulation of civil-legal relations of individuals by the state and in order to participate in them, it stipulates the limits of legality for everyone, except for those citizens who are not able to perform rational actions, and to be accountable for their actions. That is why it is not accidental that for a more flexible legal regulation of the relations with the participation of such persons, concepts such as the concepts of fully limited capacity are introduced[82].

However, the Constitutional Court of the Republic of Armenia referred to the terms such as “capacity”, “incapacity” and “limited capacity” used in the RA Civil Procedure Code. In this connection, the RA Constitutional Court notes that the content of the mentioned concepts is revealed in the relevant articles of the RA Civil Code. Thus, the Article 24 of the RA Civil Code, in particular, stipulates: “The citizen's ability (civic capacity) to acquire and exercise civil rights through his/her actions, to create and fulfill civic responsibilities for himself/herself, arises in full, from the moment he/she becomes eighteen years old”83. In this connection, the RA Constitutional Court notes that the content of the mentioned concepts is revealed in the relevant articles of the RA Civil Code. Thus, the Article 24 of the RA Civil Code, in particular, stipulates: “The citizen's ability (civic capacity) to acquire and exercise civil rights through his/her actions, to create and fulfill civic responsibilities for himself/herself, arises in full, from the moment he/she becomes eighteen years old”[84]. The

[82] **T. K. Barseghyan** *Civil law of the Republic of Armenia*, Yerevan State University ed., Yerevan, 2000, P. 90.

[83] *A certain interest in connection with the goals of this work is the point of view, according to which the concept of "self- exercise" is not identical with civil capacity. The article being commented on refers to a broader phenomenon than civil capacity, which is only a special case of the General ability of a citizen to independently exercise the rights guaranteed by the state and the duties imposed by it. It is the prerogative of the legislator to determine the age that must be reached to be able to acquire a particular status.*

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article 31 of the same Code reveals the features of incapacity, stating that “The citizen, who, due to a mental disorder, cannot understand the significance of his /her actions or manage them, may be declared incapacitated by a court following the Civil Procedure Code of the Republic of Armenia”.

The Article 32 of the RA Civil Code, in its turn, refers to the definition of the term “limited capacity”, in particular, stating that "the alcohol or drug abuse, as well as the ability of a citizen to put his/her family in a difficult financial situation as a result of gambling is limited by a court in accordance with the procedure established by the Civil Procedure Code of the Republic of Armenia”. In this regard, the Constitutional Court of the Republic of Armenia considers it necessary to state that in the course of further legislative changes this issue should also be addressed, which will allow to exclude disproportionate interference with the capacity of persons, making the grounds for recognizing a person ‘incapable” or “partially incapable” more complete[85].

Summarizing the above, it becomes clear that it is the age of 18 that is associated with the emergence of all indicators of maturity, which include: physical maturity determined by physical condition, mental maturity, which indicates wise management of one's actions and finally which is not less important is the so-called social maturity, which allows one to participate independently in the processes of public life[86].

Moreover, in order to be fully capable, it is desirable to have all three parameters of maturity, although different types of regressions

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exercise the rights guaranteed by the state and the duties imposed by it. It is the prerogative of the legislator to determine the age that must be reached to be able to acquire a particular status.

[85] For more information, see. *Legal Positions expressed in the decisions of the RA Constitutional court and their implementation*, Guide-manual, Volume 1, Yerevan, 2016, PP. 316-317.

[86] **T. K. Barseghyan** *Civil law of the Republic of Armenia*, Yerevan State University ed., Yerevan, 2000, P. 89.

are not excluded. For example, certain negative tendencies in terms of mental and physical development that do not meet the criteria of an eligible person over the age of 18 may be grounds for declaring him/her incapable[87].

The emergence of full capacity upon reaching the age of maturity refers to a general rule that goes beyond civil law and extends to all relations governed by other branches of law, in particular family-employment relations.

The possible deviations from the general provisions of that account serve as an evidence for the transformation of legal definitions into a flexible tool of legal regulation. It means the emergence of full capacity earlier than the period prescribed by law. Thus, according to the Article 24, Part 2 of the Civil Code of the Republic of Armenia, a minor who has reached the age of sixteen may be recognized as fully capable if he/she works under an employment contract or is engaged in entrepreneurial activities with the consent of his/her parents, adoptive parents or guardian. The juvenile is recognized as fully capable (emancipation) on the basis of a court decision on the application of the guardianship or trusteeship body, with the consent of the parents, adoptive parents or the guardian, and in the absence of such consent, by a court decision. Parents, adoptive parents are not liable for the responsibilities of a fully recognized minor, in particular for liabilities arising from the damage caused by him/her.

The legislator envisages two cases of recognizing the minor fully capable. First, a minor who has reached the age of 16 may be declared fully capable if he or she works under an employment contract or is engaged in entrepreneurial activities with the consent of his or her parents, adoptive parents or guardian. In this case, emancipation can be carried out either on the basis of a decision of the guardianship or trusteeship body, with the consent of the

[87] See. *Legal Positions expressed in the decisions of the RA Constitutional court and their implementation*, Guide-manual, Volume 1, Yerevan, 2016, P. 538.

parents, adoptive parents or guardian, or, in the absence of such consent, by a court decision. The second is the case when the law allows marriage before the age of 18 the citizen acquires full capacity from the moment of marriage. By the way, the full capacity acquired through marriage is retained until after the divorce before the age of 18, but if the marriage is declared invalid, the court may rule on the complete loss of full capacity of the minor spouse. Parents, adoptive parents are not liable for the responsibilities of a fully recognized juvenile, in particular for liabilities arising from the damage caused by him/her. The parental rights and responsibilities of the parents are ceased from the moment the citizen is recognized as fully capable.

Though the emancipation of a juvenile does not occur automatically and is subject to certain conditions, the return of a fully-fledged minor to his or her "former state", for example, due to unwillingness to work, the recognition of the minor's ability to work at an earlier age cannot be denied. However, in that case, the legislator does not rule out the application of the general rules of the deprivation of the capacity or the limitation of the capacity[88].

There are controversial provisions in the adopted normative-legal acts on juvenile emancipation. In particular, we believe that the concepts of "emancipation" and "adulthood" are not identical if only they do not coincide. In this regard, it is enough to address the different age limits of adulthood in specific areas of law. In some countries, a person recognized as emancipated by the decision of the guardianship body does not become an adult. The emancipated juvenile retains his or her status as a juvenile and a number of property rights that the juvenile enjoys (the right to live with his or her parents regardless of the place of residence, etc.). In this respect, it is not so right that the payment of alimony collected in

[88] See: **Murris, Karen**. *The Posthuman Child: iii*, in: D. Kennedy, B. Bahler (ed.), *Philosophy of Childhood Today: Explring the Boundaries*, Lexington Books, 2017, P. 185-197.

court is being ceased until the minor reaches the age of 18 when he/she becomes fully capable[89].

Ultimately, it should be borne in mind that an emancipated child is only a full participant in civil legal relations; in some legal relations the age limit for participation (electoral, administrative, etc.) is not removed. In some countries (for example, in Bulgaria, the Russian Federation, Poland, etc.) the full capacity arises as soon as a citizen reaches the age of eighteen. In German civil law, an adult is a citizen who has reached the age of twenty-two, respectively, before the age of twenty, citizens do not have full legal capacity, following the English Law the full eligibility (like: adulthood) occurs at the very beginning of the day preceding the age of 21. According to the Swiss legislation, a person is recognized as fully capable at the age of 20. And in some countries the legislation of minors has a limited capacity, for example, in Germany it is defined when children reach up to seven years old, in Poland - up to thirteen years old[90].

Restrictions on capability under civil law apply first and foremost to children, and secondly to those who have made their families financially difficult by abusing alcohol or drugs, as well as gambling. When defining the specificity of a child's ability to work, despite the legal definition of the restriction of rights, the term "incomplete (or partial) disability"is more acceptable, as the "presence" of disabled adults with a number of mental disorders, as provided by the RA legislation, somehow or indirectly degrades the legal status of the child.

At present, the child's ability to work is defined by certain civil criteria of the Civil Code of the Republic of Armenia, according to which children are mainly divided into 3 groups: children under 6 years old, minors under 14 years old, and minors from 14 to 18 years old.

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[89] **S. Bukhina** *Emancipation: problems and prospects* // Economy and law, No. 8, 1999, P. 50.

[90] **V. R. Ileiko** *Some aspects of the problem of legal capacity, limited legal capacity in foreign legislation* (literature review) **V. B. Pervomaysky, V. R. Ileiko** *Forensic psychiatric examination: from theory to practice.* Kiev, KIT, 2006, Pp. 257-268.

The RA Civil Code does not define the capacity of children up to 6 years old, while the legislation of different countries states that instead of these age group children, almost all transactions on behalf of them can be carried out by parents or by other legal representatives (guardians, trustees) etc.), they are completely incapable, without any exception[91].

As a general rule, minors between the ages of 6 and 14 with limited capacity, however, are exceptionally endowed with some independence.

According to Article 29 of the Civil Code of the Republic of Armenia, instead of minors under the age of fourteen, transactions may be concluded on behalf of them only by their parents, adoptive parents or guardians. Children between the ages of six and fourteen have the right to conclude on their own the following:

1) Small household transactions.

2) Transactions aimed at receiving gratuitous benefits that do not require notarization or state registration of rights arising from transactions;

3) Transactions to manage the funds provided by a legal representative or by third parties for a specific purpose or freely.

In the case of the minor's transactions, including the transactions entered into by him or her, his or her parents, adoptive parents or guardians are liable for the property if they do not prove that the obligation was not breached through their fault. These persons are legally liable for the damage caused to the minor.

If we try to analyze the presented provision of the RA Civil Code, we can easily notice the absence of clear boundaries in defining the actions that are allowed to be performed by a minor between the ages of 6 and 14. Moreover, the RA Civil Code does not define the features of a small household transaction, as they mostly depend on

[91] *Roman private law*: Course of lectures /under the editorship of **H. M. Hutus**; Bylina, 1994, Pp. 54-55.

the level of financial support of the child's family, value orientations, etc.

The capacity of minors between the ages of 14 and 18 is significantly wider, as it is about children becoming adults.

That is why their legal representatives are called upon to assist them in exercising their rights and responsibilities arising from legal facts. Moreover, according to the Civil Code of the Republic of Armenia, minors from fourteen to eighteen years of age may enter into transactions with the written consent of their legal representatives, parents, adoptive parents or guardians, except for the transactions mentioned below. The transaction entered by such a minor is valid only with the written consent of his or her parents, adoptive parents or guardian.

Minors between the ages of fourteen and eighteen, without the consent of their parents, adoptive parents or guardians, have the right to:

1) Manage their salary, scholarship և other incomes;

2) Exercise the rights of an author of a work of science, literature or art, invention or other intellectual activity protected by the law;

3) To pay and manage the deposits to credit institutions in accordance with the law;

4) Enter into small household transactions other transactions envisaged by the Code.

At the age of sixteen, minors have the right to be members of a cooperative in accordance with the laws on cooperatives. Minors between the ages of fourteen and eighteen are independently liable for

their property in accordance with the law. Such minors are liable for the damage they cause in accordance with the Code[92].

A written consent of a legal representative is required for an adult to carry out other transactions under civil law. This rule applies more consistently when the transaction is subject to notarization or state registration. All other transactions are practically made in written form without any approval. As for the coming written approval, then this norm does not apply in practice.

A transaction is the actions of citizens and legal entities, which are aimed at defining, changing or terminating civil rights and obligations (Article 298 of the RA Criminal Code); that is why it becomes valid immediately after its implementation and it is more expedient to limit the time of entry into force of a legal fact by obtaining the prior written permission of the legal representatives, rather than after it has been done.

Thus, all cases of restricted capacity of children are provided by law [93], moreover, the permissible limitations of disability are always related to the age of the child or the health condition of the adult.The emergence and expansion of capacity occurs consistently and in a certain factual condition.

In case of sufficient grounds, in some cases, through the mediation of the parents, adoptive parents or the guardianship body, the court may restrict or deprive a minor from fourteen to eighteen years of age of the right to manage his salary, scholarship or other income independently, if there are sufficient grounds, except in cases when the minor has acquired full capacity in accordance with the law.

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[92] **Anna M. Rabets** *The correlation of the civil status of minors and of their legal representatives in contractual and tort obligations (problems of theory and practice),* Vestnik Tomskogo gosudarstvennogo universiteta, Tomsk State University Journal, 2017, 424, 241–246.

[93] For details, see: **A. M. Nechaeva**. *On the legal capacity and capacity of individuals* / / State and law, # 2, 2001, P. 29 - 34.

In other words, there is no single procedure for limiting the ability of individuals. However, in any case, it is (should be) based on the law; it is implemented either in the framework of judicial or (in some countries) administrative activities. The part 4 of the Article 34 of the Civil Code of the Republic of Armenia does not ignore the consequences of the existing legal definitions, the violation of which is the invalidation of an act of a state or other body imposing an illegal restriction.

The above-mentioned on the legal capacity of individuals allows us to conclude that we are talking about interconnected concepts, each of which occupies a unique place in the process of regulation of civil legal relations of individuals. The concepts under discussion are not identical because they are in different dimensions. Besides, there are serious differences between them:

- The eligibility is not related to the age of the citizen, and the capacity is directly dependent on him,

- The eligibility is not affected by the health condition of the individual, and his / her capacity is often predetermined by serious deviations from the health condition of the legal entity,

- The eligibility is classified as a permanent concept that is not subject to change, while capacity can be expanded and on the contrary, reduced in its scope, provided by law,

-The eligibility is based on the natural human right, and capacity is primarily based on the positive right - the law.

The peculiarity of children's eligibility and capacity, in our opinion, is based on 3 crucial provisions:

1) A child, like any other person, a citizen, has the right from his/her birth;

2) In terms of age, the insufficient physical and mental development of a child, he/she can not be fully capable, that is, he is not capable of active, voluntary actions, which implies an element of responsibility;

3) Since, in the context of the realization of interests, legal interaction is practically impossible, therefore, incomplete capacity must be compensated, supplemented by the capacity of the legal representatives of the adult or adults, in a legal sense, through the full capacity of their (children) legal representatives[94].

In the professional literature, one may encounter with some other forms of perception of the integrity of a minor's eligibility, for example, that his/her legal capacity is supplemented by the capacity of a parent or his/her legal representative. Thus, here we can speak about the notion of legal entity, which in its legal content is the ability to be a bearer of legal rights and obligations, to exercise them independently or through legal representatives, to violate rights, and finally, to be accountable for non-fulfillment of his/her obligations.

By its structure, the legal entity is the union of eligibility and functionality[95].

However, noting the complexity and the specificity of the children and the legal relationship relationship between their legal representatives in terms of overlapping the interests, a number of emphases need to be emphasized. Two interrelated issues need to be addressed in the legal settlement process between parents (or their substitutes) and children, also the legislation must take into account the nature of the personal "trust" of those people, in connection with

[94] **E.V. Kosenko** *Industry definition of legal capacity in family law*, Scientific notes of Kazan University, Volume 157, book 6, Humanities, 2015, P. 191-199; **A.M. Nechaeva** *On the legal capacity and legal capacity of individuals* / / State and law, No.2, 2001, P. 29-34; **A.V. Ostapenko** *Legal Capacity of citizens as a civil legal category*: author. dis. ... Cand. the faculty of law, Sciences, Volgograd, 2011, P 30.
[95] **Ya. R. Webers** "*Legal Personality of citizens in the Soviet civil and family law*" Riga, 1976, (CH. 2, 3).

which the state intervention in this area must be minimal.On the other hand, in case parents or other family members pose a threat to the interests of children, effective mechanisms for the protection of those rights should be put in place, without mentioning the actual violations of the child's rights[96].

It is also necessary to take into account the de facto legal inequality of children and their legal representatives, accepted by many specialists in the field of family law. Even in terms of age, psychological, social and other characteristics, the parent-child relationship can not be recognized as legal relations of equal subjects[97].

Speaking about the peculiarities of the legal regulation of public relations with the participation of a child, it should not be overlooked that the Armenian legislation on children lacks a clear concept of conceptions, which is related to the fact that terms such as “a child”, “children”, “an adolescent”, “a juvenile”, “a minor" are used in legal acts, but only the concept “a child” is defined by law. It should be reminded that according to the RA Law on the Rights of the Child, “everyone under the age of 18 is considered a child, except for the cases when he/she acquires or is recognized as capable prescribed by law.”

It should be noted that the content of the term “a minor” and “a child” (“children”) in the RA legislation is consumed by the age assessment of the subject, that is, the age of 14 to 18 is defined for a minor, and for a child it is defined under 18.
In public life, the concept of “child” (“children”) in the field of law can not be attributed to adults either. In particular, according to Article 36 of the Constitution of RA, parents have the right to take care of

[96] **M. Freeman** The Best Interests of the Child? Is The Best Interests of the Child in the Best Interests of Children? International Journal of Law, Policy and the Family, Vol. 11, &3, 1997, P. 370-371.
[97] For more information, see: **M. B. Antokolskaya** *Family law.* Textbook, Moscow: Lawyer, 1996; **I. V. Zhilinkova** *Legal regime of family members' property*. Kharkiv, Xilon, 2000, P. 259.

their *children*'s upbringing, education, health, full and harmonious development, and in their turn, the *capable adults* are obliged to take care of their disabled and needy parents.

In this case, we can mention that the use of the term child in the Armenian legislation is logical; the concept is also enshrined in the civil normative-legal acts. However, both in the Civil Code as well as in the Family Code there are contradictions with the age groups, which are the little children, the minors and the juvenile. In particular, in the Articles 309-310 of the RA Civil Code, there are used the terms like "a minor (a juvenile) under the age of fourteen" or "a minor from fourteen to eighteen years old", which do not specify what age group this provision touches. And in the RA Family Code only the terms "a child" and "a minor" are used, from which it can be assumed that the use of the terms "a child" and "a minor" are represented through the general term "a child".

One problem with the system of the concepts is the simultaneous use of the terms "minors" and "children", in particular, in the Article 225 and 1194 of the RA Civil Code the phrase "minors" is used. The problem here is in the obvious semantic excess, because if the concept "a child" ("children") is used in two ways, then the concept of "minors", according to the definition, presupposes children only under the 18 years of age.

Naturally, the law should use concepts that have a legal basis, not all the terms that are known from medicine, psychology, sociology or other sciences. The main regulator of public relations is the law itself, one of the conditions for the reliable operation of that is the clarity of the wording, as well as the impossibility of their unambiguous interpretation.

There is a need to refer once again to the Convention on the Rights of the Child, which stipulates that any person under the age of eighteen is considered a child unless he or she reaches the age of maturity earlier by the law applicable to him/her. It is obvious that,

unlike the domestic law, this international legal act does not differentiate between newborns, infants and minor children. Within the subsequent articles of the Convention occur the question of the age of a child under the age of 18 years and the death penalty (Article 37), as well as, the question of persons under the age of 15 in cases of imposing restrictions on conscription and the participation in hostilities (Article 38 part 2).

It can be stated that the International Law is being developed by defining the regime of maximum guarantees for the realization of children's rights, and the narrative of the norms becomes more general.The majority of the International Legal Documents which refer to children's rights and the protection of legal interests, define an age starting from which the individual ceases to be considered a child, and that age is 18 years old[98].

However, some other international documents set a different age limit, which refers to international treaties relating to a specific area or situation of a child's life. The 1980 Hague Convention on the "Civil Aspects of Child Abduction"[99] and the 1980 European Convention for "The recognition and the entry into force of the decisions concerning the restoration and the Custody of children"[100] recognizes that a child is a person under the age of 16. The 1962 Convention on the Marriage Agreement, the Age of Marriage and the Registration of Marriages leaves the question of the minimum age of

[98] The Supplementary Convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery (7 September 1956, Geneva). Article 1/ / the Text of this Convention has not been officially published; the international Covenant on civil and political rights, article 6 / / Vedomosti of the Supreme Soviet of the USSR. 1976, No. 17(1831). Article 291; African Charter on the rights and welfare of the child 1990, article 2 / / human Rights: Collection of international treaties. Moscow: International relations, 1999; Convention on the protection of children and cooperation in the field of intercountry adoption (of 29 may 1993, The Hague), article 3 // The text of the Convention has not been officially published; European Convention on the implementation of the rights of the child 1996, article 1 // human Rights: Decree, collection; Convention concerning the prohibition and immediate action to eliminate the worst forms of child labour 1999, article 2.

[99] *Hague Convention on the civil aspects of child abduction*, 1980, art. 4, // Human rights: The Decree, the collection.

[100] *European Convention on the recognition and entry into force of decisions concerning custody of children and the restoration of custody of children*, 1980, art.1.

marriage for consideration by participating states[101]. Moreover, the 1965 General Assembly on the Marriage Agreement proposes that states set a minimum age for marriage at 15 years old[102].

In International Humanitarian Law, the age of conscription and participation in hostilities is set at 15 years old[103]. In February 2002, the Optional Protocol on the Involvement of Children in Armed Conflicts under the Convention on the Rights of the Child entered into force, raised the age of conscription to military service up to 18 years of age [104].

The International Labor Organization (ILO) Convention No. 138 on the Minimum Age for Employment of 1973 sets the minimum age at 15 years[105]. However, the convention allows economically and socially less developed countries to set the minimum age for employment at 14 years old [106].

However, the adoption[107] of the Convention on the Rights of the Child (at the regional level, the adoption of the African Charter on the Rights of the Child) allows us to speak of 18 years of age (for determining the time from which the child's legal protection is terminated) to consider age criteria as a more acceptable norm in

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[101] *Convention on consent to marriage, age of marriage and registration of marriages* (December 10, 1962), art. 2 / UN: Resolutions of the General Assembly at the XVII session. New York, 1963. P. 32.

[102] *Recommendation of the General Assembly on consent to marriage, minimum age of marriage and registration of marriages* 1965, principle II / / human Rights: Decree, collection.

[103] *Additional Protocol to the Geneva conventions* of August 12, 1949, Concerning the protection of victims of international armed conflicts (Protocol I) of June 8, 1977, art. 78, 77/ / Collection of international treaties. Vol. XLVI. Moscow, 2001; Additional Protocol to the Geneva conventions of 12 August 1949, relating to the protection of victims international armed conflicts (Protocol II). Adopted on June 8, 1977, article 4 / / *Current international law*. Documents in 2 vols. 2 / Compilers **Yu. M. Kolosov**, Krivchikova E. S. M., 2002. P. 158.

[104] *Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict* (New York, 25 may 2000) the Protocol entered into force on 12 February 2002. The text of the Protocol is available on the official server of the United Nations (www.un.org).

[105] *International Labour organization Convention No. 138 concerning the minimum age for employment* (Geneva, 26 June 1973), part 1 of article 2 // ILO. Conventions and recommendations adopted by the ILO in 1919 to 1990. 1991. P. 1703.

[106] Ibid., part 4. article 2.

[107] **Lowe N. V.,** *Challenges in Adoption Procedures in Europe*, Ensuring the best interests of the child, "The child's legal status in adoption" 30 November, 2009.

international law. More importantly, the examination of the legal status of the child clearly shows that the child does not reach a certain age, not as a means of restricting his / her rights, but as a reason for establishing additional guarantees for their realization, which in a sense must be accepted as conforming to the universal constitutional principles of many countries[108].

Based on the above, the following is suggested:

1. To refer to the subjects that are not yet classified as adults, to use the term "minor"as a legal term, with its clarification, if necessary, belonging to a certain age group, "minors 14-18 years old", etc., which will facilitate a uniform interpretation of the legislation and the use of the term "minor" in all domestic legislation will mean that it refers to children aged 14 to 18 years.

2. To submit clarifications in Part 2 of the Article 29 of the RA Civil Code regarding the following concepts:

–"Small household transactions",

–"Transactions for the purpose of receiving gratuitous benefits without requiring notarization or state registration of rights arising from transactions",

–"Transactions to manage the funds provided by a legal representative or with the consent of the latter by third parties for a specific purpose or freely".

3. To remove the second paragraph from the 1st part of the 30th Article of the RA Civil Code: "The transaction concluded by such a minor is valid also with the written approval of his / her parents, adoptive parents or guardian".

[108] See: **Claire Fenton Glynn**, *"Adoption without consent"*, Directorate General for Internal Policies, Policy Department C: Citizens' rights and Constitutional Affairs, Brussels, 2015.

4. To make changes with the phrase used in the Article 309 of the RA Civil Code “a minor (a juvenile) under the age of fourteen” “with the term” a juvenile under the age of fourteen”.

1.3. THE INTERNATIONAL LEGAL BASIS OF THE STATUS OF A CHILD

In the trends of foreign policy in the field of human rights testify the active and multifaceted nature of international human rights regulation. The greatest achievement of the 20th century was the development and adoption of new concepts for the international protection of human rights. However, we must take into account the processes of globalization, which to some extent are also associated with unfavorable consequences, which can be overcomed through legal means, first of all, through the development of International Law, its institutions, principles and norms related to human rights, and through the creation of modern international concepts for their protection[109].

Before talking about the impact of universally recognized principles and norms of international law on the legal status of a child, it is necessary to examine the legal nature of these principles and norms, the importance of their recognition and the practical application by the states.

According to the Constitution of the Republic of Armenia, in case of contradiction between the norms of laws and international treaties ratified by the Republic of Armenia, there are applied the norms of international treaties. The respect for and the protection of fundamental human and civil rights and freedoms are the responsibilities of public authority. The public authority is limited to the basic human rights and freedoms of citizen as a directly applicable right.

The fundamental principles of International Law, in their entirety, represent the basic, imperative, universal norms of

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[109] **V. A. Kartashkin** *International legal mechanisms for the protection of human rights* / Improvement of mechanisms for the protection of human rights / Rel. ed. by **E. A. Lukashev**. Moscow, 1994. P. 99-113; *Human Rights in the globalizing world (theses of the report).* Moscow legal forum: Globalization, state, law, XXI century. Moscow, 2003.

International Law, which correspond to the regularities of the development of modern international relations, as well as ensure the basic interests of all humanity, states and other subjects of International Law, also the basic, imperative, universal norms of international law protected by the toughest means of enforcement[110].

Popular principles, such as the norms of international law, being a legal category, have a uniqueness that allows them to occupy a special place in the whole system of international law. Thus, they are mandatory, without exception, for all states and other subjects of International Law, they are given a priority over all other norms of domestic law. The basic (universally recognized) principles of International Law and their content are constantly being improved. It is especially noticeable in terms of the principle directly related to the work that is presented: respect for the human rights, fundamental freedoms, and the dynamics of development.

The international-legal principle mentioned in the history of law is connected with the active preacher of the constitutional laws of the USA and France, 1789. "Declaration of Human Rights" (French: La Déclaration des droits de l'Homme ET du citoyen) by Father Henry Gregor. This principle, in the form of a universal legal norm, was enshrined in the preamble of the 1945 UN Charter's Articles 1 and 55[111]. Subsequently, its clarifications and content adjustments were followed by the moral and political resolutions of the UN General Assembly, the most significant of which were the 1948, that was the "Universal Declaration of Human Rights"[112].

During the years 1946-1966, the UN General Assembly Committee on International Law drafted an international agreement on human rights, a mandatory document protecting fundamental

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[110] *Public international law*: Textbook / Under the editorship of **K. A. Bekyashev**. Moscow, 1998, Pp. 54-76.

[111] *Charter of the United Nations* (San Francisco, June 26, 1945) / / the text of the Charter is not officially published.

[112] *Universal Declaration of human rights*. Adopted and proclaimed by the UN General Assembly on December 10, 1948, Collection of documents. Moscow: NORMA-INFRA * M., 1998.

freedoms. Ultimately the two documents created in 1966 were Human Rights Treaties (International Covenants on Economic, Social and Cultural Rights) and International Covenants on Civil and Political Rights)[113], whch became the main documents regulating the provisions of the principle under consideration. Later, in 1966, the Human Rights Treaties were amended to include a number of treaties that protected the rights of individuals or certain categories of individuals (including the later adopted Convention on the Rights of the Child in 1989).

Thus, it can be assumed that at the time of the emergence of the 1989 Convention on the Rights of the Child, a number of preconditions existed:

1. The previously adopted instruments in the field of children's rights were a declaratory in nature and were not binding on States.

2. The rights of the child are contained and included in the context of Human Rights, which has created a gap to the issue of enshrining the legal status of the child in the protection of different states in the national legislation.

3. There were differences in the status of the child in the countries belonging to different legal systems, which caused the problem of international regulation.

As a result, the need to create an international instrument for the protection of the rights of the child is due to the fact that the general criteria of the UN Charter and the Universal Basic Conventions on Human Rights, which prohibit discrimination against a person, do not provide a specific age for a person; that means, that

[113] *International Covenant on economic, social and cultural rights* (New York, 19 December 1966). The Covenant was ratified by decree of the Presidium of the Supreme Soviet of the USSR of September 18, 1973n4812-VIII; international Covenant on civil and political rights (New York, December 19, 1966), Vedomosti of the Supreme Soviet of the USSR, 1976 N 17 (1831). Article 291.

mainly the international instruments are dedicated to adults, and the rights of the child were derived from the context of human rights [114].

The international community tried to address the shortcomings of the 1959 Declaration by adopting the 1989 Convention on the Rights of the Child. The aim of the Convention is to promote the protection and harmonious development of the child, taking into account the importance of each nation's traditions and cultural values, paying special attention to children living in extremely difficult conditions, also to the need of those children, as well as giving great importance to the observance of social and legal principles in the definition of child custody; considering that the child's physical or mental immaturity needs special protection, special care, including proper legal protection.

The gross violations of human rights and fundamental freedoms are considered: the genocide within a racial, ethnic, religious group which violates the right to life; racial discrimination in the enjoyment of all human rights; apartheid and, etc., which are the means of exploiting, enslaving and "oppressing" the minority by the majority.

And if we are talking about a "minor" child in the same context, the scale of violations of his rights and freedoms will increase exponentially. The fulfillment of the requirements of the principle of respect for fundamental freedoms and human rights obliges states to pay special attention to the protection of the rights and legitimate interests of special social groups (national minorities, refugees, the disabled, women, children, etc.) in their territories.

At present, there is an established comprehensive system of international oversight of the fulfillment of the obligations by states in the field of human rights. For example, in accordance with the UN "Convention on the Rights of the Child", in 1990 the "Committee on the Rights of the Child" was established.

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[114] **A. V. Kortunov** *Convention on the rights of the child*//Pravovedenie. WPI. higher educational. # 2, 1990, P. 75.

In many countries of the world, as well as in Armenia, the activities of UN bodies, institutes, programs, foundations, and specialized institutions are carried out in different directions. In particular, the United Nations Children's Fund (UNICEF) and the Government of the Republic of Armenia are implementing numerous programs within the framework of the World Movement for the Advocacy of Children[115].

One of the basic principles of international law - the principle of honest fulfillment of international obligations (pacta sunt servanda) 116 , and in accordance with the concept of a democratic state governed by the rule of law, Armenia reaffirmed its commitment to the universal principles of human rights and norms based on the Constitution of the Republic of Armenia, giving a special status to domestic legislation, and building the foundations for the effective application of the norms of international humanitarian law[117].

It is necessary for the state to initiate organizational measures envisaged by the international humanitarian law[118], which will ensure the implementation of the mentioned norms, for that those norms functioned normally, and were observed, and in case of violation applied legal measures[119].

As the rights of a person, including a child's rights, are regulated in the modern world not only by national but also by international law, it is expedient to study also the international instruments for the protection of the rights of the child. It will give an overview of the

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[115] *"Promote the Development of Armenia-UN Program 2016-2020"*, Yerevan, July 31, 2015, https://www.un.am/, Pages 78-89.

[116] "The RA Law on International Treaties", adopted by the National Assembly on March 23, 2018, entered into force on April 9, 2018.

[117] For this book, the norms of IHL are of some significance, which are based on the 4 Geneva conventions of 1949, United under the General name of the Convention for the protection of victims of war; 2 Additional protocols of 1977 to these Conventions and the UN Convention on inhumane weapons of 1980 with its additional protocols.

[118] See: ***Platt ner D.*** *Protection of Children in International Humanitarian Law* // International Review of the Red Cross, 1984, № 240, P. 141.

[119] **P. N. Kobets** *Some problems of implementation of international human rights law.* Scientific works: RAYUN. Vol. 2. Vol. 1. Moscow: Yurist, 2002. Pp. 740-745.

general nature of the general development of International Iaw in this field, the prism of which, allows making an assessment of the peculiarities of the legal status of the child in different countries, especially in Armenia.

For this study, considering in detail the international legal documents determining the status of children in the Armenian legal system to one degree or another, according to the logic of the narrative, more than once we will have to refer to international sources, first of all to the Convention on the Rights of the Child.

At present, a number of documents have been adopted on the rights of the child, their provision, and issues of juvenile justice. There are acts of a general nature concerning the situation around the world, as well as acts of a regional nature, which refer to these or specific regions with a relatively homogeneous culture. There are international documents that raise the issues of criminal proceedings and common human rights, which are specifically dedicated to the justice of children and juveniles. First of all, we are talking about the 1989 Convention on the Rights of the Child, the 1985 UN Standard Minimum Rules on the administration of juvenile justice ("Beijing Rules")120, the 1994 UN Guiding Principles "On the Prevention of Juvenile Delinquency[121], the 1990 UN Rules "For the protection of minors deprived of their liberty"[122].

The development and regulation of international norms on the rights of the child began in 1924, when the League of Nations Assembly adopted the "Declaration of the Rights of the Child", which

[120] The UN standard minimum rules for the administration of juvenile justice (the "Beijing rules") (adopted at the 96th plenary meeting of the UN General Assembly on November 29, 1985) // Soviet justice. 1991. N 12-14.
[121] United Nations General Assembly resolution 45/112 of 14 December 1990. United Nations Guidelines for the prevention of juvenile delinquency (Guidelines adopted in Riyadh) // Collection of international standards and norms of the United Nations in the field of juvenile justice. UNICEF. Moscow, 1998. Pp. 86-102.
[122] United Nations General Assembly resolution 45/113 of 14 December 1990 "United Nations Rules for the protection of minors deprived of their liberty" Ibid. Pp. 103-128.

called on men and women around the world to create conditions of normally developmnt of a child[123].

In the context of our research the establishment of the United Nations Children's Fund (UNICEF) is of particular importance by the UN General Assembly in 1945. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, which proclaims the right of society to be protected by the state and the family, the natural and basic cell of the society[124].

Part 2 of the Article 25 of that declaration is devoted to the right to maternity and special childhood care and assistance, which stipulates that motherhood and childhood are entitled to special care and assistance. All children born out of marriage or out of wedlock should enjoy the same social protection.

"The International Covenant on Civil and Political Rights" reiterates the right of society to protect the family by the state. And the Article 24 of that contract is specifically dedicated to all children who are entitled to such protection by their family, society and the state as it is required for their status as a child.

In the International Covenant on Economic, Social and Cultural Rights, the issue is more widely considered, stating that the family, which is the natural and basic group unit of society, should be provided with the widest possible protection and support particularly during family formation, as long as the family is responsible for the care and education of non-independent children (Article 10, Part 1)[125]. Here, the attention was paid to the measures necessary for the healthy development of the child.

However, all these international documents are mainly related to human rights; only some articles define the rights of the child, although their protection has its own peculiarities and importance for each child.

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[123] *Geneva Declaration of 1924*, Human Rights: Decree. collector.

[124] *Universal Declaration of human rights*. Adopted and proclaimed by the UN General Assembly on December 10, 1948. // Collection of documents. Moscow: NORMA-INFRA* M., 1998. Pp. 39-44.

[125] Vedomosti of the Supreme Soviet of the USSR. 1976. N17 (1831). Article 291.

That is why, back in 1959, the 14th session of the UN General Assembly adopted the "Declaration of the Rights of the Child" dedicated exclusively to children[126]. That Declaration, in short, provided for more powerful, principled rules. One of them is the equality of the rights of all children without exception, excluding discrimination or discrimination based on race, color, sex, language, religion, political or other views, national or social origin, material status, or other difference or discrimination of the birth, other child or family. Here there are listed the rights of the child as a citizen (name, citizenship, compulsory free education, especially from all forms of negligence, cruelty, exploitation, the right to first aid and protection), and as independent provisions, there are mentioned his/her right to family upbringing. Public authorities should have the responsibility to take special care of children without families and children without adequate living conditions.

After years of preparation, in 1989 The UN Convention on the Rights of the Child was adopted on November 20, 2006. It received its continuation in 1990, with the "The World Declaration on Ensuring the survival, protection and development of children" adopted at a high-level meeting for the benefits of children, in New York on September 30, 2006[127], and in the "Plan of action for the implementation of the World Declaration on the survival, protection and development of children"[128], to which later joined the Republic of Armenia as well.

These international legal acts set only mandatory norms or minimum basic requirements, for example, the efforts of countries to improve those norms by adapting them to the most significant

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[126] "*Declaration of the rights of the child*" / / International conventions and declarations on the rights of women and children / / Collection of universal and regional international documents / Comp. **L. V. Korbut**, Polenina S. V. M., 1988.
[127] World Declaration on ensuring the survival, protection and development of children from September 30, 1990/ / pre-School education. 1991. N6. Pp. 2-5.
[128] Plan of action for the implementation of the world Declaration on the survival, protection and development of children of 30 September 1990.

requirements for the protection of the rights of the child[129]. The 1989 Convention on the Rights of the Child is a fundamental international legal act in the field of the protection of the legitimate interests of the child. The main idea of this document is that children are not viewed as "objects", but as subjects of legal relations, self-acting citizens, which we must admit is quite progressive. This novelty is revealed in the following provisions:

- Children, regardless of race, skin color, sex, language, religion, political or other views, national or social origin, economic or physical status, or any other status, as well as their parents or guardian, shall not be discriminated against;
- Children have the right to participate independently in all spheres of their life (physical, mental, social, cultural), as well as to develop;
- Children should be involved in social life, they should be accepted as active participants in all areas related to their interests and they should be completely free to express their opinion;
- The most important interests of the child should be of primary consideration when making decisions or actions directly affecting him or her or the group of children.

This Convention, the first international universal intergovernmental agreement, gave states legal responsibility for their actions against children, thereby giving new political status to child protection issues and decisions. People, cultures and religions of different countries, must make an effort to reach the 2 billion people living in the world, so that every child should have the right to life, education and medical care, protection from all forms of violence and exploitation, the opportunity to be heard, so that the needs (interests)

[129] Ibid., P. 5.

of children in solving potential problems deserve priority (be taken into account)[130].

In our opinion, the Convention enshrines, in general, the need for a comprehensive approach to addressing the status of children. A society that respects children is able to teach that society to treat them with respect. Preventive work on juvenile delinquency warnings should be aimed at raising the standard of living and overall the well-being, not just at addressing private but acute issues. For example, the problem of drug addiction can not be solved only by warning potential drug addicts about the negative consequences of drug use.

Agreat attention should be paid to issues related to the recognition of the legal status and rights of children, democratic decision-making procedures, and the expansion of their participation in the public process.Becoming full participants in them, children should not be considered only as "objects"[131] of life preparation or reproduction in society, but should be accepted as full participants in the legal relationship.These are the basic positions and logic of the approach to the definition of the modern meaning of the status of the child in international documents.

In order to implement these standards and procedures within the national law, all persons in a relationship with children must unconditionally adhere to the basic principle of the Convention; according to which, in all actions against children, whether taken by public or private social security institutions, courts, administrative or legislative bodies, the best interests of the child shall get a primary consideration (Article 3 of the Convention).

The second most important principle of the international act under consideration is the recognition of the special protection and care, including legal protection that a child needs in terms of his or

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[130] **A. Robul** *International protection of children's rights in the modern world//* Belarusian journal, 2002, N2.

[131] UN General Assembly resolution 45/112 of 14 December 1990. United Nations Guidelines for the prevention of juvenile delinquency (Guidelines adopted in Riyadh), art.3 // Decree. collector.

her mental or physical immaturity (the preamble of the Convention). Moreover, a number of provisions of the Convention “redouble” that special protection (care and assistance) in two cases: children who are deprived of a family environment, ie children deprived of parental care (Article 20), and children with mental or physical disabilities (Aricle 23). In the first case, it is a matter of the state's obligation to “to take care of such a child in accordance with national law” (Part 2 of the Article 20). Among the basic principles it is necessary to include the principle of common and equal responsibility of parents in the upbringing and development of the child (Article 18); as well as the principle of recognition of the right and ensurance of life of every child by the state, which is necessary for his physical, mental, spiritual, moral and social development (Article 27).

All the provisions of the Convention on the Rights of the Child, which are aimed at protecting the rights and interests of children, can lead to four basic requirements, the observance of which, in the opinion of the international community, must ensure the rights of children such as their survival, development, protection, ensurance as well as their participation in the social life[132]. These provisions basically define the main directions of the activity of state-non-governmental organizations, legal-natural persons in the field of protection of children's interests.

– The right to life, being an inalienable right of every child, includes the provision of living in difficult conditions associated with the deprivation of parental care and assumes the affordable medical care.

– The right to development is the right for every child to have the standard of living, necessary for his or her physical, mental, emotional, moral and social development.

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[132] **N. E. Borisova** *Constitutional and legal status of the child in the Russian Federation*. Moscow, 1998. P. 23.

– The right to protection excludes the economic exploitation of minors and requires the creation of working conditions that do not pose a danger to their health; the child must be protected from all forms of sexual exploitation, social immorality, child abduction, child trafficking, etc.)

Since the Convention was signed by the USSR on January 26, 1990, it was ratified by the USSR Supreme Soviet on June 13, 1990[133], the Republic of Armenia as well,acted as the legal successor of the international legal obligations of the Soviet Union. In this regard, formally, the fulfillment of the requirements of the Convention is the obligation of the Republic of Armenia.

The Constitution of the Republic of Armenia stipulates in the domestic legislation that the universally recognized norms and principles of international law, as well as the international treaties of the Republic of Armenia, are an integral part of its legal system. Despite the fact that there is no common approach among the specialists in the field of international law to the concept of "universally recognized principles-norms of international law"[134] (since the mentioned formulation has many ambiguities in it), and in this regard, let's stop at the opinion of I. I. Lukashuk. He affirms that at a certain stage in the development of society, the formerly existing ideas in the form of moral-political doctrines (the principles of international law) have been enshrined in the UN Charter and in the international legal acts developing it[135]. Given the fact that there is a certain procedure for international legal recognition of these legal acts, their unification in national legislation, the norms of international law, which have been ratified and recognized by it in the manner prescribed by the national law, become universally

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[133] *Vedomosti of the Congress of people's deputies of the USSR and the Supreme Soviet of the USSR*. 1990. N26. Article 497.

[134] The discussion on this topic started quite a long time ago. For more information, see: **H. Kelsen** *Principles of International Law*. N.Y. 1967; *Legal system and international law*: modern problems of interaction / / State and law. 1996. N 2-4.

[135] See: **I. I. Lukashuk** *Norms of International Law*. Moscow, 1997. P. 83.

recognized for a particular state[136].

As O. E. Kutafin rightly states, recognizing only the principle of the primacy of International law over the norms enshrined in international agreements of the state, is an exception to the universally recognized principles of Human rights and freedoms, the norms for which the state constitution provides a higher status[137].

However, there is a reasonable fear that the attitude of the former USSR Convention on the Rights of the Child and other normative acts of international law will be determined by fairly and free interpretation of them by the lawmakers. That is why the official interpretation or clarification of the content of the RA Constitution by the RA Constitutional Court is considered quite expedient. Ultimately, this problem could be solved by a single legal normative act, which, based on the Convention on the Rights of the Child and the Constitution of the Republic of Armenia, would define the legal status of the child in the Republic of Armenia.

The recognition of the "Convention on the Rights of the Child" by the Republic of Armenia was a significant step towards the development of its legal and social status. By that act, Armenia declared its obligations to uphold the provisions of the Convention and the principles and to be accountable to the international community if it fails to comply with them.

As mentioned above, the main purpose of the Convention is to protect the best interests of the child. Let us clarify these provisions by discussing individual articles of the Convention.

The Convention on the Rights of the Child consists of a brief preamble, three parts and of 54 Articles.

The first part (Articles 1-41) sets out the basic rights of the child the responsibilities of states, parents and other persons for their

[136] See: **Henkin L.** Introduction. The International Bill of Human Rights // International Law: Cases and Materials. - St. Paul, Minn., 1987, P.1022.
[137] See: **O. E. Kutafin** *Sources of Constitutional law*. Moscow: Yurist, 2002. Pp. 50-66.

maintenance, protection, and for the welfare of children. The ideology of the Convention is very simple: "to provide the child with the protection and care necessary for his or her well-being and harmonious development as an individual."

In addition, Article 41 of the Convention emphasizes the possibility of promoting the exercise of the rights of the child at a high level through national or international law. This recognizes the scope of the rights of protection of the legitimate interests of the child.

According to Article 6 of the Convention, the right to life is an inalienable right of every child. Immediately after birth, he/she are registered in accordance with the national legislation; from that moment on, he/she has the right to receive his/her name and citizenship (Article 7). The special need to ensure the right of children to live in difficult conditions is due to the fact that every day many children around the world, being victims of war, violence, apartheid, aggression, foreign occupation, racial discrimination, are exposed to dangers and deprivation. After the II World War, there were no less than 150 armed conflicts, during which more than 20 million people were killed, 60 million were injured and 80% of whom are children and women. Unfortunately, many children were killed in the former Soviet Union during the armed conflicts in the 1990s (Armenia, Azerbaijan, Abkhazia, Transnistria, Tajikistan, Chechnya, etc.).

The fight to reduce infant mortality is directly related to the protection of the child's right to life. In addressing this universal problem, the Convention recognizes the right of the child to access the most perfect standards of health and disease treatment and rehabilitation services, "so that no child shall be deprived of his or her right of access to such services (Article 24 part 1)".

The participating states shall endeavor to ensure the full realization of this right; in particular, they take the necessary measures;

(a) To reduce the infant mortality rate;

(b) To provide the necessary medical care to all children, paying priority attention to primary health care;

(c) To combat disease and malnutrition, including the primary health care, through the provision of affordable technologies, adequate nutrition, and clean drinking water, taking into account the dangers and risks of environmental pollution;

(d) To provide adequate prenatal and postnatal care for mothers;

(e) To ensure that all elements of society, in particular parents and children, are aware of the basic knowledge of children's health and nutrition, breastfeeding benefits, hygiene and environmental sanitation and accident prevention, as well as the availability of education support;

f) To develop preventive medical care, parental guidelines, and the family planning education and services.

