

# **IMPLEMENTATION OF THE CONSTITUTIONAL RIGHT TO EDUCATION FOR STUDENTS WITH SPECIAL LEGAL STATUS**

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## **CONSTITUTIONAL RIGHT TO EDUCATION IN THE RUSSIAN FEDERATION**

The constitutional right to education in the Russian Federation is one of the most important social human rights that takes a special place in the system of human rights. The human right to education is guaranteed by the rules of international law, namely: Para 1 of Article 26 of the Universal Declaration of Human Rights, Para 1 of Article 13 of the International Covenant on Economic, Social and Cultural Rights, Article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 of the Charter of Fundamental Rights of the European Union.

In accordance with Art. 13 of the International Covenant on Economic, Social and Cultural Rights,<sup>1</sup> the international community recognizes the right of everyone to education. Education should be aimed at developing the individual and the dignity of the person, enabling everyone to become a useful member of a free society, promoting mutual understanding, tolerance and friendship of all peoples. In order to realize the right to education, primary education must be compulsory and free for everyone; secondary education (including vocational education) should be open and accessible for everyone; higher education should be available for everyone in accordance with the abilities of each; a network of educational organizations should be developed.

Recommendations of the international community are implemented in the Constitution of the Russian Federation that guarantees the citizens of Russia the right to education, as well as available and free primary general and secondary vocational education.<sup>2</sup> The goals of education, as a socially significant benefit, carried out in the interests of the individual, family, society and the state involve intellectual, spiritual, moral, creative, physical and professional development of a person, as well as the satisfaction of his or her educational needs and interests.<sup>3</sup>

Human rights constitute an important element of social activities of people, their social relations, modes of being. Human rights are naturally intertwined in social relations. They form a regulatory basis for interaction between people, regulation of their connections, coordination of their actions and activities, prevention of contradictions, confrontation and conflicts. In essence,

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights // Adopted by the UN General Assembly on 16.12.1966.

<sup>2</sup> Para 1 and 2 of Art. 43 of the Constitution of the Russian Federation // Collection of Legislation of the Russian Federation, 04.08.2014, No. 31, P. 4398.

<sup>3</sup> Federal Law No. 273-FZ of 29 December 2012 "On Education in the Russian Federation" (as amended and supplemented and entered into force on 1 September 2016).

they provide for the legal framework determining conditions and ways of life of people that are objectively necessary to ensure the normal functioning of the individual, society and the state.<sup>4</sup>

Human rights represent the property and domain of the individual. Gusev A.D. defines that human rights "express vital needs of an individual, his or her relations with other people, society and the state, provide an individual with the greatest freedom and the opportunity for self-development."<sup>5</sup>"

In accordance with Article 43 of the Constitution of the Russian Federation, everyone has the right to education. The law guarantees available and free preschool, primary general and secondary vocational education in state or municipal educational institutions and entities. Everyone has the right, on a competitive basis, to receive a free higher education in a state or municipal educational institution and in an enterprise. Primary general education is compulsory. Parents or persons representing them ensure that children receive primary general education. Russia establishes federal state standards, supports various forms of education and self-education.

In modern Russia, education is divided into general education, vocational education, additional education and vocational training that provides an opportunity to realize the right to lifelong education or continuing training.

## THE DEVELOPMENT AND CONTENT OF THE CONSTITUTIONAL RIGHT TO EDUCATION

The right to education in the form in which it is enshrined in Art. 43 of the Constitution of the Russian Federation represents the result of many historical events that took place at different stages of the development and formation of the Russian statehood. Scholars distinguish three stages in the development of this constitutional norm<sup>6</sup>:

1. The pre-revolutionary period (from IX to early XX centuries.),
2. The Soviet period (from 1917 to 1990),
3. The post-Soviet period (1991 to the present).

During the **pre-revolutionary period**, the right to education was formed; prerequisites were created for conducting educational reforms aimed at creating a national education system; a system of normative acts that reflected the legal basis for educating the population was formed; goals, objectives and the fundamentals of teaching children regardless of their class affiliation were clearly defined; all legal conditions were created for the development of public education in the country.

During the **Soviet period**, the right to education was included into the number of constitutional rights of citizens of the USSR (see Article 121 of the 1936 Constitution of the USSR, Article 45 of the 1977 USSR Constitution). However, during the Soviet period, relations in the sphere of education were considered primarily as an object of administrative law regulation. The specificity of relations in the sphere of education was not precisely consolidated, since neither in practice nor in the norms of Soviet law the principles of the priority of human rights and freedom of education were implemented. Nevertheless, in the works by G.A. Dorokhova, G.S.

<sup>4</sup> Obshchaya teoriya prav cheloveka: ucheb. pos. [The General theory of human rights: A Study Guide]. Ed. by E.A. Lukashov. M., 1996. P. 30.