The provisions on the status of children in relation to their parents are elaborated in the Convention (Articles 8-11). Thus, without unlawful interference, respect the child's right to preserve his or her identity, including citizenship, name, and family ties. States are obliged to take measures to prevent the child from being separated from his family, except the cases provided by law. The child's right to be reunited with his family must be protected. The international community has called on states to step up the fight against illegal relocation and the non-return of children from abroad.

Articles 12-17 of the Convention on the Rights of the Child enshrine the rights of the child to freedom of thought, conscience, religion, association, and peaceful assembly. A child who has the ability to express his or her views should be given the right to express themselves freely on issues that affect his or her rights, freedoms and legitimate interests. An important element of a child's developmental abilities is the protection of his/her right to receive, convey, express

his/her opinion orally, in print, through creativity. Materials from both national and international media and other sources should be widely available to children, but only if they are aimed at promoting the child's social, cultural, emotional, moral and physical development. States should encourage the publication and dissemination of children's literature; protect the child from harm to his or her well-being as an individual[138].

The Convention states that children are not the "subjects" of adults, but independent individuals, bearers of civil rights and freedoms, which no one can violate. In this regard, Article 16 of the Convention provides that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.

The participating states shall take all necessary legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, neglection or abuse, inhuman or degrading treatment or abuse by the child's parents, legal guardians or any other child caregiver, including the manifestations of trafficking.

Such remedies include, where appropriate, effective social programming procedures designed to provide the necessary support to the child or caregivers; as well as the abusing of a child, preventing, identifying, reporting, discussing, investigating, treating, or taking further action in relation to the above cases, and if necessary, instituting legal proceedings (Article 19).

The observed requirement enshrined in international law is relevant for the state, as the existing guarantees in the field of protection of children's civil rights are important, and as the researchers of the given problem put, "On the one hand, there are demands on children, and obligations on them that are almost the

[138] **Noam Peleg** "*The Child's Right to Development*", Cambridge University Press, 2019, P. 134.

same as those on adults, on the other hand, children do not have the corresponding rights. If we Judge by their responsibilities, children live in the 21st century and if by rights, in the feudal era"[139].

The best interests[140] of the child must be taken into account when adopting in the country or abroad (Article 21). Proper protection- humanitarian assistance must also be provided to a child who has a refugee status (Article 22).

It is necessary for children who are mentally or physically underdeveloped to lead a dignified and full life with the support of society and the state, and to be actively involved in the processes of participation in the public life (Article 23).

The Convention specifically emphasizes the right of every child to have the standard of living, necessary for his or her physical, mental, emotional, moral and social development (Article 27). This problem is usually solved by the parent(s) or other persons responsible for the child, who, within their opportunities and financial means, have the primary responsibility for providing the living conditions necessary for the child's development. However, if the family is unable to feed and care for the child (and the number of such families in many countries of the modern world, including Armenia, is unfortunately growing), public bodies should help: state social protection bodies, charities, religious communities, other legal entities and individuals.

In the early 1990s, there were more than 100 million children in the world registered without a basic school education (2/3 of them are girls). According to UNICEF experts, that number has now doubled[141]. That is why, in order to address this issue, in the interests of the progressive development of mankind, "the Convention

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[139] **A. I. Antonov** *Who protects the rights of the child and from whom?//* Vestnik MSU. Series "Sociology and political science". N2, 1997, P. 6.

[140] **Joseph A. Goldstein et al.,** *Beyond the Best Interests of the Child* (London: Burnett Books, 1980); Roy Huijsmans, *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations*, 13(2) Children's Geographies 249 (2015).

[141] https://www.un.am/en/agency/UNICEF.

on the Rights of the Child" recognizes the right of the child to education and culture.

Articles 29-30 of the Convention reproduce the principles of the organization of free and compulsory pre-school education and higher education, as set out in 1966 in the International Covenant on "Economic, Social and Cultural Rights".

In addition to the Agreement, the main manifestations of education are listed, including: the development of the child's personality skills as fully as possible; the education to respect human rights, parents, language, history, folk culture, and the environment; in a democratic society, the patience in understanding the preparation of the child for independent life. The right of the child to participate in cultural and creative life and activities appropriate to his/her age is recognized. States should promote equal opportunities for children to engage in cultural and creative activities, recreation and leisure (Article 31).

Article 32 of the Convention on the Rights of the Child provides for the protection of the child against economic exploitation, the right to be protected from engaging in work that could endanger or impede the child's education or damage his or her physical, mental, moral or social development.In this regard, within the framework of the implementation of this norm, states should set the minimum age for employment, determine the basic requirements for the child's working day and working conditions.

The first part of the Convention on the Rights of the Child ends with Articles 37-41, which, based on the humanitarian principles of the law, oblige states to protect children from any arbitrariness, criminal ambitions, or dangerous treatment to minors. The Convention considers it inadmissible for persons under the age of 15 to take part in hostilities and to be drafted into the armed forces (Article 38). It sets out the obligations of the states to ensure the legal conditions of life of a child so that no juvenile is unlawfully deprived of his or her liberty; take all necessary measures to prevent the

kidnapping of children for any ways and purposes; stop any kind of cruel, inhuman treatment and torture of the child.

In the event of a just and reasonable decision on imprisonment by a court, the child must enjoy humane treatment, have access to urgent legal assistance, and have the right to have contact with his or her family. In this regard, the participating states agreed that the death penalty or life imprisonment should not be applied to juveniles[142].

The Part 2 and 3 of the Convention (Articles 42-54) contain detailed provisions on the procedure for the formation of the Committee on the Rights of the Child, its activities, such as the ratification or accession. States that have ratified the Convention are required to submit reports on measures that are taken to enforce and implement the rights of the children enshrined in the Convention, indicating the factors and issues that affect the level of fulfillment of the obligations undertaken.

Analyzing the 1989 provisions of the Convention on the Rights of the Child it can be recorded:

– The Convention sets out the legal status of a child, separated from the legal status of a person;

– The principles of ensuring the rights and interests of the child have been defined and separated, but there is no substantive explanation of the concept “interests”, and there is no list of those interests;

– The “Parental authority” is defined in a new way through the prism of the Convention, that is, it promotes the child's self-development, self-determination towards adult life as a separate and special subject of law;

– The norms of the Convention do not contain the definitions of “family” and “childhood”.

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[142] For detailed summaries of each of these offenders, see *"Juvenile Offenders on Death Row (1973–2005)". Death Penalty Information Center.* Retrieved 12 February 2019.

Thus, the Convention on the Rights of the Child, adopted on November 20, 1989, is of enormous importance, despite its all shortcomings[143].

In 1993, by ratifying the UN Convention on the Rights of the Child, Armenia undertook to bring its domestic laws and practices into line with the requirements of this international document.

Armenia submitted its first report in February 1997, on which the Committee made its observations in 2000. Then, in 2003, the Government of the Republic of Armenia submitted the second periodic report, and in 2011, the third and fourth periodic reports for 2001-2009 .

In 2013, the Committee approved its final observations on the two Protocols to the Convention, in which it addressed a wide range of issues, made observations and recommendations.

According to the UN Committee on the Rights of the Child, the problems of family life in Armenia should be more worrying, such as the tendency to disrupt family culture, in regards to the abandonment of children, abortions, divorce rates, adoptions of abandoned children and orphanages. The Human Rights Defender of Armenia monitors the implementation of the provisions of the UN Convention on the Rights of the Child, adopted on November 20, 1989, as well as the prevention of violations of children's rights and protection. For the effective implementation of this important mission, a Department for the Protection of Children's Rights has been established in the ombudsman's staff.

The 2015 May 6 report on “The inclusion of children's rights in domestic constitutions as an important component of effective domestic policies on children” of the Parliamentary Assembly of the Council of Europe, states: the states' political priorities for children's

[143] For example, it took nine years for the entry into force of the International Covenants on human rights (1966-1976). Information on the status of international human rights treaties: website of the U. N. High Commissioner for Human Rights http://www.unhchr/ch/html/intlinst/htm , free download.

rights must be enshrined in constitutions[144]. A number of common law systems of countries determine the priority of policies according to the "Principles of State Policy"[145].

The protection of children's rights in the Republic of Armenia is enshrined in the Constitution of the Republic of Armenia. For the first time, the amendments to the Constitution of the Republic of Armenia adopted as a result of the referendum of December 6, 2015 enshrined the protection of the rights of the child in a separate article (Article 37).

The Strategic Plan for the Protection of the Rights of the Child in the Republic of Armenia for 2017-2021 and the schedule of measures for the implementation of the Strategic Plan for the Protection of the Rights of the Child for 2017-2021 was adopted by the Protocol Decision N 30 of July 13, 2017 of the Government of the Republic of Armenia. The strategy is a document, which presents the goals, priorities, problems, appropriate measures to address the protection of children's rights, taking into account the international commitments undertaken by the Republic of Armenia, as well as the reforms of the legislation of the Republic of Armenia[146].

According to this strategic document, the strategic issues in the field of children in the Republic of Armenia are:

– The need to identify the causes and conditions of juvenile delinquency, to improve crime prevention mechanisms;

– Lack of cooperation between the juvenile offender and the victim;

– The insufficient state of the child-centered approaches specialized in working with children related to the law;

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[144] Council of Europe Fact. 13787, 2015 6 may, *"Including children's rights in domestic constitutions as an important component of effective domestic policies for children"*, p. 6.

[145] The principles of the Directive are based on the idea that these constitutional ideals should be applied by the party in whose hands the steering wheel is located.

[146] www.gov.am, www.arlis.am

– The ineffective mechanisms for enforcing restorative justice provisions;

– The need for the criminal justice system to develop sensitive approaches to juvenile victims, the ineffective application of restitution structures;

– The insufficient access to services in accordance with the needs of children related to the law (victims, witnesses, offenders);

– The incomplete compliance of the field of protection of the rights of juveniles deprived of liberty according to the international standards;

– The lack of re-socialization programs for juvenile probationers.

In general, the fulfillment of the requirements of the Convention on the Rights of the Child by the states has caused a number of contradictions, taking into account the peculiarities of national-domestic, international-legal acts. That is why it is necessary to consider the problems of domestic implementation of international legal documents, which in modern times can allow the achievement of significant results in the field of protection of the rights of the child. The application of the provisions of the Convention can be achieved not only by the ratification of its norms by states, but also by undertaking certain obligations to enshrine the provisions of national legislation, to develop national structures for the protection of the rights of the child[147].

It is clear why the Committee on the Rights of the Child draws its final conclusions based on the states such as Chile[148] and Belgium[149] and welcomed the fact enshrined in them that "... the Convention on the Rights of the Child is self-executing". However, not all countries have such an approach to implementing the provisions

[147] Conclusion observation: Chile CRC/C/15/Add.22, para.14.
[148] Conclusion observation: Chile CRC/C/15/Add.22, para.4.
[149] Conclusion observation: CRC/C/15/Add.3.8, para.6 4, **A. N. Talalaev** *Law of international treaties*. General issue. Moscow: "International relations". 1980, P. 190.

of the Convention. There is a right of states to make reservations about multilateral agreements. It is the reservations that correspond to the common interests of the states and contribute to the "expansion of the circle of the parties of the treaty"[150].

The Islamic Republic of Iran "reserves the right not to apply any provision of the articles of the Convention which are incompatible with Islamic law and the applicable national laws"[151]. Saudi Arabia "... declares reservations about any articles that contradict the provisions of Islam"[152].

In response to such reservations, a number of Western countries, such as Austria and Sweden, raised objections. Thus, the Austrian Government has made a very harsh statement about this "... in accordance with the international law, the final assessment of the acceptability of its norms can not be made without further clarification or reservation", and "until the scope of its legal consequences is sufficiently stated on behalf of the Islamic Republic of Iran, the Republic of Austria considers this reservation to be unacceptable, the implementation of which is crucial to the objective of the Convention on the Rights of the Child". Besides, "Iran shall not, by presenting further practical steps, confirm additional information that this reservation is compatible with the object of the Convention on the Rights of the Child; Austria may not consider the reservation acceptable proposed by Iran"[153].

Sweden considers that "a reservation by which a State seeks to limit its liability to the Convention by invoking national law or general religious principles may call into question the adherence of such a

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[150] **B. Clark** *The Vienna Convention Reservation Regime and the Convention on Discrimination Against Women* // American Journal of International Law, (85), 1991, P. 317.
[151] Note by the Secretary-General on *"Reservations, declarations and objections to the Convention on the rights of the child"*, CRC/C/2/Rev.7, P. 30, 35.
[152] CRC/C/2/Rev.7, P. 46.
[153] CRC/C/2/Rev.7, P. 99.

state to the Convention' s objectives and problems; undermining the legal foundations”[154].

The reservations of the Convention mentioned by other countries are also noteworthy. The Government of Singapore has made reservations to the Article 19 of the Convention, which states: "The participating states shall take all appropriate legislative, administrative, social and educational measures to protect the parents and legal guardians of the child from all forms of physical or mental abuse, abuse or neglection, neglection or carelessness, ill-treatment or exploitation, including sexual abuse, by the parents, legal guardians or any other person caring for the child”.

The reservations include Article 37: 1 of the Convention, which states that the participating states shall ensure that no child should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Neither the death penalty nor life imprisonment, which does not provide for the possibility of release, is established for crimes committed by persons under the age of eighteen.

The Singapore Government's reservations to the Articles 19 and 37 of the Convention state that “The articles of the Convention do not prohibit the reasonable use of corporal punishment coming from the best interests of the child”[155]. Probably, “From a Singaporean point of view, the corporal punishment in the family or in the case of child misconduct is legitimate; in this case, it is not an encroachment on the human dignity of the child”[156]. We consider that such a “reasonable” approach is a serious violation of the rights of the child, substantiated by the provisions of paragraph 54 of the Riyadh Rules of 1990, which stated that “No child shall be subjected to cruel or degrading treatment or punishment: at home, school or other institution”.

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[154] CRC/C/2/Rev.7, P. 98.

[155] CRC/C/2/Rev.7, P.47.

[156] **T. A. Titova** *"The Convention on the rights of the child in the system of General regulation human rights"*, Dissertation, Kazan, 2000, P. 136.

The seventh UNICEF International Conference affirmed: “Within its mandate, the Committee seeks to pay particular attention to the right of the child to physical disability …The corporal punishment is incompatible with the Convention; to prevent child abuse ևւ corporal punishment of children”[157].

Another reservation of the Government of the Republic of Singapore referred to Article 28: 1 (a) of the Convention, which states that "the Republic of Singapore is not obliged to provide compulsory primary education as it is not necessary in the social context of society" where virtually all children attend primary school[158].

We find it important to refer to the reservation of the Republic of Mali, “in view of the Family Code of Mali, there is no basis for applying Article 16: 3 of the Convention, which enshrines the privacy of the child, the privacy of the home or the secrecy of correspondence, the right to unlawful encroachment on his/her honor and reputation”[159].

As for the Western countries, Sweden, for example, tried to limit the right of reservations as follows: “Reservations are not allowed, except for Article 1 [the definition of a child], Article 2 [his/her name and citizenship], Article 5 [the rights of parents], Article 9 [the media], Article 11 [the adoption], Article 12 [the disabled children], Article 12 [Health and Healthcare], Article 13 [the social security], Article 14 [the living standards], Article 15 [the education], Article 16[the educational goals] and Aricle 17 [Leisure, entertainment and cultural rights]”[160].

The Article 30 of the Convention provides that in countries where there are ethnic, religious or linguistic minorities, or indigenous peoples, a child belonging to such minorities or

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[157] Report on seventh, September –October 1994, Annex IV, p.63 cite on Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 1998. P. 456.

[158] Report of Committee against Torture, General Assembly Official Records, 50 sessions, Supplement No. 44 (A/50/44), Parag. 169 and 177 cite on Ibid. P.494.

[159] CRC/C/2Rev.7, P. 38.

[160] The articles are numbered in accordance with the draft Convention on the rights of the child.

indigenous peoples may not be denied access to his or her culture or religion with other members of his or her group to profess his right to perform his rites, as well as to use his mother tongue. The French Republic has reserved this article, arguing that it contradicts Article 2 of the French Constitution[161].

Seven states have excluded reservations to the Convention: Denmark, Myanmar, Norway, Pakistan, Thailand, the United Kingdom of Northern Ireland, and Yugoslavia (now Serbia-Montenegro).

Pakistan has rescinded the general reservation on so-called "Islamic reservations"and Myanmar on a reservation of the union's right to freedom of peaceful assembly, as well as the right to a child in prison. Thailand has renounced its provisions in the Convention on the Purposes of Education.

Note that the United States, directly participating in the creation of the Convention on the Rights of the Child, signed it only on February 16, 1995 with some reservations. According to US lawmakers, the Convention is a radical, dangerous document that allows the government to interfere indefinitely in family life, "as a dangerous threat to parental rights in the history of the United States," an unlimited plan to abolish parental authority, "handguns of people with perverted views". And indeed, on the one hand, these arguments are insurmountable in the sense that many parents are concerned about how to raise their children to protect them from the harmful effects of society.

On the other hand, the provisions of the Convention do not cut off or diminish the rights of parents; moreover, they are aimed at respecting and supporing parents, which is considered to be the basis for defining any action of the international community in

[161] Note by the Secretary-General on "Reservations, declarations and objections to the Convention on the rights of the child", CRC/C/2Rev.7. P. 30.

relation to the institution of the protection of the rights of the child[162].

Modern international law has no solutions to the formations of reservations, despite the fact that they are actively used in conjunction with the Human Rights (Child) Conventions.

The Convention on the Rights of the Child does not impose specific restrictions on reservations on the basis of the horse or its contents, but in itself facilitates the nomination of reservations by states, which in turn makes it difficult to enshrine and protect the rights of the child at home.

Consequently, the legal status of a child in foreign countries is defined in the context of "national, domestic law", which makes it difficult to apply the norms of international law in the field of legal regulation, in the protection of the rights of the child.

German lawyer Henrik Triepel wrote: " The international law must always apply to domestic, national law to carry out its tasks. In many respects, without domestic law, international law can be completely powerless. It is like a commander-in-chief who can give orders only to army generals, who can achieve his goals only if the latter, in accordance with his instructions, for their part give orders to their subordinates. If the generals do not do that, the commander-in-chief will lose the battle. Just as the Commander-in-Chief's order leads to the issuance of numerous additional orders by his subordinates, this or that norm of international law leads to the emergence of a number of norms of domestic law which pursue the same goal of implementing the norms of international law within the domestic law of states"[163].

Therefore, as long as the interpersonal norms in the national legal systems continue to strengthen the "hostile" attitude towards the international law, this will hinder the process of necessary

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[162] **T. A. Titova** *UN Convention on the rights of the child: reasons for the US refusal to ratify* // Jurisprudence. No. 2, 2000, P. 224 – 225.

[163] **H. Triepel** *Les rapports entre le droit interne 74et le droit international*// 1 Recueil des Cours de l'Academie de droit international 77 (1923 I).

implementation of the norms of protection of the rights of the child in the domestic law of different states.

As for the implementation of the provisions of the Convention on the Rights of the Child in the Republic of Armenia, there are their own difficulties. The theoretical-practical problems in compliance with the RA legislation with the principles and norms of the Convention are first of all conditioned by the lack of a unified approach to the issues of realization of the rights of the child, by the non-application of a number of legal norms in that sphere. Despite the enactment of numerous international instruments on the protection of the rights of the child, a number of principles of the Convention have not yet been fully implemented in the domestic law. Not all normative acts are based on the principle of priority of the rights of the child; the inequality of the child as a subject of law concerning other subjects is not eliminated; there is no system of conditions, including legal conditions, for the welfare of children for the realization of their rights. In addition, there is no unified system of scientifically based means to stop the process of continuous deterioration of the condition of children, also there is no single, separate body for the rights of the child[164].

In our opinion, the list of reasons can be supplemented by a more complete common ground for the union, systemicity, therefore, the criterion of correctness of action, sectoral legislation, including international legal acts in the field of child protection, in compliance with this or that norms, child's rights and freedoms in the absence of sales. It seems that such bases should be the provisions of the RA Constitution, current legislation, which enshrine not only specific human rights and freedoms and their protection, but also norms-principles, norms-definitions, which as a means of ensuring a social state will aim to guarantee the human dignity, life and development.

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[164] **Lundy C.** *An Introduction to the Convention on the Rights of the Child*, N.Y., 1991, P. 4; **Yu. F. Bespalov** *Some issues of implementation of family rights of the child (theory and practice).* Vladimir: VSPU, 2001. P. 5.

In other words, we must talk about using the full potential of the Constitution.

The need to provide the courts with additional clarifications and advice during the discussion of specific cases in the application of the norms of international law, in particular the Convention on the Rights of the Child, is considered quite topical. Unfortunately, no attempt has been made so far at the state level to disseminate and cover the mass adoption of other international acts such as the Convention on the Rights of the Child so that they are accessible to any family, any child.

According to a survey of a number of children's institutions, the majority of children know nothing about the UN Convention on the Rights of the Child, 42% do not receive information about their rights, 37% think they do, but not enough[165].

Another problem is the lack of interdepartmental cooperation in early detection, guidance, prevention of problems, early and systematic intervention of a child in a difficult life situation. Children are in different institutions and have different problems and often professionals working with children notice and solve only problems related to the field. As a result, problems are not prevented and detected early, which makes it difficult for professionals to work with the child in the future. There are also issues of guidance, coordination and early intervention. They are mainly due to the fact that active cooperation between local professionals does not always work.

Particularly important is the operative-cooperative work with children with disabilities, migrants, victims of war, disasters or emergencies, as well as the lack of professionals because the more interdepartmental cooperation is important, the more the knowledge of the specialists of the departments and the expansion of their skills may be needed. Many problems will be solved easily and quickly if the specialists have certain basic knowledge and skills on the related

[165] https://www.unicef.org/armenia/en/research-and-reports

fields. Armenia lacks a reporting system for child rights, as well as a coordinating body for comprehensive monitoring of children's rights. Also there is no comprehensive unified monitoring system for the protection of children's rights [166].

Analyzing the process of harmonization of international documents, in particular, the principles of national law and practice of the Convention on the Rights of the Child, one should not ignore certain difficulties in the unification of its provisions.

The Convention on the Rights of the Child should be understood not only as a criterion of the legal status of the child in our country, but first of all as a program of the near future, taking into account the specifics of the state, and combining it with the state's capabilities, measure it according to today's realities, it's "Growth". That is why the Convention contains reservations such as "in the presence of resources" (Article 23), "within the limits of possibilities" (Article 27), etc.

As a result, it should be noted that a number of international legal acts related to the protection and provision of the rights of the child, as well as the administration of justice for minors have been adopted, which are generally an international system for the protection of the rights of the child and by maintaining the principle of sequence, they develop the provisions of previously adopted legal-normative acts, taking into account the specific historical conditions and features.

Fulfilling its international legal obligations, through the legislative process of the Republic of Armenia, it is currently trying to guarantee children's life, protection, development and active participation in public life. Although many definitions of the Convention on the Rights of the Child are enshrined in national law, this issue has not been fully solved in practice. Excluding the socio-economic and political causes of the situation from the scope of this study, it can be admitted that the general principles of international

[166] http://www.irtek.am/views/act.aspx?aid=91088

law concerning the child included in different branches of national law, the norms are separate, are applied non-systematically, while their main task, which is to ensure a dignified life for children through legal means, is pushed to the background. All this directly or indirectly points to the need to create a comprehensive national mechanism to ensure the effective application of the above-mentioned norms and principles.

In this regard, it becomes important to develop a concept of the legal status of the child in the context of compliance with the requirements of the Convention on the Rights of the Child and other key international instruments, taking into account the specific socio-economic conditions of the modern state. As a result, we can conclude that:

1. In order to ensure the application of the provisions of the Convention on the Rights of the Child, in the opinion of experts, it is expedient for the RA Constitutional Court to submit a formal interpretation of Article 37 of the RA Constitution.

2. Clarifications are needed for the concepts “the Convention on the Rights of the Child” that do not preclude ambiguous interpretations, such as “lack of care or negligence, exploitation”, “all necessary measures”.

3. In order to inform children and their legal representatives about their rights and responsibilities the Government of the Republic of Armenia needs to develop knowledge in this field through the mass media, programs, methods, methods of secondary education and introduce the “must have subject”: “Human Rights Fundamentals” independently, in the state educational standards.

4. The change of the concept of the Human Rights Defender (ombudsman) institute will allow to significantly increase its status and its role in the legal-state system of Armenia. In this regard, it is considered relevant:

- To make changes in Article 109 of the RA Constitution in the sense that the Human Rights Defender has the right of a legislative initiative;
- To separate a special section in the Law on Human Rights Defender in the Republic of Armenia, this will be dedicated to the protection of the rights of the child, clearly defining the scope of the ombudsman's activities, which refers to children.

CHAPTER II
THE ROLE OF THE STATE'S MAIN LAW: THE CONSTITUTION, IN THE FORMATION OF A CHILD'S LEGAL STATUS

2.1. THE NORMS AND PRINCIPLES DEFINING THE LEGAL STATUS OF A CHILD

For any democratic, legal-social state, the development of the national legislation enshrining the rights, freedoms and responsibilities of special social groups is possible, as the adaptation of these groups in the modern society are due to complex and diverse manifestations. These social groups should include the elderly, the disabled, refugees, and, of course, children. Of course, the rights and freedoms of the latter must be elaborated in the legislation of each state. In this regard, addressing the issue of the formation of the legal status of the child in the state will allow to establish the social status of the child by legal means, his/her status as an independent individual in modern society, making it possible to participate in public legal relations.

It is known that the life in the conditions of emergencies, wars, revolutions, reforms creates additional difficulties for any adult, and for a child, these difficulties increase many times over. The destabilizing processes in the political, socio-economic spheres of the society cause negative tendencies among teenagers. Children become more vulnerable because they are not able to defend themselves due to their immaturity, the level of domestic violence increases, also the deviant behavior, physical and mental illnesses get developed.

The maintainance of the health of children is important for every family, for the whole society, as their development and health status significantly determines the future well-being of the society, and

is a guarantee of sustainable economic and social development, and the investments in child's health are considered effective investments for a prosperous future[167].

As a vulnerable age group, children require more attention and special approaches. In recent decades, the international community has adopted a number of fundamental declarations, and developed strategies to raise the awareness of governments, the public, and professionals on the existing issues, outlining ways to address them.In 2014 The World Health Organization has adopted "Investments for Children–2016-2020 European Strategy for improving health of children and adolescents", in 2015 The United Nations Organization has declared "Let's change our world", having the action plan of the sustainable development until 2030 on the agenda, within the framework of which the UN member states, including the Republic of Armenia, have adopted 17 Sustainable Development Goals, the third of which is "To ensure a healthy life, and to promote prosperity for all ages". One of the targets of this goal is that worldwide, infant mortality should not exceed 12% by 2030, and the mortality till 5 years of age should not exceed 25%[168].

It has become a global challenge to fight diseases such as drug addiction, HIV/ AIDS, tuberculosis and a number of other diseases that are most vulnerable to children[169].

After the independence of the Republic of Armenia, the changes in the economic and social life gave birth to circumstances that did not exist before, or which were not as clearly expressed as they are now. Any developments or reforms in the state or society primarily have a great impact on children, they are conditioned by:

– The new market economy for the state, difficulties in the transition phase, high level of violations, corruption, lack of state funds, manifestations of political instability, difficulties in the

[167] *"Strategy for improving the health of children and adolescents",* Government of the Republic of Armenia, 2016 at the September 2 meeting, Protocol No. 34, part 1.
[168] *"Strategy for improving the health of children and adolescents", the same,* Protocol No. 34, part 2-3.
[169] *Drug addiction among children and youth* // Dialog. No. 1, 1999, P. 35.

transformation of society, which are manifested or directed by radical changes in economic and social policies,

– The abandonment of a kind of moral values of the society and its social groups and the acceptance of another kind of moral values previously considered unacceptable, the creation of new moral approaches and orientations,

– The frequent changes in new and existing legislations, legal-normative acts of different sectoral affiliations, laws and the practice of their implementation, as well as the frequent changes,

– On one hand, there are contradictions between the laws and the practice, and on the other hand, between the expectations of the role of the young generation, even between different age groups[170].

Naturally, the above-mentioned problems could not but affect the upbringing and development of the "little" person, both directly through the deterioration of material conditions, and indirectly through the appropriate attitudes and approaches adults - parents and educators.

The enshrinement of the rights of the child at a constitutional level plays an important role in eliminating the unfavorable circumstances in the life of children, which requires a deep study of the basic law's social reality and perspective, as well as the legislation specifying its provisions. The solution of the "metamaterial" problem of the Constitution should not only reveal the contradictions or correspondences of certain superficial norms but also remind the sectoral legislation.

The definition of legal-constitutional norms as a form of definition of a legal entity such as the child as a legal status is a field

[170] See, for example: **G. A. Gadzhiev** *Constitutionality of civil law norms: (theoretical bases of decisions of the constitutional Court of the Russian Federation)* // Russian legal journal. 1997. no. 3; **D. A. Kerimov** *Philosophical problems of law.* M., 1972; **V. N. Kudryavtsev** *Legal norms and actual behavior,* Sov. state and law, 1980, no. 2.

of rather fragmentary theoretical research, which complicates the work carried out by the state legislator in that direction[171].

As it is known, unlike other social norms (customs, moral, religious norms, etc.), the norms of law have a number of special features. The most important of these are the universality, the definiteness, the systematicity, and the state guarantee.

Undoubtedly, all the above-mentioned features are also typical to the legal norms defining the status of a child in Armenia. However, it should be noted that the constitutional norms defining the legal status of a child do not form a clear system, as they are "replaced" by the norms defining the legal status of an individual in general. The law enforcer has to use or be guided by international law or general norms that do not reflect the specificity of the subject matter of the law. The reason of this is partly due to the development of legislation on the legal status of the child, because until a certain period of time the child was considered exclusively in the context of family relations, where his/her legal status is partly due to the legal status of his/her parents or other legal representatives.

The systematic nature of the norms of law does not exclude their another feature – the specialization. There is a "division" between the norms of law, they are specialized in "their" performance of a certain legal function of a number of norms by fixing general provisions (norms-principles), the others impose prohibitions (prohibitive norms), and in case of offense third parties impose coercive measures (law enforcement norms), etc.[172].

Speaking on the specialization of constitutional norms, it is important to mention their unique features, which are conditioned by

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[171] **O. E. Kutafin** *Constitution and problems of its implementation* // Russian constitutionalism: problems and solutions: Materials of the international conference. Moscow: Institute of state and law of the Russian Academy of Sciences, 1999; **N. S. Malein** *Legal principles, norms and judicial practice* / / State and law, 1996, no. 6; **B. C. Osnovin** *Features of constitutional norms* / / Sov. State and law. 1979. No. 4; **A. S. Pigolkin** *the Legal norm and the behavior of the individual* / / Proceedings of vuzi. M., 1978. T. 56.

[172] See: **S. S. Alekseyev** *Law. Alphabet. Theory. Philosophy*. Experience of complex research. Moscow: NORMA-INFRA, M., 1998.

a respective sectoral affiliation. Among the constitutional norms of the law defining the legal status of a child, it is also necessary to include:

– The peculiarity of their content, which is being followed from the nature of the public relations to which regulation they are directed. Thus, in ensuring the fixation of the constitutional status, the examined norms acquire a special content-structure, most often only the hypothesis-disposition is included here, and the fulfillment of the definitions is ensured by the requirements of sanctions of other branches of law. This thesis is currently being discussed within the framework of the "constitutional responsibility" category research[173]. In particular, R. Kh. Hakobyan and S. A. Avagyan think that each branch of law should ensure the implementation of its norms by its own means, including the means of responsibility, sanctions, and the existence of means of responsibility is as an inseparable feature of the branch as as its own public relations and the norms regulating public relations[174];

– The peculiarity of the type of legal norms is reflected in the fact that the vast majority of the studied legal norms have a general regulatory nature (norms-principles, norms-definitions, norms-problems, etc.);

– Special mechanism for the implementation of constitutional norms defining the legal status of a child. Most of the legal-constitutional norms are characterized by the lack of connection with the emergence of specific legal relations, and on the contrary, the

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[173] See, for example: **S. L. Avakian** *State-legal responsibility* //Sov. State and law. 1975. No. 10; **V. L. Vinogradov** *Constitutional responsibility: issues of theory and legal regulation*. Moscow, 2000; **N. M. Kolosova** *Constitutional responsibility in the Russian Federation*. Moscow, 2000; **G. N. Komkova** *Prohibition of discrimination in the Russian and international law*. Saratov, 2003*; Constitutional law responsibility: problems of Russia, experience of foreign countries*. Moscow: MSU, 2001; **V. O. Luchin** *the Constitution of the Russian Federation: Problems of implementation*. UNITY-DANA, 2002; On. Constitutional torts / / the State and right. 2000. № 1.

[174] **R. H. Hakobyan** *Problems of constitutional responsibility*, Yerevan, pravo, 2008, p. 8; **S. A. Avakian** *Actual problems of constitutional law responsibilities*// Constitutional and legal responsibility: problems Russia, experience of foreign countries / ed. prof. S. A. Avakyan. Moscow: MSU, 2001. P. 9.

existence of such a connection with general relations, moreover, with legal status (civil status, residence as a family member, etc.).

In the context of our research, it is expedient to refer to the universally accepted norms of constitutional classification defining the legal status of a child. These include:

– Legal norms, ie norms that give a child a right with a positive content, the right to perform this or that action;

– Binding norms, which oblige the child to perform actions with a certain content;

– Prohibitive norms that define a child's obligation to refrain from performing certain types of activities.

Attention should be paid to the fact that in the classification applicable to the child, the priority of legal norms is obvious.

Unfortunately, the theoretical research in the field of development of legal-constitutional norms as a means of fixing the legal status of a child is either not conducted at present or is based on the existing works, which, in fact, refer to the constitutional-legal norms stipulating the status of a person in general.

The legislation of the Republic of Armenia has a relatively rich history in this field, however, in recent years it allowed to develop quite effective legal instruments and structures that are able to partially ensure the adequate response of domestic legislation to this or that situation in the field of children's rights. Most of the legal norms defining the legal status of a child have been absent for a long time or have not been coordinated with various legal-normative documents, which was one of the reasons for their separation and ineffective application. That is why, in general, the law-making bodies of the dominant states began to address the legal status of the child - rights, freedoms, legitimate interests, duties, responsibilities only at the beginning of the 20th century[175].

[175] For more information, see: **M. V. Antokolskaya** *Family law*, 2nd ed. and add., Yurist, M., 2000.

We have not received information about the legal acts related to children in the Republic of Armenia in 1918-1920, norms on this or that human right were contained only in a few legal acts adopted by the Council of Armenia[176].

The Legislation on children underwent significant changes during the Soviet era. It is supposed that in the 20th century a fundamentally different attitude towards children was emerged, agreed upon by any state to create the best conditions for children to live, care for life, as well as the welfare and comprehensive protection of them[177].

However, the hardships of the early 20th century (World War I, Civil War, famine, and other emergencies) led to the enormous cases of the loss of children's parent (s), the lack of basic living conditions which happened to the detriment of the family, and the normal development of society. It is obvious that, in the modern understanding, all this could not contribute to the formation of the child as an independent subject of law.

A comprehensive deep study of the constitutional provisions of the legal status of the child is essential for our research. Moreover, it is a powerful feature of the Constitution, is based on international standards, and it envisages the implementation of human, civil rights and freedoms at the level of norms, principles adopted by the international community.

The legislation of the modern state defining the legal status of a child is also based on the above-mentioned international instruments, first of all, the provisions of the Convention on the Rights of the Child.

Thus, it is obvious in the field of protection of the rights of the child, the national legislation, first of all, the fact that there is a certain connection between the content of civil, family legislation and

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[176] See **A. G. Vagharshyan** - *The Judicial system of the first Republic of Armenia*, Yerevan, 2005.

[177] **P. I. Lublinsky, S. E. Kopelyanskaya** *Protection of childhood and fight against homelessness*. L., 1924. P. 5

the relevant international legal acts. The Constitution is the best pillar for strengthening this connection, as a thoroughly formalized, legalized "bridge". Since the important provisions defining the rights of a person and a citizen, including a child are contained in the constitutional norms, they are crucial in determining the legal status of a child.

The enshrinement of the special protection of the rights of the child according to the Constitution of the Republic of Armenia provides a certain guarantee for its status, on the other hand, the clarification of those rights and the reflection of freedoms within the framework of domestic, sectoral legislation depends on the constitutional enshrinement of the more general principles of protection of children's rights.

When interpreting specific constitutional definitions of a child's legal status, a number of methodological issues arise. Any classification implies a clear fixation of the selection criterion, and on the other hand it contains an element of subjectivism[178].

In our opinion, through the prism of the ideology of the RA Constitution, it is possible to consider the constitutional norms according to their conformity with the UN Convention on the Rights of the Child, to the specific content of the topic under study, to the scope of the envisaged rights, in terms of their significance in the general theory of human rights and freedoms, and finally, from the point of view of the priority of "norms-guarantees" of maximum protection of the rights of the child.

In view of the above, we believe that it is possible in principle to mention the constitutional provisions in terms of non-compliance with the Convention on the Rights of the Child.

Paying attention to the content of the first chapter of the study, it should be noted that together with the need to integrate

[178] See: **Trude Haugli, Anna Nylund, Randi Sigurdsen, Lena R. L. Bendiksen** *Children's Constitutional Rights in the Nordic Countries*, University of Tromso, Brill | Nijhoff, 2019; **Jeffrey Shulman** *The Constitutional Parent: Rights, Responsibilities, and the Enfranchisement of the Child,* Yale University Press, USA, 2014.

international norms on the protection of the rights of the child with national legislation, as well as due to the recommendations of the UN Children's Fund, practical formulations in this area have achieved some results. In this regard, the work done by the Government of the Republic of Armenia is interesting.

It refers to the main provisions of the Convention as their formal conformity (or contradiction), and not based on the practice of law, embodying the de facto state of realization of the specific rights and freedoms of the child in the national legislation.

Thus, the logic of discussing the process of consistent, comprehensive protection of the rights of the child first of all lies in revealing the interconnected chain of conformity: the provisions of the Convention on the Rights of the Child, the principal definitions of the RA Constitution, as well as specific norms of national sectoral legislation. Secondly, the problem not only lies in determining the extent to which the next one corresponds to the previous one, but, ultimately, in the more complete realization and enforcement of the legitimate interests of children.

In this regard, it should be borne in mind that the fulfillment of the set task, ultimately aims to realize the full potential of the Constitution in the sectoral legislation.

Based on the analysis of the Constitution, in practice the development of legislation, the enshrinment of chilrden’s rights and the definition of the realization of their mechanizms should be identified, as well as the most perfect and optimal ways in accordance with the spirit and ideology of the Constitution.

There is no contradiction or inconsistency in the text of the amendments to the Constitution, the direct transposition of the provisions of “the Convention on the Rights of the Child”, as certain principles of international law recognized by the Republic of Armenia

may be established at the constitutional level, as is done in many countries[179].

The Constitution of the Republic of Armenia adopted by the 1995 referendum did not enshrine the rights of the child in a separate article, the provisions on the basic right of the family (Article 32) there was mentioned the rights of the child. Though the Constitution edited in 2005 expanded and strengthened the guarantees of the fundamental rights of the family (Article 35, Article 36), but it also did not recognize the fundamental rights of the child as such. The 2015 amendments to the Constitution of the Republic of Armenia in this respect are a step forward in line with the modern international trends in the constitutional enshrinement of the rights of the child, as well as with the UN Convention[180] on "the Rights of the Child", by introducing and defining the rights of the child in a separate article .

It is noteworthy that the starting point for the structure and content of the Article 37 of the Constitution of the Republic of Armenia was the Article 24 of the EU Charter of Fundamental Rights, which in turn was based mainly on part 1 of the Article 3 of the Convention on the Rights of the Child (child's best interest), on part 9 (the right to have a regular relationship with parents), as well as on the Articles 12 and13 (the free expression of opinion and taking it into account).

The constitutional enshrinement of the rights of the child is a new trend, which is built on the approach that the child is not only

[179] For more information, see Article 1 of the Austrian Federal constitutional law on children's rights; Part 1 of article XVI of the Hungarian Constitution; Part 1 of article 69 of the Portuguese Constitution; Part 1 of article 11 of the Swiss Constitution, etc.

[180] Adopted on 20.11.1989: In force for the Republic of Armenia entered in 1993. Armenia has also ratified two additional protocols to the Convention: "Armed optional example of children in conflict conclusion" (entered into force for the Republic of Armenia on 21.03.2005), and "child trafficking, it is not necessary to talk about child prostitution and child pornography Protocol" (entered into force for Armenia on 30.07.2005).

an object of protection, but also a participant in decision-making on the matters concerning him/her[181].

Part 1 of Article 37 of the Constitution of the Republic of Armenia is based on the legal idea of promoting the independence of a child developing with age, and is enshrined the right to express an opinion on issues concerning him/her, and Part 2 of Article 37 of the Constitution enshrines the principle of "the best interests of the child" enshrined in the Article 3 of the Convention on the Rights of the Child. This principle is also reflected in part 3 of Article 37 as a criterion for assessing the legality of a restriction on a child's right to maintain direct contact with the parents on a regular basis.

Part 4 of the Article 37 provides a special basis for subjective legal claims for children left without parental care. The rights provided within this article first of all have a protective role. But at the same time, given the abstract nature of these rights, they naturally have a certain need; due to that, they create positive responsibilities of the state, especially in the field of domestic legislation[182].

The approach of children as a subject of rights and the holder of rights has not yet become widespread in the constitutions of foreign countries, instead, the rights of the child are considered in the context of the protection of the rights of the parents and the family[183].

Examples of constitutional support for a child as an independent holder of a fundamental right are Finland (Article 6 Part 3), Switzerland (Article 11), Hungary (Article 16 Part 1), Montenegro (Article 74). , Slovenia (Article 56), Poland (Article 72). In some

[181] *Venice Commission Report on the Protection of Children's Rights, Adopted by the Venice Commission at its 98th Plenary Session, CDL-AD (2014) 005-e, P. 12-13.*

[182] See: **Otto Luchterhandt, Nora Sargsyan** *Regulation of children's rights as of 2015 edited by the Constitution,* Bulletin of the Yerevan University. Jurisprudence, Yerevan, # 2 (29), 2019, p.24.

[183] The constitutions of about 20 Council of Europe member countries affect the family and the special protection of children in it.

countries, this approach is reflected in the context of the child's right to develop in accordance with his or her personality and abilities[184].

In matters relating to the rights of the child, the “best interests of the child” are constitutionally regulated only in a few countries[185].

The constitutional provision of the right of the child to speak or to be heard is not yet widespread; it is directly enshrined, as such, only in the constitutions of Ireland and Poland, as well as in the Federal constitutional law of Austria on “the Rights of the Child”[186].

In the constitutions of other European countries, the guarantee of the right to education of the child, protection from economic exploitation, violence or other harassment is more common. Provisions on special care for children with disabilities can be found in some constitutions[187].

The holder of the right provided by Article 37 of the RA Constitution is the child from the moment of birth until he/she reaches the age of 18. The rights of the unborn child, provided by Article 24, are protected within the framework of the right to life. The right provided by Article 37 is a human right, regardless of the citizenship of the child. Provided by this article parents and guardians of the child do not have this right and if the child exercises it, favorable consequences may arise for him/her. At the same time, parents and guardians, acting as the child’s legal representatives, can invoke the child's rights. The title and the content of this article gives the impression that the basic rights of the child are enshrined only in this article. In fact, children are the bearers of all the basic rights enshrined in Chapter 2 of the Constitution of the Republic of Armenia (enshrining fundamental human rights), except for those rights for which there are age restrictions (for example, the right to vote, the

[184] See: **Otto Luchterhandt, Nora Sargsyan** *Regulation of children's rights as of 2015 edited by the Constitution,* Bulletin of the Yerevan University. Jurisprudence, Yerevan, # 2 (29), 2019, p.26.
[185] See The Constitution of Ireland (42A article); The Constitution of Serbia (article 65); The Constitution of Albania (part 4 of article 54).
[186] See The Constitution of Ireland (Part 4 of article 42A); The Constitution of Poland (Part 3 of article 73); The Federal constitutional law of Austria (article 4).
[187] The Federal constitutional law of Austria (paragraph 82-117).

right to participate in a referendum, Article 48, etc.). With regard to the exercise of these rights, problems can arise only in case of those rights, the realization of which is associated with a certain level of maturity of the child[188].

The guarantor of the fundamental rights defined by Article 37 of the Constitution is exclusively the public authority in the sense of Part 3 of Article 3 of the Constitution. Although the primary responsibility for the upbringing of children bear parents, the rights provided by this article affect them only indirectly through legislative regulations.

As for the concretization of the constitutional norms applicable to children, the first group consists of the principal provisions of the constitutional order directly related to the protection of the rights and interests of the child. First of all, the person (regardless of his age) declares his rights and freedoms as the highest value and their recognition and protection it recognizes as a state (Article 3), moreover, the obligation of social state whose policy is aimed at creating conditions for the free development of human life and dignity (Article 83). Secondly, by providing state support for the family, motherhood, fatherhood, and childhood, it reveals the mechanism for implementing the social policy in the best interests of the children (Article 16). These constitutional provisions, being a normative, legal basis for the whole legal regulation, the organization of law enforcement activities, have a binding regulatory effect on the perspective of the development of public relations.

The second group can include constitutional norms directly related to children. We are talking about the provisions that define the rights of the child (Article 37), as well as the fact that the family, motherhood, childhood are under the special protection of the state (Article 16), the care and upbringing of children is the equal right and responsibility of the parents (Article 36), which guarantee social

[188] **Otto Luchterhandt, Nora Sargsyan** *Regulation of children's rights as of 2015 edited by the Constitution,* Bulletin of the Yerevan University. Jurisprudence, Yerevan, # 2 (29), 2019, p.27.

security to each of them for the upbringing of children in case of illness, disability, loss of the caregiver etc. (Article 83); also they oblige parents or guardians to provide their children with basic general education (Articles 36 and 38).

In the supreme constitutional principles of the world, the child (children) are considered only in the context of motherhood, family, parents, caregiver.The explanation for this must be sought, on the one hand, in the peculiarities of the natural environment for the child's life and upbringing, reasonable priority, and, on the other hand, in the peculiarities of the historical development of legislation on children.Nevertheless, it can be confirmed that the current Constitution of the Republic of Armenia already presupposes the child as an independent bearer of rights, a legal entity. It is enough to consider the evolution of the legal status of the child from a constitutional point of view.

And finally, the next group of constitutional norms directly related to the definition of the legal status of a child is the one who regulates the humans and citizen's rights and freedoms; "everyone" (has the right to life, liberty, personal integrity, honor and reputation, freedom of conscience, thought, and speech, etc.) the norms of the Constitution applying the resolution, apply equally to adults and children.

The rights and responsibilities of a person recognized and guaranteed in Chapter 2 of the Constitution of the Republic of Armenia in the territory of the Republic of Armenia are nothing but the status of a person in a 'society' and state; it is the legal-constitutional formalized status of an individual under national law expressing the most essential sources defining the principles of the relationship between them[189].

As already mentioned, in general, the principles of the legal status of citizens enshrined in the Constitution are part of the

[189] **V. N. Kivel** *The Concept of the legal status of the individual*: *Questions of theory*, Vesnik Bdu. Ser. 3, No. 1, 2014, P. 58.

constitutional status of an individual, in particular a child, the obligation of which lies in their objectivity, because the basic law of the country in its norms not only mediates the economic, social and other public relations regulated by different branches of law, but also gives them a legal status, raising it to the level of constitutional principles[190]. Legal norms enshrining these principles can also be fully identified as norms relating to the legal status of the child. Therefore, in the norms defining the legal status of a child in the territory of the Republic of Armenia, the following should be mentioned:

1. The Article 37 of the Constitution of the Republic of Armenia enshrines the basic rights of the child to express his/her opinion freely, to give priority to the interests of the child in matters concerning the child, regular personal relations with his/her parents and the right to maintain direct contact, as well as the protection of children left without parental care under the care of the state.

2. The principle of equality enshrined in Articles 86-30 and supplemented in Articles 28-30 of the Constitution of the Republic of Armenia, in fact, enshrines the formal-legal equality of individuals, and consequently and child citizens, the equality of their legal possibilities. Thus, every child is guaranteed with the equality before the law, that is the equality of his or her rights and freedoms, non-discrimination on the basis of sex, race, color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, national minority status, property status, birth, disability, age or other personal or social circumstances.

3. The constitutional principle of individual rights, freedoms and responsibilities intersects with one of the elements of the legal status of the individual, the guarantees of the direct realization of constitutional rights and freedoms, which, in terms of our research, is of great importance. The legal-constitutional norms ensuring this

[190] See: **S. V. Polenina** *Constitutional foundations of the system of Soviet legislation/ / Sov. State and law. 1978. no. 5. P. 20.*

principle, in particular, are contained in Article 3 of the Constitution of the Republic of Armenia, according to which respect and protection of human main fundamental rights and freedoms are the responsibilities of public authorities. Public authority is limited with the basic human and citizen's rights and freedoms as a directly applicable right. Thus, in accordance with the given constitutional norms, the rights, freedoms and responsibilities of the child in the territory of the Republic of Armenia are guaranteed by their recognition, protection, guarantee and protection by the state.

In addition to the general norms of the RA Constitution, there are also special norms, which in one way or another contribute to the implementation of the principle under discussion. Thus, Article 123, Part 2 of the Constitution of the Republic of Armenia stipulates that the President of the Republic of Armenia pursues the observance of the Constitution, and according to Article 191 of the Constitution of the Republic of Armenia, the Human Rights Defender is an independent official who pursues the protection of human rights and freedoms by state and local self-governmental bodies and officials, in cases prescribed by law, promotes the restoration of violated rights, freedoms, and the improvement of normative legal acts related to rights and freedoms. The above-mentioned norms of the RA Constitution cannot be classified as those norms that directly define the legal status of a child, however, they are mediated to one extent or another and contribute to the realization of the legal status of a child.

4. The constitutional principle of guaranteeing the enshrinement of human and civil rights and freedoms in the territory of the Republic of Armenia, in accordance with the "universally recognized principles" of international law, in accordance with the norms of international humanitarian law, it carries the semantic burden of certain guarantees of individual rights and freedoms. This principle significantly affects the composition of legal norms that directly define the legal status of a child in the territory of the state.

Moreover, within the meaning of Part 2 of Article 61 of the Constitution of the Republic of Armenia, everyone (hence the child), in accordance with the international treaties of the Republic of Armenia, has the right to apply to international bodies for the protection of human rights and freedoms.

5. The principle of inalienability of rights and freedoms, or in other words, the principle of prohibition of unlawful restriction of the constitutional rights and freedoms of a human and a citizen, follows from the humanitarian essence of the RA Constitution and its content. The mentioned principle means that no person can be deprived of his/her rights and freedoms from the moment of birth, as the person is the highest value in the Republic of Armenia. The inalienable dignity of a man is the inalienable basis of his/her rights and freedoms (Article 3.1 of the Constitution). Moreover, Article 122.1 of the Constitution of the Republic of Armenia stipulates that there may be established autonomous bodies by a law adopted by a majority of the total number of votes of the deputies in order to ensure the realization of the fundamental human rights and freedoms, as well as to protect the fundamental public interests defined by the Constitution. This principle is also expressed in the constitutional norm, the provision of which stipulates that a citizen of the Republic of Armenia cannot be deprived of citizenship (Part 5 of Article 47 of the Constitution of the Republic of Armenia). However, taking into account that "the exercise of human and civil rights and freedoms should not violate the rights and freedoms of other persons" (Article 39 of the Constitution of the Republic of Armenia), certain restrictions are possible, but only in cases prescribed by law. As it is enshrined in the articles of the Constitution of the Republic of Armenia, "certain rights and freedoms of a human citizen may be restricted only by law for the purpose of state security, prevention or detection of crimes, protection of public order, health, morality or other fundamental rights and freedoms". Based on the above, it is obvious that the principle of inalienability of the rights and freedoms

of the child is also not absolute in nature, which is connected with the peculiarities of his/her legal subject, and, ultimately, its overriding goal is to secure and protect the rights of the child, not to restrict his or her rights when prescribed by law.

6. The principle of direct exercise of rights and freedoms is enshrined in Article 3, Clause 3 of the Constitution of the Republic of Armenia, according to which public power is limited to basic human rights and freedoms as a directly applicable right. In other words, the rights and freedoms of the individual enshrined in the Constitution of the Republic of Armenia do not need to be expressed in other normative acts in order to give proper force to the rule of their universal obligation, as the norms of the Constitution are norms combining "direct, directly acting or norms coordinating mediated actions"[191].

As S. A. Avagyan notes, "The Constitution is not a Bible, but a directly applicable law, which has the highest legal force - direct application throughout the country. During its operation, the Constitution should be based not only on the "arsenal" of other branches of law, but also on its own mechanisms, ensuring the direct application of constitutional norms, and, if necessary, on the means of constitutional responsibility[192]. One of the possible guarantees of ensuring the constitutional legitimacy is not only the proper normative fixing of the rights and obligations of the subjects of constitutional legal relations, but also, if there are established grounds, the application of the measures of constitutional responsibility in the prescribed manner[193]. Of course, those "peculiarities" of the implementation of the constitutional principle of

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[191] **Natalia V. Kolotova** *Principle of Direct Effect of Human Rights and Peculiarities of Social Rights*, Institute of State and Law, Russian Academy of Sciences, Moscow, 2019, P. 114-140.

[192] **S. A. Avakian** *Actual problems of constitutional law responsibilities* // Constitutional and legal responsibility: problems Russia, experience of foreign countries, Moscow: MSU, 2001. P. 11.

[193] **R. H. Hakobyan** *Problems of constitutional responsibility*, Yerevan, pravo, 2008, p. 62.

direct action of the rights and freedoms of the child also play a negative role.

From the constitutional law's point of view, it is possible to cover the concept of "child's interest". Part 2 of Article 37 of the Constitution of the Republic of Armenia enshrines the basic principle of "child interes" which is of key importance for the protection of the child (Part 1 of Article 3). "Child's interest" is equivalent to the concept of "the best interest of the child" provided by the Article 3.1 of the Convention on the Rights of the Child, which is one of the four general principles for the interpretation of the Convention and the implementation of the rights of the child[194].

Article 3 of the Convention on the Rights of the Child contains a requirement that "in all acts concerning children" the State gives priority to "the best interests of the child". In fact, the international community enshrines the principle of "the best interests of the child" in the provisions of the Convention, requiring that States, in all matters relating to children, should undertake, by public or private social security institutions, courts, administrative or legislative bodies, in order to give priority to the best interests of the child and protection. The principle of "the best interests of the child" is the cornerstone of the Convention and it means that when a conflict of interest arises, the best interests of the child should be of a primary consideration. In the legal, judicial and administrative spheres, such an approach requires new structures when making decisions [195].

In this regard, in our opinion, the state should separate the interests of the child, as the interests of the child do not always coincide with the interests of adults. In addition, examining the consequences of any action in the best interests of the child it can be revealed that there is an interference with the interests of other

[194] UN Committee on the Rights of the Children, General Comment № 5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child, 12; General Comment № 12 (2009) on the Right of the Child to be Heard, part 2.

[195] Second report: Senegal, para. 43 cite on Implementation Handbook for the Convention on the Child, UNICEF, 1998. P. 42.

groups of the population, which must also be taken into account. Thus, the state, in the person of its state bodies, must ensure the protection of the best interests of the child, without violating the interests of society.

Many factors are taken into account to determine the best interests of the child. Thus, Article 20 of the Convention stipulates the "desire to ensure the continuity of the child's upbringing" in matters of religion, language, culture, family ties and citizenship (Article 8), as well as the child's wishes to be considered according to his "age and maturity" (Article 12). Therefore, the purpose of determining the best interests of the child should be the preamble of the Convention on the Rights of the Child: "A child shall grow up in a family environment, in an atmosphere of happiness, love and understanding, for the full and multifaceted development of his/her personality"[196].

According to T. A. Titova, the nature of the assessment of the concept of "best interests" is fully justified, as in each case it is fixed with a specific content, taking into account the identity of the child[197].

Yu. F. Morgun, the representative of the office of the United Nations High Commissioner for Refugees in Belarus thinks that the principle of "best interests" runs through the full text of the Convention on the Rights of the Child, and each article is a unique variation on the best interests of the child[198].

It can be assumed that the child, developing his consciousness and life experience in the family, exercises his/her subjective rights and freedoms. It can be concluded that the child's interest is formed under the influence of parenting or other adults. In addition, parents

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[196] Second report: Senegal, para. 43 cite on Implementation Handbook for the Convention on the Child, UNICEF, 1998. P. 43.

[197] **T. A. Titova** "*Convention on the rights of the child in the system of General regulation of human rights"*. The dissertation on competition of a scientific degree of candidate of legal Sciences. Yekaterinburg, 2000, P. 58.

[198] **Yu. F. Morgun** *Activities of the UNHCR on international protection of the rights of refugee children,* Belarusian journal of international law and international relations, no. 2, 1999, Pp. 87-94.

need to identify the child's interests and having that interest in mind, build their behavior, the purposeful development of which is important in the child's upbringing and learning process. However, it is difficult to determine the real interest of the child in family life, depending on the age of the child, his/her development and other social, psychological, health conditions the interests of the child may be different. There can be distinguished *real* (real family situation, education, health, etc.) and *imaginary* (the child's sympathy and dislike are quite real) interests of a shild. In protecting the rights of children, in accordance with their interests, it is possible to determine the main interest, which may not correspond to the real desire of the child. In this case, the following criteria should be used: *objective* (the interests of the child coincide with the interests of society, their inseparability and their predetermination) and *subjective* (the content of the interest reflects the personal qualities of the individual, ie his/her inclinations, affections, sympathy, etc.)[199].

Thus, the role of the Constitution in determining the legal status of a child is possible; it is impossible to identify the issues of the legal status of a child without studying the current domestic legislation. The Constitution of the Republic of Armenia practically contains norms that define the legal status of a child as a special subject of law, at the same time, Chapter 2 of the Constitution lists all other rights and responsibilities, which, as we have already mentioned, apply to “everyone” or “a citizen”, including the child. Thus, in the Republic of Armenia, according to the general rule, the whole set of rights and responsibilities presented by the RA Constitution is applied to the child, including:

– The right to respect the dignity (Article 23 of the Constitution of the Republic of Armenia);

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[199] **V. V. Artemenko, A. A. Shabunova** *Influence of socio-economic characteristics of the family on children's health, problems of territory development*, Issue 2 (48), 2009, pp. 68-74

– The right to life (Article 24 of the Constitution of the Republic of Armenia),

– The right to physical and mental immunity (Article 25 of the Constitution of the Republic of Armenia),

– The right to personal liberty (Article 27 of the Constitution of the Republic of Armenia),

– The right to equality before the law (Article 28 of the Constitution of the Republic of Armenia),

– The immunity of private and family life, honor and reputation (Article 31 of the Constitution of the Republic of Armenia),

– The immunity of the apartment (Article 32 of the Constitution of the Republic of Armenia),

– The freedom of communication և privacy (Article 33 of the Constitution of the Republic of Armenia),

– The right to education (Article 38 of the Constitution of the Republic of Armenia),

– The right of a person to act freely (Article 39 of the Constitution of the Republic of Armenia),

– The right to free movement (Article 40 of the Constitution of the Republic of Armenia),

– The freedom of thought, conscience and religion (Article 41 of the Constitution of the Republic of Armenia),

– The freedom of expression (Article 42 of the Constitution of the Republic of Armenia),

– Freedom of creation (Article 43 of the Constitution of the Republic of Armenia),

– The right of citizenship (Article 42 of the Constitution of the Republic of Armenia),

– The right to apply to Human Rights Defender (Article 52 of the Constitution of the Republic of Armenia),

– The right to preserve national and ethnic identity (Article 56 of the Constitution of the Republic of Armenia),

– The freedom of choice of work and labor rights (Article 57 of the Constitution of the Republic of Armenia),

– The freedom of economic activity and the guarantee of economic competition (Article 59 of the Constitution of the Republic of Armenia),

– The right of ownership (Article 60 of the Constitution of the Republic of Armenia),

– The right to judicial protection and the right to apply to international human rights bodies (Article 61 of the Constitution of the Republic of Armenia),

– The right to compensation, the right to a fair trial, and the right to legal aid (Articles 62-64 of the Constitution of the Republic of Armenia),

– The respect for and the protection of the fundamental human and civil rights and freedoms (Articles 3 of the Constitution of the Republic of Armenia),

– The responsibility to care for children and elderly parents (Articles 36 of the Constitution of the Republic of Armenia),

– The responsibility of the protection of the nature environment (Articles 12 of the Constitution of the Republic of Armenia),

– The obligation to pay taxes and duties (Articles 60 of the Constitution of the Republic of Armenia) (in some cases).

The age of a person is used for the emergence of a number of constitutional rights and responsibilities. For example, the right to vote, compulsory military service after the age of 18, etc.

Based on the principle of guaranteeing the rights and freedoms of a citizen, including a child, it is necessary to note that in the variety of existing issues of guarantee provision, a significant problem at this time is the insufficiently developed mechanism for the implementation of the legal norm[200].

[200] **T. Yu. Falkina** *Forms of realization of the right and mechanisms of their implementation*: dis... Cand. The faculty of law. Sciences: 12.00.01 / T. Y. Falkina;

We believe that the mechanism for exercising the rights and freedoms of the child is no less important, as the lack of consideration in the means of ensuring the operation of legal norms can lead to the "separation" from the requirements and definitions (including constitutional) declared by law. In such cases, the declarative nature of the established rights and freedoms of the child or the fixation of the child shall be indicated.

The Constitution, being the primary legal act of the state, the main guarantor of human (and, of course, the child) rights and freedoms, at the same time enshrines only basic legal norms. The analysis of the legal framework for the normalization of relations with the participation of children shows that their status in the vast majority of the definitions of the Constitution is a presumed part, an "integral" element of the status of any person and / or citizen[201].

On the one hand, this provision guarantees the principle of equality for all citizens (of course, regardless of any characteristics, including age, etc.). On the other hand, due to the specific age peculiarities that characterize the legal status of a child, this circumstance can be considered as evidence of poor protection of children's rights and insufficient guarantee of interests. Thus, there is a need to increase the legal status of the child through the separation of his/her legal status as an independent status[202].

This problem can be solved by developing an accessible mechanism for the protection of the basic rights of the child (life, health, inviolability, dignity). In this regard, it is possible that in the case of a violation of a child's rights, he or she may resort to a more widespread use of existing means of facilitating his or her accessibility. In addition, it is necessary to involve the maximum

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Ural law. In-t of the Ministry of internal Affairs of the Russian Federation. - Yekaterinburg, 2007, P. 8, 34.

[201] **N. V. Vitruk** *Socio-legal mechanism for the implementation of constitutional rights and freedoms of citizens* // Constitutional status of the individual in the USSR, Moscow: Nauka, 1980.

[202] **N. V. Letova** *Main types of legal status of a child: concept, content, classification criteria*, Proceedings of the Institute of state and law of the Russian Academy of Sciences, no. 6/2015, p. 137.

number of stakeholders (including the child) in the process, as well as all the organizational and legal implications arising from this, to one degree or another, take care of the parents (their substitutes), strengthening the responsibility of officials or other entities.

Due to the fact that the Armenian legislation does not envisage a unified normative act aimed at more complete realization of the legal status of a child, the law enforcer has to compensate this gap by applying the above-mentioned international documents on the legal status of the child and the general norms of the RA Constitution which define the legal status in general. From a legal point of view, this circumstance raises certain fears in the form of omissions or omissions of persons authorized to protect the interests and rights of the child because of the absence of a rule in law.

Thus, the legislation of the Republic of Armenia defining the legal status of a child is still quite young, it needs to be improved, clarified and concretized. That is why it seems to us that in order to determine the ways of legislation development, a detailed analysis of the existing normative base, law enforcement practice, implementation of targeted programs is necessary[203].

The adoption of any law, as a rule, needs a comprehensive justification. The theoretical assumptions and legislative initiatives of the legislator regarding the current constitutional norms defining the legal status of a minor in the Republic of Armenia, leave only the best to be desired. In this connection, the definition of constitutional norms as a means of fixing the legal status of a legal entity is still a difficult task, and, consequently, the issue of determining the constitutional status of a specific legal entity. The theoretical definition of the quantitative-qualitative composition of the constitutional status of a child should at least, in practice, comply with the provisions of the constitutional norms defining the status of the individual in general. In terms of our research, we can also

[203] **T. V. Osipova, Zh. G. Pochivalova, O. V. Kolyada** Relevance of the problem of children's rights and protection, Bulletin of the South Ural State University. Ser. Education, Educational Sciences, vol. 10, no. 4, 2018, pp. 6–14.

mention the systemic significance of the Constitution. As mentioned by V. O. Lucin: The constitutional norms, sometimes incorporating one branch of law into their orbit, and often several branches, put into operation a single legal complex, the sectoral affiliation of whose components seems to be pushed to the background[204].

In this regard, we assume that such a "legal complex" represents the consolidation of norms ensuring the protection of the rights of the child, which is based on its constitutional status. As the implementation of the constitutional provisions requires a multi-level, comprehensive legal provision, their clarification is completely natural, but their basic nature and original content should not "suffer" from it.

Clarification of the constitutional norms defining the basic rights, freedoms and responsibilities of citizens, in addition to the interpretation of the content of rights and responsibilities (a concretization in a narrow sense), it also implies the definition of legal means to ensure their realization - legal facts, means of protection, legal responsibility, etc. (in a broad sense, a concretization)[205]. At the same time, it should be borne in mind that many norms are regulated by the current legislation, so the relevant relations will be regulated not by law, but by various by-laws, which are not free from arbitrary departmental approach, that is why these are not always available for citizens, especially for children. Hence it follows the conclusion of the primacy of constitutional laws in the structures of implementation of constitutional provisions. The content of the constitutional rights and obligations of citizens, the main means of realization and protection, first of all, need to be enshrined in law, and then already in by-laws, and it is up to them to detail and clarify, but not to define the content of the rights and responsibilities[206].

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[204] **V. O. Luchin** *the Constitution of the Russian Federation: Problems of implementation*: UNITY-DANA, 2002; on. Constitutional torts// the State and right. 2000. № 1, P. 42.
[205] See: *Constitutional status of the individual in the USSR*. Liter, 1980, P. 213.
[206] See: *Constitutional status of the individual in the USSR*. Pp. 214-215.

Second, in the process of concretization, as reaching the next level, therewith it is possible to move away from the original position, which requires the creation of special legal structures and procedures to ensure the compliance with the provisions of the current constitutional content of child rights legislation. The right can be an effective protection mechanism only if the norms of the legislation are adequate to the social situation in the country. In this regard, the objective statistical information is essential (even in the absence of scientific substantiation of the general patterns of development of the modern state). Unfortunately, the numbers, which in particular indicate an increase in drug use among children, are reduced; they do not always correspond to reality. Such statistics are available in most departments[207]. The reasons for such discrepancies are multifaceted and are a subject of separate studies, but the need to eliminate them is very urgent.

The state has an obligation to protect children not only because it is enshrined in the norms of international law, and the obligation to follow which it has enshrined in its Constitution, but also because any government must take care of the reproduction of the population. In terms of a matured issue, the legislative enshrinement of the legal status of the child through the adoption of a separate law has an urgent resonance. The point is that in the normalization of relations with the participation of children as the axis of the future of the state, the normative acts - first of all the laws - must take into account not only the present, but also the prospects of development. In addition, the law should create certain barriers to negative processes, and stimulate the development of legal relations in a positive way. Thus, the existence of both material and procedural guarantees for its realization is a necessary component of the nature of normative-legal acts on children. The further development of the constitutional

[207] See: **E. I. Tsymbal** *Problems and ways to improve the legal protection of children's interests* // Actual problems of modern childhood. Issue 6: Collection of scientific papers for the 10th anniversary of the adoption of the Convention on the rights of the child and the creation of the research Institute of Childhood RDF. Moscow: research Institute of Childhood RDF, 1999. P.177-182.

norms defining the legal status of a child should be directed not only to the provision of specific material and other rights to them, but also to the development of a mechanism for their provision and realization. In turn, the mechanism of realization of the rights of the child, together with ensuring the inevitability of strict liability for non-fulfillment of the relevant responsibilities, it, in the modern state, is considered to be an important indicator of the guarantee and increasing security of the legal status of the child.

In our opinion, examining the consolidation of legal-normative acts, it is noteworthy that the norms of the law directly related to the child were first introduced in the national legislation of the state by the enactment of civil law-family legislation. Prior to that, as already mentioned, children's rights were viewed only through the prism of the relationship between parents and children[208], and the child often, due to their incapacity, found himself in the role of a non-independent bearer of rights, but either a passive or an absent object of parental care. Thus, it can be confirmed that in the Article 37 of the Constitution of the Republic of Armenia on the rights, freedoms, legal interests and responsibilities of the child, as well as the legal status of the person indirectly related to the child in Chapter 2, has accumulated considerable experience through sectoral legislation. The legislation of different branches of law - constitutional, administrative, civil, family, criminal, etc. - contains norms regulating the status of the child as a participant in this or that public relations.

As the next chapter of the following study is dedicated to the realization of the potential of the Constitution in the field of ensuring the protection of the rights of the child, here it should be noted that the current national legislative framework, which can be used to clarify the legal status of the child, includes such normative acts, which can be considered necessary for the legal status of the child

[208] See: **Kolosov Y.** The CRC: Juridical significance and the Committee on the Rights of the Child: Stock taking and new challenges //Understanding Children's Rights, Children's Rights Centre, and University of Chent, Belgium, 1998, P. 407.

containing a series of normative-legal acts. First of all, it refers to the RA Law on “the Rights of the Child”, adopted in 1996.

For the purpose of creating legal, socio-economic conditions for the realization of the rights and legitimate interests of the child, the law defines the main guarantees of the rights and legitimate interests of the child envisaged by the Constitution of the Republic of Armenia. The State recognizes childhood as an important stage of human life and is proceeded to prepare children for a full life in society, about their creative activity and the development of socially significant, high moral qualities, and from the principles of patriotism, citizenship, and upbringing. However, this law establishes only the general guarantees of the rights of the child, without stipulating the legal status of the child in general. The observed legal norm is “often of excessive declarative nature” and is incomplete in terms of uncertainty. And this is not a harmless uncertainty at all, because certainly, many abuses can be a tangible result of the law[209].

As for the composition of the rights of the child guaranteed by the domestic legislation, their number, in accordance with the RA Constitution, universally recognized principles and norms of international law, RA international treaties, RA Civil and Family Codes, are first of all attributed to human rights and freedoms. The brevity of the legislation does not define a number of important concepts, the mechanism of law enforcement is not revealed, or reference is made to the departmental normative acts that have not been developed yet. For example, the Family Law of the Republic of Armenia does not address the issue of parental responsibility for the upbringing of children, and their direct obligation to ensure and exercise the rights of the child is replaced by the notion of “supporting the child”.

By defining the ways of solving the most important problems of protection of the rights of the child, the enumerated legal-

[209] **A. A. Petrosyan** *Problems of children's rights protection in the Republic of Armenia*, Yerevan, "Iravunk", 2016, pp. 41-59

normative acts, first of all, do not fully specify the scope of the subjects responsible for solving the problems set, secondly, they do not define the extent of liability for non-compliance or circumvention and measures of the law, and finally, they do not offer a clear mechanism for implementing the provisions of the law, in particular, without mentioning specific options for resolving financial, socio-economic issues that ensure the rights of children.

In addition to the above, it is necessary to mention the absence of normative legal acts regulating the protection of certain rights of children, for example, the Law on the “Protection of the Rights of the Child”, etc.

The need to specify constitutional norms in sectoral legislation also stems from the fact that the laws governing the mechanism of ensuring the rights of children, equal to mature legal entities, do not always take into account the specificity of the child as a legal entity. In particular, the protection of the labor rights of minors is extremely weak. The current situation, which is characterized by the huge unemployment of the youth, partially discredits the notion of “freedom of work” proclaimed by the RA Constitution. On the other hand, free work does not mean forced work for all people, including minors.

All of the above leads to the idea that the provisions of the Constitution enshrining the legal status of the child are not adequately protected by the sectoral legislation and the law enforcement mechanism for their implementation, which in more detail will be discussed later. If we take into account the judgments about the formal nature of certain provisions of the Constitution in the form of declarative definitions, cut off from real life, then not only lawyers but also political scientists should think about the issue of legislative protection of children's rights in the modern state.

The current processes in the formation of the legal system of the state are characterized by the strengthening of the interaction of different the branches of law. Unfortunately, in order to find a

complete the picture of the legal status of the child, and to find a common ground, as well as a system-building criterion, scientists-lawyers have not yet made attempts to synthesize the legal-normative regulation of his / her status in different branches of law. In this regard, it is more acceptable to apply to the RA Constitution, as its provisions, "as general provisions, may include many new and unpredictable situations"[210]. In our opinion, the real implementation of international legal standards can be used as a means of legislating the legal status of a child. However, one must approach to this process cautiously and gradually, based on the specific historical situation and the specifics of the state governance or structure.

It is obvious that the direct and verbal copying of international norms is also unacceptable in the domestic legislation of the state. The implementation process should be preceded by the analytical work existing in national legislation, to bring it in line with international norms.

The research made allowed to make the following conclusions:

1. The analysis of the provisions of the RA Constitution showed that the child is considered a special constitutional legal entity, the legal status of the child is a "supposed" part, a "component" element of the universal status of the RA citizen. Due to the peculiarities of the child's age, his/her incomplete functionality, by separating him/ her as an independent subject, there is a need to increase the guarantee of the legal status of the child. The protection of the rights of the child enshrined in the Constitution of the Republic of Armenia will provide additional guarantees for the realization of the rights and legitimate interests of the child.

2. Constitutional order (first of all, the declaration of a country as a welfare state, where a person, his rights and freedoms are considered the highest value), is of fundamental importance for the

[210] See: **J. L. Bergel** *General theory of law* / Under the General editorship of **V. I. Danilenko** / Per. s FR. M: Ed. Dom NOTA BENE, 2000, P. 30.

determination of the legal status of a child, the constitutional norms that directly define the protection of children և childhood, regulate the rights and freedoms of a person and a citizen.

3. For the purpose of consistent realization of the legitimate interests of the child, it is possible to examine the specifics of the interconnected chain of conformity, the provisions of the Convention "on the Rights of the Child", the fundamental definitions of the Constitution, as well as the specific norms of sectoral legislation.

4. Maximum protection of the rights of the child is modernized by the development of a concept for the development of legislation on his/her legal status, which can be a basis for the adoption of relevant normative-legal acts. In the concept should be taken into account:

– The systematicity of legal norms, as the constitutional norms defining the legal status of a child are combined with the norms with the same purpose of the legislation of other branches, thus forming a "legal complex",

– The peculiarities of the legislation on children, which should reflect the perspectives of the development of the state, in general, contain the material-procedural guarantees of the protection of the rights and the legitimate interests of the child.

2.2. THE GUARANTEES TO SECURE THE RIGHTS AND FREEDOMS OF A CHILD

The guarantees of the rights and freedoms of the child as a special subject of law are a matter of universal importance for all modern states. By enshrining the status of the child in law, the legislators of the an the states of international community have established the legal boundary between minors and adults, thus creating an autonomous demographic group of people with special rights and responsibilities. The need to create such an independent group is dictated by the need for special legal protection of children, which is conditioned by the psycho-physiological and social characteristics of their individuality[211].

Since the legal status of a child is a subcategory of "legal status of a person (individual)", it is advisable to consider the grounds and problems of the more general category. This solution will allow for a comprehensive analysis of the principles of the principles and properties of the object under study, also it will allow focusing on its most significant components.

The status in Latin means the status of someone or something (Latin plural: Status (statūs))[212]. In this case, it is about the status of an individual, a person, a citizen. Etymologically, the terms "legal status" and "status" coincide, they are synonymous. However, there are suggestions in the literature on delimiting the legal status of an individual, as the former acts as part of the latter (the core)[213]. Although this study does not require such a distinction, the concept of legal status can be viewed both in the broad and narrow senses of the word. In a broad sense, the concept of the legal status of the individual refers to the legally enshrined status of a person in society,

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[211] See: **E. B. Melnikova** *Juvenile justice: problems of criminal law, criminal procedure and criminology*: Textbook. Moscow: Delo, 2000, Pp. 11-12.
[212] https://en.wikipedia.org/wiki/Status.
[213] See: **V. A. Kuchinsky** *Personality, freedom, law.* M., 1978, Pp. 113-115; **N. V. Vitruk** *Fundamentals of the theory of the legal status of the individual in a socialist society*. M., 1979, Pp. 28-29.

his/her rights, freedoms, duties and responsibilities as defined by law. In the narrow sense, the category of "legal status of an individual" describes the degree of rights and freedoms that a person, the subject of law, is endowed with[214].

In legal science, the legal status is defined in the shortest form as a legally fixed status of an individual in society[215]. Another definition defines the legal status as "a system legally recognized and guaranteed by the state, a system of rights, freedoms and responsibilities of a person as a subject of law, as well as a system of legitimate interests"[216]. Legal status is based on the actual social status, ie the real state of a person in a given system of public relations. Moreover, if we take into account that the law only fixes that situation, includes it in the legislative framework, then in a certain sense, the social "legal statuses" are treated as a content and a form. One could speak of the social status even before the emergence of the state, the state society, then, due to the lack of the legal regulation, the legal status as such could not even exist. The uncharacteristic situation, in a legally sense, could be expressed by the notion of social-normative status determined by the relevant social norms and relations[217].

The legal status of an individual is a complex, integrative category that expresses the various social relations, including the relations of the individual and society, citizen and state, individual and collective. Hence the possibility for a person to have a correct idea of his position, rights and responsibilities, of his/her place in

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[214] See: *Theory of law and state* / Edited by **V. V. Lazareva**, Moscow: Pravo I law, 2001, Pp. 480-481.

[215] See, for example: *Theory of law and state* / Edited by **V. V. Lazareva**, P. 485; *Constitutional law* / Ed. by **A. E. Kozlov**. M.: BEK publishing House, 1996. P. 56; *Theory of state and law* / Ed. by **N. I. Matuzova**, **A.V. Malko**, Moscow: Yurist, 1999, P. 231; **V. I. Vlasov** *Theory of state and law*. Rostov-n / D: Phoenix, 2002. P. 474.

[216] See: **O. G. Rumyantsev, V. N. Dodonov** *Legal encyclopedia*, Moscow: INFRA-M, 1996, P. 238.

[217] See: **N. V. Vitruk** *The status of the individual in the political system of society* // Political science, Moscow, 1993, P. 152; *Legal status of the individual in the USSR*. Pp. 7-23; **A. S. Pigolkin** *General theory of law*. M., 1996. P. 132-150; *Theory of state and law* / Ed. by **N. I. Matuzova, A.V. Malko**, P. 237, and others.

this or that structure. As V. A. Anufriev rightly states: “In our life, there are often examples of falsely understood and granted statuses. If this status is misunderstood, the person is oriented towards other forms of behavior”[218].

The main difficulty in finding a variety of effective state-individual relation structures lies in defining a system, in which the individual would be able to develop his potential abilities without obstacles, on the other hand, national goals should be recognized and respected, what unites everyone. It is this balance that expresses its essence in the totality of rights, freedoms and responsibilities, that is, in the legal status of a person. The dialectic of the process towards the child is reflected in the fact that it is the legal status that affects the development of the child as an individual. The legal status also serves as a legal basis for increasing an individual's social activity [219].

In our opinion, in the processes of progressive, democratic reform of the society, the definition of the legal status of the child is of great importance: the child's activity, involvement in public life as an inseparable line of his socialization, for the development of his personality. As for the identification of the child and individuality, we agree with the opinion that “the child presents himself/herself as a social being, not only because he/she is always surrounded by a social atmosphere, but, also because he/she himself/herself lives an active social life, is included in its organizational forms as an integral part, and, all in all, participates in its creation”[220].

Let us note that the concept of status applicable to the study of children's problems is quite common. There is a talk of recognizing the status of childhood, the legal status of children, the independent status of the state social policy in accordance with the interests of the child. The object of this policy are the children, and the subject is the

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[218] **V. A. Anufriev** *Social status and activity of the individual*. Moscow, 1984. Pp. 178-179.

[219] See: **N. V. Vitruk** *On the categories of the legal status of the individual in the socialist society*// Sov. State and law. 1974. no. 12. P. 12.

[220] See: **M. Ya. Basov** *General bases of Pedology*. M.-L.: State publishing house, 1928.

complex process of improving the life of children[221]. At the same time, as a result of our research, we are in favor of recognizing the special role of the Convention on "the Rights of the Child", in recognizing the problems and solutions related to the protection of the rights of the child[222]. The peculiarities of civil, labor and family legal relations with the participation of minors are considered in the context of defining the legal status of children[223]. The high protection of the rights of the child is evidenced by the requirement to maintain the special status of a minor for an emancipated minor[224]. The 600-page practical legal encyclopedia for young people, in fact, is dedicated to the legal status of young people, "for building a healthy youth image, for a constructive attitude towards life", "for those who want to be able to exercise and protect their rights, as well as to the representative of "the maximum information on the field of legislation"[225].

In the scientific-educational literature on family law, it is mainly about the legal status of the child[226]. The analysis of family law, on the other hand, allows us to conclude that, to a lesser extent, based on the priority of the child's interests, it grants the child only a certain set of rights, providing certain means of securing them. The main problems of theoretical and practical nature are that the inequality of the child as a subject of law and between other subjects is not eliminated, also, there is no system of conditions (guarantees)

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[221] See: **E. M. Rybinsky** *Childhood as a social phenomenon. Moscow*, 1998. Pp. 37, 41, 93-106.

[222] See: **U. E. Lapin** - *The Convention on the rights of the child and the reality of childhood in modern Russia* // Current problems of modern childhood: Collection of proceedings. Issue 2. Moscow: research Institute of Childhood RDF, 1993. Pp. 18-21.

[223] See: *Legal status of minors*: Collection of scientific papers, Krasnodar, 1985.

[224] See: **S. Bukshina** *Emancipation: problems and prospects* // Economy and law, No. 8, 1999, P. 50.

[225] **A. V. Orlov** -*Practical legal encyclopedia of a young person*. Moscow: Territory, 2002, pp. 592-593.

[226] See, for example: **G. H. Karakhanyan** *Family law of the Republic of Armenia.* YSU, 2008: **M. V. Antokolskaya** *Lectures on family law.* M., 1995; **Yu. F. Bespalov** *Family rights of the child and their protection*: Monograph. Vladimir: VSPU, 2001; **A. E. Kazantseva** *Duties and rights of parents (replacing their persons) to raise children and responsibility for their violations*. Tomsk, 1987; **A. M. Nechaeva** *Legal protection of childhood in the USSR*. Moscow: Nauka, 1987; **S. A. Saltanova** *Legislation on the protection of family rights*. St. Petersburg, 1998; **S. A. Sorokin** *Rights of the child in the family*. Moscow: Dialog-MSU, 1999.

(including legal) for the successful development of children, the realization of their rights, and there has not been developed a system of unified scientifically substantiated means to stop the process of worsening the situation of children[227]. Unfortunately, it should be noted that the above notions do not give a clear idea of the nature of the legal status of the child.

The legal status of an individual includes the whole set of rights, freedoms, legal interests and responsibilities of a person envisaged by all the norms of legislation. At the same time, the Constitution of the state contains the basic rights, freedoms, responsibilities that form the constitutional status of an individual, which defines all types of statuses, and its provisions form the basis of the legal status of the individual - the basis. The Constitution of the Republic of Armenia enshrines the unified status of an individual, the legal status of a person and citizen, but it does not exclude the same perception and application of that status to certain groups of citizens, including the child. Therefore, the application of both the constitutional principles of the legal status and the notions of the constitutional status of the child is fully permissible in scientific research. Moreover, the concepts of constitutional status and constitutional basis of legal status are the same, but not identical. It is necessary to remember the limits of the term "constitutional status", which "is" within the clear legal framework of the Constitution, and it is not an exclusive normative-legal act fixing the legal status of a child. When it comes to the basics of the legal situation, we mean national legislation that addresses the rights of the child - the legitimate interests. In addition, understanding the difference between a constitutional and constitutional status [228], and

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[227] See: **Yu. F. Bespalov** *Some questions of realization of family rights of the child.* M., 2001, P. 5.

[228] The Constitutional status, being the basis of the legal status of an individual, is determined by the normative characteristics enshrined in the Constitution. The constitutional legal status is broader than the constitutional one in content and includes characteristics contained, in addition to the Constitution, in the norms of other sources of constitutional law. This type of status takes into account the specific features of legal entities of the same type and in this sense it is

trying to reveal the constitutional basis of the legal status of the child, we have focused our attention on the constitutional provisions, in practice, leaving out the norms of constitutional law as other sources of the branch. Without denying the characteristics of the universally accepted individual status of constitutional law in science, in this context, we considered it possible to apply the constitutional status of a child in the same way. This emphasizes their commonality, not the difference, as well as the legal nature of the Constitution.

As the role of the child as a participant in constitutional relations has not been studied in practice (despite the fact that he/she, as a person-citizen, is as such), the approach to the concepts of "constitutional status" and "constitutional-legal order" applicable to a child has its own peculiarities in a certain sense[229].

The peculiarity of the definition of the legal status of a child is that the latter, being a full member of society, a subject of legal relations, is endowed with a number of mandatory restrictions related to ensuring its safety. In other cases, one must rely on the views that ensure equality for everyone guaranteed by the Constitution of the state. The "principle of equality" enshrined in Article 28 of the RA Constitution stipulates that everyone is equal before the law. All state and legal structures should be involved in guaranteeing the rights and freedoms, as the issues of protection of the rights and freedoms of a human and citizen, family and childhood are placed in the joint proceedings of the state and its subjects. The definition of the constitutional status of a child allows revealing the constitutional basis of his / her legal status. In its most general form, it is derived from the provisions of the Convention on "the Rights of the Child", as well as from the norms of the Constitution, which not only directly

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synonymous with a special legal status. The constitutional status of all citizens is determined within the framework of the current Constitution and is the same with the exceptions described in the Constitution. The constitutional and legal status of a citizen reflects its belonging to a certain group.

[229] **O. M. Nikulina** The Problem of constitutional regulation of adolescent rights // The Russian justice. № 12, 2014, Pp. 51-52.

address the protection of children, but also define the principles of constitutional order, human rights, freedoms, etc. Here, the Constitution is the axis, which, taking into account the national, socio-economic, political-ideological peculiarities of the modern stage, incorporating the provisions and principles of the Convention, must decide the future of the growing generation by giving specific "instructions" to other branches of legislation[230].

As a rule, all types of statuses contain, to one degree or another, the constitutional characteristics of the individual. By considering the relationship between the legal, constitutional, constitutional and legal status of an individual, by their nature as content, we emphasize not the difference between them but their interdependence and generality[231]. The enshrinement of the rights of the child at the level of the Constitution will allow to express it to a greater extent in the sectoral legislation, therefore, to fully implement them. Hence, the process of examining the constitutional basis of a child's legal status presupposes a discussion of all types of his or her status and the identification of issues [232].

Given that the structure of legal status is a combination of its elements in interconnectedness, there are several approaches to defining the legal status of an individual. Some researchers, along with the system of rights and responsibilities, suggest citizenship, common law, and guarantees of rights[233], legal interests[234], legal

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[230] *The Convention on the rights of the child, as a General principle, is intended for all countries, and a number of its provisions are devoid of" legal character ", which is due to the peculiarities of the development and upbringing of minors.* CIT. on: **G. F. Shershenevich** *Course of civil law.* Tula: Autograph, 2001, P. 573.

[231] **I. A. Bogdanova** *System of science of constitutional law.* Moscow: Yurist, 2001, P. 56.

[232] Based on the scope of legal status, in legal science also there are individual, special, and general statuses. For the concept of "special legal statuses" is used "legal mode" of the person, introduced by V. A. Patyulin. See, for example: **V. V. Rovny** *-About the category "legal mode" and its content* / / State and law. No. 4, 1998, Pp. 86-88.

[233] See: *Constitutional status of the individual*, Pp. 21-26.

[234] See: **N. V. Vitruk** *Fundamentals of the theory of the legal status of the individual in socialistic society*, Moscow, 1979, P. 29; Theory of state and law / Ed. by **N. I. Matuzova, A.V. Malko**. Pp. 231, 237.

responsibility[235], legal norms defining the given status, general type of legal relations [236], and etc, to include in the content of legal status. As structural elements of legal status, for example, N. L. Grenat considers the citizenship, legal entity, fundamental rights, freedoms, legal interests,responsibilities and principles recognized and protected by the state, acting as the main legal principles, sources; on the basis of which the exercise of human and civil freedoms, the fulfillment of his duties, the guarantees of legal status are exercised, among which the legal responsibility occupies a special place[237].

We have already addressed the issues of the child's legal entity, and the issues of the child's rights and freedoms (the core of legal status), their provision and implementation are examined throughout the whole work process. Citizenship is seen as an important element in the structure of an individual's legal status, even when it is presented as a necessary precondition for the legal status of a person and citizen. Since this institute of constitutional law has been elaborated in detail in accordance with the goals of our work, let us discuss its peculiarities applicable to the child.

The status of a citizen of a state means the granting of greater rights to a person in the territory of that state, as well as a degree of state protection outside the state (sponsorship)[238].

According to the universally recognized principles of international law, every child has the right to acquire citizenship, ie in no case should a child be deprived of citizenship (stateless). This provision, enshrined in Article 7 of the Convention on “the Rights of the Child” and in Article 24.3 of the 1966 “International Covenant on

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[235] See: **V. L. Kuchinsky** *Personality, freedom, law*. P. 115; **A. B. Vengerov** *Theory of state and law*: Part 2. Theory of law. Volume II. M.: jurist, 1996. P. 142.
[236] See: **V. I. Vlasov** *Theory of state and law*, M., 2017, P. 474.
[237] **N. L. Granat** *Interpretation of law norms in law enforcement activity of internal Affairs bodies*: textbook. Manual / N. L. Granat, O. M. Kolesnikova, and M. S. Timofeev; an MVD of the USSR, Moscow, 1991, P.14; See: *Constitutional law* / Ed. **A. E. Kozlov**, P. 57.
[238] *"Citizens of the Republic of Armenia outside the Republic of Armenia, on the basis of international law, are protected by the Republic of Armenia" (article 47 of the RA Constitution, paragraph 8)* .

Civil and Political Rights", it has also been embodied in "The RA law On citizenship"[239].

A child whose parents are citizens of the Republic of Armenia at the time of his / her birth, regardless of the place of birth, acquires the citizenship of the Republic of ArmeniaMoreover, the law is based on the equality of men and women, without linking the citizenship of the child with the citizenship of his father or mother.

A child, one of whose parents is a citizen of the Republic of Armenia at the time of his / her birth, and the other is an unknown or stateless person, acquires citizenship of the Republic of Armenia.

In case one of the parents is a citizen of the Republic of Armenia at the time of the child's birth, and the other is a foreign citizen, the child, regardless of the fact of having citizenship of another state, has the right to acquire citizenship of the Republic of Armenia with the written consent of the parents[240]. In the absence of consent, the child acquires the citizenship of the Republic of Armenia

1) if he was born in the Republic of Armenia or,

2) if in case of non-acquisition of citizenship of the Republic of Armenia he/she becomes a stateless person, or

3) if he/she resides in the Republic of Armenia, and if there is the consent of one of the parents.