<sup>5</sup> Gusev A.D. O pravakh cheloveka i grazhdanina [ On the Rights of Man and the Citizen] // Sotsial'no-gumanitarnoe znanie [Social and Humanitarian Knowledge]. 2002. No. 3. Pp. 79-89.

<sup>6</sup> The constitutional right to education under the conditions of application of criminal penalties: monograph / Perly L.F., Zenin S.S., Shaporenko A.A. Moscow: Research Institute of the Federal Penitentiary Service of Russia, 2017. P. 7.

Sapagaliyev and S.S. Alekseev theoretical and methodological prerequisites for the systematic study of legal relations arising in the sphere of education were created.

At the present stage, Federal Law No. 273-FZ of 29 December 2012 "On Education in the Russian Federation" describes the development of education as a single purposeful process of education and training that is a socially significant good carried out in the interests of the individual, family, society and the state as well as knowledge, skills, values, attitudes, experience, activities and competences of a certain volume and complexity acquired for the purposes of intellectual, spiritual, moral, creative, physical and (or) professional human development, and satisfaction of his or her educational needs and interests.

The variety of approaches to understanding the constitutional right to education indicates that by its very nature the constitutional right to education is very capacious and multifaceted, and its features are manifested in various legal relationships.

It should also be noted that despite the fact that the right to education is enshrined in international norms and the Constitution of the Russian Federation, it is not unlimited and has its restrictions: psychophysiological limitations of a person, restrictions caused by age, health status, previously accumulated volume of knowledge.

Analysis of Articles 43, 44, 26, 38 of the Constitution of the Russian Federation, the Federal Law "On Education," Article 26 of the Universal Declaration of Human Rights, Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights allows to define the structure of the constitutional right to education and to distinguish the following elements:

- the right to receive education for everyone,
- the right to receive different levels of education,
- the establishment of not only the right, but also of the duty to obtain a primary general education;
- the right to receive education in various forms;
- the right to freely choose the language of instruction;
- the priority right of parents in choosing the type of education for their minor children

## IMPLEMENTATION OF THE RIGHT TO EDUCATION OF STUDENTS HAVING SPECIAL LEGAL STATUS

The right to education is the most important constitutional right of the individual and citizen regardless of his or her legal status. The degree of implementation of the right to education is expressed in the possibility of satisfying the educational needs of the individual. Introduction of legislative acts concerning universal primary education results in inevitability of determining the state's attitude with respect to the formation of such categories of students. Satisfaction of educational needs of the individual can depend on the special circumstances that determine the regime for the implementation of the constitutional right to education. Special support and guarantees are necessary for orphans, children left without parental care, children with disabilities, children with deviant behaviour, talented children, students who are subject to military conscription, etc. From the general category of subjects (participants) of implementation of the right to education, the students belonging to categories mentioned above are distinguished by international law: The Declaration on the Rights of Persons with Disabilities (1975), the Declaration on the Rights of Mentally Retarded Persons (1971), the World Declaration on the Survival, Protection and Development of Children (1990), the Standard Rules for the Equalization of Opportunities for Persons with Disabilities (1993), etc.

The general legal status consists of general rights and duties belonging to everyone regardless of any group characteristics, social, official, marital status, gender, age, etc. General rights and duties include general constitutional and general rights set forth by different branches of law, freedoms and duties of the individual, which gives grounds for recognizing the need to identify the general constitutional status of the individual.

The general in the status of students is determined by the constitutional principle of equality. Article 123 of the 1936 Constitution of the USSR established the equality of citizens of the USSR, but the equality of subjects of the right to education was not established.

Consolidation of the principles of the legal status of the individual in the RF Constitution and legislation means the emergence of new legal opportunities for the individual.

The general in the status of students:

1. The norm concerning the right to education (Article 5 of the Law "On Education") establishes the principles of equality, freedom, social responsibility. The list of characteristics (gender, race, nationality, language, origin, property and official position, place of residence, religion, beliefs, membership of public associations) consolidated in Article 19 of the Constitution of the RF is not exhaustive. It is possible to take into account "other circumstances"(for example, health, disability or ability). Thus, the objective circumstances in ensuring the conditions for obtaining education with regard to the equality of children, one can attribute the presence or absence of parents.
2. The fundamental requirement of equality is realized in the principle of equality of subjects of the right to education, it embodies the democratic principles of functioning of the entire education system and it is the basis for the legal regulation of the place of children possessing special legal status.
3. Access to education as a constitutional value is based on the principle of equality.

A special circle of subjects of the constitutional right to education includes orphaned children, children left without parental care, children with disabilities and children with deviant behavior. The forms of implementation of the constitutional right to education by such categories of students are determined by a number of their social and natural features: presence (absence) of parents, peculiarities of health, residence, etc., which gives grounds to distinguish their special social status.