Thus, here the "right to blood" is clarified by the territorial principle ("by the right of land"), as well as by the right to citizenship of the child. The Article 12 of the RA Law on Citizenship stipulates the citizenship of a child of stateless persons, as well as the citizenship of a child whose parents' citizenship is unknown, or whose parents cannot transfer their citizenship to a child under the legislation of their country(s). A child born in the Republic of Armenia acquires the citizenship of the Republic of Armenia if:

1) the parents are stateless persons;

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[239] Adopted by the National Assembly on October 23, 1995. N-041-I, "The RA law On citizenship", article 11.

[240] Dual citizenship in the Republic of Armenia is permitted after the amendments to the Constitution of the Republic of Armenia adopted by referendum on November 27, 2005.

2) the citizenship of the parents is unknown[241];

3) the parents are citizens of another country (countries), but cannot transfer their citizenship to the child in accordance with the legislation of their country (countries);

4) one of the parents is a stateless person and the other is a citizen of another country who, according to the legislation of his / her country of citizenship, cannot transfer his/her citizenship to the child;

5) one of the parents is a stateless person, and the citizenship of the other is unknown;

6) the citizenship of one of the parents is unknown, and the other is a citizen of another country, who, according to the legislation of his country of citizenship, cannot transfer his citizenship to the child.

The Legislator of Armenia also has a singularity on citizenship, stating that "*An Armenian child* whose parents are not citizens of the Republic of Armenia has the right to acquire the citizenship of the Republic of Armenia from the moment of settling in the Republic of Armenia (registered at the State Population Register) (RA Law on Citizenship, Article 12.1)". The issue of adoption of Armenian children by foreign parents deserves special attention, as it has recently acquired a criminal connotation. Thus, in 2019-2020, 13 criminal cases were initiated and investigated by the RA Prosecutor General's Office on the alleged abuses in the adoption process in the Republic of Armenia, and the preliminary investigation is still underway. Under the proper judicial supervision of the Prosecutor's Office, active, large-scale investigative actions are carried out in order to identify the circle of persons who have committed a substantial

[241] For example, under French law, a French citizen is a child born in France to unknown parents. However, if, before reaching the age of majority, it is established that he is related to a foreigner and if he has the nationality of the latter according to the national law of that foreigner's country, it will be recognized that he was never French. See: Code of The French Republic "On French nationality" No. 45-244 of 19 October 1945. (As amended on January 9, 1973), article 21 // *Legislation on citizenship* in 4 vols. Vol. 1: Countries of Europe / Comp. p. **G. Gromushkin**. M.: TERRA. 1993. P. 361.

crime, to give a legal assessment to their actions, and to ensure the prosecution of those who committed crimes by obtaining sufficient evidence.

During 2019, 206 materials on crimes against children were prepared by the bodies and subdivisions of the RA Investigative Committee. During this period, the Committee heard 360 criminal cases on crimes against children, 10 of which were heard by the Committee's General Military Investigation Department. In addition, 294 of the 360 criminal cases pending before the Committee were heard in 2019, and 66 were those criminal cases which were pending at the beginning of the year. 203 criminal cases were initiated during the mentioned period. 187 people were involved in the above-mentioned criminal cases as defendants, 7 of whom were 14-16 years old, 2 were 16-18 years old, 110 were 18-35 years old, 68 were over 35 years old. There were 336 victims in the ongoing cases, 169 of which were under 12 years old, 61 were 12-14 years old, 63 were 14-16 years old, and 43 were 16-18 years old. In 2019, 224 criminal cases on crimes against children were completed, 7 of which by the General Investigation Department of the RA Investigation Committee. 133 criminal cases were terminated, 86 of which were acquitted and 47 were not acquitted. 88 criminal cases against 89 persons were sent to court with an indictment (General Investigation Department of the RA Investigation Committee - 4 criminal cases against 4 persons)[242].

Unfortunately, these negative phenomena occur despite the measures taken by the executive and legislator to protect the rights of children deprived of parental care. This regards the case of adoption of children; it is about the established order of priority of the citizens permanently living in the territory of the Republic of Armenia. Besides, there are a number of problems in the adoption process in the Republic of Armenia, in particular, the coordination of the

[242] http://www.investigative.am/news/view/erexaneri-nkatmamb-hancagorcutyunner_2019.html.

process, the definition of a clear procedure for providing data on children to be adopted, the lack of legal regulations on the combination of RA citizens wishing to adopt, and, all in all, the further control over adopted children. Based on the requirements of the Family Code of the Republic of Armenia and the Convention on "the Protection of Children and Cooperation in the Field of Foreign Adoption", the Government of the Republic of Armenia is discussing the improvement of normative-legal acts regulating the sphere, in particular, with the adoption of a new decision by the Government of the Republic of Armenia [243]:

1. The adoption procedure will be regulated, also the functions related to the adoption of children, the registration of persons wishing to adopt, the supervision of child care, the combination, the scope of powers of the competent bodies will be regulated.

2. A new procedure will be established for the provision of centralized registration of persons wishing to adopt a child to provide certain personal data on the children to be adopted, which will make the adoption process as transparent as possible and, at the same time, will help those who want to adopt a child to make an informed and reasoned decision in choosing a child,

3. The corruption risks in the adoption process will be reduced, the transparency of that process will be ensured[244].

In terms of our research, the study of issues related to the operation of the legal status of the child, the guarantees of sale are considered fundamental. In this regard, special legal guarantees, general socio-economic and political conditions are taken into account.

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[243] https://www.e-draft.am/projects/1870/justification

[244] Draft for "Citizens of the Republic of Armenia permanently residing in the Republic of Armenia willing to adopt a child, provide information on children subject to adoption persons wishing to adopt a child, on the comparison of persons wishing to adopt a child and adoption of children, adoption of child by persons wishing to adopt a child, draft part on approving the procedure for maintaining confidentiality of the data of persons who wish to adopt and are subject to adoption, and the approximate forms of documents related to the adoption process, and invalidating the decision of the government of the Republic of Armenia n 269-n of march 18, 2010".

In their research, A. I. Lepeshkin and L. D. Voevodin consider legal guarantees to be an integral part of legal status[245]. Speaking about the fact that "guarantees are nothing but some" external "means of securing the original status", and, consequently, can not be elements (parts) of legal status, N. V. Vitruk classifies guarantees among the principles of the legal status of the individual, calls for overcoming the underestimation of the procedural-judicial procedure of legal guarantees existing in the practice of legal regulation, in particular, rights and responsibilities[246].

The structural elements of a person's legal status are the citizenship and legal entity being as necessary conditions for acquiring the legal status of a person, as well as legal guarantees as means of sale[247], which corresponds to the rights and freedoms guaranteed by the Constitution of different countries of the world.

Discussing the constitutional status as a basis for the legal status of an individual, L. D. Voevodin notes that at present the constitutional norms contain not only the basic data of the status of the individual, but also fix all its possible aspects and components. In his opinion, the elements of constitutional status include citizenship as a precondition for all other elements; the universal competence, ie the ability to have rights and responsibilities; the main rights and responsibilities occupying a central place in the category under discussion, because according to their content, one can obviously judge the legal status of an individual; and finally, the material, political, ideological guarantees, which "ensure" both the full constitutional status of the citizens and the actual realization of its separate elements[248].

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[245] See: **A. I. Lepeshkin** -*The Legal status of Soviet citizens*. Moscow, 1966. P. 3-11; **L. D. Voevodin** *Concept and main elements of constitutional law personal status* // Constitutional status of the individual in the USSR, 1997, Pp. 21-27.

[246] See: **N. V. Vitruk** *On the categories of the legal status of the individual...* // the Soviet state and law, no. 12, 1974, P. 13.

[247] **I. A. Danilyuk** -*The Person's Legal Status: Concept, Juridical Structure,* Law, Journal of the Altai state University, 2013 P. 92.

[248] See: **L. D. Voevodin** *Concept and basic elements of the constitutional status of the individual,* M., 1997, Pp. 21-27.

Guarantees are the responsibilities undertaken by the state to create the necessary conditions for ensuring the constitutional rights and responsibilities of citizens, to provide appropriate means, in the society, they put the legal-factual situation of a person in a joint connection. Moreover, by providing the necessary means, the state, in addition to social features, takes into account the natural features of certain categories of citizens (age, gender, health status, etc.)[249].

L. D. Voevodin singles out the age of a person as the one which determines the peculiarities of the actual exercise of other rights, noting that citizens can also exercise certain constitutional rights at an earlier age, ie before the age of 18. In particular, from the moment of birth, citizens are endowed with the right to inherit personal property; with the right to health care; with the right to receive a pension in case of loss of a breadwinner; with the right to have an apartment; with the right to life support, whereas, the legal liability for non-fulfillment of constitutional obligations arises in its all scale at the same time as adulthood, with the exception of some crimes, which are types of violation of constitutional obligations, when the law stipulates liability at the age of 14-16. In our opinion, we are talking about the uniqueness of the constitutional status of minors, which differs from the status of an adult in the extent of constitutional rights, and features of legal responsibility[250].

Calling the guarantees of the stability of the legal status of the subjects of the constitutional law as an element of the constitutional legal status, N. A. Bogdanova defines them as: "A system of legal conditions, means, and forms that ensure the dignified existence and development of a person and the general society, as well as the normal and proper functioning of the state in the direction of its socio-political appointment"[251].

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[249] **E. G. Azarova** *Social security and legal protection of children* // Journal of Russian law, # 3, 2013, Pp. 21-32.
[250] See: **N. Yu. Tsyganova** *On the issue of Legal Guarantees Legal Status of the Individual*, Bulletin of Perm University, Legal Sciences Issue 1(11), 2011, P. 52.
[251] **N. A. Bogdanova** *System of science of constitutional law*. Moscow: Yurist, 2001, P. 70.

It turns out that both legal and economic, political and ideological guarantees are in fact a mechanism for the implementation of legal norms that determine the legal status of an individual. In order to delimit the constitutional-factual status of a person, E. I. Kolyushin emphasizes the crucial importance of guarantees, saying that "The inclusion of guarantees in the constitutional-legal status of an individual, at least as a factor, is aimed at ensuring the interdependence of the constitutional-legal and factual status of a person, and as a maximum, to obtain compliance with each other"[252].

One of the reasons for the need to recognize the legal status of children, and, consequently, the need for legislation, is the poor condition of children around the world. In addition to the aging of the society, the obvious diseases of the youth, the lack of proper upbringing and education is obvious, which creates problems for the development of civilization.

It is known that discoveries and progress throughout the history of mankind have been made by the individuals, but, as world experience shows, the society from the crisis in difficult times have been saved by the youth. In addition to the sufficient number of physical health conditions, there was one component in youth – an enthusiasm, a patriotism, which was focused on the previous generation, based on appropriate compulsory education, which contributed to improving the quality of the social environment and ensuring positive responsibility. Summing up the study of doctrinal sources, in our opinion, in the context of providing methodological solutions for the legal status of the child, the following conclusions should be made.

- *The subjective rights, freedoms, responsibilities, as well as legal interests through public and state security are considered as*

[252] **E. I. Kolyushin** -*The Constitutional (state) law.* Course of lectures. Moscow: MSU publishing house, 1999, P. 93.

obligatory, *i**nseparable** components of the legal status of a person, including a child.*

- *Legal guarantees and legal liability are an **additional** part of ensuring the legal status of a person, including a child.*
- *As far as the legal personality, citizenship and principles are concerned, our position is that they are the **basic conditions for exercising** the legal status of a person, including a child*[253].

At present, there has been some distortion of the "state-individual" system, not in the direction of the absolutization of individual or collective interests, but leading to the collapse of that system, the misunderstanding or disregard for those interests. In public life, there is also missing the state policy on the unification of goals, the needs of the growing generation, the desire to discover other necessary means, and the implementation of programs. The priorities of a market economy are clearly not enough here, they rather play a role in contributing to the collapse of structures. In a globalized society, the live communication and connection between different generations and the study of this problem is topical and urgent. Today, the predictions of historians, doctors, sociologists, demographers, jurists, ideologists are either missing or at least not optimistic. Thus, in determining the legal status of a child, the following should be taken into account:

1. According to the Constitution- the basic law of the country of almost all states, the basic human rights and freedoms are inalienable and belong to everyone from birth, ie the child is endowed with the whole set of adult human rights and freedoms. It is not

[253] For more information, see: **A. M. Vasiliev** *Legal category: methodological aspects to develop category systems theory of law.* M., 1976; **N. V. Vitruk** -*The General theory of the legal status of the individual.* M.: Norma, 2008; **S. V. Lavrent'ev** *On the concept of legal status of the person* // To the 10th anniversary of the adoption of the Constitution of the Russian Federation: proceedings of the interuniversity scientific-practical conference / Ed. .: **V.A. Melnikov**/, Volgograd: VA MVD of Russia, 2004; **A. I. Lepeshkin** *The Legal status of Soviet citizens*, M., 1966; **A.V. Malko** *Rights, freedoms and legitimate interests: problems of legal support* / **A. V. Malko**, **V. V. Subochev, A. M. Sheriev,** M.: Norma: INFRA-M, 2010; **N. I. Matuzov** *Personality. Law. Democracy: Theoretical issues of subjective rights,* Saratov, 1972; **N. I. Matuzov** *The legal system and personality*, Saratov, 1987; **B. S Ebzeev** *Constitution. Democracy. Human rights.* Moscow, Cherkessk, 1992.

enough to say here that the child is also a human being, because "only the full realization of the rights of the child can pave the way for the more complete realization of the rights of the adult generation, and serve as a stronger guarantee of those rights"[254].

2. The social "value" of this category of citizens is quite high today, and now the future of each state depends on the number of children (given the modern demographic crisis). Especially if we take into account that in 1960 there were 1 billion children under the age of 15 in the world, they made up 35% of the world population, now there are 1.9 billion children in the world, but they make up only 27% of the world population, and in 2050, it is estimated that there will still be 1.9 billion children, but they will make up only 20% of the world's population[255].

3. Due to age, physical and insufficient psychological development, consequently, due to incomplete functioning, the child needs high legal protection. Even compensating his / her legal representatives (parents or their successors, including representatives of guardianship bodies) does not allow the child to become a full-fledged subject of law, because their interests do not always coincide and get attention[256].

4. The actual situation of children in the modern world is such that children predominate in the number of "risk groups". These are child refugees, orphans, children out of control, and the socio-economic problems in the family, especially psychological ones, the parents' indifference to each other, the formal relations "for the sake of the child", frequent quarrels due to a lack of tolerance, the "conflict of generations", and violence lead to the manifestation of deviant and, in some cases, criminal behavior by the child[257].

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[254] **K. N. Wentzel** author of the "Declaration of the rights of the child" in 1917, a teacher and thinker. See: **K. N. Wentzel** *Free education: A Collection of selected works*. Moscow, 1993.

[255] https://www.un.org/esa/population

[256] **O. Yu. Kosova** *Legal status of children: questions of theory and practice*// Family and housing law, № 4, 2014, Pp. 19-23.

[257] See **A. Gabuzyan, A. Margaryan, S. Arakelyan** and others, *Problems of combating juvenile delinquency in the Republic of Armenia*, Yerevan, 2010, p. 27

5. Reforms in the spheres of state intervention in public life, particularly in the field of education, which are constantly taking place, but more experimental, weakening the influence of social institutions in the process of raising children, almost stateless participation in the organization of children's leisure, and Nihilism created favorable conditions for children to deviate to criminal behavior. According to the official statistics of the Republic of Armenia, compared to 1993, the crime rate per 100,000 inhabitants increased almost twice in 2016, from 349.2 to 628.3, while the juvenile crime rate in the Republic of Armenia did not increase intensivelly becoming 11.7 from 12.6. However, both experts' assessments and media coverage of child delinquency, as well as official statistics on poverty, unemployment, and population change, cast doubt on the credibility of the data presented, suggesting that juvenile delinquency is simply becoming more latent[258].

6. The existing domestic legislation, which contains most of the norms regulating the situation of children in various spheres of life, is "scattered" according to relevant branches, and the norms of civil and family law are not able to "include" all the relations in which the child occurs today[259].

7. In the conditions of the existing demographic crisis, child and adolescent's drug addiction threatening the national catastrophe, there is no program of state significance in the country to fight against the mentioned phenomena, as well as a centralized joint governing body.

8. The general socio-economic problems of the state, the lack of funds for the implementation of proper social policy, ensuring survival, development and upbringing of the growing generation, today pose additional difficulties in solving the problem of protection of children's rights, considering that the economic crisis, the growth

[258] **A. R. Margaryan** -*Problems of juvenile delinquency in the Republic of Armenia*, YSU, Patriarch ed. 2017, P. 5.
[259] **O. Yu. Sitkova** *Ways to protect the rights and legitimate interests of minors* // Judge, No. 6, 2014, Pp. 51-54.

of inaction, the real threat to personal security, are objectively leading to the "erosion of the social and legal status of the citizen"[260].

9. The legal conditions, means of security for the realization of the constitutional status of a child are also currently not ideal; they need to be amended, formally interpreted and detailed (including in other areas of law).

The above allows you to find out the specifics of the legal status of the child and their problems. In addition to the system of rights, freedoms and responsibilities, the constitutional status of the child, as a mandatory element, presupposes socio-economic, political, ideological and legal guarantees for its realization. The state should guarantee the rights of the child with appropriate guarantees, as children, due to their special legal entity, often do not have the opportunity to exercise their rights on their own[261].

The justification of this position is confirmed by the humanitarian principle of the constitutional status of citizens, which, in order to ensure the calculation of an individual's social affiliation, age, sex, health status, etc., is reflected in a certain clarification of the legal status of the individual. Thus, in each case separatelly, the legal status of the citizen becomes fairer than it could be on general terms. It is achieved through the establishment of both general (for example, equal opportunities for women and men) and specific (a whole system of special measures for the protection of employment, health, benefits and privileges)[262].

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[260] **V. M. Syrykh** *Sociology of law*: textbook. 4 editions supplemented and revised. Moscow: Justicinform, 2012, P. 104.

[261] **N.Y. Tsyganova -***On the issue of the person legal status juridical guarantees,* Bulletin of Perm University, Legal Sciences Issue 1(11), 2011, Pp. 52-54.

[262] L. D. Voevodin refers to the principles of the constitutional status of citizens as guiding principles, leading ideas and institutions that reflect the fundamental relationship between the state and its citizens in relation to their place in society. Among them: a combination of public and personal interests, universality of rights and immutability of duties, equality of citizens, both in rights and in duties, humanism. We are talking about a socialist society, but such fundamental principles are still relevant today. See: **L. D. Voevodin** *Political and legal principles of the constitutional status of the individual* \\ constitutional status of the individual in the USSR. Pp. 27-35.

Socio-economic, political, spiritual, organizational aspects, which in fact already exist in the existing legal guarantees, should become the irreplaceable elements of the constitutional right of the child, finding their proper expression in the normative fixation or law enforcement actions[263].

Legal safeguards play a special role in ensuring the legal status of a child in a way that they not only place certain responsibilities on public authorities but also provide the means to protect the rights of the individual[264].

The need for judicial provision of justice in the realization of the status of a child is obvious if "the Constitution, which does not have appropriate procedures for its realization, pushes the government to arbitrariness, and the citizen to protection"[265], then in case of a child to double defenselessness.

Human rights and freedoms are traditionally divided into several groups: personal, political, economic, social and cultural. The Constitution of the Republic of Armenia does not intend division of rights into groups, however, in the wording of the norms one can notice their grouping according to certain grounds, and depending on the criterion of choice it is according to the place of location (enumeration or at the beginning or at the end), or according to the specific holder of the constitutional-legal status, the significance of those rights, freedoms, etc. This classification is to some extent conditional, as individual rights can be classified into different groups according to their nature. For example, freedom of speech can be equated with both personal and political rights and freedoms. The right to own an apartment is, on the one hand, an inalienable civil (personal) right, and on the other hand, its inclusion in the group of

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[263] **I. A. Bogdanova** -*System of science of constitutional law.* Moscow: Yurist, 2001, P. 70.

[264] **S. S. Alekseyev** *Pravo: Azbuka-Teoriya-filosofiya: experience of complex research.* Moscow: Statut, 1999, P. 382.

[265] **N. V. Shcherbakova** *Human Rights and freedoms in the context of globalization as the main problem of the modern General theory of law* // Problems of the theory of modern Russian law: SB. nauch. Tr. Issue III, Moscow; Yaroslavl, 2006, Pp. 166-173.

socio-economic rights does not cause any objections. All constitutional rights and freedoms are indivisible, interconnected and mutually conditioned, this is the peculiarity of them as the core of an individual's legal status.

In the framework of our research, it is also interesting to cover the basic normative-legal provisions on the welfare state (whose policy is aimed at creating conditions for a dignified human life and free development). For the purpose of its establishment, human labor and health are preserved, the minimum guaranteed level of wages is established, the state support of the family, motherhood, fatherhood, childhood, the disabled, elderly citizens is provided, the system of social services gets, state pensions, benefits and other guarantees of social protection are established. The existence of a provision on the welfare state in the text of the Constitution is, of course, progressive, but the state is declared solely responsible for the development of social relations and the welfare of its own citizens, without taking into account the elements of a market economy. It turns out that there is an exclusion of the society from the number of subjects ensuring the social nature of the state (or legislative “non-inclusion”), meanwhile, all so-called civil society actors should be legally responsible for their social disadvantage. For this reason, through numerous normative acts, public organizations, associations and companies are given the status of legal entities.

Article 83 of the Constitution of RA stipulates, that everyone shall, in accordance with law, have the right to social security in cases of maternity, having many children, sickness, disability, accidents at work, need of care, loss of bread-winner, old-age, unemployment, loss of employment, and in other cases. Naturally, these provisions apply in proportion to the child - minors, but when they are equally applied, they create unequal conditions (the child and the adult in this sense are unequal in many circumstances), and the recognition of the juvenile as a special, independent subject in social relations will also solve many legal conflicts, as well as placing

the responsibility for the welfare and normal life of the child, in addition to his/her parents, also on the society and the state[266].

The analysis of the human rights and freedoms applicable to human-citizen and child, enshrined in the norms of the RA Constitution of 1995 (including the amendments of December 6, 2015), the following fact is subject to attention that only one of the 59 articles included in Chapter 2 ("Fundamental Human Rights and Freedoms") only Article 37 is dedicated to children and it is in fourth (Articles 36, 47, 57); that the terms "child" and "children" are literally used. Of course, the quantitative indicator is not always a direct expression of the qualitative indicator, but in this case, the mentioned approach characterizes the certain attitude of the drafters of the RA Constitution towards the discussed issue. Naturally, such a provision does not mean that children in the remaining articles of the given chapter of the Constitution are not included as subjects of "regulated" legal relations as "citizens", however, in some articles of the Constitution it is expedient and would be possible to designate the child as an independent subject of law.

Our conviction on this issue is substantiated by the analysis of certain provisions of some norms of the Constitution and domestic legislation. For example, Article 57 of the Constitution of the Republic of Armenia enshrines the freedom of choice of work, labor rights, according to which the employment of children under the age of sixteen is prohibited. The the conditions and the procedure for hiring them temporarily and are defined by law.

According to Article 17 of the Labor Code of the Republic of Armenia, employees are considered to be from fourteen to sixteen years old persons working under an employment contract with the written consent of one of the parents or the adoptive parent or guardian. People between the ages of fourteen and sixteen can only

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[266] For liability in connection with rights and obligations, see: **N. A. Bobrova, F. D. Zrazhevskaya** *Responsibility in the system of guarantees of constitutional norms*. Voronezh, 1985, especially chapters I and IV; **N. I. Matuzov** *Legal system and personality*. Saratov, 1987, especially Chapter VII "Positive responsibility of the individual". Pp. 191-216.

be involved in temporary work that does not harm their health, safety, education or morals, and persons under the age of fourteen may be involved in cinematography, sports, theatrical-concert organizations, circus, television, radio creation (creative work) and (or) performance, with the written consent of one of the parents or the adoptive parent or guardian or trustee; which should not harm their health and morals, nor should it impede their education and safety.

Article 19 of the RA Law on the Rights of the Child stipulates: "Every child has the right to receive a profession appropriate to his/ her age, developmental peculiarities and abilities, to engage in work activities not prohibited by law". An employment contract with a child can be concluded after he/she turns 16, except for temporary employment contracts. Children under the age of 16 may be employed on a temporary basis with the written consent of one of the parents (adoptive parent) or guardian (trustee) and with the written consent of the guardianship body, provided that this does not interfere with their learning. Thus, the age at which a child has the right to exercise his / her right to work (according to Article 57 of the RA Constitution) is different.

It turns out that by guaranteeing the rights of "everyone", the Constitution of the Republic of Armenia creates a potentially contradictory legal situation, in which, due to real, objective reasons (such as incomplete capacity of minors and, for example, the need for legal protection against domestic violence) this or that restriction of rights in different laws must be defined. On the other hand, given the nature of the Constitution as a special legal phenomenon, the "comprehensive nature of the constitutional regulation", it would not be right to demand the elaboration of certain provisions, but reservations may also be made about children. Citizens' ability to exercise each of their constitutional political rights comes at different times. As for suffrage, active suffrage is objectively related to adulthood (Article 48 of the Constitution grants such a right to citizens over 18 years of age). However, the exercise of the right to

unite, which is reserved for everyone by Article 45 of the Constitution of the Republic of Armenia, has no age restrictions. The mentioned circumstance was an occasion for the legislator to behave quite arbitrarily towards the solution of the given issue. Thus, based on the RA Law on Non-Governmental Organizations, in terms of the age of the members and participants of the non-governmental organizations, it stipulates that a person under the age of fourteen can become a member of the organization at his/her own will, based on the application of the legal representative. A person between the ages of fourteen and eighteen, may become a member of the organization upon his / her application, with the written consent of the legal representative, if he / she is not recognized as fully capable in the manner prescribed by law. Here, too, the problem, of course, is the lack of a minimum age for membership in the organization.

The Constitution of the Republic of Armenia also does not stipulate an age at which a person acquires the opportunity to exercise his/her constitutional right to participate and organize peaceful, non-violent assemblies (Article 44 of the Constitution of the Republic of Armenia). On the one hand, taking into account the age of occurrence of administrative and criminal liability of violators of this right, it is expedient to restrict its realization when reaching adulthood. On the other hand, it would deprive minors of the opportunity to express their position publicly, as well as to play a role in the political life of the society, to express their opinion and position. It is clear that the last word in this matter is the legislator's, but in this case it is necessary to take into account that in practice, sometimes it is difficult to visually determine the age of specific participants in a public event. It also raises questions about the child's practical realization of the rights and freedoms of his or her worldview (if one may say so). It is about freedom of expression, the right to freedom of thought, the right to information, the right to freedom of conscience. Formally, the Constitution does not restrict these subjective rights and freedoms of minors (including young

children), but the possibilities for their realization in practice depend most of all on the situation in the family, the world's worldviews and other circumstances[267].

Thus, no article of the RA Constitution regulating human rights and civil liberties contains any age restriction, direct mention of their implementation by a child, therefore there is no doubt that the realization of personal constitutional human rights and freedoms applies equally to adults and and to the children. However, in real life, the legal interests of the child are not always taken into account within the framework of normative-legal acts.

Despite the difficult demographic problem in the country and the declining birth rate, it can be confirmed that the number of children is higher than the number of retirees, even servicemen, but a single legal norm defining the rights, freedoms, responsibilities, their realization, protection and maintenance still doesn't exist. As a result, in 1996 the RA Law on "the Rights of the Child" was adopted, where, as already mentioned, the mechanism for the realization of the interests of children, the specific protection is either not fully mentioned, or it had to be developed in the relevant government decisions.

The absence of provisions in the law on the responsibility of the bodies fulfilling the responsibilities of protection and realization of the rights of the child, in fact, "void" the guarantees of the rights of the child. The forms of fixing liability in legal norms are different. Liability can be contained in the law itself, based on the meaning of the norm; sometimes it has to be defined by another legislative act; it may be provided by another sectoral code or law. As the essence of

[267] Of course, it is possible to establish special mechanisms for external legal protection of the rights of the child in this area, but for the formation of rules of procedural law, it is necessary, as you know, the rules of substantive law, which are enshrined in the Constitution and current legislation. We should also not forget about the educational function of legal norms that affect law-abiding parents. In this regard, the Constitution of the Republic of Armenia, which contained a direct instruction, is indicative: "The child has the right to freely express his or her opinion, which is taken into account in matters related to the child's age and level of maturity" (RA Constitution, Article 37, part 1).

guarantees is the emergence of liability for non-compliance, the lack of a liability mechanism in the norms guaranteeing the protection of the rights of minors makes them blank declarations[268].

From a methodological point of view, the “guarantees” can be crucial concepts in the development of a child's legal status, not only legal, but also requiring legislative enshrinment: socio-economic, political, ideological,as well as the “social” as a starting point (precondition) for the strengthening of any legal entity, including the legal status of a minor; the social is at the core of the rights and responsibilities and it is one of the important elements of ensuring the social nature of the state. In our opinion, such directions in the development of the legal status of a child fully correspond to B. L. Kistyakovsky, who predicted that law has the most important role of all formal values, the main thing is that law is mostly a social system, moreover, the only social disciplinary system[269].

Summarizing the above, the following conclusions can be reached:

1. All types of statuses contain to one degree or another the constitutional-legal characteristics of an individual's condition. Hence, the process of examining the constitutional basis of a child's legal status presupposes a discussion of all types of his or her status. The legal, constitutional, constitutional-legal status of a child is a single whole.

2. In the most general form, the constitutional status of a child is derived from the provisions of the Convention on “the Rights of the Child”, as well as from the norms of the Constitution, which not only directly address the protection of children, but also define the foundations of constitutional order, human rights, freedoms, etc. The Constitution is an axis here, which, taking into account the national, socio-economic, political-ideological peculiarities of the modern state,

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[268] **O. V. Kuptsova** *Subjective guarantees of the legal status of a minor*, Theory and practice of social development (no. 21), M., 2015, Pp. 96-97.

[269] **B. L. Kistyakovsky** *In defense of law (intelligentsia and legal consciousness)* // Vechi: Collection of articles about the Russian intelligentsia, 2nd ed. M., 1909, P. 101.

incorporating the provisions and principles of the Convention, determines the future of the growing generation, giving specific “instructions” to other branches of legislation to create legal guarantees.

3. The constitutional status of a child, as a mandatory component, should include the socio-economic, political, ideological-legal guarantees of its realization in their interconnectedness, as children are a special socially significant category of citizens, but they do not have the opportunity to fully enjoy their rights.

4. In order to ensure the maximum realization of the constitutional status of a child, the adoption of a joint legal-normative act defining the rights, freedoms-responsibilities, their realization, maintenance and protection is very urgent.

2.3. THE DOMESTIC-LEGISLATIVE DEFINITIONAL ISSUES OF THE LEGAL STATUS OF A CHILD

In the 20th century, for the first time in the history of mankind, the child, in legal terms, began to be viewed not as a passive object of parental authority, but as a subject of parental care, that is, endowed with an independent legal status. Parental care can be described as parental care in the area of a child's personal and property rights, legitimate interests, as well as parental disciplinary dependence on children (for example, parental responsibility for a child's offense). Despite the fact that the rights enshrined in the Convention on "the Rights of the Child" cover practically all aspects of a child's life, there are three basic principles that can be considered as the cornerstone of the entire Convention on the Rights of the Child, they are children's rights of "best interests", "non-discrimination" and the "right to participate"[270]. These are the three important principles that influence the formation of domestic legislation on children.

The Office of the United Nations High Commissioner for Refugees (UNHCR) uses the provisions of the Convention on the Rights of the Child in all aspects of its activities, emphasizing the importance of such unique "triangle of rights" principles. However, T. A. Titova suggests mentioning the following as general principles of ensuring the rights of the child:

– The prohibition of discrimination (Article 2 of the Convention);

– Ensuring the best interests of the child (Article 3);

– The right of the child to freely express his or her views on all matters relating to his or her interests and views (Article 12);

[270] *General guidelines on the form and content of initial reports. Human rights. Statement of facts No. 10 (Rev / 1); Guide to the form and content of periodic reports of States parties. CRC/C/58. Section III.*

– To give the rights and responsibilities of the parents in accordance with the developing abilities of the child in the exercise of his/her rights (Article 5)[271].

The importance of each of the principles in its entirety contributes to the achievement of the goal of "survival and development" of the child (Article 6) in accordance with the principle of "best interests", which is manifested in two aspects of application. First, it is in the policy of the state government, and second, in decisions made on an individual basis towards the child. Article 3 of the Convention on the Rights of the Child contains a requirement that the State, in all its actions against children, give priority to the "best interests of the child" to which we referred in the preceding subsectionsThe principle of "best interests of the child" is the cornerstone of the Convention, which means that when a conflict of interest arises, the best interests of the child should be a of a primary consideration. In the legal, judicial and administrative spheres, such an approach requires a new approach on decision-making[272].

In our opinion, in this regard, the state should separate the interests of the child, as it is not always that the interests of the child coincide with the interests of adults. In addition, examining the consequences of any action in the best interests of the child, it reveals conflicts or inconsistencies with the interests of another public group or groups, which should also be taken into account. Thus, the state, in the person of its state bodies, must ensure the protection of the best interests of the child, without violating the interests of society.

Depending on the age, the development of the child's interests may be different at different ages. The interests of the **real** (based on family, education, health and other real state) and **imaginary** (based on the child's imagined sympathy and dislike) can be identified. In

[271] See: **T. A. Titova** *Convention on the rights of the child in the system of General regulation of human rights*. The dissertation on competition of a scientific degree of candidate of legal Sciences. Yekaterinburg 2000. P. 46.

[272] *Second report: Senegal, para. 43 cite on Implementation Handbook for the Convention on the Child, UNICEF, 1998. P. 42.*

protecting the rights of the child, in accordance with their interests, it is possible to determine **the main interest**, which may not correspond to the real desire of the child. In this case, the following criteria should be used: **objective** (the interests of the child coincide with the interests of society, their inseparability and predetermination of the first two) and s**ubjective** (the content of the interest is reflected by the personal qualities of the individual, ie his tendencies, attachment, sympathy, etc.). The "interest' of the child can be viewed from the point of view of psychology, sociology, philosophy. We study the psychological and sociological aspects of this concept in order to define the legal interest in the context of the rights and freedoms of the child.

The category of "interest" has been developed in the history of social thought to indicate the real reasons for public and individual actions[273], because the driving force of people's activities in all spheres of public life is, after all, their interests[274]. The necessity also serves as a stimulus for the activity, there are many similarities in the content of needs and interests, but legally there are significant differences between them. The concept of "needs" is applicable for life, and the category of interest is only for public life. Therefore, the "interest" is a social category, it is also a necessity, but a special type, social demand, or a necessity conditioned by social living conditions[275].

The content of "interest" is what is objectively necessary to satisfy the society, the development of human life, its vital needs and demands. The objectivity of interest is that it exists regardless of the consciousness of its bearer, and the consciousness of interests adds

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[273] **A. G Zdravomyslov** - *The Problem of interest in sociological theory*. "Bulletin of the Leningrad University", no. 17. Series of Economics, philosophy, law, Issue 3. L., 1959, P. 8.

[274] **G. Glezerman** *Interest as a sociological category* - "Questions of philosophy", no. 10, 1966, P. 16.

[275] See: **V. G. Nesterov** *On the ratio of public and personal interest in socialism*, 1959, P. 77; **A. G. Zdravomyslov** *Interest as a category of historical materialism.* - Scientific notes of the higher school of Economics at the Central Committee of the CPSU, Issue 1. Moscow, 1986, P. 164.

nothing to their content, as it is determined by the living conditions of the people[276].

The objectivity of interest, according to G. Glezerman, it means that the nature and condition of a given subject (society, person, etc.) give rise to certain needs in him/her; and that he/she naturally requires certain actions to satisfy them; moreover, this necessity arises not from consciousness, but from the conditions of his/her social existence [277].

As R.Ghukasyan notes, one cannot assume that there is no connection between the "interest and consciousness". Such a connection, of course, exists and it is manifested first of all that interest is a social category, and its existence presupposes conscious, involuntary activity and that the interests can not exist outside humanity. Second, interest can be exercized only after realizing it as a result of conscious activity through its bearer, when the unity of objective-subjective interests is achieved in the process of objectively pursuing the interests[278].

"The realization of objective interest as a necessary condition includes the realization of the interest of the bearer in the form of aspirations, desires, opinions, ideas, and the transformation of people into ideal driving forces for social action"[279].

"Only the conscious interest acts as a stimulus, a certain motivation for action. The unconscious interest can not cause any motivation, moreover, this kind of interest can affect people's consciousness not only in the form of concepts that reveal its

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[276] **D. V. Aleksandrov** -*The Concept of "interest" in modern Western sociology* // Sociological research, No. 8, 2014, P. 57-66.
[277] **G. Glezerman**, *The same place*, P. 18.
[278] **R. Gukasyan** *The problem of interest in Soviet civil procedure law*. Privolzhskoe book publishing house, Saratov, 1970. P. 9.
[279] **A. S. Aizikovich** *The important sociological problem*. "Questions of philosophy", no. 11, 1965, P. 167; **P. Bourdieu** -*The Interest of the Sociologist* // Bourdieu P. Other Words: Essays toward reflecxive sociology. Stanford: Stanford University Press, 1990, P. 87–93.

content, and motivate conscious activity with its satisfaction, but also in the form of instinctive involvement of some goal"[280].

Not all the needs of the individual are considered as an object of interest. Such are the physiological needs of a person (for example, the need for food or nutrition, etc.), and the interests, as A. S. Aizikovich rightly points out, they are social, and that is, they express themselves as economic, political, outward needs[281].

From the point of view of psychological sciences, interest (in Latin interest-meaning, is important) is a person's attitude towards a subject in the psychological sense as a valuable, attractive "event"[282].

It can be assumed that the legislator, insisting on the principle of "best interests of the child", meant that the attitude of the state, society, family towards the child's personality should be built taking into account the high level of priority of the child's interests and needs in the international community.

The concept and essence of interest in the legal science is formed taking into account the content of sociology and psychology, but, in the end, in our opinion, the legal definition of interest is given only in judicial normative-legal acts. The concept of "interest" in the practice of law has been explored by legal scholars such as G. Ghazinian, A. Gabuzian, S. Dilbandian, R. Ghukasian, G. Glezerman, G. Gack, A. Aizikovich and others.

The legal significance of envisaging and enshrining the "best interests of the child" in the formation of the legal status of a child in national law is important. The law, by defining subjective rights and responsibilities for the governed persons, contributes to the creation of conditions that are necessary for the interests and social needs of children. Thus, in terms of satisfying the interests of the child, the legal regulation is limited to the creation of the necessary social conditions. A child who is interested in meeting his or her

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[280] **G. Glezerman** *Interest as a sociological category.* "Questions of philosophy", no. 10, 1966, P. 20.
[281] **A. S. Aizikovich** The same place, P. 168.
[282] Soviet encyclopedic dictionary. M: "Soviet encyclopedia". 1983, P. 495.

needs may not be aware of the external circumstance arising from the law, as the child's personal interests change with age: “these are the real changes of interests during the normal physical and psychological development of the child” [283]. The satisfaction of social demands or creation of social conditions is controlled by the state, in the person of the subjects mentioned in the law, in accordance with the provisions of the established order. G. M. Gack makes a legally distinguishment between the terms “person’s interest”and “personal interest”. Personal interest, in his opinion, is what is necessary for a given person in the development of his personal establishment. A person's interest is broader than personal interest, as its content includes both personal and public interests. The impetus for the activity can not only be personal, but also public interest, which is perceived by the person as his/her interest[284].

According to us, a child’s “personal interest” describes his/her interests in a specific period of time, in a specific life situation. The child's “interest”, in our opinion, includes the whole spectrum of his desires and aspirations, which are connected with the past, present and future.

The interest and interests are important factors in law-making and law enforcement [285].

Regarding this issue there is another viewpoint of law. V. A. Tarkhov notes that the “interest” is not included in the content of the law, as it is not a legal category. The interest is a social phenomenon, the protection of which is served by the subjective right, presenting a special way of exercising the law[286].

R. Herring's theory of interest is that subjective law consists of two points: “the substantive type, which includes the practical

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[283] **V. N. Lavrinenko** *Interest as a category of historical materialism*. Bulletin of the Moscow University. Series VIII. Economics, philosophy, 1964, P. 66.
[284] **G. M. Gack** *Public and personal interests and their combination in socialism*, Questions of philosophy, no. 4, 1965, P. 20.
[285] **Yu. A. Tikhomirov** *Theory of concepts*. Yurinformtsentr, Moscow, 2001, P. 245.
[286] **V. A. Tarkhov** *Some issues of protection of property rights of workers in the Russian Federation to the Soviet civil legislation* // Scientific works of the Saratov law Institute named after D. I. Kursky. 2. Saratov, 1965, P. 87.

purpose of subjective law, in particular, the benefits, profits, which must be secured by law, and the formal type, which refers to the mentioned goal as a mean to achieve, in particular, legal protection, lawsuit, etc. The first is the core of subjective law, the second is the shell that preserves it. "Rights are the expression of legally protected interests"[287].

L. Windshid nots that "the purpose of subjective rights is to satisfy human interests"[288].

According to A. V. Malko, "the legitimate interest is reflected in the objective legislation or derives from its general meaning and to a certain extent guaranteed by the state, with simple legal permission, expressed in the aspirations of the subject to use certain social goods, as well as in some cases, to apply to the competent authorities for protection in order to meet public needs"[289].

"Legal relations are the most important way to achieve the rule of law. It predetermines certain relationships between individuals, on the basis of which one person has certain subjective rights and the other bears responsibility. The subjective rights allow their owner to perform certain actions within the law, to use certain social privileges, to demand appropriate behavior from other persons and, if necessary, to apply for state protection"[290].

The subjective law guarantees the creation of social (legal) conditions to satisfy the interests of the authorized person, in other words, the subjective law serves the protection of interests, and the interest protected by subjective right is the interest protected by the law[291].

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[287] **Ihering**. *Geist der romischen Rechts.* 1888, T 3, P. 339: *«Der Begriff des Rechts beruht auf der rechtlichen Sichercheit des Genusses. Rechte sind rechtlich geschiitzte interessen».*

[288] **Windsheid**. *Lehrbuch des Pandektenrechts.* 1. 1873, P 87.

[289] *Problems of the theory of state and law* / Ed. **Marchenko M. N.**, Jurist, Moscow, 2001, P. 375.

[290] **N. I. Matuzov** *Subjective rights of citizens in the USSR*, Ed. Saratov Univ. Saratov, 1966, P.

[291] See: **S. S. Alekseyev** *Social value of socialist law as a regulator of public relations* // Soviet state and law. No. 3. 1968, P. 17; **Yu. Zavyalov** *Personality, interests, law* // Sov. Justice. No. 15. 1967, P. 6; **S. S. Alekseev** *-About the object of law and*

Referring to M. A. Gurvich's work, we can state that we meet definitions of legitimate interests, which are social needs, and are protected by law not by granting subjective material rights holders, but by granting them (or other persons) the right to apply to judicial or other forms of protection[292].

Remaining loyal to M. A. Gurvich's viewpoint, the personal needs and interests of the child protected by the state are the state guarantee of legitimate interests, which can be classified as:

– Physiological needs (food, water, clothes, housing, etc.);

– Safety needs (child's sense of protection);

– The need for care (to be around people, to feel family protection, to be understood by parents or caregivers);

– The need to respect the child's personality (the child is accepted by his / her views, ideas, and is being recognized by the family, society and state);

– Social needs (problems of child self-realization and self-affirmation).

Thus, the task of any modern democratic-social state, based on the principle of "ensuring the best interests of the child", is to meet and protect the individual needs of the child.

People (children) differ from nature in terms of gender, age, mental abilities, views, health, etc. Only by setting a certain level of rights for each citizen, the state can satisfy the interests of the society. In this respect, it is interesting to consider R. Z. Livshits viewpoint, who thinks that "this level, of course, depends on the welfare of society, its level of economic, social and careful development. For certain groups of people, the deviations below this level are unacceptable and will lead to discrimination.

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legal relations. // Questions of the General theory of owls. Rights. M. 1960, P. 289. **R. Gukasyan** *The problem of interest in Soviet civil procedure law.* Privolzhsky book publishing house. Saratov. 1970, P. 18.

[292] **M. A. Gurvich** *Civil procedural legal relations and procedural actions.* Questions of civil procedure, civil and labor law, VYUZI, M., 1965, P. 86.

Raising the level is possible for certain groups of people, which is called legal regulation. Discrimination, by its very nature, restricts the deprivation of rights, and the legal distinction is the increase of the volume of rights. The differentiation is the creation and provision of wider opportunities for special social groups by the state, it exclusively refers to people belonging to socially vulnerable groups (women, children, the elderly, the disabled, members of national minorities, refugees, etc.). The meaning of differentiation is the society's demand to smooth over the real inequality of people by supporting the weak"[293].

The principle of non-discrimination is enshrined as in "the Convention on the Rights of the Child", numerous other international treaties and treaties, so it is enshrined in the constitutions and current legislation of almost all states.

F. Alston states, "Child's protection should include all situations in which he or she is or may be discriminated against or punished based on the status or conduct of others".Children often easily become "accessible targets", more often than their parents, adult family members or guardians [294].

In this connection, T. A. Titova sought to distinguish the "direct" grounds of discrimination, based on the personal status or actions of the child, and "indirect" on the personal status or activities of the parents or guardians[295].

Thus, Article 2 of "the Convention on the Rights of the Child" states:

1. "The participating states respect and ensure all the rights enshrined in the Convention for every child under their jurisdiction, without any discrimination, regardless of race, color, sex, language,

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[293] See: **R. Z. Livshits** *Theory of law.* Textbook, Moscow: BEK publishing house, 1994, P. 156.

[294] See: **P. Alston** *The legal framework of the Convention on Rights of the Child*// Bulletin of Human Rights 91/2, P.7.

[295] See: **T. A. Titova** *Convention on the rights of the child in the system of General regulation of human rights.* The dissertation on competition of a scientific degree of candidate of legal Sciences. Yekaterinburg, 2000, P. 47.

religion, political or other belief, of the child or of his or her legal guardians or caregivers, national, ethnic or social origin, property status, health and birth, or other status".

2. The participating states take all appropriate measures to ensure the protection of the child against all forms of discrimination or punishment based on the status, activities, views or beliefs expressed by his or her parents or legal guardians or other family members.

Naturally, the principles of non-discrimination against children are contained in normative-legal acts of all countries of the world.

The child acquires the experience and skills of his/her life, he/she is brought up first of all in the family, that is why it is legally worth paying great attention to the elimination of discrimination against the child in the family legal relations, as the scale of the violations under Article 2 of the Convention is enormous (53 of the 68 periodic reports from participating states have identified grounds for discrimination against children)[296].

In our opinion, when describing the "marital status of a child", it is necessary to distinguish its internal and external aspects. In relation to the internal description of "marital status" it refers to the parent-child relationship and, in this regard, it is necessary to prohibit discrimination by parents, relatives and their substitutes by domestic normative-legal acts, regardless of the child's gender, race, skin color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, ethnic minority status, property status, birth, disability, age[297] or other personal or social circumstances.

The external character of a "child's marital status" is expressed through family-society relations; the exclusion of discrimination here refers to children of migrant families, families where parents suffer from diseases such as alcoholism, drug addiction, HIV infection, as

[296] *Implementation Handbook for the Convention on the Rights of the Child.* UNICE, 1998, P. 28-33.
[297] Here we are talking about reaching the age of majority from birth to 18 years.

well as children whose parents' property status and religious beliefs are different.

R. A. Mullerson's view of the concept of “positive discrimination” against children is interesting. The scholar believes that “providing certain groups of people with the benefits they need for equal participation in the public life of the country is not only non-discriminatory, but also indicates a fairly high level of development of international law”. It is not only an equal means for unequal subjects, but also becomes a tool for mitigating the negative consequences of actual inequality [298].

However, in our opinion, one of the cornerstones of building domestic, national legislation on the child is the observance of the principle of exclusion of any form of discrimination.

Article 12 of the Convention on the Rights of the Child states that the participating states ensure that for a child capable of expressing his or her views has the right to freedom of expression in all matters concerning the child. Proper attention is paid to the child's views according to his age and maturity. To this end, the child shall, in particular, be heard either directly or through his or her representative or the relevant body, during any judicial or administrative hearing concerning him or her, in accordance with the procedure laid down in national law.

Children's participation in making decisions about themselves helps adults to make better choices, as it allows them to better understand the child's interest, interests, feelings and needs. Therefore, a norm should be established where the participating states respect the right of the child to freedom of thought, conscience and religion (Article 14 of the Convention).

The real participation of the child corresponds to the developmental needs of the child, and it is through personal participation that children learn to make their own decisions. For this

[298] **R. A. Mullerson** *Human Rights: ideas, norms, reality*. - Moscow: Yurid. Lit., 1991, P. 57.

purpose, in different countries have been established school-children's parliaments (Slovenia, Senegal, Russia), children's assemblies (Spain) and other bodies. Moreover, children are involved in social policy planning (Denmark, Finland, Norway). By gaining self-confidence and the ability to use the experience gained correctly, children later become active, law-abiding participants in public relations[299].

Thus, due to the interconnectedness of the three basic principles – the "protection of the best interests of the child", the "exclusion of non-discrimination", as well as "ensuring the right to participate", in the states, a natural and effective normative-legal development of the legal status of the child takes place.

Thus, due to the interconnectedness of the three basic principles – the "protection of the best interests of the child", the "exclusion of non-discrimination", as well as due to the interconnectedness of "ensuring the right to participate", an effective normative-legal development of the legal status of the child takes place in the states. It can be concluded that the child, by developing his consciousness and life experience in the family, exercises his/her subjective rights and freedoms. It can be assumed that the child's interest is formed under the influence of parenting or other adults. In addition, parents need to identify the child's interest and build their behavior based on the interest found and the purposeful development of the child's interest will be of great importance in the process of his upbringing, development and education. However, in modern conditions, especially in poorly developed or developing countries, it is difficult to determine the real interest of the child in family life.

In this regard, it is also worth studying the domestic, national

[299] See: **M. V. Antokolskaya** *Family law*. M., Norm, 1997, P. 61; **Yu. F. Bespalov** *Family and legal status of the child: problems of family legislation*. // Family and housing law. No. 5, 2016, P. 13; **C. A. Avakian** *Democracy of protest relations: constitutional and legal dimension* // Constitutional and municipal law, no. 1, 2012, P. 3-17; **Yu. A. Gurevicheva**, **K. R. Maksutova** *Protection and implementation of political rights and freedoms of minors* // Mir nauki I obrazovaniya, no. 3 (7), 2016, P. 8.

legislative system of the legal status of the child. The issue of legislative definition of the legal status of a child is not fully resolved in the Republic of Armenia, as Armenia has an active position in the field of protection of children's rights in the international arena. By ratifying the Convention on the Rights of the Child in 1993 [300] the Republic of Armenia undertook the obligation to implement the norms of the Convention in its national legislation. It confirmed the readiness of our country to pursue the goal of ensuring the legal and social guarantees of the child, their legitimate interests and security. However, other laws on "the protection of the rights of the child", "the guarantee of the protection of the rights of the child" and "the prevention of violence against children" have not yet been adopted.

Let's try to classify the legal sources defining the legal status of a child according to the influence of legal force, in this part paying special attention to the domestic, national legislation.

Thus, the legal act with the highest legal force is the Constitution of the Republic of Armenia, which enshrines the basics of the legal status of a human citizen, including a child. According to the provisions of the RA Constitution, the international treaties form an integral part of the RA legal system. And the important thing is that if the international agreement of the Republic of Armenia defines norms other than those provided by law, then the norms of the international agreement are being applied. It can be concluded that the Republic of Armenia recognizes the primacy of international law in the field of protection of the rights of the child, ie if a basic human right (including a child) is not included in the provisions of the Constitution, it must be recognized by the Republic of Armenia, regardless of whether it is enshrined in the Constitution. It means that the norms defining the legal status of the child in the field of rights can be contained not only in the domestic legislation, but also in the legal acts of the state governing bodies, ministries, departments and other bodies regulating the protection of the rights

[300] The Convention entered into force for the Republic of Armenia on 22 July 1993.

of the child within the respective branch or sphere. For example, the decision of the Government of the Republic of Armenia of March 18, 2010 N 269-N on approving the "Procedure for adoption of a child", etc.

Finally, acts on the protection of the rights of the child can be found in the local acts adopted by the territorial administrational, local self-governmental, various organizational and educational institutions.

2018 on September 27, the Government of the Republic of Armenia approved the 2019 annual draft program on the Protection of the Rights of the Child, which was developed in implementation of the RA Law "on the Rights of the Child", and it complies with the government's 2014 provisions and main directions of the "Prospective Developmental Plan of the Republic of Armenia for 2014-2025" approved on March 27, 2010. The Government of the Republic of Armenia has established departments for the protection of children's rights in the staffs of the Municipality of Yerevan and the regions of the republic. The decision was made between the Government of the Republic of Armenia and the European Commission, in accordance with the Memorandum of Understanding signed on June 2, 2004[301].

Thus, it can be assumed that considering the new conditions of public life, the process of determining the legal status of a child is actively underway in Armenian law. As a result, in our opinion, the issues of systematization of the RA legislation in the field of protection of children's rights and freedoms have gained a high degree of urgency. However, the issue of legal regulation in this area is still not fully explored. Until it is resolved, children's rights will not be adequately protected, and an indicator of Armenia's degree of integration with the world community is the observance of international obligations in the field of child protection.

[301] See the Department for the protection of children's rights of the Yerevan mayor's office on November 03, 2006. report: www.yerevan.am/reports

There are different views on determining the legal status of a child. Thus, lawyer N. E. Borisova believes that "the lack of a unified system of legal norms regulating the legal status of a child leads to a number of negative circumstances: contradictions, gaps in legal regulation, etc.". Hence the importance of creating a juvenile[302] right that represents the legal status of the child in its entirety is seen[303].

N. E. Borisova raises the issue of the relationship between "juvenile" law and other branches of law. "The theory of law mentions two general approaches to the division of law into private and public. On the one hand, the recognition of the existence of private law, regardless of the criteria of segregation, which is based on the inadmissibility of subjective law, individual freedom, and the unrestricted interference of the state in private-legal relations. On the other hand, the denial of private-legal relations as a private initiative, a power of will, the non-recognition of the existence of a subjective right... the patriotic juvenile law, at the end of its legislative process, can generally be classified as natural, private law"[304].

In order to decide which right the juvenile law refers to (private or public), let us consider some aspects. The connection between the supposed juvenile law and the natural law is obvious: it is reflected in the human rights and freedoms of the child. However, according to S. S. Alekseyev, natural law, including human rights, is not yet a reality, it is not in itself permissible for certain behavior, rather, it is a requirement for the permissibility of human behavior as a rational being, pre-determined by nature, based on the determination of a man striving for freedom, the steadfastness of his/her highly dignified position in life. In addition, natural law (particularly in the sense in which it is expressed in humanistic ideas, and now in inalienable human rights) is known for its uncertainty, its inability to become a

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[302] "Juvenile" (this is "Minor", hence "Right of minors").

[303] **N. E. Borisova** *Concept of formation of the branch of juvenile law in the legal system*, Lawyer, M. 1999.

[304] **N. E. Borisova** *Development of juvenile law in Russia*, M., 1999; **N. E. Borisova** - *The Legal status of the child in the Russian Federation*, Moscow: MGSU Publishing house, 2004, P. 27.

universal reality without the help of other social institutions[305]. In order for these natural rights to "work", that is, to begin to be actively used in public life, positive law is necessary, that is, "law as an institutional formation with its own characteristics (normative binding, universal, definite content, obligatory action), with high security features)"[306]. Therefore, the state is obliged to restrict human freedom only when it is required for the common good.

At the same time, there is also private-legal regulation in juvenile law, especially when it comes to civil, family, inheritance, copyright related areas of juvenile law, then the state needs to refrain from regulation, therefore, when juvenile law is enacted, in our opinion, it can be considered a natural private right.

From the above it can be concluded that the norms of legal protection of the child, his / her rights and the norms defining the legal interests are contained in different institutions of other branches of civil, family, work and law. In addition, there is an impressive volume of such norms in the branches of criminal and administrative law. Of course, the development of norms of juvenile law is greatly influenced by constitutional, civil and family rights.

There is some connection between juvenile law and other branches of it, when one of the parties where the relationship is regulated is the child or his or her legal representatives. In this regard, "it is considered possible to complete the given norms in juvenile law by" clearing "them of obvious nonsense, contradictions, enriching domestic and foreign juveniles with new applications that have been successfully tested"[307].

Thus, the protection of children's rights is possible not only in solving socio-economic problems, but also due to the precise determination of the place of juvenile law in the legal system.

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[305] **S. S. Alekseyev** *General Theory of Law*, Moscow, 2011, P. 132.
[306] **N. E. Borisova** *Correlation of juvenile law with other branches of legislation*, M. Yurist. 1999, #8, P. 8.
[307] See: **N.E. Borisova** *Correlation of juvenile law with other branches of legislation*, m. Yurist. 1999, #8, P. 12.

It is known that the norm of law, the legal institution and the branch of law are the main elements of the legal system. The legal system is formed under the influence of economic relations and the activity of the legislator.

At present, a rather broad legal framework on children is formed in Armenia. However, it should be noted that the content of the norms in different legal institutions causes some inconveniences in the process of their application.

It can be concluded that in connection with the growth of the importance of certain institutions of juvenile law in the general system of law, there is an opportunity for their independent branch to grow[308], which is evidenced by various scientists, for example, N. Ayvazian, G. Gharakhanian and Russian lawyers N. E. Borisova, A. M. Nechaya, M. V. Antokolskaya, L. M. Pchelintseva and the works of other specialists.

It is possible that the legislator will change the existing legislation on children, develop new legal norms, eliminate legislative gaps - contradictions between legal acts. It is still unknown what kind of systematization the legislator will choose.

N. E. Borisova believes that "a number of juvenile legislation being developed in the country are endowed with 'sectoral', 'intra-sectoral' and 'complex' lines of legislation. In turn, it is appropriate to talk about the emerging juvenile justice system. The system of juvenile law is its structure, the composition of the norms of individual institutions in a certain sequence. The juvenile law system gets its expression in the legislation, first of all in the regulated acts"[309].

Let's try to make sense of juvenile law, to describe it as a branch of supposed law. Thus, in order to protect the rights of the child, the state needs to establish a legal regulation of relations, in particular, a

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[308] See: **G. H. Karakhanyan** *Family law of the Republic of Armenia*. YSU, 2008; **L. M. Pchelintseva** *Family law*, M. 1999; **M. V. Antokolskaya** *Family Law*, Textbook, 2nd Edition, "Jurisprudence", Jurist, Moscow, 2002.

[309] **N. E Borisova** *Concept of formation of the branch of juvenile law in the Russian legal system*, autoref. For the degree of doctor of law, Moscow, 1999. P. 28.

clear definition of the rights, duties and responsibilities of their participants. That is the significance of juvenile law. Through its norms, the mechanism of legal protection of the child is applied by the state, which currently requires regulation.

In this regard, the theoretical substantiation of juvenile law, in our opinion, provides a basis for the establishment of the juvenile justice institution in Armenia, in many other countries, which is mentioned in the provisions of the annual programs of the Government of the Republic of Armenia on "Protection of the Rights of the Child in the Republic of Armenia".

It should be noted that juvenile law is a complex system of legal norms, such as the person's personality, his/her legal interests, protection of rights through governmental orders, and norms of protection that have not been fully established, which unites the norms of domestic legislation and international agreements, regulates property and personal non-property relations on the basis of the principle of equality of the parties (one of which is the child). In our opinion, juvenile law is not endowed with an independent branch subject and method; it is included in the branch of civil and family law of the Republic of Armenia.

Juvenile law should enshrine the structure of state bodies implementing the legal protection of the child, define the legal status of officials in the field of child protection on the basis of an authoritarian method, The essence of which is the strict regulation of the behavior of the participants of the legal relations, their "unequal" status, because the state body acts as the initiator of the protection of the child's personality and his/her rights[310].

The norms of juvenile law are called to strengthen the legal status of the child in the family, to ensure the protection of children deprived of the opportunity of upbringing in the family, children with

[310] See: **A. S. Avtonomov** *The juvenile justice system*: proc. Handbook. Moscow, 2009. P. 6; *Juvenile and juvenile policy in the XXI century*. Experience of complex interdisciplinary research / under the editorship of **E. G. Slutsky**. SPb, 2004; **Ya. I. Gilinsky** *Deviantology. Sociology of crime, drug addiction, prostitution, suicide and other "deviations"*. Saint Petersburg, 2004, P. 34-39.

disabilities and refugee children. Juvenile law covers areas of labor law that cover child's labor rights, as well as child's education and health care. The mentioned relations are the subject of juvenile law.

Therefore, the subject of juvenile law is mainly the settlement of personal property and personal non-property relations, where one of the parties is always the child. In their content, these relations are quite elementary, which are conditioned by the diverse circle of participants, with the direct participation of the society and the state in the regulation of the relations connected to the "working" and "educational" activities of the child. Thus, the definitions of the concept of juvenile law and subject are related not only to civil, but also to family, work, administrative, inheritance, as well as social security relations. Therefore, juvenile relations are complex, they are united by the fact that everything is connected with the legal regulation of children's rights in different areas of legislation[311].

In such relations, which are the subject of juvenile law, according to the subjective composition, the following groups can be distinguished:

1. The responsibilities of the child and parents, as well as their guardians and, in connection with the responsibilities of their care, upbringing and protection.

2. The child and the educational institution, in the person of officials, pedagogues, educators, etc., in connection with the realization of the child's rights in the field of education.

3. Between the child and healthcare organization, in connection with the protection of children's health and the right to rest.

4. Among the children, non-profit organizations and other non-commercial organizations to exercise their rights and to fulfill their responsibilities in the field of child preparation.

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[311] **A. N. Chashin** *Juvenile justice* (Legal advice; Issue 5/13), Moscow, 2014, 112 p.; **V. V. Nagaev** *Juvenile justice. Social problems,* M., Unity-Dana, 2012.

5. The volume of social services, in accordance with the minimum state social standards, between the child and social services, as well as family social protection bodies.

6. Between the minor and employer, in connection with the exercise of the right to work.

7. Among the child and local self-governmental bodies, as well as other housing funds, in connection with the realization of the rights of the child to have an apartment.

8. Between the court, as well as law the enforcement bodies, in terms of the protection of the rights of a juvenile and the justice administrative body.

The observation of juvenile relations by groups shows that although they are different, they have a common content - the direction of the regulation of the basic rights of the child, as well as a realization of the main guarantees of the rights of the child in the Republic of Armenia - the legitimate interests, that is, the object of legal protection is first of all the child's personality, his/her rights, which form the basis of the latter and the welfare of the general society.

It is obvious that these relations arise within the framework of the state and legislation, in case of a direct influence of the state and local self-governmental bodies. Under such influence, the basic rights and legitimate interests of the child must be ensured. The state must organize the activities of all its bodies in such a way that all the rules and requirements of full life and upbringing of children in the society in the spirit of patriotism are observed.

In regulating these relations, the norms of juvenile law should enshrine the rights and responsibilities of state bodies, local self-governmental bodies, educational institutions, other organizations, citizens, as well as the legal status of their children[312].

[312] **V. A. Lelekov**, **E. V. Kosheleva** *Juvenile criminology*, "Jurisprudence". 2nd ed., reprint. And add. M., 2014; **D. I. Tislenko** *Socio-psychological reserves of criminological knowledge* // Library of criminal law and criminology, no. 3(7), 2014, Pp. 204-211.

The clarity and harmony of legal regulation of juvenile relations is necessary for ensuring the cooperation of proper organization of state bodies of local self-governmental bodies, in the field of state policy for child protection. It can also be used by the state to protect the interests of the child by international standards and, consequently, to carry out functions by the state.

The emerging juvenile law of the Republic of Armenia reflects the new economic, political, social conditions of the country, that is why the following most essential directions can be noticed in its development.

1) The creation of legal norms is conditioned by the recognition of childhood as an important stage of human life by the state, which gives rise to the definition of the principles of primary preparation for the life of a child, in the conditions of complex social relations.

2) The civil, administrative and criminal liability for violations in the field of protection of the rights of the child aare getting tightened. It also refers to the responsibility of minors working in different areas of the legislation.

3) Juvenile law reflects the development of public relations in Armenia. It is obvious that the role of the RA public authorities is increasing, where their independence and the sphere of legal regulation in the field of protection of children's rights is expanded.

It is importnat that the development of juvenile law is in line with the norms of international law (not just the provisions of the Convention “on the Rights of the Child”), but with international acts to which Armenia has not yet acceded. Equal to the affirmation of the rights and freedoms of the child and human rights must be of the highest value in any society or state. The child’s consciousness is getting developed in the family, which comes from the nature of family relations, due to which he/she realizes his/her subjective rights and freedoms.

Thus, it is necessary to introduce the concept of “family status of the child” in the RA legislation, thus describing the child as a

separate subject in family legal relations. The absence of a special regulatory body is a consequence of the separation of the norms defining the “marital status of the child” and the lack of a unified legislation.

The lack of clarification of the “marital status of the child” is due to the lack of protection of the rights of the child, legal interests, free choice of protection options, which gives rise to non-uniform ways of their implementation, and the duplication of decisions of bodies becomes obvious that in this or that way can solve children's problems.

In addition, the protection of the rights of the child, falling within the competence of many bodies, is not, however, the main and independent direction of their activities. In our opinion, in the conditions of globalization and integration, the RA legislator will finally end the need to divide the right from private to public. In that case, juvenile law will find its place in the system of public and private norms.

From our view, the creation of a juvenile law will enable more effective protection of the rights, freedoms and legitimate interests of the child.

CHAPTER III

THE ISSUES OF ENSURING THE PROTECTION AND RESPONSIBILITY FOR CHILDREN'S RIGHTS

3.1. THE CONTENTS AND STRUCTURES OF PROTECTION OF CHILDREN'S RIGHTS

The respect for human rights and protection is the foundation on which real democratic, legal and social state power must be built. The freedom of a person guaranteed and protected by the state gives birth to the individual's will, ability and expression towards the economic and social progress of the society.

The protection of rights is a set of measures prescribed by law, which are aimed at the prevention, elimination, and prevention of violations, as well as the protection of individual rights and freedoms[313].

In this regard, the concept considered applicable to the child includes:

– The comprehensive and effective regulation by legal means of relations related to the realization of the rights of the child;

– The improvement of the legislative, and, in general, the legal-normative base in the field of legal regulation and the improvement of it;

– Detailed elaboration of procedural norms during the examination of administrative, criminal, civil or other cases directly or indirectly related to the rights of the child;

– Establishment of sanctions (legal sanctions) for the violation of the rights of the child, and in some cases, the imposition of more severe sanctions in relation to the encroachments on the same rights of adults (eg life and health, personal immunity of children);

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[313] See: **E. A. Mikitova** *Guarantees and mechanisms for protecting children's rights* // Law and life, No. 45(2), 2002, Pp. 119-124.

– The special and effective activities of justice and law enforcement agencies (court, prosecutor's office, police, special inspectorates, departments), various individuals and legal entities (guardianship and trustees, educational institutions, cultural institutions, etc.) directed at crimes against children and other prevention of offenses;

– The punishment and prosecution of the offender;

– The oversight activities of special public authorities (court, prosecutor's office, investigative bodies);

– The control over their departments by state bodies;

– The improvement of the provision of legal services to state, private, public and other institutions and organizations.

The constitutional rights and freedoms of a human being, including a child, are endowed with a certain set of methods of protection. Among them are:

1. The international legal mechanisms for the protection of human rights;
2. The constitutional mechanisms (Constitutional court)[314],
3. The judicial protection (courts of general jurisdiction and specialized courts);
4. The administrative actions of the executive bodies of the government;
5. The operations of public, human rights bodies and organizations;
6. The protection of the rights of the child by family, parents or other legal representatives;
7. The legal self-defense of human rights[315].

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[314] *Report on the Protection of Children's Rights: International Standards and Domestic Constitutions*, adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), P.16-17.

[315] *Norms regulating the child's self-protection in family legislation they are missing for obvious reasons. However, to this method protection can be attributed to the order and conditions under which the child is personally or through legal representatives, but without contacting the competent authorities, if possible, apply actual or legal measures actions aimed at restoring (recognizing) violated rights.*

In some countries, the scope of the above-mentioned methods of protection of constitutional rights and freedoms may be extended to a number of judicial structures, in particular, at the expense of administrative justice (judicial bodies for the examination of disputes between human and state administrations), labor justice (for the settlement of labor disputes, including juvenile labor disputes between the state), and juvenile justice, etc. Unfortunately, these methods of human rights activities in modern Armenia have not yet been properly disseminated, as, despite the theoretical elaboration of the issue, the institutional elements of civil society are not yet sufficiently developed.

During the study of the Constitution of the Republic of Armenia, the terms “protection” and “security” are widely used in the chapters on the principles of constitutional order and human and civil liberties. Thus, for example, the “respect for and protection of the fundamental human rights and freedoms are the responsibilities of public authorities” (Article 3 of the Constitution of the Republic of Armenia); the “Motherhood and childhood are under the special protection of the state” (Article 16); the “Children left without parental care are under the care of the state” (Article 37), etc.

In terms of the constitutional provisions, it turns out that these terms are close in their literal meaning, they are used as synonyms. However, it should be noted that the concept of the “protection of rights” could be applied in both broad and narrow senses, where the protection in the narrow sense means protection itself, which implies the restoration of rights or their recognition by the individual, and it is mainly related with the fact of violation. Thus, the concept of the “protection of rights” includes a whole set of measures to ensure the normal course of rights. It includes not only legal, but also economic,

political, organizational and other measures aimed at creating the necessary conditions for the exercise of subjective rights[316].

The legal remedies include all remedies that ensure both the development of legal relations that are in their normal state and the restoration of disputed rights or interests. Within the protection of the rights of a person, and consequently of a child, we understand the consolidation of the domestic and national measures applied in connection with the violations against those rights[317].

In the context of the issue of child protection, the forms and types of protection of rights in national law, as well as in the number of countries, are undoubtedly of interest.

The international legal mechanism for the protection of human rights is based on international normative acts, which are part of the legal system of the subjects of international law, states, and have a prudential significance. Moreover, states recognize the right to apply to interstate and international bodies for human rights and freedoms if all domestic remedies have been exhausted[318].

The priority of the best interests of the child in all spheres of state life is enshrined in the Convention on the Rights of the Child, which not only identifies the child as a person with specific rights but also enables the confirmation of his rights with the help of national judicial or administrative proceedings (Article 12 of the Convention).

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316 **S. V. Kabyshev** *Implementation of the Constitution as a factor of sustainable and progressive development of the country* / / Lex russica, no. 6, 2014, Pp. 666-673.
317 **S. S. Alekseyev** *Legal means: problem statement, concept, classification* // Soviet state and law, no. 6, 1987, P. 14; **V. A. Sapun** *Theory of legal means and mechanism of law implementation.* Saint Petersburg: publishing house of the Saint Petersburg humanitarian Institute of trade unions, 2002, P. 29.
318 It is a principle of international law that the protection of human rights should be carried out by national governments. National remedies are viewed as more effective than international ones because they are easier to access, proceed more quickly and require fewer resources than making a claim before an international body. Access to international enforcement mechanisms is seen as a last resort after the State has failed to correct the violation or to carry out justice.

According to many experts, one of the most significant contributions of the Convention to domestic law is the introduction of the principle of transformation of an active subject from a passive object of child "protection"[319].

It is clear that all the rights of the child are protected, which are envisaged by the main law of the state as basic human rights and freedoms of citizen; the family rights of the child, which are enumerated by the Civil and Family Codes (for example, the right to live in a family, to be brought up, the right to communicate with parents, etc.). Finally, it refers to (due to insufficient ability of children, determined by the issues of common national and global development) the special protection of children's rights and interests[320].

The applications to the European Court of Human Rights are the first and foremost among the international legal remedies for the protection of the child[321]. According to the statistics, the majority of child protection cases in the European Court are related to the appointment of a child guardian, contact with parents and other relatives, respect for personal and family rights, the right to education, the inadmissibility of corporal punishment[322]. In addition, complaints may be lodged with the UN Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child and other international bodies. This method cannot be an effective defense measure, as the decisions of these committees are of an advisory nature only.

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[319] See: **A. G. Mower** *The convention on the rights of the child*: Intem. Law support for children. Westport (Conn.); L.: Greenwood press, 1997.
[320] See: **A. Egorov** *Convention on the rights of the child: results and prospects* // Social security issues, no. 23, 2015, P. 5-6.
[321] **K. V. Starovoitova** *Protection of Children's Rights in the European Court of Human Rights'*, Eurasian, BAR, 1 (32), 2018, P. 61-70.
[322] T. V. United Kingdom (Complaint no. 24724/94). Judgment (Strasbourg, 16 December 1999); Case V. V. the United Kingdom " (Complaint no. 24888/94). Judgment (Strasbourg, 16 December 1999); Johnston and others V. Ireland: Judgment of the European court of human rights of 18 December 1986 (complaint no. 9697/82); dragon V. France, Judgment of the Grand Chamber of the European court of justice of 6 October 2005, complaint no. 1513/03.

Despite the international application of direct or indirect protection of the rights of the child, their practical effectiveness can not be overestimated. The problem is that human rights organizations, especially individuals, find it difficult to navigate the diversity of their operations and, consequently, the applicability of this or that mechanism to this particular violation of child rights (even if there are documents in international organizations and exhaustive information on the rules for their adoption). In addition, in some cases the conventional control mechanisms are characterized by repetition, in others - the lack of regulation[323].

The activity of the Constitutional Court of the Republic of Armenia occupies a special place in the protection of fundamental human rights and freedoms in the Republic of Armenia. This rather new constitutional-legal institution, which under its constitutional responsibility has concentrated on the explanatory-control paradigm of the essence of all the components of the national legislation, seems to take its proper place in the protection of the rights and interests of the child as well. Especially since today, the social problems are becoming quite noticeable in the activity of the RA Constitutional Court. The social issues are reflected to one degree or another in the Court's rulings; and the issues examined reflect the issues of guaranteeing social security, including citizens who have children, with minimal state benefits; questions on the guarantee of the limits of free higher education, the means of exercising the right to higher education; as well as the issues of employment status of the unemployed, including age restrictions on the right to work, judicial protection of other rights[324].

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[323] Today, we are talking about the need to reorganize the entire system of activities of UN bodies in the field of human rights. See: *Human Rights*: Textbook for universities / Ed. **E. A. Lukashev**, M., 1999, P. 501.

[324] See: "*Legal positions expressed in the decisions of the RA constitutional court and their implementation"* (guide-manual), **G. Danielyan**, Press Service of the RA MFA Reports, Yerevan, 2016.

The functioning of the constitutional-judicial mechanism is reflected in the constitutionalization of the rights of citizens, including children (checking their compliance with the constitution), which can take place in different ways[325]. These include:

– The tnterpretation of the norms of the Constitution, which ensures the constitutional assessment of the sectoral legislation and simultaneous development of the content of the constitutional norms without amending the relevant articles of the Constitution;

– The formal interpretation of the legal norms of certain branches of social legislation (civil, family, labor, housing, etc.), which clarifies the normative content of the article of the law, by maintaining the balance of constitutional values embodied in the norms of the law, the collisions are being overcome (contradictions) between the norms, also it reveals the existing systemic, hierarchical connections and dependencies between certain norms of social protection legal institutions;

– The constitutional regulation ("correction") of established legal practice (which may give an unconstitutional meaning to the norms of social legislation);

– The discovery of the constitutional nature of the mentioned rights of citizens, giving them qualifications to be natural, basic, and not foreign;

– The specific interpretation of the procedure, forms and methods of application of procedural norms in law enforcement and human rights practice.

If we take into account that a number of norms of the RA sectoral legislation were adopted in the "pre-constitutional" period (1995)[326], then these forms of constitutional oversight can play an

[325] **N. Bondar** *Social protection of citizens: constitutional "straightening" of laws and law enforcement practice* // Russian justice, no. 6, 2002, P. 8-11.

[326] The Republic of Armenia today has many legal acts that were adopted in the Soviet era, such as "The Code of administrative offences", adopted in 1985 and, despite numerous changes and additions, is still in force today.

important role in ensuring the exercise of the rights and legitimate interests of the child.

In accordance with the requirements of "the Convention on the Rights of the Child", taking into account the child's physical and mental disability, children need special care, including adequate legal protection[327].

The procedure for the protection of the rights of the child in national law includes administrative and judicial protection. Moreover, the administrative-judicial means of resolving disputes are two sides that reasonably complement each other in the joint mechanism of protection of individual rights and freedoms[328].

The Constitution of the Republic of Armenia enshrines **the Right to Proper Administrative Action**, according to which, "Everyone shall have the right to impartial and fair examination by administrative bodies of a case concerning him or her, within a reasonable time period. In the course of administrative proceedings, everyone shall have the right to get familiar with all documents concerning him or her, except for the secrets guarded by law. State and local self-government bodies and officials shall be obliged to hear the person prior to the adoption of an interfering individual act thereon, except for the cases prescribed by law". Unfortunately, in this issue, the RA NA Law on the "Fundamentals of Administration and Administrative Proceedings" adopted on February 18, 2004 does not contain significant provisions concerning children[329].

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[327] *International protection of human rights and freedoms*: a collection of documents. - Moscow: Legal literature, 1990, p. 385.

[328] **N. Yu. Khamaneva** *Protection of citizens' rights in the sphere of executive power*/ Institute of state and law RAS, Moscow, 1997, P. 75.

[329] The law establishes the fundamentals of administration, regulates the relations arising between administrative bodies and natural or legal persons (hereinafter-person) in connection with the adoption of administrative acts, appealing the actions and omissions of administrative bodies, execution of administrative act, administrative expenses, and compensation for damage caused by the administration, *and we would like to see also the rule of law in matters concerning the child.*

Guaranteeing the state protection of rights and freedoms, Article 61 of the RA Constitution stipulates, "Everyone shall have the right to effective judicial protection of his or her rights and freedoms Everyone shall, in accordance with the international treaties of the Republic of Armenia, have the right to apply to international bodies for the protection of human rights and freedoms with regard to the protection of his or her rights and freedoms"[330].

Undoubtedly, the role of the family is great in the maintenance and protection of the rights of the child. The protection of the rights of family members is carried out in court, and in cases provided by the Code, by the relevant state bodies or guardianship bodies (RA Family Code, Article 7).

The protection of the rights of the child is also carried out by the authorized state and local self-government bodies. The state, through relevant bodies, cooperates with public associations of persons promoting the protection of children's rights (RA Law on the Rights of the Child, Article 3). In general, many lawyers have examined the protection of the rights of the child and the legitimate interests and have studied two directions, prior to the court proceedings and the trial, ensuring the main procedural norms. In this regard, it is possible to look at the system of domestic child protection bodies to determine the role of each and the scope of competence.

Thus, among state bodies, specific bodies for the protection of children's rights are not mentioned in legal acts, that is, there is no single legal body whose main function is to protect the rights of the child. In our opinion, this has both a positive and a negative aspect, for example, by having one separate body for child protection, the state would have a highly specialized structure for the protection of

[330] According to Spanish lawyers, " effective judicial protection is a fundamental right" see: **Diez-Picazo G.** *Reflexiones sobre algunos facedas de derecho fundamental a tutela judicial efectiva* // Cuadernos de Derecho Publico, 2000, No.10, P. 37.

children's rights, however, it would in fact limit the mechanisms for the protection of the rights of the child by restricting the competence of other bodies, and the use of this function by different bodies will contribute to the diverse protection of the rights of the child, ensuring normal participation for the child in different legal relations.

In our opinion, child protection structures are included in the functions of state bodies; it forms a complex system of protection, but when protecting the legitimate interests of the rights of the child, there are often contradictions in the actions of state bodies. The reason for this can be considered the weak mutual cooperation between the RA state bodies in the protection of the rights of the child; it has its reasons:

– First of all, the problem is that in different spheres of law (constitutional, civil, family, administrative, criminal, etc.) there are many normative-legal acts, which are somehow related to the regulation of children's rights, there are approaches, structures and legal regulation , which contain proposals on the implementation of children's rights in various spheres of society, the improvement of childhood-related institutions. However, in modern domestic law, the inter-sectoral-interdisciplinary connection is weakly presented, which in turn hinders the improvement, regulation, filling in the gaps, and overcoming of the contradictions of the legal framework in the implementation of the approaches declared in the interests of children by the legislation[331].

– Secondly, there is the absence of a separate state body called to protect the rights of the child, the gap of cooperation between different bodies. These issues should be addressed by the social protection governing bodies of the population, the governing bodies of education, the guardianship, trusteeship, youth, health management, employment service, law enforcement agencies, ensuring the

[331] **M. V. Nemytina** *Protection of the rights of minors системный systematic approach* // Legal policy and legal life, № 2, 2004, P.59.

expression of the child's lawful behavior and prevention of offenses through joint measures and joint work. However, all branches of the state apparatus, public and local self-government somehow fail to increase the effectiveness of the protection of the rights of the child, excluding at the same time duplication of actions and parallelism[332].

The role of state, public or local bodies in the protection of rights and freedoms are important; the definition of their powers in terms of protection of the rights of the child, but also it is important the very mechanism of protection.

In the legal literature, the category “mechanism” is viewed from different perspectives: “legal regulation mechanism”, “legal mechanism”, “legal mechanism of government”, “legal state formation mechanism”, etc. We pay attention to such terms as are used in scientific circulation, such as “state-legal mechanism for the protection of fundamental rights and freedoms of citizens”, “mechanism for the protection of subjective rights”, “human rights”, “the legal provision mechanism of civil rights and freedoms”.

V. D. Gorobets defines the state-legal mechanism of protection of the fundamental rights and freedoms of citizens as a system of “constitutional legal norms, the structure of state bodies in accordance with the established procedures and principles, different political-legal, socio-economic and socio-psychological factors, forms and methods, ways of implementing legal norms, conditions and means”[333].

The mechanism of protection of subjective right and legal interest, according to V. Butn, it is “a system of legal remedies in unity, through which the restoration of violated subjective rights, protection of interests protected by law, settlement of legal disputes,

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[332] **A. Yu. Bukharov** *Protection of children's rights as one of the global problems of modern world politics*: Diss. Cand. yurid. nauk (12.00.10) Moscow, 2013, P. 203.
[333] **V. D. Gorobets** *Rights and freedoms of citizens under protection state* (review of **V. N. Butylin's** work *"State-legal mechanism of protection of constitutional rights and freedoms of citizens"*, Moscow, 2001) // Journal of Russian law, № 9, 2002, P. 166.

elimination of other obstacles to the exercise of subjective rights are ensured"[334].

"The mechanism of social-legal protection of human rights, A. S. Mordovets writes - is a certain system of factors: that provide the necessary conditions for respect for all human rights and fundamental freedoms arising from the inherent dignity of the human person, essential to his free and full development. The main purpose of such a mechanism is the protection of the subjective rights of the human and citizen and the problems include the protection of the violated rights, protection and restoration, formation of the general and legal culture of the population"[335].

V. I. Abramov understands the system of social and legal cooperation measures used to ensure the rights of children under the mechanism of protection of their rights. Here, we are definitely talking about a system of social and legal protection of children's rights[336].

Moreover, social protection is a system of economic, organizational, legal remedies guaranteed by the state, which provides children with the conditions to overcome the difficult situation of life, and the concept of legal protection can be described as the provision of legal interests through legal means.

The concept of "social protection" is much broader than the concept of "legal protection", as the latter is derived from social protection, as legal remedies are part of the impact of the social regulation system on public relations, including the matters of the protection and defense of the individual[337].

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[334] **V. V. Butnev** *Mechanism of judicial protection of subjective rights and interests protected by law*// Legal notes of the Yaroslavl State University named after P. G. Demidov, Vol. 4, Yaroslavl, 2000, P. 300.
[335] **A. S. Mordovets** *Socio-legal mechanism for ensuring human and civil rights*/ ed. by N. I. Matuzov, Saratov, 1996, P. 86.
[336] **V. I. Abramov** *Rights of the child and their protection in Russia*: General theoretical analysis: autoref, Saratov, 2007, P. 30.
[337] **A. S. Mordovets,** P. 87.

The concept of legal protection can be described as the protection of rights and legitimate interests through legal means.

The system of legal remedies is represented by state bodies, non-governmental organizations, legal and physical persons, who consider human rights activities as their main function or one of their functions. V. Abramov believes that the mechanism of protection of children's rights should be determined by the state and society at five levels: legislative, programmable, administrative, executive and educational. Under the mechanism of legal provision of human and civil rights and freedoms, E. A. Kournoskin understands the "system of legal remedies" aimed at the exercise of subjective rights, freedoms, protection and defense"[338].

According to him, the state and legal provision "exists in order to create optimal conditions for the real realization of human, civil rights and freedoms" of state, local self-governmental bodies, officials, non-governmental organizations, and citizens[339].

Returning to the terms: the "Mechanism for the Protection of the Rights of the Child", the "Mechanism for the Legal Ensurance of Human and Citizen Rights and Freedoms", the "Mechanism for the Social-Legal Protection of Human Rights", the "Mechanism for the Protection of Subjective Rights and Legal Interests", the "Basic rights of a citizen and state-legal mechanism for the protection of freedoms", it should be noted that the authors use different legal categories when discovering their meaning and supplementing them with structural elements: the structure of the right to protection, the structure of the legal provision mechanism, legal, juridical procedures, types of protection of rights, protection of the rights of citizens, level of protection of the rights of citizens, stages of protection of children's rights, the subjects of social and legal

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[338] **E. A Kurnoskin** *State-legal support of human and civil rights and freedoms in the Russian Federation*: author's abstract ... Cand. Yurid. Nauk (12.00.02). SPb. 2000, P. 7.

[339] **E. A Kurnoskin**, P. 8.

protection, etc.Each of these points of view is interesting in its own way and deserves attention. The protection of subjective rights and legitimate interests is done in certain forms and ways.

"Taking into account the protection of the right in the material-legal sense, V. V. Kulapov writes: The nature of his/her protection must be understood under the protection of rights. Second, in the procedural-legal sense, the right to protection is the procedure for carrying out appropriate activities by this or that subject"[340].

It should be noted that during the development of history, there is a clear tendency to increase the number of votes for the protection of rights and legitimate interests, while increasing the availability of those votes for citizens. However, in our opinion, such a tendency can hardly be unconditionally perceived as positive.

The importances of the rights of the child, the multi-vector nature of the state system for the protection of their rights have conditioned the need to create a special mechanism for that protection, which includes:

1) Measures to protect the rights of the child while carrying out activities in the field of education and upbringing. They are carried out on the initiative of the child by forming student associations (organizations), conducting disciplinary investigations into the activities of employees of educational institutions that violate the rights of students, as well as holding meetings and gatherings during extracurricular activities on the protection of the violated rights.

2) Ensuring the rights of children to health care, which are implemented through the provision of free medical care and diagnosis to children including dispensary care, medical rehabilitation of children with disabilities, children with chronic diseases, and the sanatorium treatment of children.

3) The protection of children's legal interests in the field of professional orientation, professional training and employment. This

[340] **V. V. Kulapov** *Protection of subjective rights and legitimate interests of children* (questions of theory): dis. ... kand. the faculty of law. Sciences, Saratov, 2004, P. 46.

type of protection of minors envisages measures for professional orientation and professional training of children over 14 years of age. In case of employment of children over 16 years of age, they are guaranteed a salary, job protection, reduced working hours, vacation, and employees under 18 years of age are provided with benefits, combining work with training, annual compulsory medical examination, etc.

4) Protection of children's rights to rest and recovery, which takes place through the maintenance and development of institutions whose activities are aimed at organizing children's rest and ensuring a healthy lifestyle.

5) The protection of the rights and legitimate interests of children during the construction of social infrastructure. It is carried out through the expert assessment and registration of norms for the construction of social infrastructure facilities for children, the use of these facilities only for direct use.

6) Protecting the child from information or propaganda that is detrimental to his or her health, moral development. It is carried out by taking measures in this direction, including national, class, social intolerance, alcohol and tobacco advertising, promotion of social, racial, national and religious inequality, as well as the distribution of print, audio and video products that promote violence, pornography, drug addiction, poisoning, anti-social behavior, etc. In order to ensure the health, physical, mental, moral and spiritual safety of children, the norms for the distribution of non-intermittent printed products, videos and other products are established. In order to ensure the safety of the child's life, health, morality, protection from negative influences, examination of children's table, computer and other games, toys and game structures (social, psychological, pedagogical, security, sanitary, etc.) is carried out.

7) The protection of the rights of children in difficult life situations is carried out through social rehabilitation, judicial protection of rights and extrajudicial procedures, taking into account

the provision of personal and priority of social welfare, age peculiarities and social status of the child. In this regard, the rights of the child can be protected in various ways and means (economic, organizational, educational, etc.). The powers of the state authorities are to implement the state policy for the interests of children, to solve the issues of social assistance, social services for orphans and children left without parental care, to organize and ensure a healthy rest and healthy lifestyle for such children.

Domestic, national legislation pays special attention to the protection of the rights of children in difficult life situations, which is carried out by state authorities in accordance with normative-legal acts. Children in difficult life situations, children left without parental care, children with disabilities, children with health probems, that is, physical and (or) mental disabilities, victims of armed and ethnic conflicts, environmental and man-made disasters, natural disasters, children of refugee and IDP families; children in extreme conditions, children who have been victims of violence, children serving prison sentences in educational institutions, children in special educational institutions, children living in vulnerable families, children with behavioral disorders, children whose life activities have been objectively disrupted by the circumstances created, who can not overcome these difficulties and circumstances on their own or with the help of the family.

One of the directions of protection of the rights and interests of children in difficult life situations is the activity of state child support institutions, which implement social policy for the benefit of children, that is, they establish the relations and cooperation of the main social spheres, structures, institutions, which can provide the legal, economic, organizational conditions and guarantees for the development of special socio-demographic group of children with special priorities, rights, needs and interests of the population.

Childhood support institutions are educational institutions where orphaned children are kept (taught and (or) brought up),

children left without parental care; such as the social services for the population (institutions for the mentally retarded, people with physical disabilities, social rehabilitation centers for children left without parental care, social housing), institutions for the health care system, and other institutions for the support of children in difficult situations.

Child support institutions admit children in difficult life situations, who need permanent care, social services, medical care, social and occupational rehabilitation due to their health condition, the main problems of these institutions are:

– The care, education and upbringing of children in difficult life situations;

– The preservation of life and strengthening of health;

– The provision of psychological-pedagogical and social assistance;

– The protection of child's legitimate interests,

– The implementation of educational programs and the development of a general personal culture;

– The solving of the problems of social adaptation of the child;

– The social-legal protection of the child and, etc.

Childhood support institutions also aim to develop a socially adapted individual, a person who exhibits legally necessary behaviors useful to society.

Thus, the protection of childhood is the conditions created by the state, which are aimed at providing the necessary conditions for the birth, survival, and protection of children, their full development, the implementation of all its functions by the family in the life of society.

The state of protection of the rights of the child is assessed taking into account the socio-economic situation in the country, the economic and legal potential of the state, which is used for the ensurance and protection of the rights of these entities.

The powers of the state authorities refer to the implementation of the state policy for the interests of the children, the solution of the issues of social support, social services for the children left without parental care, and to the organization and provision of the rest of children.

According to M. V. Shugurov, the promising way to ensure the protection of the rights of the child is not "the definition and consolidation of rights at the national level, but the development of more effective means of cooperation between state and public bodies and other family members aimed at their protection"[341].

It can be assumed that the most important means of protecting the rights of the child is the enactment of the relevant legal norms by the national law, and for their implementation, the establishment of the competencies of the actions of specific bodies.

The modern stage of human development is characterized by the recognition of human rights as the highest social value. Accordingly, one of the primary challenges facing the world community today is the proper ensurance and protection of the rights of the child from violations[342].

The age peculiarities of the child cannot be ignored in law. The law should not only take this feature into account, but also protect them from possible violations of the rights and freedoms of "stronger" adults, as well as limit the influence of "strong" adults on a child's still undeveloped psychology, and the certain legal and civic position.