The term "social status of the person" is used by the legislator, in jurisprudence and in the legal science. A special status of a person is defined as the relative position of an individual or social group in a society or an individual subsystem of the society determined by a number of characteristics typical for a certain system (profession, qualifications, education, etc.). The concept of social status includes such features as attributive (belonging to the class, social group, collective) and functionally-role and normative. The special social status of orphans, children left without parental care, children with disabilities and deviant behaviour as part of the social and normative status in an objective sense is a multi-sectoral complex system of norms and institutions that determine specific features of implementation of the constitutional right to education by such students. The special status of such students in the exercise of their constitutional right to education is singled out as special one in order to find the best solutions for the effective exercise of this right by these children which is possible only if there is an additional guarantee of the right to education provided by the state either through the implementation of guarantees or active work to implement them.

In accordance with international agreements and recommendations, children with deviant behaviour are children who regularly commit offenses, evade implementation of the right to education, homeless children.

Features that allow to talk about the existence of a special legal status of orphans, children left without parental care, children with disabilities and children with deviant behaviour are as follows:

- Difficulty of implementing the constitutional right to education as a result of (1) absence of parents as subjects having a constitutional obligation to provide children with educational conditions, (2) health peculiarities, (3) staying in special educational institutions for children and adolescents with deviant behaviour, (4) failure of homeless children to receive education, etc.
- Temporary and fixed-term nature of such statuses. As the state fulfills its obligations to enforce the constitutional right to education, the scope of additional rights and guarantees resulting from such statuses is reduced. The status of children with deviant behaviour is limited to the period of their staying in the special institution.
- Transitional nature of the statuses.
- Low level of assimilation and failure of such students to adapt to the life in the society.
- Such statuses are of a special nature associated with residing in a special institution.

The law-maker fixes its attention on certain categories of students requiring special legal support; the peculiarities of their legal status have caused the need to develop special norms that protect their interests in the exercise of the right in question.

## IMPLEMENTATION OF THE RIGHT TO EDUCATION OF STUDENTS WITH DEVIANT BEHAVIOUR

Let us dwell in more detail on students who have a special status of children with deviant behaviour. Implementation of their constitutional right to education is limited by specific conditions of isolation from the society and it has some special features.<sup>7</sup>

Recommendations No. R (89) of the Committee of Ministers of the Council of Europe "On Education in Prisons"<sup>8</sup> set out the main approaches to the organization of educational activities in places of deprivation of liberty (Adopted by the Committee of Ministers on 13 October 1989 at the 429th meeting of the Ministers' Deputies).

The Committee of Ministers, considering that the right to education is fundamental and understanding the importance of education for the development of the individual and the community, and that a high proportion of prisoners have very little educational experience admitted that education in prison helps to humanise prisons and to improve the conditions of detention.

Needless to say, education in prison is an important way of facilitating the return of the prisoner to the community.

In compliance with Recommendation No. R (87) 3 on the European Prison Rules and Recommendation No. R (81) 17 on adult education policy, the governments of states are recommended to implement policies which recognize that:

1. all those who are enrolled in, have access to education;
2. education for prisoners should be like the education provided for similar age-groups in the outside world, and the range of learning opportunities for prisoners should be as wide as possible;
3. education in prison shall aim to develop the whole person;
4. all those involved in the administration of the prison system and the management of prisons should facilitate and support education as much as possible;

<sup>7</sup> Danilin E.M., Davydova N.V., Semenova S.A. Implementation of the right of convicts to education // Bulletin of the Saratov State Technical University. 2014. Vol. 3. No. 1(76). P. 167-171.

<sup>8</sup> Committee of Ministers of the Council of Europe: Recommendation No. R (89) 12 of the Committee of Ministers to Member States of the Council of Europe "On Education in Prisons" (13 October 1989).

5. prisoners should not lose out financially or otherwise by taking part in education;
6. every effort should be made to encourage the prisoner to participate in all aspects of education;
7. prison educators should adopt appropriate adult education methods;
8. social education should include practical elements that enable the prisoner to manage daily life within the prison, with a view to facilitating his return to society;
9. prisoners should be allowed to participate in education outside prison;
10. the outside community should be involved as fully as possible into the educational activity.
11. Measures should be taken to enable prisoners to continue their education after release.