Ensuring the rights of the child addresses global issues that are of interest to the international community. This is explained by the crucial role of the growing generation in guaranteeing the viability of society and predicting its further development. However, it must be

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[341] **M. V. Shugurov** *International human rights law: problems of doctrinal consensus* // International public and private law, no. 5, 2010, Pp. 2-11.
[342] *International acts on human rights*: sat. Doc. /comp. **V. A. Kartashkin, E. A. Lukasheva**. M.: NORMA, 2000, Pp. 24-38.

admitted that no country in the world can claim the role of a leader in the field of protection of children's rights. Even the most democratic and economically developed countries are characterized by an increase in juvenile delinquency, the existence of low-income families, child mortality due to insufficient health care, and an increase in the plight of children. All these factors prove the impossibility of solving the children's problem only by national means and there is a need to unite the efforts of the world community, which has led to the emergence of domestic, national and international legal institutions for the protection of the rights of the child.

The scientific research of the last century has made a significant contribution to the development of a new policy towards the child. The child was recognized as an independent subject of law with a unique social and legal status. The modern Doctrine views the child as a legal entity endowed with its legitimate interests and rights, the rights and freedoms of which the state, society, adults must respect, preserve and protect in the first place.

The World Declaration on the Survival, Protection and Development of Children states: “The children of the world are innocent, vulnerable, addicted”. They need special help and protection. Adults should lend a strong hand to children, remembering that if today's children grow up, they will reach out to an older adult.

The overall assessment of the situation of children in the modern world is based on the data of the official state reports on the situation of children in the states, and on the “final remarks” of the UN Committee on the Rights of the Child, from the reports of various countries on the progress of the implementation of the Convention on the Rights of the Child, from the analysis of the official statistics of the official statistical committees, as well as from their own scientific research.

Based on this, it can be concluded that despite numerous domestic and national laws, other normative legal acts, drafts on children's programs and programs adopted in recent years, in almost all countries of the world there have been no drastic positive changes to improve the situation of children. Unfortunately, it should be noted that the situation with regard to the condition of children, the protection of their rights is still a well-founded concern, moreover, it threatens the national security of states[343].

Analyzes show that the strategic basis for improving the condition of children is to increase the living standards of the population based on the modernization of the country's economy, the development of the social sphere, which will lead to the effective protection of the rights of the child due to the implementation of coherent measures, financing of the social sphere and significant improvement of state policy measures for the benefit of children[344].

Often, in new socio-economic conditions, the lack of a state-level upbringing concept, the low educational potential of many families, the weakening role of the school civil children's social associations, the growing influence of extremist political-religious organizations, the neglection of the protection of children's interests to meet media consumption standards and many other factors will continue to contribute to the deepening of moral and psychological differences between individuals, as a result of which the protection of the rights of the child and legitimate interests will be pushed to the background, developing the negative manifestations of the society and ideological destructive influences[345].

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[343] The State of the World's Children reports - https://www.unicef.org/sowc/; https://www.who.int/maternal_child_adolescent/ topics/child/rights/; https://www.coe.int/ru/web/compass/children

[344] **D. V. Suslova** *Rights of the child in the modern world* / D. V. Suslova // Problems and prospects of education development: materials of the V international conference. scientific Conf. (Perm, March 2014), Perm: mercury, 2014, Pp. 93-96

[345] **V. I. Abramov** *Children's Rights and their protection in Russia*: General theoretical analysis doctor of law, Saratov, 2007, p. 455.

Concerns about the implementation and protection of the rights of the child are also expressed at the international level. And this is understandable, because the international community is concerned about the condition of future generations, the ability to preserve human life properly.

Moreover, it goes about the system of protection of the rights of the child, including social and legal means, which form the mechanism of protection of rights. The effectiveness of the protection of the rights of the child depends on the use and improvement of such a mechanism[346].

In line with the objectives of this work, it is of interest to discuss issues related to both administrative and judicial protection of the rights of the child. Despite the declared "volumes" of protection of the rights of the child in all spheres of his / her life, from the point of view of the normative elaboration of the law enforcement and protective mechanism, and finally, the real conditions (for which the birth, survival, upbringing, etc. are most typical) this regards mainly to the protection of the family rights of the child envisaged by the provisions of the "RA Family Code".

Family law is based on strengthening the family, building family relationships on mutual love and respect, mutual assistance and responsibility of all family members, the inadmissibility of arbitrary interference in family affairs, the priority of raising children in the family, ensuring the unimpeded exercise of their rights by family members, and, all in all, on the need for judicial protection of those rights.

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[346] **N. V. Kombarov** *Protection of the rights of minors* // Leningrad law journal, 2009, № 4.

The number of parents deprived of parental rights in our society is growing [347]. According to our data, the number of lawsuits for deprivation of parental rights has almost doubled in 2020 compared to 2000. Improper family upbringing, parental drunkenness, alcoholism, family conflict, are the main reasons for children to leave home voluntarily.

According to Article 16 of the Constitution of the Republic of Armenia, the family, as a natural and basic cell of society, the basis for the preservation and reproduction of the population, as well as motherhood and childhood are under the special protection of the state. The main role in the protection of the family rights of the child belongs to the procedure of judicial protection of violated rights. Because, according to Article 14 of the International Covenant on Civil and Political Rights, "in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"[348].

According to Article 61 of the Constitution of the Republic of Armenia, everyone shall have the right to effective judicial protection of his or her rights and freedoms.

This constitutional provision, which applies to all persons, including children, regardless of their age, is enshrined in the current legislation of the Republic of Armenia - the judicial protection of the family's rights and interests is considered to be one of the most important ways to protect his/her rights. Certain means are used to implement judicial protection[349]. There is no common approach to

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[347] See: *Organization of interaction of institutions for prevention of neglect and delinquency of minors to protect the rights and legitimate interests of children*/ Under the hand of **M. N. Mirsagatova**, Moscow, 2000.

[348] International Covenant on civil and political rights (New York, December 19, 1966), article 14// Vedomosti of the Supreme Soviet of the USSR, 1976, No. 17 (1831), P. 291.

[349] By means is meant a device, a method of action for achieving something; an object, a set of devices for carrying out some activity.

the definition of legal (administrative, judicial) protection in the legal literature. According to some scholars, the lawsuit, the statement, the complaint is a means of legal protection [350]. Other scholars believe that the court's decision, the decision of the administrative body, is a means of legal protection[351]. Such a controversy suggests that science has not yet sufficiently studied this concept.

It seems that the means of judicial protection of family rights and interests should mean a set of ways to ensure the restoration (recognition) of the violated (disputed) rights of the child, ie the application of specific methods of protection. To the number of remedies for the protection of the rights of the child should be attributed to:

– The claim (the claim is submitted in case of a dispute over the right, the complaint is in cases arising from administrative-legal relations, the application is submitted to the court in special proceedings);

– The judgment (court decisions differ in terms of publication, appeal procedure, content and in terms of subjects: decisions, absent decisions, court orders, decisions of cassation-supervisory bodies (for which a new decision has been published), a decision to approve a conciliation agreement. The mentioned court documents are united by the fact that they indicate the method of protection (way) used by the court for the restoration (recognition) of the violated (disputed) family rights of the child;

– The cassation appeals;

– The application for review of an absent or additional decision;

– The application for review of the case due to new circumstances, etc.

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[350] See: **V. P. Gribanov** *Limits of implementation and protection of civil rights*. M., 1972, P. 235; **L. L. Dobrovolsky** -*The Claim form of protection of law*. M., 1965, P. 10; **L. P. Sergeev** *Civil law*: Textbook. Vol. 1. SPb. 1996, P. 243.

[351] See: **Z. V. Romovska** *Protection in the Soviet family law*. Lviv: publishing house at the Lviv state University, 1985, P. 30; **M. K. Vorobyov** *Ways to protect civil rights* // The theory of the law. Novosibirsk, 1968, P. 93 and others.

In addition to the “materialized” means of judicial protection, one should not forget about the activities of guardianship bodies during the litigation of disputes related to the upbringing of children, taking into account the opinion of the child during the settlement of the dispute, as well as the participation of the pedagogue and psychologist.

With regard to the development of the requirements of Article 13.1 of the Convention on the Rights of the Child, the legislation of the Republic of Armenia gives the child the right to express his or her opinion in the family when resolving any matter affecting his or her interests, as well as to be heard during any judicial or administrative hearing. It is a mandatory to take into account the opinion of a child over 10 years of age, except the cases when it is against his/her interests.

The Family Code of the Republic of Armenia contains specific articles stating that only the guardianship or trusteeship bodies or the court can make a decision with the consent of a child over 10 years of age. These include: the restoration of parental rights; the consent for adoption; the change of surname, name, patronymic of the adopted child and the registration of adopters as their parents. Moreover, the procedure for obtaining a consent for the adoption of a child over 10 years of age is an exception. According to Article 121, Clause 2 of the Electoral Code of the Republic of Armenia, if the child has lived in the adopter's family before the adoption application, he/ she is considered his/her parent, then the adoption can be made exceptionally without obtaining the consent of the adopted child. It turns out that the secret of his/her birth is exclusively in the best interests of the child.

As for the litigation of deprivation of parental rights, it is obvious that taking into account the opinion of the child is directly against his/her interests, “because the assessment of the situation through the eyes of a child who does not know other parents is not natural, it

is associated with his/her increased suffering. However, it is often the case that the courts question a child as a witness in a case of deprivation of parental rights, or seek to obtain such information through guardianship authorities. Whatever the position of the child will be, even if he is 10 years old, it can not be important for the decision in that case [352].

The child's testimony (explanations) may also relate to the evidence in the case of the restriction of parental rights. The court of first instance shall involve the juvenile's legal representative in the interrogation of a juvenile witness, and a child psychologist or pedagogue shall be involved in the interrogation of minors under the age of fourteen. During the interrogation of a witness under the age of fourteen, persons participating in the case shall be removed from the courtroom if they have a representative, or if their participation may affect the testimony of the witness. The dismissed representative of the person participating in the case participates in the session. If the circumstances on the basis of which the parental rights of the parents or one of them which had been restricted have been removed, the court may decide on the request of the parents or one of them to return the child to his or her parents or one of them, removing the restrictions provided by law. It is noteworthy that taking into account the opinion of a child who has reached the age of ten, the court may reject the satisfaction of the claim, if the return of the child to his parents or one of them contradicts his/her interests.

There is also the issue of clarifying the child's opinion in cases related to the elimination of communication barriers, as it is not solved by the RA legislation. The analysis of the RA legislation suggests that the child's consent (disagreement) has no legal significance in the removal of barriers to communication with the child's parents or legal representatives. As in the cases where the lawsuit on the elimination of communication barriers is being

[352] **A. M. Nechaeva** *Judicial protection of children's rights.* Moscow, 2003, P. 83.

examined the child is not a witness, as A. M. Nechan thinks his/her civil-judicial status has not been determined. In this case, the point of view of the scientist in the best interests of the child can be considered the child's opinion which should be known, if necessary, should be taken into account, but not clarified during the examination of the claim, but earlier during the preparation of the conclusion of the guardianship bodies[353].

As a result, it can be argued that judicial remedies are quite diverse, but in all cases they are aimed at protecting the rights and interests of the child defined by law. Their types are determined by the nature of the legal relationship, the request, the legal status of the child, the decision-making and appeal, content of court decisions, and other conditions.

The protection of the rights of the child under family law is a special area of judicial activity. Its legal basis is the RA Family Code and the RA Civil Procedure Code.

Judicial protection of the rights of the child is carried out directly and indirectly. In the first case, it is about cases directly related to the family upbringing of the child. The following are attributed to them in the various articles of the RA Family Code:

– The determination of the child's place of residence, in case his/her parents live separately,

– The fulfillment of parental responsibilities by a parent living separately from the child;

– Ensuring the child's right to communicate with close relatives;

– The return of the child by other persons to the parents, the adoptive parent or to the care of the guardianship or trusteeship body;

– The deprivation of parental rights;

– The restoration of parental rights;

[353] **A. M. Nechaeva** *Judicial protection of children's rights.* Moscow, 2003, P. 47.

– The restriction of parental rights and their control;

– The abolition of adoption and etc.

The above list of cases in which the court directly protects the rights of the child is exhaustive. Its peculiarity is that the dispute over the right to family upbringing is obvious here.

The indirect judicial protection is provided through family law, for example, in cases of alimony collection, paternity determination. The above list is not exhaustive. In addition, the indirect protection of the rights of the child in the family can be achieved through other branches of legislation (civil, administrative, criminal, labor, etc.).

Thus, if the protection of the rights of the child in court relates to cases of violation of his/her rights in the family, when there is a dispute over the upbringing of the child, then the protection of the rights of the child (especially the one who has lost parental custody is first and foremost involved in the activities of the guardianship body. In this regard, at present, in law enforcement practice, a situation has arisen in which the legal protection, which is mainly provided by guardianship and trusteeship bodies, is a priority in terms of the need to combat the most common violations of child protection. These bodies are authorized by the state to perform protective functions, which are performed in different ways depending on the specific situation. That is why the full protection of children's rights by guardianship and trusteeship bodies requires their close connection, cooperation with the prosecutor's office, police bodies, juvenile commissions, other state and non-governmental organizations.

Unfortunately, in most legislative acts, the main focus is on determining the role of agencies and the scope of their activities, which is related to the distribution of budget funds. However, there is no legal mechanism of liability for cooperation with child protection agencies and non-fulfillment of their functions.

In this regard, the existing system of social assistance services known for the protection of children's rights in some countries is important[354]. Regardless of the type of property, social service institutions include the family: regional child welfare centers, social service centers, social rehabilitation centers for orphans, orphanages, emergency psychological care centers by telephone, nursing homes, and other institutions. Returning to the legislative regulation of the legal interests of the rights of children arising from the constitutional provisions and international legal norms, it should be noted that there are still frequent cases of misrepresentation of the means of protection of the rights of the child in special zones, incorrect reproduction of general legal policy. As it has already been mentioned about the shortcomings of the RA legislation, for example, the normative-legal acts do not consider the measures of strict responsibility of the parents for the upbringing of the child, and their direct responsibility to ensure and implement the child's rights is replaced by the concept of "child support".

The development of the child and the annual sectoral affiliation of the norms of law regulating the mechanism of protection of his/ her legal interests, is not the first time that makes us pay attention to the lack of a common normative-legal act aimed at the complex protection of children's rights. For example, in many countries there is a law on the protection of the rights of the child, which provides the protection of the child's personal rights, property rights, the interests of the child, the rights and interests of the child with disabilities, as well as a liability for the violations of child rights. It is possible to create conditions by normative legal acts, in which case no child will be left without housing, clothes, food, other means for a dignified life, as well as the opportunity to receive high moral

[354] *Report on social protection in the world in the years 2017-2019, Ensuring universal social protection for achieving the sustainable development Goals*, International Labour Organization, 2018.

education, proper physical development, education guaranteed by law, and if necessary provide an appropriate assistance[355].

It is a complex legal normative act clarifying the peculiarities of protection of the rights of the child based on the socio-economic as well as legal guarantees, as well as the cooperation of state institutions, agencies, non-governmental organizations, authorized persons.

Taking into account the international experience of protection of children's rights and interests, in order to protect them more consistently, there is also the institution of ombudsmen in charge of protection of children's rights in different countries, the relevant subdivisions of local, territorial bodies for the protection of these rights, for the effective operation of which it is necessary to observe a number of conditions.

First of all, the ombudsman's independence, that is, the government should not interfere in his affairs, should guarantee the freedom of expression of his views on the policy pursued by state bodies towards children; the right to independently determine the activities of its department. Obviously, if the agency for the rights of the child is set up by the executive body and is accountable to it, then this condition is unlikely to become a reality.

Second, direct contact with children is certainly possible, as the person holding the position must be accessible to children, and information about his or her work must be written in a language accessible to children and disseminated through the media.

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[355] *Report:* European Commission for Democracy Through Law (Venice Commission), On the Protection of Children's Rights: International Standards and Domestic Constitutions adopted by the Venice Commission, at its 98th Plenary Session, Venice, 21-22 March 2014.

Third, there must be an unusual (extraordinary) person in that position, a person of authority, who will be “heard” by the children, who will be “heard” by the members of the government, and so on.

According to the Article 52 of the Constitution of RA, “Everyone shall have the right to receive the assistance of the Human Rights Defender in the event of violation of his or her rights and freedoms, enshrined by the Constitution and laws, on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organizations.

As the Constitution of the Republic of Armenia enshrines the right of everyone to the protection of their rights and freedoms by all means not prohibited by the law, the protection of the rights of children should not be left out of the non-governmental organizations that are called to support the state by fulfilling its responsibilities. These include human rights, charitable and non-governmental organizations. One of the important activities of non-governmental organizations for the protection of children's rights is the organization of forums, conferences, meetings, etc.

Thus, summarizing the above, the following is considered necessary:

1. Expand the legal framework governing the protection of the rights of the child (naturally at a certain level of conscious behavior and physical development), ensuring access to both administrative and judicial protection bodies for violation of his/her rights in accordance with the constitutional principle of equality with other subjects of law;

2. Supporting the idea of introducing the position of International Ombudsman for the Rights of the Child within the UN, in terms of developing the institution of legal protection of minors,

adopt the “Law on the Authorized Ombudsman for the Rights of the Child in the Republic of Armenia”;

3. Prepare the reform of guardianship and trusteeship bodies, at the same time envisage relevant amendments to the Family Code of the Republic of Armenia, clarifying the issue of their relationship with local self-government bodies;

4. Given the complex nature of the protection and protection of the rights of the child, the protection of those rights, in addition to judicial and administrative means, should also include the establishment of civil society institutions, social assistance centers. Hence the creation of an independent service for the protection of children's rights under the state authorities, local self-government representative bodies, which, if necessary, will provide pedagogues, lawyers, psychologists, etc. to provide direct moral, social, legal, material, psychological assistance to children, as well as the involvement of non-governmental organizations, individual citizens, all stakeholders in their work.

3.2. THE LEGAL RESPONSIBILITY OF THE CHILD AND THEIR LEGAL REPRESENTATIVES

The institution of legal responsibility, which is an integral part of the general legal system, occupies one of the most important places in jurisprudence. As one of the means of ensuring the rule of law, the study of legal responsibility according to the subjects is more relevant when it comes to children.

Legal liability, being a form of expression of mutual responsibility between the individual and the state, as one of the essential guarantees of strengthening the rule of law, and as a possible means of protecting the interests of the individual, society and the state, finds its "adequate" expression in the constitutional norms, some types of the latter are studied by the legal sciences[356].

The Republic of Armenia recognizes fundamental human rights and freedoms as an inalienable "highest value"; naturally, the state has a duty to protect citizens, including children, from illegal actions that violate the values protected by law.

Legal liability is usually defined as a legal relationship between a state, in the person of its competent authorities, between an "offender" who is liable for his or her wrongdoing or misconduct[357]. In legal theory, legal liability means the use of state coercive measures for a committed crime[358]. This concept in the same sense is usually applied in the legislation, defining the application of certain restrictive measures (criminal, administrative, disciplinary, property liability) for offenders by legal acts.

Legal liability is defined by a specific legal act, the necessary basis for the implementation of which is an offense - an illegal act

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[356] **N. V. Vitruk** *Speech at the meeting of the round table // State and law.*, no. 3, 2000, p. 21.

[357] *Theory of state and law: Course of lectures*/ edited by **N. I. Matuzov and A.V. Malko**, Moscow: Yurist, 2001. p. 599.; **S. S. Alekseev** *Problems of the theory of law.* M., 1972., T. I., p.371; **V. G. Smirnov** *Functions of Soviet criminal law*, L., 1965, p. 78-79.

[358] *General theory of state and law*/Edited by **V. V. Lazarev**, M., 1994. p. 204; *General theory of law.* A course of lectures/ Under the editorship of **V. K. Babayev**. Nizhny Novgorod, 1993, p. 462.

(inaction) of an individual, which causes (or may cause) harm to the state, society, individual legal entities or individuals.

Legal liability for the offender is expressed in the form of restriction of his/her rights, interests, imposed by the sanction of a legal norm, imposition of additional obligations on him/her. The exercise of the prescribed liability is always ensured by the force of state coercion, and the grounds and procedure for the application of state coercion are regulated by law.

In addition, legal liability is a form of social liability. Social responsibility arises when an individual's behavior is of public importance, and is regulated by social norms[359]. Along with the development of society, certain relations have been formed in people in the form of mutual rights and responsibilities, and only those qualities are characteristic, without which the "phenomena of legal reality (fact, provability, feasibility through legal process) lose their real content"[360].

Legal liability is divided into certain types on its factual basis. The following types of legal liability are distinguished depending on the committed offense and the means of responsibility provided for it: civil-legal, administrative, criminal, disciplinary, material, etc.[361]

At the present stage of the development of jurisprudence, a type of legal liability such as constitutional liability is also distinguished[362].

At the same time, the types of legal liability differ in their specific content, nature, sources and grounds, spheres of influence, scope of subjects, sanctions, peculiarities of the order of application[363], and in order to determine which type of legal liability applies to children or

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[359] Types of social responsibility can be moral, political, professional, legal, etc.

[360] **O. E. Leist** *The Concept of responsibility in law*// Bulletin of the Moscow University: Pravo Series, 1994, no. 1. c. 36.

[361] In addition to the above types of legal liability "classic", legal branch Sciences put forward other types, such as tax liability, etc; **O. Yu. Sudakov** *Grounds and General conditions for bringing to responsibility for violations of legislation on taxes and fees* / / Financial law, 2001., № 1.

[362] See: **R. Kh. Hakobyan** *Problems of constitutional responsibility*, "Iravunk", 2008, p. 26.

[363] See: **R. Kh. Hakobyan**, p. 24.

their legal representatives, it is necessary to study the legal features of each type.

In general, legal remedies are usually applied if the child-rearing responsibilities are properly performed. These include the deprivation of parental rights and their restriction, urgent measures in case of imminent threat to the child's life, etc.

Deprivation of parental rights is considered to be one of the most severe measures of legal influence to protect the legal rights of the child. As mentioned by L. E. Kazantseva the deprivation of parental rights "is a measure of state coercion, the application of which, in the case of property obligations, entails all the rights arising from the parents' kinship with the child, as well as the limitation of their functionality, which is aimed at protecting the rights and interests of children, the rehabilitation of parents, and the prevention of offenses"[364].

Thus, deprivation of parental rights terminates the continuation of the legal relationship between the parents and the children. Parents lose all rights responsibilities except one - they are not relieved of the responsibility to take care of their children. Therefore, when considering a claim for deprivation of parental rights, the court is obliged to resolve the issue of child support at the same time.

Another measure of family-legal responsibility is the restriction of parental rights. Previously, the Soviet Marriage and Family Code did not provide clear boundaries between the grounds for deprivation of parental rights without deprivation of parental rights and the grounds for the return of a child. This gap has been partially eliminated in the Family Code of the Republic of Armenia. The restriction of parental rights is allowed if leaving the child with a parent or one of them is dangerous for him / her regardless of the circumstances of the parents or one of them (mental or other chronic

[364] See: **L. E. Kazantseva** *Duties and rights of parents (replacing their persons) for the upbringing of children and responsibility for their violation.* Tomsk, 1987, P. 62.

illness, severe circumstances, etc.) (Article 63 of the Family Code, part 2).

However, the restriction of parental rights is possible even if the parents' behavior is considered dangerous for the child, but not all the grounds for depriving them of parental rights have been determined. Thus, such a danger can be the environment of the parents, the desire to use the children for social purposes, etc.

As the legal status of the child becomes uncertain by the deprivation of parental rights, the protection of his or her rights and interests becomes more difficult. Therefore, 6 months after the court decision on deprivation of parental rights enters into force, the law authorizes guardianship and trusteeship bodies to file a claim for the deprivation of parental rights in court, if the parents have not changed their behavior (Article 63.2 of the RA EC). And if the grounds for restriction of parental rights are eliminated, the court may, at the request of the parents (one of them), make a decision to lift the restriction and return the child to the parents (Article 66.1 of the RA EC).

The legal basis for taking a child from a parent or surrogate parent may be a decision of the local self-government body, which has revealed the fact that the child is living in a life-threatening condition. The decision should be based on the act on the investigation of the living conditions of the child drawn up by the representative of the guardianship body. After taking the child, the guardianship body must inform the prosecutor about it, provide temporary accommodation for the child, and file a lawsuit to deprive or restrict the parental rights within 7 days.

In many cases, improper parenting responsibilities lead to property damage to third parties. The compensation for the mentioned damage is not connected with the application of family-legal measures. In the mentioned cases, the parents are responsible in the cases envisaged by the norms of the RA Civil Code.

In the legal literature, legal liability (including civil liability) is an obligation to be legally accountable for one's actions[365], and civil liability is considered a sanction for the offender, which causes negative consequences for the offender, depriving him of subjective civil rights or imposing additional civil-legal obligations on him[366].

Thus, civil liability is a form of coercive influence, the application of special civil sanctions, which, in addition to causing unprofitable property consequences for the offender, forces him to fulfill an additional obligation that did not exist before the offense[367].

The civil liability of a child, in general, being endowed with the characteristics of legal liability of other persons, at the same time differs in a number of features, which are connected with being immature, having incomplete capacity.

The Civil Code of the Republic of Armenia stipulates that a citizen's ability (civic capacity) to acquire and exercise civil rights through his/her actions, to create civic responsibilities and to fulfill them, arises in full from the moment he/she becomes an adult, ie from the age of eighteen[368].

According to civil law, certain age standards for children's responsibility are set. Thus, according to Part 3 of Article 29 of the RA Civil Code, in the case of transactions of a minor (from 6 to 14 years old), including transactions concluded by him/her, his/her parents, adoptive parents or guardian are liable for property, if they do not prove that the obligation was not violated through their fault. These persons are legally liable for damage caused by a minor if they do not prove that the damage was not their fault[369]. The legislator has taken the lead in this matter due to the fact that minors are considered

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365 See: **V. A. Tarkhav** *Civil law.* General part, Chebaksary, 1997, p. 273.
366 See: **O. S. Ioffe** *Law of Obligations.* M., 1975, p. 97.
367 **T. K. Barseghyan** *Civil law of the Republic of Armenia.* First part (second edition), Yerevan State University, Yerevan, 2004, p. 454:
368 *"Civil code of the Republic of Armenia"*, adopted by the national Assembly of the Republic of Armenia on 05.051998, article 24, Part 1:
369 In the same place, article 1067, part 1.

incapacitated, therefore, they can not be the subject of a court hearing.

The liability of parents for harm caused by minors is legitimate, given that it is the result of inappropriate parental control over children, irresponsible attitude towards their upbringing or improper exercise of their rights over the child, which caused the damage (indulgence or disorder, encouragement of hooliganism, lack of attention to children, etc.). In other words, the obligation of parents to bear the negative consequences in the form of confiscation of damages is conditioned by their illegal inaction in the upbringing of their children. Thus, the civil law regulation of the parents' liability for the damage caused by the child is intertwined with the family law regulation of their behavior, they are influenced for violating the responsibilities of raising children[370].

In addition, the obligation of the parents, adoptive parents, guardians, educational, upbringing, medical and other institutions to compensate the damage caused to the minor does not cease when the minor reaches adulthood or receives sufficient property to compensate the damage (Part 4 of Article 1067 of the RA Civil Code). On this basis, the parents, adoptive parents, guardians or relevant institutions who have compensated the damage caused by the minor do not acquire the right of recourse against the person who caused the damage[371].

Minors between the ages of fourteen and eighteen shall be jointly and severally liable for property damage (Article 1068, Clause 1 of the Civil Code of the Republic of Armenia). Persons of that age are legally delinquent, ie they are liable for the damage caused to another, they can appear in court as a defendant. This means that the victim has the right to sue the juvenile directly. At the same time, taking into account the property status of the minor, the legislator envisages

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[370] **Ya. N. Shevchenko** *Theoretical problems of legal regulation of civil liability of minors for an offense*. Abstract of dis. Doct. yurid. nauk., Kiev, 1981, p. 19.
[371] See: **T. K. Barseghyan** *Civil law of the Republic of Armenia*, Second part, Yerevan State University, Yerevan, 2001, p. 618.

additional (ancillary) liability of the parents for the damage caused by the minor.

In the event that a minor between the ages of fourteen and eighteen does not have sufficient income or other property to compensate for the damage, the damage must be reimbursed in full or in part by his parents, adoptive parents or guardian, unless they prove that the damage was not their fault. The obligation of the parents, adoptive parents, guardians or the relevant institution to compensate the damage caused by minors between the ages of fourteen and eighteen ceases when the perpetrator becomes an adult or in cases where he or she has acquired income or other property sufficient to compensate the damage before reaching adulthood or he became fully functional before reaching adulthood. In this case, the subsidiary liability of the minor's legal representatives is excluded[372].

According to E. A.Chefranova, the norm of subsidized (auxiliary) responsibility of parents does not correspond to the goals of civil liability - prevention of new violations, restoration of violated rights of victims, punishment of offenders. When a minor under the age of 17 is a learner, the property liability for the damage caused sometimes fully borne by the parents, and in order to compensate the damage, the minor is released from civil liability due to lack of earnings, income or property[373].

In this case, the definition of non-subsidiary but share-responsibility of parents and children (in case of harm caused by the latter) is correct in the legislation. It will allow both the direct cause of harm and the persons responsible for controlling it to be affected at the same time[374]. On the other hand, despite some preventive effects on minors, the definition of parent-child share responsibility may to some extent weaken the parental responsibility for the upbringing of

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[372] In paragraph 4 of article 1068 Of the Civil Code of the Republic of Armenia, instead of "full legal capacity", "legal capacity" is written, so the idea is not fully expressed.

[373] See: **E. A. Chefranova** *Legal Personality of minors in the Soviet civil law.* Abstract of dis. Cand. yurid. nauk., Moscow, 1978, p. 17.

[374] See: **E. A. Chefranova,** In the same place, p.18.

children. Which is more preferable in modern conditions, the proper fulfillment of parental responsibility, or the realization and realization of the independent responsibility of minors at an earlier age? We believe that both are preferable.

The liability of the parents for causing harm to the child is defined by the RA Civil Code, but sometimes the law cannot provide exhaustive answers to some naturally occurring questions.

Thus, as already mentioned, according to Article 1068, Clause 3 of the RA Civil Code, "The liability for damage caused by minors aged 14-18" is the responsibility of the parents, adoptive parents, guardians or the institution to compensate the damage caused by a minor aged 14-18. It ceases as soon as the person causing the damage reaches adulthood, or in cases where sufficient income or other property has been incurred before reaching adulthood, or when he or she has become fully functional by the time he or she reaches adulthood. At the same time, according to Part 4 of Article 1067 of the RA Civil Code, "The liability for damage caused to minors under 14 years of age" is defined as compensation for damage caused to minors by parents, adoptive parents, guardians, educators, medical and other institutions. This obligation is not terminated as soon as the minor reaches the age of majority, or if the minor receives sufficient property to compensate for the damage.

Here are some questions. It is not clear why the legislator tries so hard to delimit juniors and minors, without setting the necessary age limits[375].

Besides, after reading Article 1067, Clause 4 of the RA Civil Code, it is assumed that a minor (in the sense in which he / she applies the legislation, ie a person under 14 years of age) can reach adulthood at once, while it is known that at the age of 14, the child ceases to be a minor, and by the time he or she reaches adulthood, 4

[375] Article 29 of the Civil Code of the Republic of Armenia is entitled "Legal capacity of minors under the age of fourteen", which may have been "legal capacity of minors between the ages of 6 and 14", defined by paragraph 2 of the same article, and the content of article 30 shows that the concept of "minor" is typical for persons between the ages of 14 and 18.

years must be passed. As a result of incorrect wording on reaching the age of majority of a minor, the rule of law does not apply in practice. Then, if in this case we make the only possible conclusion that the legislator in both norms meant the same obligation of the parents (adoptive parents, guardians, etc.) to compensate the damage caused by the minor, which is applicable to the same group of persons under 18 years of age (that assumption is based on the feature of "reaching adulthood" used in both norms, which defines the change of the obligation to compensate the damage to the parents (adoptive parents, guardians, etc.), then it becomes incomprehensible, why in the presence of the mentioned feature, that obligation is terminated by Article 1067 of the RA Civil Code, and it is continued by Article 1068 of the same Code.

In analyzing the civil law provisions governing parental responsibility[376], we would like to draw attention to the fact that the RA Civil Code omits the issue of compensation for damage caused to minors, as well as minors, in case of deprivation of parental rights of the compensating parents, cancellation of adoption or guardianship, and in case of the damage caused by children[377] there is no question of compensation.

In our opinion, the definition of the mentioned civil-legal norm of parental responsibility testifies to the great importance given by the legislator to the conscientious fulfillment of their responsibilities to bring up their children.

The results of the review of civil liability remedies allow us to draw conclusions that the commission of any crime by children, as a rule, is a consequence of domestic or non-domestic violation of their parents' responsibilities to bring them up, the non-application of legal

[376] See: **G. H. Karakhanyan** *Family law of the Republic of Armenia*. Textbook for higher education institutions, Yerevan University press, 2005, p. 234-274; **T. K. Barseghyan** *Civil law of the Republic of Armenia*, Part two, Yerevan University press, Yerevan, 2001, p. 616-621:

[377] The age of child adulthood on the part of medical, psychological, pedagogical, legal Sciences is set from the moment of birth to 5-6 years.

norms to their children, and non-use of measures to protect their children's rights and interests.

It has been repeatedly stated in the legal literature that such a differentiated approach to minors (the emergence of legal responsibility in different age groups) is considered insufficiently justified in both administrative and civil rights[378].

The social and physical characteristics of the child's personality, in turn, dictate the need to have special norms for the regulation of his/her responsibility in legal acts.

Children are not only responsible for violating family and civil law, but the liability may also arise for violating the norms provided by administrative or criminal law.

A feature of their criminal-administrative responsibility is their social nature.

The child, as a rule, enters into certain relations with the state authorities, because the rights and the interests protected by law are violated, or there is a need to bring the juvenile offender to legal liability. That is why the organizational relations formed in different spheres of human activity, no matter how closely they are connected with the relations with the participation of the child (juvenile legal relations), are regulated by the norms of administrative law, in which the method of subordination prevails.

Thus, the norms of administrative law (as well as criminal law) regulate the relations between the child and his/her legal representatives and the judiciary in bringing juvenile offenders to legal responsibility.

The basis for administrative liability is the commission of an administrative offense by a minor. As it is known, Article 12 of the RA Code[379] on Administrative Offenses provides for the possibility of

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[378] **L. G. Kuznetsova**, **Ya. N. Shevchenko** *Civil legal status of minors*. M., 1968; **E. A. Chefranova** Decree, work. P. 10; **D. A. Kerimov** *Personality and legal state*// Law and education, 2003, № 5.

[379] The Code of the Republic of Armenia "On administrative offences" is a normative legal act adopted in the Soviet period, in 1985, and is still valid and has been amended by the legislative body more than 600 times.

bringing to administrative responsibility those persons who have reached 16 years of age at the time of committing an administrative offense. It turns out that compared to civil law, administrative law sets a slightly different age limit for liability.

Persons under the age of 16 are considered incapable of being held accountable for their actions and, consequently, of committing an administrative offense, are released from any liability.

In legal practice, it has been repeatedly stated that the differentiated approach to minors (the emergence of legal responsibility in different age groups) in administrative and civil rights is considered insufficiently justified[380].

And indeed, if a minor's level of consciousness allows him/her to understand the significance of his/her actions in marriage, in making deals, in causing harm, then why can't he/she understand the significance of the administrative offense he/she is committs? After all, the ability of a minor to understand the significance of his/her actions does not change itself depending on what legal norms, in which branch of law his/her actions will be evaluated. It is necessary to eliminate these discrepancies during the further improvement of the legislation. For most administrative offenses with juvenile offenders, there is a special procedure for hearing cases in the Juvenile Commission. Taking into account the specific circumstances of the case and the data on the offender, the commission for the protection of minors and their rights can release him from administrative responsibility, apply measures of influence to him provided by law. The procedure for the formation of commissions and the exercise of their powers shall be established by national legislation. At present, the mentioned commissions operate in accordance with the procedure envisaged by the Charter of

[380] See: **T. A. Smagina** *Administrative and legal regulation of the rights and legitimate interests of minors*: dis. for PhD in law. Saratov, 2012; **E. V. Pokachalova, T. A. Smagina** *Legal interests of minors as an object of administrative and legal regulation* // Bulletin of the Saratov state law Academy (additional issue), № 85, 2012, P. 98-102.

"Guardianship and trusteeship bodies" approved on the basis of the RA Government Decision N 631-N of June 2, 2016.

The "RA Code on Administrative Offenses" stipulates the establishment of administrative liability for minors. Article 13 of that Code, which regulates the issue of juvenile liability, is in a deplorable state both in relation to the legal acts of liability and in the enumerated articles which establish liability in the event of a misdemeanor. According to the mentioned article, the persons envisaged by the charter of juvenile cases, regional (city), regional city councils, executive committees, commissions, approved by the presidency of the Supreme Council of the Republic of Armenia during the Soviet years, should apply to persons who have committed administrative offenses between the ages of sixteen and eighteen. In case of committing administrative offenses provided by Articles 53, 123-131, 160, 172, 173, 182, 190-193 of the Code, persons between the ages of sixteen and eighteen shall be subject to general liability. However, it should be noted that six of the listed articles (1232, 1245, 127, 129, 130, 172) have been declared invalid. Moreover, taking into account the nature of the misdemeanor and the person of the offender, the cases of the mentioned persons, except for the cases provided by the Code, may be submitted to the examination of the non-existent regional (city), city council committees, juvenile cases commissions. Moreover, in accordance with the current Code, minors between the ages of sixteen and eighteen may be subject to administrative liability on a general basis in other cases directly provided by the legislative acts of the USSR[381].

According to Article 178 of the RA Code on Administrative Offenses, there is an administrative legal responsibility for the malpractice of parents or their substitutes for malicious fulfillment of the responsibilities of raising and educating minor children, the use of drugs by minors without a doctor's prescription or other offenses

[381] See: **R. Yeghyan** *Problems of reform of legislation on administrative offences*. State and law, no. 1 (63), 2014, pp. 6-8.

committed by them, such as petty hooliganism or hooliganism committed by adolescents between the ages of fourteen and sixteen; in cases when teenagers under the age of sixteen are drunk in public places, as well as when they use alcohol.

It is noteworthy that these two provisions are defined by the Code:

- One of the mitigating circumstances for an administrative offense is that the offense was committed by a juvenile (Article 33 of the Code);
- The involvement of a minor in an offense is an aggravating circumstance for liability of an administrative offense (Article 34.3 of the Code).

In our opinion, the normative legal acts on administrative offenses by a child or his/her legal representative may provide all means, methods, means, as well as the powers of the relevant bodies, which are called to investigate and prevent administrative offenses in interlocutory proceedings.

It is also important that in the Republic of Armenia the provisions concerning juveniles in the field of administrative justice are a little different. According to Article 4 of the RA Code of "Administrative Procedure", the legal capacity and judicial capacity - the ability to have procedural rights, the ability to carry out judicial duties (procedural jurisdiction) is recognized for all natural and legal persons equally. Judicial capacity for full-fledged persons arises from the moment of becoming eighteen years old or from the moment of recognizing a minor fully capable (emancipation). Minors between the ages of fourteen and eighteen, as well as persons with limited legal capacity, are represented in court by their legal representatives. In cases provided by law, minors between the ages of fourteen and eighteen may represent their interests independently. In such cases, the court may include their legal representatives in the proceedings.

The rights and freedoms of minors under the age of fourteen, as well as persons recognized as incapacitated, are represented in the

proceedings by their legal representatives - the parent, guardian or other persons having such a right by law. Minors between the ages of fourteen and eighteen, as well as persons with limited legal capacity, have the right to be heard during the hearing. The court may grant the right to be heard during the examination of the case to a minor under the age of fourteen or to a person declared incapable.

It should not be overlooked that as a powerful administrative institution, administrative responsibility is quite widely used in the system of legal responsibility. In this regard, having special legal features of administrative responsibility, in particular, as a means of ensuring the rule of law, a special normative legal basis - conditions of application, administrative offense as a precondition for administrative liability is applied to individuals and legal entities, authorized legal bodies (officials) and by the court. By the way, studies have shown that in some countries (USA, Great Britain, France, Germany, Japan, etc.) the institute of administrative responsibility can be a guarantee for both public administration and effective functioning of state power[382].

Criminal liability, as the most severe form of legal liability, arises from the most significant offenses - the commission of a crime. Crimes in the Republic of Armenia and their punishment, as well as the circumstances under which the responsibility arises, as it is known, are defined in a single regulated act, the RA Criminal Code.

With the entry into force of the RA Criminal Code in 2003, its General Part included a whole section on the specifics of juvenile criminal liability (Section V).

To clarify and ensure the means of protection of human rights and civil liberties proclaimed by the Constitution of the Republic of Armenia, the Special Part of the Criminal Code of the Republic of Armenia contains Section VII: “Crimes against humanity”, which includes Chapter 19 “Crimes against the constitutional rights and

[382] **R. Yeghyan** *Problems of reform of legislation on administrative offences*. State and law, no. 1 (63), 2014, p. 15.

freedoms of a citizen" and Chapter 20 "Crimes against the interests of the family and a child".

The independence of the juvenile criminal liability department is primarily due to the psychological characteristics of such offenders, which should take into account that the punishments against them should be of a special nature. The existence of a separate chapter (Chapter 14) on the specifics of juvenile criminal liability (punishment) is due to the importance given to this issue by the society, the specificity of criminal measures applied to juvenile offenders, the need for precise definition of deviations from the general rules of criminal liability. The definitions (measures) fully comply with the constitutional principles of criminal liability, such as the presumption of innocence, the inadmissibility of double punishment, the maximum general public and legal control over the administration of justice for minors, etc. Highlighting the peculiarities of juvenile criminal responsibility, the RA Criminal Code proceeds from the fact that a number of provisions of the General Part of the Criminal Code either specifically regulate the responsibility of minors or apply to minors. For example, in the case of a recidivism, convictions for crimes committed before the age of 18 are not taken into account (Article 22 of the Criminal Code); being a minor at the time of committing a crime is considered as a mitigating circumstance (Article 62 of the Criminal Code). In case the norms of the General Part of the Criminal Code in terms of the subject of criminal regulation coincide with the norms of the chapter on juveniles, the latter are applicable as special norms, which solve these problems for minors in a more favorable way than the norms for persons over 18 years of age[383].

Another reason for the emergence of special norms regulating the responsibility of minors in the criminal legislation was the objective factors of the socio-economic situation in Armenia, which to

[383] See: **A. R. Margaryan** *Features of sentencing and other means of criminal legal influence in relation to minors,* "Bulletin of Yerevan University. Jurisprudence", Yerevan, no. 1 (22), 2017, pp. 55-61.

some extent strengthen the criminalization of the juvenile environment.

From 1993-2016 the share of juvenile delinquency in total crime in Armenia has fluctuated from 2 to 7 percent. The study of official statistics proves that in 1993 compared to 2016 the share of juvenile delinquency in the structure of general crime has sharply decreased from 3.3% to 2%, in the case when in 2007 that figure was 6.7%.The study suggests that the number of juvenile delinquency cases in Armenia is officially declining, but this is not due to the effective work of law enforcement agencies, the value system of juveniles, and the improvement of moral views, but it is a consequence of the increase in the latency of other juvenile delinquent behavior and decrease in the share of juveniles in the population[384].

Of particular concern is the use of weapons or objects that serve as weapons in juvenile delinquency. According to the data provided by the Information Center of the RA Police, the proportion of crimes committed with firearms has decreased, making 0.4% of the total crime in 2015, compared to 1.07% registered in 2003, and in juvenile delinquency, respectively 0% and 0.36%, but according to the information provided by the same source, in 2003-2015 there were 100 cases of robbery committed by minors, of which 37 (37%) used a weapon or an object serving as a weapon. On the contrary, it must be assumed that in such a case a non-firearm weapon was used. The factor of more frequent involvement of minors in the illegal trafficking of weapons also appears as a result of the study of the official statistics of the Republic of Armenia, that is, there has been registered a 2.5-fold increase in the criminal acts in question. 8 such cases were registered in 2003, while in 2015 - 20 cases (the coefficient was 0.249 in 2003 and 0.667 in 2015). These indicators

[384] See: **A. R. Margaryan** *Juvenile Criminality in the Republic of Armenia (1993-2016),* "Bulletin of Yerevan University. Jurisprudence", Yerevan, no. 2 (23), 2017, pp. 71-83.

show that juvenile delinquency is undergoing qualitative changes, turning into a more dangerous phenomenon[385].

It is noteworthy that in May 2020, the Government of the Republic of Armenia submitted to the National Assembly of the Republic of Armenia the draft of the new Criminal Code of the Republic of Armenia, which has rather reformed the provisions of juvenile criminal responsibility.

In particular, the 5th section of the draft of the new RA Criminal Code fixes the peculiarities of criminal responsibility of minors under the age of twenty-one:

– The objectives and types of punishment imposed on juveniles (Chapter 15 of the Draft Criminal Code of the Republic of Armenia);

– The imposition of punishment on juveniles under the age of twenty-one (Chapter 16 of the Draft Criminal Code of the Republic of Armenia);

– The exemption of minors from criminal liability of persons under the age of twenty-one (Chapter 17 of the Draft Criminal Code of the Republic of Armenia);

– The peculiarities of releasing juveniles persons under the age of twenty-one from punishment (Chapter 18 of the Draft Criminal Code of the Republic of Armenia).

The draft of the new Criminal Code of the Republic of Armenia, taking into account the peculiarities of that age group, provides opportunities to solve the problem of juvenile delinquency.

According to Article 99 of the new draft Criminal Code of the Republic of Armenia, a minor who has committed a crime within the meaning of the Code is a person who has reached the age of fourteen at the time of the crime, but has not reached the age of eighteen.

Thus, the minimum age of a juvenile as a special participant in criminal law is 14 years. A child under the age of 14 is not subject to criminal liability. Moreover, the legislator proceeds from the fact

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[385] See: **A. R. Margaryan** *Problems of combating juvenile delinquency in the Republic of Armenia*, Hayrapet Ott., Yerevan, 2017, p. 25.

that the child, the minor, can not fully realize the factual nature of his actions (inaction) - public danger or its management. The legislator finds that only after reaching the age of 14 (16) does an individual reach a certain level of physical, psychological and social maturity, gaining the ability to answer for or regulate his actions, which is a condition for the need to be prosecuted. The general development of the person should allow him/her to correctly perceive the criminal punishment, to change his/her own behavior under its influence. On the one hand, minors aged 14-18 reach a fairly high level of development (they develop independence, the ability to control their behavior), on the other hand, further socialization of the individual takes place (continuing or finishing school or other educational institution, accumulates experience in interpersonal relationships). The listed age peculiarities conditioned the limits of a number of exceptions and additions to the responsibility for minors in comparison with the general rules of opportunity.

Thus, according to Article 23, Part 3 of the current Criminal Code of the Republic of Armenia, if a person has reached the age of 14-18, but due to mental retardation has not been able to fully realize the nature and significance of his action or to manage it, then he is not subject to criminal liability. We are talking about the so-called “age unconsciousness”.

The mentioned approach towards such children is correct and fully complies with the principle of justice and personalization of responsibility enshrined in Article 10 of the RA Criminal Code, according to which the punishment applied to the perpetrator and other means of criminal influence must be fair, commensurate with the gravity of the crime; the circumstances of the perpetrator, the personality of the offender, must be important and sufficient to correct him and to prevent new crimes.

According to Article 100 of the draft of the new RA Criminal Code, the types of punishment imposed on juveniles are:

– The fine;

– Public works;
– The deprivation of the right to be engaged in certain activities;
– The restriction of liberty;
– The short-term imprisonment;
– The imprisonment[386].

The minimum or maximum term or amount of the sentence imposed on a juvenile who has committed a crime may not exceed one third of the maximum or minimum term or amount of the sentence provided by the relevant article of the Special Part of the Code or part of the Article. The minimum or maximum term or amount of the sentence imposed on a person who has committed a crime from the age of sixteen to eighteen shall be reduced by one second. If, during the application of the above rules, the term or amount of the sentence is less than the minimum term or amount provided by the given type of punishment, a sentence with the received term or amount shall be imposed.

Due to the fact that juvenile delinquency is often related to non-fulfillment of their parenting responsibilities, One of the peculiarities of influencing juvenile criminal liability is the definition of compulsory measures of educational influence in the legislation instead of punishment. When sentencing a juvenile, the principles envisaged by the Code are taken into account, as well as the conditions of their life and upbringing, level of mental development, state of health, other features of the person and the influence of other persons on them.

It is considered expedient to analyze the possibility of applying the above-mentioned types of punishments to a minor. In particular, the fine is applied in the case of the juvenile's own income or property that can be confiscated as a real measure of punishment, but is rarely used in practice, as juveniles often do not earn the property on which the confiscation could be directed. It's true that, in some countries the fine can now be confiscated from parents (or other legal representatives) with their consent.

[386] https://www.e-draft.am/projects/496.

The period of public works assigned to a juvenile may not exceed two hours per day for juveniles under the age of fifteen at the time of sentencing, and three hours per day for juveniles under the age of sixteen to eighteen. Minors may not be engaged in activities that endanger their physical or mental development or health. In case of avoiding or refusing public works, it is replaced by short-term imprisonment or imprisonment (Article 102 of the draft Criminal Code of the Republic of Armenia).

A short-term imprisonment for a juvenile shall be imposed on a juvenile only if a milder form of punishment cannot contribute to the achievement of the purposes of the sentence. For a minor crime, as in the case of committing a crime for the first time, which is a moderate crime, no short-term imprisonment is imposed on a juvenile (Article 103 of the Draft Criminal Code of the Republic of Armenia).

The detention and punishment in the form of imprisonment are the most severe form of punishment[387]. The detention as a measure of short-term imprisonment does not apply to minors aged 14-18.

The imprisonment of a juvenile is an exceptional measure of punishment, which is imposed only when no other means can ensure the realization of the goals of the punishment. For a minor crime, as in the case of committing a crime for the first time, which is a moderate or serious crime, not accompanied by violence, an imprisonment is not imposed on a juvenile (Article 104 of the Draft Criminal Code of the Republic of Armenia).

Compared to adults, male juveniles are not allowed to serve their sentences in very special prisons, as well as in prisons; the punishment of female juveniles is imposed only in general regime prisons; juveniles do not serve their sentences in colonies as well[388].

In our view, the view is true that, in addition to the need to keep the convicted juveniles and adults in separate places, it is also

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[387] See: **I. N. Alekseyev** *Conditional sentence in criminal law*. Rostov N/D: Phoenix, 2007, p. 10.

[388] See: **V. A. Bystrov** *Criminal liability of minors in Russia and abroad*. Young scientist, no. 8.1, 2016, Pp. 3-5.

required to serve the sentence of juveniles separately in educational prisons, depending on the type of crime committed and the objective composition.

The peculiarities of the application of criminal liability to juveniles allow us to conclude that the criminal activity of the competent state structures is important during the suppression of juvenile delinquency in Armenia. The last place in this work is not occupied by their legal representatives, who are the parents, adoptive parents, guardians, trustees of the minor, but by the representatives of the organizations or institutions under the custody of the minor.

However, the liability for crimes against minors under criminal law is not severe enough. In the United States, immoral acts against children are considered a grave crime, for which a sentence of up to 45 years in prison is imposed[389].

In the final documents of the UN Committee on the Rights of the Child, published as a result of the XXII session of the UN General Assembly of October 8, 1998, Armenia was instructed to take all necessary measures to accelerate the process of legislative reform, including pornography and violence, in the field of child protection, both in the family and outside of sexual exploitation[390]. The answer to this instruction was the use of the new RA Criminal Code from August 1, 2003, after which the draft of the new RA Criminal Code was put into circulation today, which will improve the peculiarities of juvenile criminal responsibility and punishment.

At the same time, the current insufficient orientation of the legislation on education should not lead to a call to the state to refrain from imposing coercive measures on minors at all. The need

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[389] With regard to responsibility for child prostitution and pornography, the Belgium imposed a penalty of 10 to 15 years in prison years (for minors up to 16 years) and for a period of 15 to 20 years (for children up to 10 years). Currently, the legislation is more one-third of European countries (Belgium, Finland, Norway, etc.) prohibit any, including voluntary, sexual contacts between adults and children under the age of 16. In some countries the protection of the sexual integrity of minors is increased up to 18 years (France, Sweden, Canada, Hungary, Denmark, Greece, etc.) .

[390] http://www.hro.org

for a comprehensive scientific approach to the issue of establishing a reasonable balance in the upbringing of minors through the efforts of law enforcement agencies and child-educational institutions in punishing children is becoming apparent. Today, the legal scope of measures to influence children is catastrophically small, largely limited by criminal law, as there is no other legal basis on which to include non-punitive measures.

Apparently, one of the main goals of the sentence is to correct the convict, to warn of new crimes, which has a special meaning when the offender is still a child. However, as it is known, the existing correctional system is less adapted for educational purposes. On the contrary, once you are there, given the time limit and the conditions are “cellular” (the existence of constant close communication environment with its unique “Code of Honor”) the chances of the child being corrected in any way are slim. Moreover, the return to a normal social environment is not even perceived by a minor as desirable for him/her. One of the most important means for that is the additional legal and psychological elaboration of the classification of the child's act as being socially dangerous and the size and the term of the sentence, as well as the type of correctional institution should depend on it. In any case, the more differentiated (of course, within reasonable limits) such an assessment is, the better the chances of the child being corrected or rehabilitated are.

Thus, the issues related to juvenile criminal responsibility and its peculiarities directly and indirectly raise the issue of establishing juvenile justice in the Republic of Armenia; that is, the creation of a certain system of state legal institutions, whose activities are aimed at protecting the legitimate rights and interests of the child (which is discussed in the next paragraph).

The formation of a sense of responsibility in a person is established before reaching adulthood. Ignoring the issue of the responsibilities of minors in the legislation, we “teach” them care and childishness. Moreover, there is no notion of “non-fulfillment” of law

in jurisprudence. As a result, both the society and the children suffer. It is another matter that the main amount of responsibility is placed on the adult and it is necessary to fix the limit of the responsibility of minors. The legal status of a child is characterized not only by a special procedure for exercising their rights, but also by a special procedure for liability due to the limitation of their legal obligations (along with the full recognition of the rights of minors)[391].

As for the constitutional-legal (state-legal) responsibility, it arises towards a state body or an official, or an adult citizen. Since, in particular, there have been talks recently of a proposal to involve minors in the electoral process, endowing them with the right to take an active part in the electoral referendum, and then the prospect of such liability of minors is not ruled out [392].

As a result, certain conclusions can be made.

1. The legal liability of minors, being generally endowed with the legal liability of other persons, at the same time differs in a number of features, which are conditioned by their legal subjectivity.

2. The responsibility of the parents for the damage caused by the minor is ultimately conditioned by the lack of proper upbringing and supervision over the children. The definition of parental responsibility testifies to the importance given by the legislature to the conscientious fulfillment of their duty to bring up minors.

3. In modern conditions, the proper fulfillment of parental responsibility is no less important than the realization of responsibility and self-fulfillment by minors at an earlier age. The responsibilities of minors as well as adults should "walk" in line with their rights, thus forming the core of their legal status.

Based on the above arguments, it is necessary:

– Envisage amendments to Article 1067 of the RA Civil Code, removing point 4 from it: "The obligation of the parents, adoptive

[391] **A. M. Nechaeva** *Family law:* textbook for bachelors. 6th ed., reprint. and add. M.: Yurayt, 2013, P. 178.
[392] See: **A. A. Yashin** *Constitutional and legal bases of youth participation in voting (in elections and referendums).* Abstract dis. ... Cand. yurid. nauk. M., 1997, P. 9.

parents, guardians, educational, upbringing, medical and other institutions to compensate the damage caused to the minor does not cease when the minor reaches the age of majority or receives sufficient property to compensate the damage.";

– In the RA Civil Code, in particular, in Articles 29, 30, 309, 1067, 1068, to delimit the age group of the child (minor: 6-14 years old, minor: 14-18 years old);

– To fix in the Civil Code of the Republic of Armenia also sanctions for compensation for damage caused by children (up to 6-year-old children);

– Envisage changes and improve the child's administrative liability and measures of influence, normative-legal acts defining the powers and competencies of the relevant bodies in this matter.

3.3. JUVENILE JUSTICE AND THE PROSPECTS OF ITS DEVELOPMENT

The most significant changes in the justice system, manifested in the establishment of specialized courts or the expansion of general jurisdiction, occurred in periods of social crisis or transition (for example, at the turn of the XIX-XX centuries, during the "Great Depression" in the United States, etc.). In many countries, the creation of an independent juvenile justice system, juvenile justice, was an example of retreating from the "classic" version of judicial protection[393].

Juvenile justice as a justice system and was established in the United States. Such judicial institutions exist in different countries of the world, but the founder of juvenile justice, as a system of courts, auxiliary correctional institutions, is rightly considered America. The founding date for juvenile justice dates back to 1899, when the first juvenile justice courts, the Juvenile Courts, were established in Chicago (Illinois state), , and Denver (Colorado state), the purpose of which was to prevent juvenile delinquency and rehabilitate juvenile offenders[394].

The founders of juvenile justice believed that juvenile delinquency should be different from adult delinquency and to serve the sentence separately from adult offenders. The establishment of such a court was a recognition of the peculiarities of the legal status of juvenile offenders, to whom the issues of accountability can best be addressed by a justice system different from that of juvenile offenders[395].

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[393] **O. Vedernikova** *Juvenal justice: historical experience and prospects* // Russian Justice, № 7, 2000, P. 51-52.
[394] **B. Feld** *In re Gault revisited: A cross state comparison of the right to counsel in juvenile court* // Crime and Delinquency, Vol. 34, № 1, 1988, P. 393–424.
[395] **E. N. Smith** *The juvenile justice system as the main direction of the criminal the policy of the state towards minors.* // Issues of judicial reform: law, Economics, management, №1, 2009, P. 33.

The analysis of the latest scientific publications on the protection of the rights of the child has revealed the tendencies of the development of the solution of the problems of the unfavorable status of children in the modern society. Most of them are about the history of the creation, development, restoration of the courts, that is, the justice itself [396].

In the practice of law, the justice on juvenile cases (the juvenile justice) has traditionally been assessed from two perspectives, the first as a tool for combating juvenile delinquency, as a way of protecting the rights of minors and legitimate interests, a way to protect them from unfavorable living conditions. These two approaches reflect the content and goals of juvenile justice. As they are practically inseparable, it leads to the elimination of the boundary between the functions of judicial protection and the fight against crime.

The main task of this type of justice is to ensure the informal procedure of maximum careful treatment of juveniles, taking into account the physical, mental, individual and age characteristics of juveniles, as well as to realize a flexible criminal justice system of non-custodial influence.

Juvenile justice, being a rather complex organization (in order to protect and rehabilitate a juvenile in the event of a conscious inevitability of punishment for an act), tries to develop all possible concepts to find various effective ways of influencing the juvenile. The principled peculiarity of the formation under consideration is also reflected in the connection between the legally organized state court system and the definition of personalized child custody, which led to the emergence of a unique way of working with juvenile offenders,

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[396] **V. Boytsova, A. Golovan, N. Shamsutdinov** *Juvenile justice-protection for orphans* // The Russian justice, 1998, no. 8. P. 42; **Yu. E. Pudovochkin** *Juvenile criminal law: concept, structure, sources* // Journal of Russian law, 2002, No. 3, P. 44-52; **F. Bagautdinov** *Juvenile justice begins with a preliminary investigation* // The Russian justice, 2002, no. 9, P. 43-45; **L. I. Belyaeva** *Domestic experience of juvenile justice (beginning of the XX century).* Journal of Russian law, 2003, No. 1, P. 135-138 and others.

under the influence of which, the very system of criminal justice for juveniles was actually reconstructed.

Here, we agree with the definition of justice suggested by E. B. Melnikova, “It is a judicial system that administers justice in juvenile cases, has problems with the protection of juvenile rights, legal interests, as well as problems with criminal prosecution on juvenile delinquency and crimes”[397].

In 1914, based on US experience, a juvenile court was established in France, where the concept of juvenile justice was later developed into a more elaborate legal framework. The peculiarity of this was that the juvenile courts began to operate on the basis of criminal procedure norms, at the same time as the development of separate juvenile courts, together with both the sole judge and the jury, the board of trustees was set up to deal with the issues of offenders and children under 12 years of age. Such councils were included in the system of civil jurisdiction. The modern juvenile justice system in France is regulated by Law No. 45-174 of 2 February 1945 on Juvenile Delinquency. The main tasks of this law are the administration of juvenile justice (fight against juvenile delinquency, effective protection from criminal harassment of children, youth, etc.), as well as the fact that the law defined the specifics of the criminal liability of minors. The law of December 23, 1958, on children at “risk group” stipulated that the possibility of judges' intervention and the institution of judicial protection apply to all children whose health, safety, morals are compromised, and their upbringing is endangered [398].

Judges have a responsibility to protect children in difficult situations and to investigate the cases of juvenile offenders. Moreover, the transfer of such cases to courts of general jurisdiction

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[397] **E. B. Melnikova** *Juvenile justice: problems of criminal law, criminal procedure and criminology*: Textbook. Moscow: Delo, 2000, Pp. 112-113.

[398] **M. Sadovnikova** *How does the juvenile justice system in France.* Almanac "Slavery". Appendix to the journal "Index / Dossier on censorship" // Rossiyskaya Gazeta [2012-2012]. Date of update: 01. 08. 2006. [Electhrone resource] URL: http://index.org.ru/nevol/2006-8/sadov_n8.htm/ Date of access: 10.11.2013.

is inadmissible, as all types of juvenile offenses are subject to the jurisdiction of juvenile courts only. Although the main goal of juvenile justice is to protect the rights of minors as fully as possible, it should not be overlooked that the French system is not as flawless as it seems at first glance[399].

At the beginning of the last century, the system of "Children's" courts of the Soviet states differed by the following features. The first was that juvenile cases were heard alone by a special judge; second, it was the observance of the general rules of criminal proceedings; third, the court was required to oversee child care facilities for juvenile delinquents. Juvenile justice, at the time, was distinguished by the secrecy of the trial, the absence of formal court proceedings, including a formal indictment, a simplified trial (which consisted mainly of a judge-juvenile interview in the presence of a guardian), and the use of custodial control as the primary means of influence. In 1918-20 this model was abolished, juvenile commissions were set up, to which the courts were in fact subject to, and the participation of lawyers in those commissions was reduced to a minimum[400].

It was ony in 1964 that the Plenum of the USSR Supreme Court passed a decision authorizing the people's courts to try juvenile cases, and the need for judges to become specialized was discussed, but special courts did not emerge[401].

At present, juvenile justice does not exist in the Republic of Armenia as an independent subsystem of general justice. However, we can talk about the scientific and practical preconditions of the

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[399] **Yu. M. Cherniyenko** *Juvenile justice: pros and cons*, Scientific notes of young researchers, Pravo, no. 2-3/2013, p. 55.

[400] In 1935, the CEC and the SNK of the USSR decreed the age of responsibility for juvenile offenders were reduced to 12 years, and children could again be subjected to all types of punishments, including the death penalty. In order to increase the responsibility of children and parents, commissions on minors were abolished. In 1941, by decree of the Presidium of the Supreme Soviet of the USSR, minors were brought to justice not only for intentional crimes, but also for crimes committed by negligence. Both legal acts were in force in the USSR until the end of the 50s, to a certain extent setting the tone for the entire system of Soviet justice.

[401] See: **L. Pustyntsev** Will the Russian juvenile justice system? Conversation with Chairman of the Board of juvenile Affairs of Saint – Petersburg of the Petersburg city court by N. K. Shilovym // Russian thought. Paris. no. 4338. 2000, October 26.

concept of juvenile justice. Methodological and experimental publications, conferences and seminars and other activities aimed at identifying juvenile justice issues and offering solutions are considered.

The Juvenile Justice Council has been functioning within the structure of the RA Ministry of Justice since 2015 [402].

Juvenile Justice Council of the RA Ministry of Justice:

– Serves as a platform for cooperation of stakeholders for the development of sector policy, submission of proposals, implementation of programs and coordination;

– Raises and discusses the issues in the field of juvenile justice;

– Supports the implementation of the Sector Policy in the Republic of Armenia with the participation of minors;

– Discusses and submits proposals to the competent bodies on the action plans, draft legal acts, reports submitted on the results of their implementation in the field with the participation of minors;

– Develops Action Plans for the sector, including for the prevention of juvenile delinquency, justice for children, access to services, and other services;

– Studies the domestic and international-legal regulations of the sphere, develops and submits proposals to the competent bodies in connection with the prevention of juvenile delinquency, related to the implementation of programs aimed at improving public services;

– Provides suggestions for ensuring effective cooperation between state bodies, sectoral councils and other stakeholders related to minors;

– In order to provide minors with an accessible environment it rganizes public awareness events, equal and normal conditions[403].

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[402] The Juvenile Justice Council operates in accordance with the regulations and other legal acts approved by the order of the Minister of Justice of the Republic of Armenia No. 188-a dated may 11, 2018:

[403] https://forchild.am/hy/page_list/ashkhatakargi_havelvats/#sthash.sONWwiJx.dpbs

Juvenile justice, as a juvenile justice system, must specifically address the issue of liability for offenses committed, ie the issue of remedies or punishment. Since justice is a type of state activity aimed at discussing and resolving various social disputes related to factual or alleged violations of legal norms, accordingly, juvenile justice deals with the restoration of rights that have already been violated (or that offense is presumed not to change its substance) where the child is either the victim or the accused[404].

In our opinion, juvenile justice is a complete system of protection of the rights of minors, which includes all the components of the fight against offenses and crime[405].

The protection of the rights of the child should be based on the legally enshrined rights and freedoms that form the core of his or her legal status. From a legal point of view, discussing any area of public relations that interests us, the issue is studied from the legal point of view of defense or liability for offenses, which are also defined by legal norms,and we study the consolidation of legal acts, individual norms of law, ie the whole legislative body that regulates specific public relations. When it comes to the subject of law, the essence and content of its legal status is defined by the legal status, which characterizes its position in relation to the state, its bodies and other persons.

There are many normative acts regulating the relations with the participation of a child in the legislation of the Republic of Armenia. Armenia is trying to solve the problem within the framework of the current reforms in the field of justice. The fundamentally amended Criminal Code, the Criminal Procedure Code, the legal acts regulating the activities of the State Probation Service are more progressive than

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[404] **E. N. Smith** *The juvenile justice system as the main direction of the criminal the policy of the state towards minors.* // Issues of judicial reform: law, Economics, management, №1, 2009, P. 33

[405] It is appropriate to recall that the juvenile justice system, to a certain extent as a social and legal guarantee of the rights of the child, judicial protection of minors has historically emerged in civil law, not in criminal law. See: **E. B. Melnikova** *Juvenile justice: problems of criminal law, criminal procedure and criminology,* 2000, P. 28.

the existing laws and contain separate provisions on juvenile justice, but this is not enough. The Convention on “the Rights of the Child” requires the participating states to develop and implement a comprehensive juvenile justice policy. The international experience shows that it is more effective to create separate legislation. Many countries follow this path and neighboring Georgia also has the Juvenile Justice Code, which was adopted in 2015.

We need a comprehensive state policy, at the institutional and legislative level and, most importantly, we need political will and serious investments to make it happen. Otherwise, any reform could become artificially forced.

The peculiarity of the mentioned acts is expressed in the special object of their direction - the attitude of the children, who become the main subjects of the formed legal relations. The adoption of this legislative set of “children's law”[406] is conditioned by the new socio-economic situation in Armenia, the common problems of the state in ensuring the survival, development and upbringing of the growing generation.

As it is known, the status of minors is regulated by the norms of different fields of law, in particular, family, civil, criminal law, etc. Taking into account the status of the child, the realization of his / her fundamental rights and freedoms, as well as the institution of protection of the rights of the child, it is possible to raise the issue of establishing an independent scientific field studying the legal status of minors in all spheres of public relations under the conditional name (juvenile) [407]. The structure of the legal regulation of relations with the participation of minors is possible only on the basis of the Constitution, the basic provisions of human rights and freedoms. For the development of the child's physical, mental and moral

[406] The concept of "children's law" is known to Soviet law. See, for example: Children's law of the Soviet republics: Collection of current legislation on children. Kharkiv: Legal publishing house of the people's Commissariat of the Ukrainian SSR. 1927.

[407] "Juvenus" (Latin) means "young, minor". This is the meaning of the term "juvenile" given in English dictionaries, Oxford and Webster.

components, the system-building legal algorithm for managing the child's development and upbringing process must be found in the “legal field” of the state,without reducing, but emphasizing in the family, as in a more natural environment, the decisive importance of his upbringing,

Juvenile law presupposes the exclusion of a certain type of public relations (a relationship in which at least one of the parties is a child, ie a person under the age of 18). The mentioned relations, according to their subjective composition, are special; in this case, the subject of research will be:

– Public relations, which arise during the exercise of the rights and freedoms and legal obligations of the child as an independent subject of legal relations, or his / her legal representative;

– the conditions for ensuring the proper status of the child and the order in the relations which, by different branches of law, have been settled to one degree or another, in which the child as a participant is opposed by the adults;

– Types of juvenile legal liability, rights and procedure, including those related to the establishment and operation of juvenile justice.

In the general context of juvenile delinquency, juvenile law is concerned with relationships that, by their very nature and social significance, require direct legal influence in which, due to the underdevelopment, the child is less able to defend his or her rights and legitimate interests as effectively as the other party, ie. the adult. The relationships subject to legal regulation include the most important stages of a juvenile's life and activity, which are related to the emergence, exercise or termination of the most significant rights enshrined in the Convention “On the Rights of the Child”, which require a clear legal regulation.

The object of research is not the child as such, but the existing social relations in which he or she becomes a direct or indirect mediator (through legal representatives, etc.). These relationships

also allow us to understand the need to establish a special legal status for the child.

At present, the word “juvenile” is used quite often when discussing the problems of the rising generation, and it is used not only in combination with the word “justice”. During the investigation of a criminal case, the body conducting the proceedings, in addition to the circumstances subject to approval in all cases, in the cases of juveniles shall find out:

1) age (day of birth, month, year);

2) life and upbringing conditions;

3) State of health and general development (Article 440 of the RA Criminal Procedure Code)[408].

When talking about juvenile law, as a general term for children under the age of majority, it is important to consider the types of juvenile delinquency, the forms and methods that give rise to the need for juvenile law[409].

The juvenile legislation is characterized by the role of the guardian of democracy, which protects the juvenile governance system, protects the interests of the subjects of the juvenile-governance process. As we can see, the term "juvenile", its universally accepted and well-known use, on the one hand does not contain the necessary explanatory component, and on the other hand, proves that this definition has firmly entered in the vocabulary of lawyers and politicians.

Along with the debate on the subject of juvenile law, the emergence of juvenileology as “science, knowledge about youth” is also of interest. Juvenology is a complex interdisciplinary science about the development and maturation of man in the dialectical unity

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[408] See: **S. A. Dilbandyan** *Features of the proceedings on the crime attributed to the minor dilbandyan at the stage of completion of the preliminary investigation*, State and law, N 2 (80), Yerevan, 2018, p. 70.

[409] **V. F. Vorobyov** *Juvenile legislation-a democratic means of humanizing public administration* // Actual problems of administrative and administrative-procedural law. Collection of abstracts of articles. Moscow: Moscow University of the Ministry of Internal Affairs of Russia, 2003. P. 44-45.

of social, spiritual and vital sources, his emergence as a full member of modern society[410]. This spectrum includes research and substantiation of medicine, pedagogy, psychology, sociology, economics, history, as well as other scientific directions. In the structure of juvenile science, in private theories by E. G. Slutsky, the last one was called juvenile law.

There are researches in which it is proposed to introduce a new concept in the legal science – "youth law"[411], legislating definitions such as "dangerous for moral development", "morally dangerous scenes", "dangerous source of moral influence", "public places with limited access", etc. In our opinion, in this situation, it would be expedient to present the legal concept and description of "youth" as its sociological nature is obvious.

Undoubtedly, the concept of juvenile law is known to jurists only due to the etymology of the word and Roman law. In abroad, where juvenile justice issues[412] are addressed in parallel with juvenile justice[413] research, child rights advocacy practices are studied in detail by our lawyers, human rights defenders and social workers. Naturally, in that case it is necessary to take into account the differences between the legal systems of Armenia and other countries, the peculiarities of historical development, the modern socio-economic situation, as well as the aspiration of Armenian jurists to "formulate an abstract resolution on the subject of settlement"[414].

Thus, child law in England was developed in the second half of the twentieth century, due to the growing public interest in human

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[410] **E. G. Slutsky** *Youth policy: History. Problems. The prospects*. Saint Petersburg: ISEP RAS: national Academy of juvenile science, 1999, P. 10-11.
[411] See: **M. S. Narikbayev** *Criminal and legal protection of children in the Republic of Kazakhstan*. Diss. ... Doct. yurid. nauk. M., 1997; **Yu. V. Truntsevsky, A.V. Sumachev** *Rights of the child and the sex industry (the younger generation of Russia needs state protection from the corrupting influence of immoral products)* / / State and law. no. 2, 1999, Pp. 97-103.
[412] The definition of juvenile law is not clearly defined; it is mainly about "children's" legislation.
[413] See: **Jasper, Margaret C.** *Juvenile Justice and Children's Law*. Dobbs Ferry, N.Y: Oceana Publications, 1994.
[414] *Soviet state and law* / under the editorship of **I. E. Farber**. Saratov, 1979, P. 39.

rights in general, the recognition of the interests and needs of each member of the family.

The first work to prove the recognition of the right of the child in the system of other branches of English law was Clark, Holly-Morrison's1934 book[415], "The Right concerning children and minors". And although the concept later became widely used in ordinary law textbooks, children's law gained academic recognition only in the 1970s.

According to English lawyers, experts in the field of family law, the development of children's rights was proceeding at a rather high pace[416]. In this regard, some important legislative acts were passed in England: "the Law on Human Fertilization and Embryology" (1990), "the Law on Child Care" (1991), "the Law on Child Protection" (1999), "the Law on Child Care, Pensions and Social Protection" (2000), "the Law on Adoption and Children" (2002), etc.

There is an opinion that the development of children's rights is conditioned by the increase of state intervention in the family, because in case of abuse of rights by the child's parents, no one but the state can protect him/her. Moreover, the state is interested in ensuring the welfare of all citizens, including children [417].

Although there is no definition of a child in English law[418], its scope includes substantive issues (adoption, protection of the rights of the child, powers of the state over minors, development of new technologies in the field of human reproduction, financial and property issues in the event of divorce, etc., parental responsibility[419] in case of abuse of parental rights), as well as issues of procedural law, in particular the representation of the child during the trial. Child law, according to the authoritative scholar S. Cretney in the

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[415] See: **Clarke, Hall and Morrison**. *Law Relating to Children and Young Persons*. 2nd Edn.L., 1973.
[416] See: **K. Standley** *Family Law*. 2nd Edn. L.: Macmillan, 1997, P. 1.
[417] See: **G. Douglas** *Introduction to Family Law*. Oxford, 2001. P. 72
[418] English law, historically established as a case law, practically does not know clear legal categories, they are output every time from a specific case.
[419] See: **K. Standley** Op.cit, P.34.

field of English family law is becoming more and more specialized in the practical field [420].

There is a lot of attention paid to children's rights in the United States, but there is no juvenile code [421].

In China, the rights of the child are enshrined in a separate line of the state constitution. Thus, Article 46 of the Constitution of the People's Republic of China stipulates that the state ensures the comprehensive moral, intellectual and physical development of youth, adolescents and children[422].

The theory of human intellectual development presupposes a biological diagram of the development of the stadium, where the adult man is considered a fully developed and fully "human" figure. On the other hand, a child is defined in terms of "lack", some deficit. This approach has had a major impact on the perception of the child and childhood in science and in educational theory and practice of the twentieth century[423].

The above allows us to raise the question of juvenile law as a direction of scientific research, a scientific research to answer the practical need to improve the situation with children. For its further development, certain economic, political, social and legal conditions must become mature, which will allow the children's problem to take its rightful place in the system of the concept of state and legal development of each state.

The interrelationship between the legal status of a child and his / her judicial protection, the realization or provision of which is possible within the framework of certain legal models, it presupposes rules of special jurisdiction and trial. And such a model has already

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[420] See: **Cretney S., Masson J. M., Bailey-Harris R.** Op. cit., P. 691.
[421] See: **Gardner, Martin R.** *Understanding Juvenile Law*. New York; Matthew Bender, 1997.
[422] The Constitution of the People's Republic of China (adopted at the 5th session of the national people's Congress of the fifth convocation on December 4, 1982, its text was amended by the same body at the annual sessions in 1988, 1993 and 1999, article 46).
[423] See: **Matthews, Gareth B.** *The Philosophy of Childhood*, Cambridge: Harvard University Press, 1994.

been established and is successfully operating in many democratic, developed countries [424].

The judicial system in the Republic of Armenia is not so ready to guarantee its right to a timely, efficient and impartial investigation of a criminal case against a child, which is enshrined in the Convention on the Rights of the Child (Article 40). Due to the increase in the total number of court cases, the number of criminal cases initiated against minors due to the lack of judges (in 2019 alone, the RA courts examined 46 cases involving minors)[425] sometimes are being examined for several years, and minors wait a long time for their fair verdicts, often during that time they become adults.

These circumstances dictate the means of combating juvenile delinquency, such as legal theory, legislation, the composition of criminal justice, including the establishment of independent juvenile courts or specialized judges in the courts of general jurisdiction, that is, the need to review the radical improvement of juvenile justice through the establishment of juvenile courts. The jurisdiction of the juvenile courts should include all issues and disputes related to the violation of the rights of the child envisaged by the Constitution of the Republic of Armenia and the relevant legal acts.

Unfortunately, in the Republic of Armenia no initiatives have been taken so far to develop legislative proposals dedicated to the principles of juvenile justice organization, regulation and submission to the National Assembly.

In the 1990s, a draft law on Family and Juvenile Courts was drafted by a working group of scholars and law enforcement officials in the Soviet Supreme Council. It was assumed that these courts could take over the examination of civil cases related to child care (upbringing, alimony, deprivation of parental rights, paternity, etc.);

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[424] The growth of child crime in the late X1X-early XX centuries. It was an impetus to change the system of justice for children. As a result, in 1931, juvenile courts already existed in 30 countries (in Great Britain - since 1908, France and Belgium - since 1912, Spain - since 1918, Germany - since 1922, Austria - since 1923 and so on).

[425] http://court.am/hy/statistic-inner/185.

juvenile delinquency and administrative offenses; as well as trials of crimes committed by adults that disrupt the normal development of children (domestic violence, involvement of minors in criminal activities, etc.)[426].

It was proposed to put the responsibility of consistently analyzing and summarizing child protection law enforcement practices to the family and juvenile courts carried out by state bodies and officials. The establishment of such specialized courts was planned in stages over several years on the basis of courts of general jurisdiction. Unfortunately, with the collapse of the Soviet regime, this bill was not approved, although many post-Soviet countries tried to submit draft laws on "Juvenile Justice" to their legislatures.

These projects predetermined the prospects for the further development of juvenile justice in many countries. In this connection, it seems important to mention the features of juvenile justice, or the principles of juvenile justice, one of which is the restorative provision[427]; social orientation, personalization of the trial and its closedness; the principle of educational influence. At the same time, it is necessary to remind about the unique features of juvenile justice, such as the unity of all stakeholders and its complex systemic nature of regulating their activities; preventive direction; special requirements for a judge: professionalism, flexibility, high morals, authority and other characteristics.

The need for legalization of juvenile justice is evidenced by the problem that arises in the event of a conflict between the interests of the juvenile and his or her legal representative. On the one hand, the current legislation expresses the high, primary legal protection of the juvenile in court through the right of dual representation of the

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[426] See: **V. G. Prosvirnin** *On the current understanding of the juvenile judiciary*, Russian Academy of Justice, No. 2(15), M., 2013, Pp. 172-183.

[427] Restorative justice is a worldwide movement for restorative reorientation of criminal justice in General. More about this: **X. Zer** *Restorative justice: a new view on crime and punishment*: General ed. **L. M. Karnozova**. M.: MOO Center "Judicial and legal reform", 1998; Center "Judicial and legal reform": formation and development of the organization. M., 2003.

juvenile's advocacy. On the other hand, in this case, one should not overlook the dual nature of the legal status of the legal representative (protection of his /her own and minor interests), which requires a clearer legal formulation of the priority of the minor's interests.

The urgency of the introduction of juvenile justice in the Republic of Armenia is expressed in numerous strategic documents, which have been discussed and adopted by the Government of the Republic of Armenia: in particular, the 2017 decision of the Government of the Republic of Armenia "On approving the Strategy of Judicial and Legal Reforms of the Republic of Armenia for 2018-2023 and the resulting Action Plan" included:

– The problems of developing effective mechanisms for comprehensive protection of the legal rights and interests of minors: In order to effectively protect the rights of minors, it is necessary to take steps to improve the legislation aimed at regulating the participation of children in court proceedings, as well as in the field of justice in the field of rehabilitation of children who have witnessed crime and violence and the introduction of protection services;

– The issue of ensuring access to juvenile justice. The strategic goals of this direction are aimed at the establishment and development of structures ensuring access to justice[428] for juveniles, the introduction of structures for the protection of the rights of offenders, victims and witnesses under the legislation of the Republic of Armenia, as well as the ensurance of their practical applicability.

– The problems of juvenile justice, criminal punishment system, re-socialization and, etc.[429].

The instructions on the reform of the juvenile justice system of the Republic of Armenia also follow from the international legal documents: from the "Convention on the Rights of the Child" (Article

[428] **Diez C. C.** *El acceso a la justicia en Espana*, 2017, URL: Lfc.dpz.es/recursos publiciones/29/19/carnicer.pdf. P. 16.
[429] https://www.e-draft.am/en/projects/1900/justification

40.3) and the UN Minimum Standard Rules on "the Administration of Juvenile Justice" (Beijing Rules, paragraph 2.3).

Guarantees of juvenile rights and legitimate interests must be ensured at all stages of criminal proceedings. Particular attention is paid to Article 7.1 of the United Nations Minimum Standard Rules on the Administration of Justice for Minors ("Beijing Rules", adopted by UN General Assembly Resolution 40/33 of 29 November 1985). This international document pays special attention to the termination of criminal proceedings against minors, in particular, in accordance with Rule 11.1, when examining the cases of juvenile offenders, as far as possible, one should not turn to the formal investigation of the case by the competent authorities referred to the Rule 14.1. According to the interpretation of this provision of the Beijing Rules, the termination of a case, including the removal of a case from criminal proceedings, and often the transfer to the ancillary services of those communities, is often used in many legal systems on formal or informal grounds. This practice allows us to limit the negative consequences of juvenile justice (for example, the stigma of conviction and sentencing). In many cases, the best result is the non-interference[430] of the competent authorities. Thus, it may be more effective to terminate the case at the outset without transferring it to alternative (social) authorities. This is especially true in cases involving non-serious violations, when the family, the school and other institutions carrying out informal social control have taken or intend to take appropriate constructive measures of influence. Beijing rules pay special attention to the family control factor, ie the family has the right of priority over the juvenile in the event of termination of the criminal case or termination of the criminal prosecution. According to Beijing Rule 18.2, "No juvenile may be removed, in

[430] See: ***Bugnion F.*** *Les enfants-soldats, le droit international humanitaire et la Charte africaine des droits et du bien-etre de l'enfant*» // La Revue africaine de droit international et compare. 2000, T. 12, № 2, P. 266; ***Happold M.*** *Child Soldiers in International Law:* Th e Legal Regulation of Children's Participation in Hostilities // Netherlands International Law Review. 2000. Vol. 47, № 1, P. 30.

whole or in part, from parental control unless justified by the circumstances of his/her case". Rule 18.2 mentions the important role of the family, which, in accordance with Article 10.1 of the "International Covenant on Economic, Social and Cultural Rights", is considered the "natural, fundamental cell of society". Within the family, parents not only have the right, but also the obligation to ensure the care and control of their children. According to Rule 18.2, the separation of children from their parents is considered an extreme measure. It can be applied only in cases when the facts of the case justify that serious step (for example, child abuse, etc.)[431].

The possibility of expanding the list of courts operating in the Republic of Armenia is enshrined in the RA Constitution and the introduction of the institute of specialized justice, among others, aims to ensure, first of all, through the specialization of judges, the efficiency of the exercise of the right to judicial protection in the given field; and completeness, taking into account the peculiarities of this type of justice. The establishment of specialized courts stems from the need to administer proper justice in regard to relations arising in certain spheres of public life. Judges specialize in administering justice in certain categories of cases; in this case, the probability of judicial error is very little. Therefore, the normal, full-fledged functioning of this institute requires that the factor of specialization be clearly expressed in all courts with jurisdiction over this type of case[432].

In our opinion, the possibility of establishing a juvenile court will close the gap in the field; the reform of the juvenile court system will pursue the solution of the following problems:

1) Reform of the juvenile court system through the establishment of juvenile courts in the structure of courts of general jurisdiction;

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[431] **S. Dilbandyan, N. Aghababyan** *Some issues of termination of proceedings in criminal cases and termination of criminal prosecution*, "Bulletin of Yerevan University. Law", № 3 (18), 2015, Page 31-32.

[432] *"Legal positions expressed in the decisions of the RA Constitutional Court and their implementation"*, Guide-manual, Volume 1, Yerevan, 2016, p. 279.

2) Development of social technologies (introduction of new social professions and programs) during the development of the juvenile justice model;

3) Creation of a complete concept of juvenile justice by merging juvenile litigation into a unified system of social and legal structures.

The solution of the first of the mentioned problems is not possible without (in terms of introducing juvenile courts in the judicial system of the Republic of Armenia) the “Judicial Code”, making changes in the Constitutional Law of the Republic of Armenia, as well as making “additions on juvenile courts in the Republic of Armenia”. In this respect, the example of our neighboring Republic of Georgia is remarkable. In September 2019, the “Draft Code of the Rights of the Child” was submitted to the Parliament of the Republic of Armenia, the aim is to “ensure the welfare of the child by facilitating the effective implementation of the Constitution of Georgia, the Convention on the Rights of the Child, its Additional Protocols” and other internationally recognized international legal acts. Achieving this goal contributes to the solution of various issues, including:

– The realization of children's rights and freedoms;

– Take into account the best interests of the child, protect his dignity, ensure the welfare, safety, life, health, education, development of the child and other interests without unequal treatment;

– To ensure the participation of the child, to prepare him / her for independent living in the society, to bring up a child with high moral values, especially in the spirit of peace, dignity, tolerance, freedom, equality and solidarity;

– The orientation to respect the child's homeland, mother tongue, traditional cultural values of the native country;

– Protection and support for the main cell of society, the family, as a particularly important environment for the upbringing and welfare of a child;

– Focus on child's labor and healthy lifestyle as a necessary precondition for the development of society;

– Focus on child's volunteering as a necessary element of civic activism and society solidarity[433].

In a sense, it can be said that juvenile justice issues in Armenia will also have their history. Moreover, the UN Committee on the Rights of the Child has also instructed to carry out comprehensive judicial reforms in the administration of juvenile justice. However, the recommendations for the development of alternative ways of caring for orphaned children in orphanages and children deprived of families (developing procedures and mechanisms for reviewing child complaints of inhuman or degrading treatment or assisting NGOs in activating children's rights) remained unresolved, as juvenile justice reforms in the Republic of Armenia are currently limited to the formation of a "Juvenile Justice Council" within the Ministry of Justice.

In this regard, the draft Federal Constitutional Law "On Juvenile Courts in Russia" is of interest, according to which the juvenile court system includes:

– Juvenile Judicial Board in Juvenile Cases of the Supreme Court of the Russian Federation;

– Supreme courts of the republics, regional and provincial courts; federal courts of cities, uvenile judicial panels in juvenile cases of autonomous regions and district courts, which are formed from the presidencies of those courts, as necessary;

– Federal juvenile judges (supervised and under newly discovered circumstances as a court of first and second instance, specialized courts hearing cases against minors)[434].

Under the draft, juvenile cases are heard by federal juvenile judges alone, and in higher juvenile courts by three specialized

[433] https://matsne.gov.ge/ka/document/view/4613854?publication=1

[434] See: *Draft Federal constitutional law "On Juvenile courts in the Russian Federation"* // Questions of Juvenile Justice. № 1, 2001.

judges. The bill envisages the establishment of juvenile judicial panels within the system of courts of general jurisdiction adjacent to the supreme courts of the republics, the courts of the regions, districts, the courts of federal significance, the courts of the autonomous region and it is recommended to carry out a pilot introduction of juvenile courts.

The development and strengthening of the judiciary as an independent branch of government is the aspiration of every democratic state: the creation of conditions for its independent and effective activity, ensuring the protection of freedoms under international treaties, increasing the efficiency of the judiciary, the optimal legal and logistical provision of the judiciary creation is relevant and required today.

Unfortunately, there is almost no talk of establishing juvenile courts in the Republic of Armenia, respectively, no funds are provided for that purpose. It is only a matter of proposing the creation of special juvenile bodies (courts or specialized judges) in the system of courts of general jurisdiction, and these requirements are presented by child rights organizations or individuals conducting scientific research. The introduction of juvenile justice will require not so many financial resources as voluntary and organizational efforts within the judiciary.

In fact, many events[435] have been organized in the Republic of Armenia in recent years on the need to specialize in juvenile justice, which were attended by government officials, lecturers, judges, lawyers, law enforcement officers, scientists, representatives of international organizations and NGOs. It was discussed that the investigation of juvenile cases in Armenia is not at a proper level at present, although there are some legislative regulations, but there are many problems in applying practical mechanisms in the field.

[435] "Juvenile justice; two-day scientific and practical conference "possible ways of development", organized by YSU faculty of law, November 28-29, 2018.

As for the creation of a social technology system, it will ensure the social fulfillment of work with children. From this point of view, a great role is played in the formation of joint program-targeted activities of state and non-state structures.

Finally, for the effectiveness of the protection of the rights and freedoms of the child enshrined in the Constitution of the Republic of Armenia, the formation of a unified juvenile justice system will be of great importance, as it has a complex inter-branch jurisdiction. In this connection, the draft laws on juvenile justice, built in accordance with the broader understanding of the juvenile justice system, (which includes not only juvenile courts, but also other institutions, including child rights authorities, juvenile rights commissions, as well as non-governmental non-profit organizations involved in the implementation of rehabilitation programs, etc.), are aimed at the cooperation of various state, local self-governmental and public institutions dealing with children's issues on the foundations of juvenile justice legislation and juvenile justice system.

In our opinion, it is necessary to propose the creation of a juvenile justice system in two stages through bills, based on the personnel, financial and other opportunities of the Republic of Armenia, using both new and previously developed methods of social-legal services for juveniles, but only jointly developed for this specific area, within the framework of a scientifically substantiated program.

It turns out that juvenile justice as justice on juvenile cases (where the juvenile courts are central) is considered only as one of the legal mechanisms for ensuring the rights of the child. In addition, in the above definition, the sociological meaning of juvenile justice prevails over the legal one, while in matters of the legal interests of the minor, the priority is given to the court’s decision.

Ensuring the functioning of specific operational units of the juvenile justice system should be within the competence of state and local self-governmental bodies, which will allow to increase the responsibility of local self-governmental bodies for the upbringing of

children, their rest and work; to set free the system of justice, police, education and other bodies from their unusual operations; to minimize sanctions against minors; to significantly reduce the financial and other state budget expenditures for the correction and rehabilitation of juveniles in conflict with the law.

All services within the juvenile justice system - institutions, including educational colonies - must go through *state accreditation procedures* in accordance with the law. For the development of the juvenile justice system, it is important to envisage the elaboration, discussion and adoption of the legislation on juvenile justice by the National Assembly of the Republic of Armenia.

It can be assumed that the adoption of the Law on Juvenile Justice in Armenia at the initial stage will require large financial resources, in particular, for the qualification and training of judges and other specialists, taking into account the nature of providing and furnishing inter-branch and additional buildings for juvenile jurisdiction. On the other hand, these costs will ultimately be reimbursed by reducing juvenile delinquency and simplifying their practice of crime prevention.