Under the Russian legislation, when serving sentences, convicts are guaranteed the rights and freedoms of citizens with exemptions and restrictions established by law (Article 10 of the Penal Code of the RF<sup>9</sup>). General education and vocational training, along with the regime, educational work, socially useful work and social influence, is one of the main means of rehabilitating convicts, that is, forming in them respect for the person, society, labour, norms, rules and traditions of human co-existence and stimulating law-abiding behaviour (Article 9 of the Penall Code of the RF). The concept of the development of the penal system of the Russian Federation until 2020<sup>10</sup> provides for "further development of favourable conditions for the prisoners to receive primary general education and secondary vocational education and higher education by correspondence within the framework of implementation of educational programmes using e-learning and distance educational technologies; the development of additional education programmes, the search for and the introduction of new individual forms of work that ensure targeted pedagogical assistance to every prisoner taking into account his or her socio-demographic, criminal and individual psychological characteristics."

The opportunity of implementing the right to education of people sentenced to deprivation of liberty is limited by the specific conditions of isolation from society and has some peculiarities. Under the conditions of deprivation of liberty, the state represented by correctional institutions exercises general education and vocational training of prisoners. The law-maker refers education and training of prisoners to the main means of their rehabilitation.

According to data for 2016, in the institutions of the Federal Penal Enforcement Service of the RF (the FSIN), 57,589 convicts subject to compulsory education (10.9% of the total number of convicts), including 4,006 women and 1354 juveniles, are held in the institutions of the FSIN of Russia. At the beginning of the 2016-2017 school year, there were 71,638 people (5,491 women and 1,563 minors) registered as students, which is 24.4% more than the number of people subject to compulsory education. The increase in the number of students is due to the category of convicts, who are trained in places of deprivation of liberty at their will.

Those sentenced to deprivation of liberty, in overwhelming majority, have an antisocial life standing and a high degree of pedagogical neglect. Training and/or education of convicts changes their consciousness and behaviour of the personality of the offender.<sup>11</sup>

In correctional institutions (CI) of the penitentiary system of modern Russia, there are evening (shift) general education schools and training and counselling points (TCP) that ensure

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<sup>9</sup> The Penal ECode of the Russian Federation of 08.01.1997 No. 1-FZ (as amended on 28 November 2017) (as amended and supplemented, effective from 01.01.2016) // Collected Legislation of the Russian Federation, 13.01.1997, No. 2, p. 198.

<sup>10</sup> The concept of development of the penal system of the Russian Federation until 2020 // Approved by the Order of the Government of the Russian Federation of 14 October 2010 No. 1772-p (as amended on 31 May 2012, and 23 September 2015).

<sup>11</sup> Danilin E.M., Davydova N.V. Education as a means of rehabilitating juvenile convicts // Law and Education. 2015. No. 9. P. 17.

the implement of the right of prisoners to receive the following levels of general education: primary general education, basic general education, secondary general education.<sup>12</sup>

In accordance with Article 112 of the PC of the Russian Federation, all those sentenced to deprivation of liberty who have not reached the age of 30 are subject to compulsory general education. Thus, education and the acquisition of knowledge, skills and competencies, on the one hand, form the constitutional right of convicts to education, on the other hand, they are their duty.

Implementing the right to education of people sentenced to deprivation of liberty, the attitude of the staff and teachers of the school can both open and close the door to positive development of the convict's personality. Their common task is to help the convict believe in his or her ability to acquire knowledge, skills and become prepared for life in the free society.

307 federal state professional educational establishments of the Federal Penitentiary Service of Russia and 389 of their structural subdivisions provide vocational training in the institutions of the Russian Federation Penal System, with 464 titles of professions of secondary vocational education and 1711 names of vocational training professions.

## IMPLEMENTATION OF THE RIGHT TO EDUCATION OF CAPABLE AND TALENTED STUDENTS

Support for gifted and talented children is based on the Convention on the Rights of the Child, the Constitution of the Russian Federation, the Russian Federation Law "On Education," the Federal Law "On Basic Guarantees of the Rights of the Child in the Russian Federation," the National Strategy of Action for Children for 2012-2017 adopted by Presidential Decree No. 761 of 01.06.2012, local regulations.

Support for talented and gifted children is carried out in accordance with the principles of respect for the rights of the child, protecting children's health, taking into account the age and individual characteristics of children, a comprehensive approach to identifying signs of giftedness in children and developing their creativity, active cooperation with social partners and participants in the educational process.

To sum up, general right to education is based on the principle of equality. However, certain categories of students possess characteristics that allow us to determine their legal status as a special legal status for the purpose of providing the most efficient mechanisms of implementing the universal right to education. Rights, freedoms and responsibilities of people having special legal statuses are consolidated by means of the rules of international law and international agreements, the rules and norms of national legislation, granting rights by local governments (measures of social support and social assistance), establishment of rights, freedoms and obligations within the framework of local legal acts of educational institutions.

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<sup>12</sup> Davydova N.V., Danilin E.M. Organization of general education of convicts in educational colonies // In Collection of Articles: The penal system at the present stage: interaction of science and practice: proceedings of the Int. scientific and practical Conf. Ed. by A.A. Votinov. 2016. P. 193-195.