Given that juvenile justice in Armenia is under active study, a number of theoretical and practical issues are becoming relevant.

In the administration of juvenile justice, the goals that the competent authority should pursue are specific. In particular, Article 5.1 of the Beijing Rules states that “the juvenile justice system shall, in particular, ensure the welfare of the juvenile and to ensure that any measures taken against juvenile offenders are always commensurate with both the nature of the offender and the circumstances of the offense”. It follows from this provision that in the administration of justice in the case of minors, the following must be guaranteed:

1. The purpose of ensuring the welfare of the juvenile, which means to avoid a purely punitive effect, to prescribe criminal measures in response to the crime, which will meet the needs of the

juvenile offender, guarantee the requirement to act in the "best interests of the child".

2. The purpose of ensurance of the "principle of proportionality", which presupposes the ensurance of a balanced response of what happened: the gravity of the offense, the nature, the characteristics of the offender (health, social status, mental development, maturity, family circumstances, living conditions, etc.), post-crime behavior (for example, smoothing or compensating for the damage caused)[436].

One of the tasks is to discuss the composition and content of the elements included in the juvenile justice system. In determining the external framework of juvenile justice, we support E. B. Melnikova's view, which classifies juvenile justice as the most specialized judiciary (it's true, not only in the form of a separate judicial system, but also in the form of judicial appearances or panels within the courts of general jurisdiction), although in a number of works it states that the modernization of juvenile justice presupposes the emergence of administrative structures as an alternative to juvenile courts. Other authors suggest that the juvenile justice system include a wider range of bodies. It is about the commissions for juvenile cases; child rights authorities; about the specialized bodies and institutions, whose competences include the solution of this or that problem related to youth policy, ensuring the rights of minors, the fight against juvenile crime, etc.; juvenile custody and guardianship bodies; investigative bodies; on other institutions of educational and long-term isolation of juvenile offenders. Such an extension of the subject of juvenile justice, as it is presented, again puts it aside from its own legal nature, does not contribute to a more complete theoretical understanding of the problem, as it is considered a mixture of its main and ancillary elements, which directly affects on the drafting and adoption of relevant bills[437].

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[436] **A. R. Margaryan** *Problems of combating juvenile delinquency in the Republic of Armenia*, Hayrapet Ott., Yerevan, 2017, pp. 197-198.

[437] **E. B. Melnikova** *Juvenile justice: problems of criminal law, criminal procedure and criminology*: Textbook. Moscow: Delo, 2000, Pp. 112-113.

In this regard, we can talk about a narrower, broader interpretation of juvenile justice. Juvenile justice in the narrow sense should mean the operation of juvenile courts based on the relevant principles of justice for juveniles. In a broad sense, the definition implies the inclusion of a variety of auxiliary (including alternative to the courts) organizations, structures, technologies, schemes, programs, and even various elements of civil society.

Taking into account the above, during the establishment of the juvenile justice system in Armenia, the question of the court about the administrative body carrying out out-of-court operations will arise as an alternative, especially since such experience exists in many countries. First of all, the establishment of juvenile commissions is meant, which initially performs mainly preventive-protective operation. However, in the future, their sphere of competence may be significantly expanded to make decisions that have serious legal consequences for juveniles, focusing more on upbringing, prevention, rather than punishment, and in this regard, it is also possible that the members of these commissions have professional (legal) qualifications in order to exclude the violation of the rights of minors.

However, despite the numerous provisions aimed at strengthening the legal status of children in various branches of law, the existence of child protection and rights-based infrastructure in the Republic of Armenia, we continue to encounter numerous facts of violations of children's rights. There is no really humane, balanced, balanced approach, which will testify to the full care of children in our country, protection of life, health, immunity, protection of other rights[438].

Due to the lack of an independent normative-legal act dedicated to the commissions on juvenile cases, these commissions are guided by the relevant provisions of this or that law concerning them, one of the most important requirements for the adoption of a joint act would

[438] **S. A. Iskandaryan** The Constitutional-legal guarantees of the protection of the Rights of the Children in the Republic of Armenia, Resume, Yerevan, 2014, P. 5.

be the unification of all stakeholders in a common system for the prevention and rehabilitation of deviant or delinquent juveniles; as well as increasing the regulatory and supervisory role of juveniles and their commissions for the protection of their rights.

As mentioned earlier, juvenile justice legislation proposes to include legal acts defining the activities of the child rights officer. Therefore, emphasizing the need to ensure the subjective rights of the child, the inclusion of this institution in its protection system, let us also refer to several aspects of the activities of the Authorizing Officer on the rights of the child, the prospects for the development of juvenile justice.

At present, institutes of specialized ombudsmen are being set up all over the world, including ombudsmen for the rights of minors. For example, institutes for children's ombudsmen were introduced in Norway (1981), in the French-speaking community of Belgium (1991), and in Sweden (1993)[439].

The ombudsman for the rights of the child is an agency set up to protect the rights of children with the status of an independent body, is established by law or through non-governmental organizations that directly define their role as the mandate of the child rights officer.

In the activities of the ombudsman for the rights of the child, the following main functions can be emphasized: protection of the specific rights of the representation of his / her interests; investigation of cases of individual complaints of children; overseeing the implementation of legislation related to the protection of children's interests; submission of proposals to state bodies on amendments to the legislation in the field of protection of children's rights; promotes awareness of children's rights for both children and adults; exercising the role of mediator in cases of conflicts between children and parents; submission of reports on the work done and on the situation related to the protection of the rights of the child.

[439] See: *Juvenile justice Issues*. Almanac, № 1, 2001.

Of course, not all ombudsman's departments currently carry out the work in all of the above areas. In Finland, for example, the ombudsman acts as an advocate exclusively for children or grievances. In Norway, the child rights officer, in addition to protecting the interests of individual children, also represents the interests of Norwegian children in general. The Swedish ombudsman is not empowered to hear specific cases, he works to promote and strengthen the rights and interests of all children.

Pursuant to Article 2 of the RA Law on the Human Rights Defender adopted by the National Assembly of the Republic of Armenia on December 16, 2016, the Defender monitors the implementation of the provisions of the UN Convention on the Rights of the Child adopted on November 20, 1989, as well as the prevention of child rights violations and protection. And according to Article 30 of the same law, the Defender's powers in the protection of children's rights the Defender is entitled to:

1) Monitor the compliance of the legislation with the provisions of the UN Convention on the Rights of the Child, adopted on November 20, 1989;

2) Make regular, as necessary, unhindered visits to child care and protection institutions; as well as general educational institutions. The Defender is not obliged to inform in advance about the time and purpose of the visits;

3) Make public reports on the rights of the child;

4) Submit proposals to the competent authorities on legal acts related to children's rights or their drafts or improvement of practices;

5) Exercise other powers defined by law.

Departments for the protection of children's rights were established in the local self-government bodies of the Republic of Armenia, in the municipality of Yerevan, in all regional administrations, whose main functions are:

1. In the relevant area implements the policy aimed at the protection of the family, women and children;

2. Develops and implements programs aimed at the protection of the family, women and children;

3. Develops and implements programs aimed at social protection and targeted assistance to children in difficult life situations;

4. Identifies children in difficult life situations and their families, discloses information about them, conducts home visits to assess needs, develop and monitor social-psychological rehabilitation programs;

5. Based on the results of the study and assessment of the needs of children left without parental care, issues a conclusion on the placement of the child in an orphanage;

6. On the basis of a study of the parent's application and the study of the living conditions of the family, issues a conclusion on the placement of the child in a boarding school of care and protection;

7. On the basis of the results of the study of the living conditions at the request of the parent, gives a conclusion on the return of the child from the orphanage to the biological family;

8. On the basis of the parent's application, issues a conclusion on the child's discharge from the boarding school;

9. Maintains an automated information system for children in difficult life situations;

10. Executes other authorities assigned to him/her by the RA legislation.

In our opinion, in the practice of protection of children's rights in the Republic of Armenia, within the framework of a comprehensive approach to the establishment of a juvenile justice system, only through the introduction of a single, specialized institute dealing with child protection issues will it be possible to achieve maximum results in priority protection of children's rights.

Based on the above, we find the following necessary:

1. Develop a Concept of Juvenile Justice Legislation in the Republic of Armenia, which will include recovery-rehabilitation procedures, later to be adopted in accordance with:

– "Judicial Code", the Law on Making Amendments to the Constitutional Law of the Republic of Armenia, according to which in Chapter 4, adding the section "On Juvenile Courts" among the specialized courts;

– RA "Law on Fundamentals of Juvenile Justice System";

– RA "Law on Commissions on Juvenile Cases";

– RA "Law on the Plenipotentiary for the Rights of the Child in the Republic of Armenia".

1. During the reform of the domestic legal system, use the foreign experience of juvenile justice, which develops humanitarian tendencies in law.

2. To abandon the repressive standards of thinking in the administration of justice for juveniles, taking into account the restorative nature of juvenile justice and social well-being as its main characteristics.

CONCLUSION

Concluding the research on the legal status of the child, we can state that in many developing, underdeveloped countries of the world, the legal status of the child, his/her rights and freedoms are not legally enshrined, the structures for their provision are not defined, they are often only declarative.

Summarizing the results of the research, we "give the floor" to the child, presenting the data of a sociological survey (on juvenile self-assessment) conducted among minors aged 12-18 to study their rights and their awareness about protection.

Only 201 (39.3%) of the respondents answered in the affirmative to the question of whether the children were aware of their special legal status, "guaranteed rights" and freedoms protected by the state, 251 or 49% have heard about it, but do not know the details, and 60% (11.7%) of the respondents do not know anything about it at all.

Outside of the low level of legal awareness, there was a lack of legal awareness of the extent to which children are aware of their basic rights. Because most of the respondents are learners, the answers to the question about the right to education were more optimistic: 50.6% of the respondents think that they are aware of it in detail and 40.4% in general terms.

The survey showed that children have a poor understanding of the concept of "human dignity". Less than a quarter of the respondents (24.2%) know their right to protection of dignity and honor; 48.6% have heard about it in general and 16.6% do not know anything about it. It should be noted that the "assessment' of this knowledge is quite conditional, rather it corresponds to the concepts of "have an idea" or "have heard about it".

The following were mentioned by the children as sources of knowledge and ideas about their rights: RA legislation (4.9%); educational disciplinary rules (50.2%); mass media (17.8%); parents (15.4%); friends and acquaintances (5%).

According to the respondents, 12.3% of them often use their rights; 14.8% of them use more often than rarely; rather rarely than often 1.2% of them exercise their rights; 9.6% never exercise their rights; 22.9% of children found it difficult to answer this question at all.

Minors have a rather low threshold of confidence in the guarantees provided by domestic legislation for the protection of their right to work (32.6% - against; 50.8% - not so confident; and 16.4% - not at all confident). Only 26.8% of them are fully confident in the right to dignity, 48.6% are not so sure, 25% are not sure that such guarantees exist.

In exercising their rights, the children showed poor awareness, lack of experience in answering the question of what to do, where to go if their rights were violated. Only 38.7% of them answered positively to that question.

More than half of the children surveyed have never sought the help of law enforcement agencies to protect the rights of children. Among the seven options, the answers were summarized as follows: 16.8% applied to law enforcement agencies; 6.6% in juvenile cases and the commissions of the protection of their rights; 35.9% (the highest) to training (employment) managers; 11.3% to non-governmental organizations; 3.3% to the deputies; 4.1% to the mass media. 14.1% of the applicants received assistance; and 6% - insufficient answers.

The reason for their reluctance to seek help was explained by the children for the following reasons: 24.4% found it useless, 2.5% were afraid of the consequences, 6.3% preferred to defend their rights in another way (17.8% of children agreed with the opinion that the best way to defend their rights was to “clarify” with the offender on their own or with the help of friends, and 66 percent thought it was possible, depending on the circumstances.

As for the children's knowledge about the Constitution, according to the survey, 85% of the respondents answered that they

are aware of the Constitution, but 60% are not aware of the provisions on the rights of the child contained therein. The majority of respondents have no information about the juvenile justice of the European Court of Human Rights.

This study on the legal status of the child allowed us to draw some conclusions on the issues of protection of the rights of the child and at work, taking into account the prospective research in this area, to make specific recommendations, mainly on changes in domestic legislation. As a result of the study, recommendations were made on the establishment and development of the institution of the legal status of the child, the development of a more complete normative legal basis, the improvement of the constitutional legislation, the clarification of the judicial mechanisms for the application of sanctions. The presentation of scientifically substantiated guarantees to increase the effectiveness of the institution of the legal status of the child has got an importance.

However, the urgency of the issue under discussion and the multiplicity of issues raise the need to emphasize a number of provisions.

1) In the conditions of the changed world reality, the demand for the strategy of educating the growing generation, the new ideology and development has increased. At the same time, data on the condition of children in many modern countries show a decrease in their number, deterioration of physical and mental health, decrease in living standards, etc. Infant mortality, juvenile delinquency, child drug addiction, child trafficking are among the negative phenomena that threaten a national catastrophe.

2) It is not one of the last roles in the regulation of relations with the participation of a child that is given to the right, first of all to the constitutional right defining the legal status of the individual. It should give a new impetus, a positive direction to the process of their upbringing and socialization, which are necessary to prepare the child for a new level of life.

3) The Basic Law enshrines the basic principles of the legal status of the child in the society, in the state, implying a set of rights, freedoms and responsibilities, by which he/she is endowed as a subject of legal relations, arising during the implementation of the norms of all branches of law. Therefore, the potential for a change in the relationship with the child is enshrined in the Constitution of each state.

4) In the modern world, the social urgency of the study of the constitutional basis of the legal status of a child is reflected in the fact that it is ultimately aimed at protecting human potential. This explains the complex nature of the research conducted within the framework of constitutional law, at the same time, with a deep understanding and analysis of the entire legal system, as well as examining the significance and decisive role of the principles and norms of international law for the development of the constitutional status of a child.

5) In the domestic legislation of many countries, when defining the functionality of minors in the scientific literature, it is more correct to use the terms “incomplete functionality” or “partially functional” instead of the term “limited functionality”, as the former indirectly limits their constitutional status.

6) It is also important that the physical, mental and social maturity of a person immediately after birth, in the initial period of life is not possible without the intervention of other persons; the necessary assistance can be provided by a double egg: naturally, it is the primary responsibility of the parents or legal guardians, and in its absence, it is the responsibility of the society in which the child was born.

7) The state is obliged to protect children not only because it is enshrined in the norms of international law, the obligation to comply with which the state has assumed an international obligation, enshrined in its Constitution, but because any rational government must take care of the future.

8) Since the right is originally intended to apply equally to unequal people (and in this respects, the child and adult are not equal in many matters), the author believes that in this case the child, as a representative of a special social group, should be given status of an independent subject of social relations, placing the responsibility for its welfare not only on the parents but also on the society and the state.

9) In many countries (especially in the post-Soviet republics) the domestic legislation defining the constitutional status of the child is still quite 'young" and needs to be developed, improved and clarified, taking into account the experience of developed countries in the implementation of international law.

10) For the purpose of more complete realization of the rights of the child and legal interests, it is necessary to increase the level of their protection before the constitutional one. The rejection of the classical approaches to the classical fixation of the legal status of the individual, typical to the previous constitutions, does not exclude the possibility of another, special approach to the status of the child, as, today, the social price of the issue is quite high. At the same time, it is about improving the legal status of the child according to the constitutional standard. The elimination of the gaps in the current legislation is possible only in accordance with not only the letter, but also the spirit and meaning of the Constitution.

11) The level of realization of not only the legal but also the general social potential of the Constitution of each state is revealed through the Convention on the Rights of the Child, the multi-level legal-normative consistency, sequence and interconnection of the sectoral legislation. It will allow the child to be seen as the center of a social, legal, democratic state, its social policy, which in turn can be the national idea of stabilization and unification of society.

12) The need to take into account the international experience of the rights of the child is justified not only by the expansion of his/her rights and freedoms, but also by the borrowing of a number of

elements of the guarantee mechanism and the participation of civil society in it.

13) Subjecting the joint management of family, motherhood, and child protection issues by states; in the modern socio-economic conditions, may lead not to the increase of the protection of the rights of the child, but to the irresponsibility of the public authorities.

14) Taking into account the role and significance of the Constitution of each state, the basic law, their priority in the domestic legal system, the specification of “the legal status of a child” by normative legal acts of the highest legal force will be more expedient by a developing or underdeveloped country.

Since the normative acts in the regulation of relations with the participation of children as the axis of the world future, first of all the laws should take into account not only the present but also the development perspectives, the doctoral student proposes the following concept with the standard “Law on the Legal Status of the Child”.

At present, in many countries, the legal status of the child, and consequently the protection of their interests, are regulated by various regulations in different branches of law. These norms are diverse, they are not unified, they are included in many normative acts, which are not always properly regulated, the result of which is the insufficient implementation of these norms in practice. Moreover, children's rights, such as the right to life and health, can be protected by regulations in various industries.

However, all of them are united by the same subject of law - the child. Ensuring the rights of children, their protection based on the sectoral feature (in accordance with the principle of legal regulation of public relations in our country), inevitably leads to gaps, inconsistencies and sometimes contradictions between the existing norms, especially when it comes to responsibility for improper upbringing.

In this regard, there is an obvious need to review the laws and by-laws (which do not serve the interests of children in one way or

another) from one perspective to build a platform; for the emergence of new regulations not included in a separate branch of law; concentration of the norms mentioned in the joint legislative act capable of becoming a guideline for law enforcement activities.

However, it is not a question of adopting specific norms from normative acts of certain branches of law, including criminal, civil or family codes, etc. It should formulate the main, principled provisions in the field of child protection, the norms-principles that ultimately determine the consistent perspective state policy in accordance with the interests of the child, which allow the protection of his / her rights to be raised to a cross-sectoral level; also the peculiarity of the legal subject of the child should be also clarified, which determines the need for special, high protection, and the social significance of the growing generation

As the whole complex of the rights of the child cannot be completely subordinated to any existing branch of law, the decisive role of the Constitution or the basic law in determining the legal status of a child on the basis of the norms and principles of international law becomes clear.

The concretization of the principles of the future Law is already partially included in a number of sectoral legislative acts (in this case the reference nature is applied), or it will be implemented through a specific mechanism for the implementation of norms and principles through the adoption of new legal acts regulating the activities of various bodies.

With regard to meeting the urgent practical need for law enforcement bodies, then, as a supplement to “the Law on the Legal Status of the Child”, a regular collection of existing legislation on the child could be published.

The structure of the law.

Given the socio-legal nature of the protection of the rights of the child, which stems from both the definition of upbringing and the interests of the society and the state in the development of the

generation (which is capable of developing and multiplying its own achievements), the preface will not be obtained without moral provisions free from legal definitions.

Part I must contain the Basic Provisions of the law.

– Definition of necessary terms: “child”, “minor”, “juvenile (s)”, their “eligibility” and “functionality”, “welfare state” and etc.;

– Relations regulated by that Law, relationships in which at least one party the child;

– The social significance of child’s development and upbringing; the priority of their interests in all actions initiated by state bodies, public associations, individual citizens towards the child; the essence of special, high protection of the rights of the child and legitimate interests.

In Part 2 of the law, it is necessary to clarify the structure of the legal status (status) of the child, and as its basis, the essence of the constitutional status of the child. It is necessary to pay special attention to the unity of rights and responsibilities, as well as to the socio-economic, political and legal guarantees of ensuring the legal status of the child.

Part 3 opens the main normative base, with the help of which the relations with the participation of the child are regulated to one degree or another:

– universal principles and norms of international law, international treaties to which the state is a party;

– the Constitution, the basic law as a normative-legal basis for the legal status of a child;

– national legal normative acts, which specify the legal status of the child in different spheres of public relations;

– By-laws related to the child.

The fundamental rights and freedoms of children enshrined in the Constitution -the Basic Law and proclaimed by the Convention on the Rights of the Child, will become the content of Part 4 of the Law. Here it is necessary to emphasize that.

– basic human rights and freedoms are not subject to alienation and belong to everyone after birth. The state guarantees the equality of human and civil rights and freedoms, regardless of age, except in cases provided by law;

– The child enjoys legal protection and the civil status of the parents, regardless of origin;

– The state and society are obliged to "replace" the parents of orphaned children, children deprived of parental custody, ensuring their care, care and education;

- Orphans, children deprived of parental care, as well as children with disabilities (mentally and physically underdeveloped) have the right to special protection and assistance.

Part 5 of the law talks about the responsibility of a child, a minor.

A person's sense of responsibility mainly develops before adulthood, in this regard, ignoring the child's ability to take responsibility, we lead them to "excessive interference" by adults. As a result, both society and children suffer, as juvenile legal liability acts as a means of ensuring their law-abiding behavior.

It is a different matter when the bulk of the responsibilities are placed on an adult and the limit of the child's responsibilities should be sought here. The legal status of a child is characterized not only by the establishment of a special order for the exercise of their rights, but also by the recognition of their rights in full, by a special order of liability due to the limitation of the child's legal responsibilities.

Part 6 is dedicated to the responsibility for ensuring the legal status of the child: "Legal liability of minors". The law should provide a well-founded system of liability for improper performance of duties, the limits of illegal actions (inaction) should be specified. Moreover, it should be taken into account that:

– Types of liability defined by domestic law - family-legal, administrative, and criminal - should be applied in case of an illegal act (inaction), which to one degree or another not only violates the

rights of minors, but does not properly promote the realization of their rights and legitimate interests ;

– The law should provide all types of liability, both to the parents or their successors and to officials, whose responsibilities to one degree or another include the exercise of the legal status of the child.

Part 7: "Guarantees of the legal status of the child" includes:

– scientifically based and developed minimum social standards that ensure the survival, development, protection; active participation in public life;

– Bodies responsible for the implementation of all components of the legal status of the child and institutions authorized to protect the rights of the child;

– Basic provisions for the protection of the rights and the realization of legal interests of the child, as well as the peculiarities of the procedural order;

– Establishment of a comprehensive protection mechanism, which will require a higher level of cooperation between all stakeholders and responsible structures and regulation of activities;

– Development of child rights protection components in the future. In this regard, the role of the Plenipotentiary for the Rights of the Child is of interest, as well as the practice and theory of juvenile justice based on international socio-economic conditions, unconditional calculation of modern socio-economic conditions.

In our opinion, in the conditions of globalization and integration, the RA legislator will finally end the need to divide the right from private to public. In that case, juvenile law will find its place in the system of public-private norms.

In our opinion, the creation of a juvenile law will enable more effective protection of the rights, freedoms and legitimate interests of the child.

Finally, at the beginning of the 21st century, a rather extensive legal framework has been accumulated, which has been formed in

the domestic legislation of individual countries. Time demanded serious reforms in the field of protection of the rights of the child, both domestically and internationally. Judicial practice and the scientific views of the progressive sections of the society also contributed to the process of creating a normative legal basis for the protection of children's rights and in the future, especially based on the experience of developed countries, it will be easier to regulate the legal status of the child.

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ANEXO.
RESUMEN DE LA MEMORIA DE TESIS EN LENGUA CASTELLANA

1º La relevancia del tema de investigación

Los procesos socio-económicos y políticos que tienen lugar en el mundo contemporáneo, caracterizados por el colapso del sistema social existente y la anomalía social resultante, por la falta de confianza en la ley, en las autoridades policiales y la justicia, así como por la desconfianza de la mayoría de los miembros de la sociedad hacia su presente y futuro ha tenido un impacto inmediato en el modo en el que se forman los miembros de la sociedad y, en particular, en el comportamiento de los niños.

La preservación y la protección de los derechos humanos, las libertades y los intereses legítimos se encuentran entre las principales preocupaciones de cualquier Estado democrático. En toda sociedad, la libertad humana, garantizada y protegida por el Estado, permite el desarrollo de la capacidad individual y, al fin y a la postre, el progreso social y económico del Estado.

La protección de los derechos, libertades e intereses legítimos del niño está conformada por un conjunto de mecanismos y reglas definidos por los instrumentos jurídicos internacionales, en las constituciones de los Estados (leyes fundamentales), y en las leyes vigentes en los mismos destinadas a fortalecer los derechos y libertades de la infancia mediante la prevención y la eliminación de las infracciones.

El sistema de protección de los derechos, libertades e intereses legítimos del niño incluye:

- La aplicación adecuada de los tratados internacionales relativos a los derechos del niño en los Estados.
- La regulación completa y eficaz de un conjunto de acciones de tutela y promoción de los derechos de la infancia.
- La mejora y el desarrollo continuo de los instrumentos jurídicos de protección sustantiva de los derechos del niño.
- La promulgación de normas procesales eficaces para el examen de los casos relativos a los derechos e intereses legítimos del niño.
- La definición del ámbito de responsabilidad y de las diferentes responsabilidades que se derivan de la violación de los derechos del niño.
- La eficaz organización y funcionamiento del conjunto de autoridades encargadas de prevenir y, en su caso, reprimir la violación de los derechos de los menores y de tutelarlos ante las situaciones de desamparo.
- Un sistema de enjuiciamiento y castigo eficiente de los que vulneran los derechos de la infancia.

A nivel mundial, los Estados tienen la obligación de proteger los derechos de los niños en la mayor medida posible moral y legalmente, de conformidad con la ley y en el contexto de la cooperación internacional.

En los últimos años, el movimiento por los derechos del niño ha cobrado una fuerza considerable y la adopción de normas jurídicas internacionales se ha considerado un medio particularmente útil para crear conciencia de la idea de «los niños tienen derechos» en la legislación nacional. En general, esos derechos se superponen significativamente con todos los derechos humanos, pero también se extienden a una variedad de medidas especiales a las que los niños tienen derecho en virtud de su especial vulnerabilidad.

Los primeros esfuerzos a nivel internacional en este sentido fueron emprendidos por la Sociedad de las Naciones, que estableció un comité especial para tratar las cuestiones relativas a la protección de los niños y aprobó convenciones que prohíben la trata de mujeres y niños (1921) y la esclavitud (1926). La Declaración de Ginebra de los Derechos del Niño, aprobada en 1924 por la Asamblea de la Sociedad de Naciones, no fue concebida como un texto que expresaba una obligación que los Estados firmantes asumían, sino como un conjunto de deberes declarados y aceptados por "*hombres y mujeres de todas las naciones*" y según los cuales "*el niño debe ser provisto de los medios necesarios para su desarrollo normal, tanto material como espiritual*". Posteriormente, la Declaración Universal de Derechos Humanos de 1948 proclamó un catálogo básico de derechos humanos internacionalmente reconocidos que, aun siendo la mayoría ellos igualmente aplicables a niños y adultos, incluye dos disposiciones que se refieren específicamente a los niños: el párrafo 2 del artículo 25, que reconoce que "*la maternidad y la infancia tienen derecho a cuidados y asistencia especiales*" y el artículo 26, en relación con el derecho a la educación.

En 1959, la Asamblea General de las Naciones Unidas adoptó la Declaración de los Derechos del Niño haciendo hincapié en que "*la humanidad debe al niño lo mejor que tenga para darle*". Los diez principios de la Declaración afirman el derecho del niño a recibir protección especial, a recibir oportunidades y facilidades que le permitan desarrollarse de manera sana y normal, a disfrutar de los beneficios de la Seguridad Social, incluida una nutrición adecuada, a la vivienda, servicios recreativos y médicos, a recibir educación, así como a ser protegido contra todas las formas de abandono, crueldad y explotación. El proyecto actual de Convención sobre los Derechos del Niño define que es niño todo ser humano menor de dieciocho años, a menos que en virtud de la ley aplicable, ese niño alcance antes la mayoría de edad se alcance antes.

La protección de los derechos del niño en el mundo sigue siendo hoy especialmente importante debido a la constante presencia de violaciones de los mismos a todo lo largo y ancho del planeta, tanto por parte de organizaciones privadas, que han llegado a tratar a los menores como

mercancía, como, en casos más extremos, por parte de las autoridades de ciertos Estados. La rotunda afirmación que acabo de efectuar no pretende afirmar que la protección de los derechos de la infancia no haya mejorado en los últimos tiempos. En algunos puntos no puede negarse que la situación haya mejorado, pero tampoco debe ocultársenos que ahora hay nuevas tendencias y posibilidades que sólo son posibles con las tecnologías disponibles actualmente. Además, todavía hay países donde los derechos de los niños directamente no están protegidos y en los cuales la infancia sigue estando constantemente bajo la amenaza o la realidad del padecimiento físico y emocional. Teniendo todo esto en cuenta, es importante comprobar cómo la sociedad internacional protege a los niños, qué medidas se tomaron para garantizar los derechos de los menores, qué instrumentos tenemos para proteger la dignidad y la autoestima de los niños. Lo importante es que la protección efectiva de los derechos del niño no se logrará a menos que las comunidades locales perciban las protecciones sustantivas como culturalmente legítimas.

La importancia de determinados grupos de derechos de protección del niño es diferente en diferentes partes del mundo. En Europa, Estados Unidos, Rusia o México, los gobiernos se están centrando en prevenir la explotación sexual de los niños, dada su dependencia de otros y su limitada capacidad para protegerse. El abuso y la explotación sexuales pueden adoptar diversas formas, como la violación, la explotación sexual comercial y el abuso doméstico. En los países asiáticos, los problemas, sin embargo, se concentran en torno a la cuestión del trabajo infantil, que en gran parte de ocasiones se define como simple explotación. Esta explotación incluye una serie de factores que incluyen el trabajo en sí, el entorno de trabajo y la presencia de peligros particulares, los beneficios percibidos del trabajo y la naturaleza de la relación laboral. Por último, en los países del continente africano, a los problemas anteriores hay que unir el de la utilización militar de los niños. Se trata de un continente en el que el reclutamiento de menores para integrarlos en los ejércitos y participar en operaciones militares ha superado la cifra de 300.000 niños y adolescentes participantes en conflictos armados. La brutalidad de los niños soldados es legendaria en un sentido negativo. Los actos de violencia extremadamente brutales cometidos por los menores excedían con mucho el de sus compañeros adultos.

Los niños son vulnerables y cada niño, debido a su inmadurez física y mental, necesita salvaguardias y cuidados especiales, incluida una protección jurídica adecuada, tanto antes como después del nacimiento. La Convención sobre los Derechos del Niño sigue siendo, hasta hoy, una referencia clave para la promoción de los derechos del niño y una fuente de inspiración para la administración de justicia y la consolidación de las normas y mecanismos internacionales de justicia. Este texto ha establecido una serie de hitos a nivel nacional e internacional que constituyen el estándar de obligaciones constitucionales e internacionales de los Estados

en aras a promover el interés superior del niño. A pesar de los logros conseguidos por el texto, sin embargo, y debido a diversos factores, como el aumento de la población, la persistencia de la extrema pobreza en ciertas zonas del planeta, etc., cada año millones de niños siguen sin estar en disposición de conseguir una comida completa cada día. Además, otras cuestiones que van más allá de la disposición o no de recursos económicos, como la selección adversa del sexo de los niños en perjuicio de las mujeres, son motivo de preocupación y ponen de manifiesto, que además del Estado y las organizaciones no gubernamentales, es necesario poner el acento en el compromiso de los ciudadanos de a pie con los derechos de la infancia.

2. El propósito y los objetivos de la tesis

El objetivo principal de la tesis es analizar, con la profundidad propia de un trabajo de las características de una memoria doctoral, los problemas de la condición jurídica del niño, a través del estudio de los documentos jurídicos básicos internacionales y de las constituciones de países significativos con diferentes sistemas jurídicos, así como su reflejo y desarrollo en las legislaciones nacionales. Los objetivos concretos de la tesis han sido:

1. Analizar los actos jurídicos y documentos internacionales sobre los derechos y libertades del niño.
2. Identificar similitudes y diferencias entre los derechos y libertades del niño en diferentes países.
3. Evaluar los mecanismos de protección y garantía de los derechos e intereses del niño en diferentes países.
4. Analizar las formas y los organismos encargados de combatir la delincuencia infantil, así como los principales enfoques para responder al comportamiento criminal del niño.
5. Estudiar los problemas actuales de la condición jurídica del niño con el objetivo de determinar posibles elementos de mejora de la protección de los derechos del niño en la práctica internacional.

El principal desafío que enfrentan los niños, es prepararlos para la vida en sociedad a la par con los adultos, el desarrollo de la experiencia social, la introducción a las normas aceptadas de comportamiento. Existen diversas visiones sobre la infancia que se explican en la tesis doctoral y que coexisten en el momento presente.

La tradición cristiana ve al bebé como una alegoría de la pureza y la falta de coraje. Esta tradición, sin embargo, no define la relación de la comunidad adulta con los niños reales. Esa falta de definición explica cómo, por ejemplo, en la Edad Media los niños, pese a la imagen cristiana, se contaban entre los elementos sociales discapacitados y marginados. Por su parte, la cultura japonesa está impregnada de un cierto culto al niño, algo que se manifiesta en instituciones abiertamente apoyadas de educación preescolar pública y familiar. El culto se basa no tanto en el reconocimiento o la estima de la infancia en sí como en la santificación, de raíz sintoísta, y en la adoración de los antepasados, los que los niños representan la

continuidad. El niño es en la tradición japonesa una encarnación simbólica del espíritu de los antepasados.

Así pues, el niño ha sido visto tradicionalmente como el resultado o el producto del adulto, como una metáfora o alegoría de la adultez. Los niños con sus características psicofisiológicas no parecen tan diferentes de los adultos, pero, aunque están relacionados metafóricamente con la adultez, desde esta visión se estima que adolecen de una "*organización de salud mental menor, más débil y pobre*". Esta visión, como hemos visto, ha llevado en el pasado a la conclusión de que los niños no son realmente miembros de la sociedad, y a entender que su función principal es la adquisición de conocimientos y habilidades, experiencia de vida y adaptación a las normas de comportamiento socialmente aceptadas y no mucho más. Sobre la base de esta posición, los niños no tienen por qué estar sujetos a los derechos y libertades que pertenecen a los adultos, lo que conduce a una desigualdad en los derechos de los diferentes grupos de edad.

Desde esta perspectiva, el niño se convierte en un consumidor en el plano material y espiritual. El niño, a través de su proceso de formación y el desarrollo, adquiere conocimientos, habilidades, y satisface sus necesidades materiales por medio de sus padres o del Estado. Sin embargo, esta visión reduccionista de los niños como actores de un consumismo material y espiritual es claramente errónea. El consumo aparece sólo una de las condiciones y el trasfondo de la formación de un hombre complejo. Los costos de los niños no son costosos. Actúan como una inversión en capital social a largo plazo. Cuanto más grande sea la sociedad y más invierta el Estado en el desarrollo y la formación del niño, mayor será el crecimiento económico, cultural y espiritual de la nación, el país y la sociedad en su conjunto. Los niños no son sólo consumidores, también son productores.

Actualmente, se considera que, con respecto a la educación y la formación, es necesario tener en cuenta que los niños no solo están en la escuela, consumiendo conocimiento, sino que en realidad son sus coproductores, invirtiendo en el estudio su energía e intelecto. Otros investigadores ven a los niños como una prioridad y el grupo más valioso de personas, y a sus necesidades e intereses como los más altos de la sociedad. Esta actitud se fundamenta en el hecho de que los niños darán forma al futuro de la sociedad, el llamado acervo genético de la nación.

Otro grupo de investigadores se basa en el hecho de que los niños participan en actividades organizadas por ellos que tienen consecuencias sociales de un nivel equivalente a los demás grupos. Uno de los representantes más brillantes de este punto de vista en Occidente es George Kvortrup. Este autor defendía que los niños pertenecen al «público» de las actividades sociales, pero no en el sentido trivial de su mera presencia allí, no como una propiedad de la sociedad o el Estado, sino como un integrante más del cuerpo social: "*los niños no son la parte menos activa de la gran*

sociedad y no afectan menos a la mayoría de los eventos sociales que otros individuos y grupos".

Al analizar el papel y la función de los niños en la sociedad, los investigadores han llegado a la conclusión de que los niños son un grupo específico e identificable. Este grupo se caracteriza no sólo por la edad cronológica de todos sus miembros, sino también por las condiciones de existencia y desarrollo de los mismos: "*los niños son un grupo esencial de personas, actúan como una categoría que refleja las relaciones sociales específicas sobre su desarrollo*". En la actualidad, los niños son parte integrante de numerosas relaciones jurídicas en las que actúan como entidades independientes (vínculos sociales y jurídicos entre los propios niños), como objetos (la proporción de adultos sobre niños), o como una de las partes (la relación entre el niño y los adultos), etc. En cada una de estas relaciones, están dotados de derechos y responsabilidades. Este punto de partida posee gran importancia en relación con el desarrollo de medidas para la protección de menores. Por ejemplo, el menor en relaciones criminales puede aparecer como sujeto del delito, como perpetrador y como objeto de un asalto criminal. Naturalmente, el alcance de los derechos y la forma de proteger sus intereses en cada caso son diferentes.

Uno de los signos de la autonomía de la comunidad infantil, en nuestra opinión, es su estructuración. Dentro de la comunidad infantil se pueden distinguir huérfanos, niños discapacitados, niños con problemas de conducta, niños superdotados, etc. Estos grupos difieren entre sí, tanto en datos psicofisiológicos como en estatus legal. Existe un enfoque diferenciado para diferentes grupos de edad; El alcance de los derechos y obligaciones del menor de 16 años es esencialmente diferente de las facultades de un niño de 6 años.

En resumen, los niños tienen sus propias necesidades especiales, las cuales aparecen vinculadas con ciertas áreas de derechos. Ello implica que la tarea del jurista se la de determinar los derechos específicos que son exclusivos de los niños. De hecho, el período de la infancia es una etapa en el desarrollo de la personalidad. Se caracteriza por características específicas únicas de este período. Lo mismo puede decirse sobre el período de mediana edad, o el de la vejez. Los niños no pueden ser tratados como miembros inferiores de la sociedad que sólo están preparándose para entrar en la vida. Por el contrario, constituyen un grupo de personas cualitativamente único, que desempeña sus funciones en la sociedad, con derechos y responsabilidades, y que tiene su propia estructura.

A pesar de la variedad de leyes y reglamentos relativos a los derechos del niño, los niños, el de los infantes es uno de los grupos sociales menos protegidos en muchas zonas del globo. Y ello en parte porque es un hecho que los niños, por sí mismos, no pueden proteger suficientemente sus intereses. Este es un hecho reconocido por los legisladores. Como principales razones que justifican la necesidad de apoyo social para los

niños, se encuentran la de que los niños, por un lado, son la parte más vulnerable de la población, y por el otro, que constituyen el único potencial posible que garantiza el mantenimiento del Estado y crea las condiciones para una integración exitosa en la comunidad mundial.

Pese a ello, en muchos Estados sigue faltando una política pública de asistencia a la infancia, sigue existiendo una debilidad de las instituciones públicas para su protección, y no existe una verdadera una cooperación interinstitucional e intersectorial para la protección y el cumplimiento de los derechos del niño. A nuestro modo de ver, la solución de estos problemas comienza con la definición de la condición jurídica del niño. Al considerar esta cuestión se deben tener en cuenta varios aspectos:

En primer lugar, todos los derechos y libertades que pertenecen al niño deben dividirse en tres grupos: el primer grupo consiste en los derechos y libertades que pertenecen a todos, independientemente de la edad (derecho a la vida); el segundo grupo incluye los derechos y libertades de todos los ciudadanos, pero cuya defensa y protección se diferencia por la edad (derecho al trabajo); el tercer grupo de derechos y libertades de los niños pertenece exclusivamente a este grupo social (el derecho al cuidado y la educación de los padres o tutores). A nuestro modo de ver, este enfoque diferenciador proporcionará la protección más eficaz de los derechos e intereses legítimos del niño. En segundo lugar, para determinar la condición jurídica del niño se requiere un enfoque integrado jurídico, pero también psicológico, pedagógico, sociólogo, histórico, etc. En tercer lugar, es preciso construir un enfoque diferenciado para diferentes grupos de niños.

El propósito del trabajo es un análisis integral de los derechos y libertades del niño, su consolidación normativa en el derecho internacional y la efectividad de los mecanismos para su provisión y protección, así como el desarrollo de propuestas teóricas y prácticas destinadas a mejorar las medidas tomadas por el Estado en esta dirección.

La estructura del trabajo está compuesta de una introducción, tres capítulos, un apartado de conclusiones, y una relación de los materiales y fuentes empleadas. El primer capítulo analiza las características teórico-generales de la condición jurídica del niño. El segundo capítulo está dedicado al papel de la ley fundamental del Estado: la Constitución, en la formación del estatuto legal de un niño. En el tercer capítulo se abordan las cuestiones relativas a la protección y a la responsabilidad por la vulneración de los derechos del niño.

3. Base metodológica de la investigación

La base metodológica de la investigación está constituida son los métodos generales propios de las disciplinas jurídicas, que son empleados generalmente en la doctrina y en la práctica (métodos dialécticos y sistemáticos, para reconocer fenómenos y procedimientos sociales, lógicos, comparativos, sistémicos-estructurales, sociológicos). Durante la

investigación se utilizaron así mismo los métodos de análisis estadístico de datos, investigación documental, entrevista y revisión, así como una análisis comparativo y legal para recopilar y estudiar el material normativo.

4. Base teórica de la investigación

La base teórica de la investigación está conformada una serie de obras de autores armenios, de otros Estados postsoviéticos, europeos y estadounidenses, que incluyen monografías, tesis, publicaciones científicas, guías educativas, informes sobre derecho penal constitucional internacional, derechos civiles, psicología, pedagogía y sociología, así como otros materiales científicos y prácticos. La importancia teórica del estudio está determinada por el hecho de que está dirigido a un área del derecho insuficientemente explorada: los aspectos constitucionales y civiles de la regulación legal de las relaciones jurídicas en las que participan menores.

Teniendo en cuenta el hecho de que existen muchos estudios sobre ciertas cuestiones y aspectos particulares de la condición jurídica del niño, la tesis intenta desarrollar una tarea de elaboración dogmática a partir de la interacción entre reglamentos, evaluaciones científicas y comentarios, con el objetivo de eliminar la fragmentación y asegurar el estudio sistemático del tema elegido.

5. La importancia práctica de la investigación

La importancia práctica de la investigación radica en el hecho de que está dirigida a maximizar el potencial de las normas internacionales y constitucionales en el desarrollo de una legislación sectorial que garantiza la protección de los derechos del niño. Los resultados obtenidos durante el estudio y las propuestas prácticas formuladas sobre su base tienen por objeto optimizar la situación jurídica de los niños en Armenia y los Estados postsoviéticos; contribuir a la mejora de la legislación vigente, a la aprobación de un enfoque con base científica para el desarrollo del marco legal que determina el estatuto jurídico del menor en un Estado dentro del mundo contemporáneo. Los resultados de la investigación de la tesis pueden utilizarse tanto en la preparación de proyectos de ley como en la actividad práctica cotidiana de los representantes legales de los niños, los empleados de las instituciones estatales especializadas para niños, los representantes de los organismos encargados de hacer cumplir la ley, los trabajadores sociales y cualquier otro grupo de interés vinculado con la protección de la infancia.

6. Conclusiones

A continuación, se resumen sumariamente las conclusiones más trascendentes que se alcanzan en el trabajo:

1) En las condiciones actuales la necesidad de que exista una estrategia para educar a la generación futura, fundada en nuevas premisas es más

acuciante que nunca. Al mismo tiempo, los datos sobre las condiciones de la infancia en muchos países muestran un descenso en su número, un deterioro de su salud física y mental, una reducción de su nivel de vida, así como el incremento de fenómenos perniciosos como la delincuencia juvenil, la adicción infantil a las drogas, el tráfico de niños y otros que amenazan de forma catastrófica a los Estados que los padecen.

2) La regulación jurídica de un estatuto del niño de carácter constitucional constituye un instrumento de carácter esencial para dar un nuevo impulso en una dirección positiva al proceso de educación y socialización de los menores.

3) El potencial para que en un determinado Estado se pueda producir un cambio en positivo en el régimen jurídico del niño se encuentra en la Constitución de cada estado. El estudio de las normas constitucionales a la luz de los principios y normas del derecho internacional es indispensable para el desarrollo y mejora de la condición jurídica del niño.

4) Es preferible utilizar los términos capacidad incompleta o capacidad parcial para referirse en el ámbito de la legislación interna a la capacidad de los menores que la expresión capacidad limitada, ya que este último tiende a favorecer la limitación de los derechos que se integran en su estatuto jurídico básico.

5) A la hora de acometer la tarea de legislar sobre las responsabilidades en la educación y desarrollo de los menores, el Estado debería tratar de poner los medios para fomentar conductas coherentes con la idea de que, aunque primariamente la responsabilidad corresponde a sus progenitores, al mismo tiempo constituye una labor y una responsabilidad de todos los integrantes de la comunidad civil en la que nació el niño.

6) El Estado tiene un deber jurídico de proteger a la infancia no sólo porque esté consagrado en las normas de derecho internacional o en la Constitución, sino porque cuidar el futuro es una medida de racionalidad elemental que se impone a cualquier gobierno.

7) El autor defiende que el niño, como representante de un grupo social especial, debería tener la condición de sujeto merecedor de una tutela específica, asignando la responsabilidad de su bienestar no sólo a sus padres sino también a la sociedad y al Estado.

8) En muchos países (especialmente en las repúblicas postsoviéticas) la legislación nacional que define la condición constitucional del niño es todavía bastante joven y debe desarrollarse, mejorarse y aclararse, teniendo en cuenta la experiencia de los países occidentales en la aplicación del derecho internacional. A los efectos de una realización más completa de los derechos del niño y sus intereses jurídicos, es necesario aumentar el nivel de su protección constitucional.

9) El potencial jurídico y de transformación social general de la Constitución de cada Estado en relación con la infancia se incrementa a través de la interpretación conjunta de la misma y la Convención sobre los Derechos del Niño. Es interpretación debidamente realizada permitirá que el niño sea situado como el centro de un Estado social, democrático y de derecho.

10) La necesidad de tener en cuenta la experiencia internacional en materia de derechos del niño se justifica no sólo por la ampliación de los derechos y libertades que inevitablemente produce, sino también por la experiencia que aporta a la hora de definir los mecanismos de garantía de estos derechos, y la participación de la sociedad civil en su protección.