

Conditions for Exercise by Foreign Citizens of Some Fundamental Social Rights as Subjective Rights

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ABSTRACT

With a high migration attractiveness of Russia, the issue of the exercise of fundamental social rights by foreigners, including minors, in Russia is important. The author reviewed the existing regulations, enshrining the right to health and medical care, education, housing and social security, and the practice of the Children's Rights Ombudsman in St. Petersburg. The ways of solving the identified problems in practice and eliminating conflicts in the legislation of Saint Petersburg are proposed.

Keywords: foreign citizens, children, fundamental human rights, right to health and medical care, right to education, right to housing, right to social security.

The modern social realities are characterized by the large-scale migration processes.² According to the 2017 study by the UN Department of Economic and Social Affairs, the number of international migrants in the world has grown by 49% and made 258 million since 2000. The Russian Federation (hereinafter referred to as the RF) takes the forth place among the five countries with the largest number of inhabitants-external migrants.³

In particular, migration processes are caused by people's search for better living conditions: shelters, places to escape from natural disasters or military conflicts, permanent and highly paid work, etc.⁴ In the XXI century, the world community recognized migration as one of the tools to achieve sustainable development.⁵

The stable socioeconomic status, preservation of the historical and cultural ties of the peoples of the member states of the Commonwealth of Independent States, mutual visa-free travel, and the establishment of the Eurasian Economic Union are key factors of the migration attractiveness of the Russian Federation.⁶ The latter is eloquently confirmed by official statistics of the Russian Ministry of Internal Affairs. For instance, 15,710,227 people were registered as migrants foreign citizens and stateless persons (hereinafter referred to as foreign citizens) in the Russian Federation in 2017.⁷ The number of

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² Khabrieva T. Ya. Migration Law of the Russian Federation: Theory and Practice [Migratsionnoe pravo Rossii: teoriya i praktika]. M.: Yuridicheskaya firma "KONTRAKT", 2008. P. VII. (In rus.)

³ Gordeev V. The number of migrants in the world has increased by almost 50% since the beginning of the century [Kolichestvo migrantov v mire vyroslo s nachala veka pochtu na 50 %]. // RBC News Feed Internet Portal: [Novostnoi internet-portal "RBK"]. [19.12.2017]. Available at: <https://www.rbc.ru/politics/19/12/2017/5a38670d9a7947cbce6346bb> (accessed 29.03.2019).

⁴ Prudnikova T. A. Theoretical, methodological and legal bases of regulation of migration processes (on the example of Russia and the member States of the European Union): Monograph [Teoretiko-metodologicheskie i pravovye osnovy regulirovaniya migratsionnykh protsessov (Na primere Rossii i gosudarstv — chlenov Evropeiskogo Soyuza): monografiya]. // Law and Right [Zakon i pravo]. M.: YUNITI-DANA Publ., 2015. P. 40. (In rus.)

⁵ Andrichenko L. V., Plyugina I. V. Migration Legislation of the Russian Federation: Development Trends and Practice of Application [Migratsionnoe zakonodatel'stvo Rossiiskoi Federatsii: tendentsii razvitiya i praktiki primeneniya]. M.: Norma INFRA-M Publ., 2019. 391 p. (In rus.) Access from the legal reference system "Consultant-Plus".

⁶ The Concept of State Migration Policy of the Russian Federation for 2019–2025: approved by Decree of the President of the Russian Federation dated October 31, 2018, No. 622 // Collection of Legislative Acts of the Russian Federation. 2018. No. 45. Art. 6917.

⁷ Selected indicators of the migration situation in the Russian Federation for January–December 2017 with a breakdown by country and region [Otdel'nye pokazateli migratsionnoi situatsii v Rossiiskoi Federatsii za yanvar'-dekabr' 2017 goda s raspredeleniem po stranam i regionam] // Official website of the Ministry of Internal Affairs of the Russian Federation [Ofitsial'nyi sait Ministerstva vnutrennikh del Rossiiskoi Federatsii]. Available at: <https://xn--b1aew.xn--p1ai/Deljatelnost/statistics/migracionnaya/item/12162171/> (accessed 29.03.2019).

foreigners arriving in the Russian Federation increased by more than two million people in 2018: 17,764,489 migrants were registered.⁸

The main tasks of the demographic policy of the Russian Federation by 2025 include attracting migrants according to the needs of demographic and socio-economic development, taking into account the necessity of their social adaptation and integration.⁹

Since the beginning of the 1980s, the science has recognized that these are not individuals who are involved in migration processes, but groups of interrelated people (families or households) who decide to migrate not only to improve their material well-being but to enhance their social status.¹⁰

The practice of various government bodies, namely those providing public services in the area of migration, competent in protecting the rights of minors, as well as state healthcare and educational institutions and diplomatic missions of foreign countries, evidences that families of foreign citizens with minor children are actively involved in migration processes. At the same time, migrant parents take the education their children get in Russia as a vertical social elevator for the latter,¹¹ which confirms the thesis about the use of migration mechanisms to increase the family social status.

Rights and freedoms of a person and citizen are recognized and guaranteed in Russia subject to generally recognized principles and rules of international law and in accordance with the Constitution of the Russian Federation. Fundamental human rights and freedoms are inalienable and belong to everyone from birth (parts 1–2 of article 17 of the Constitution of the Russian Federation, adopted by nation-wide voting on December 12, 1993,¹² hereinafter referred to as the Constitution of the Russian Federation).

Human rights are rights that belong to every person regardless of their nationality, that is, to foreign citizens and stateless persons. At the same time, part 1 of article 17 of the Constitution of the Russian Federation enshrines the priority of universally recognized principles and rules of international law when establishing human rights standards, which gives rise to well-defined obligations for the legislative, executive, and judicial authorities. Therefore, the Constitution of the Russian Federation, while obliging to recognize human rights, imposes an obligation on the state to enshrine human rights existing before and outside the state, as well as to reproduce international human rights standards in Russian legislation.¹³

Pursuant to part 1 of article 7 of the Constitution of the Russian Federation, the Russian Federation is a social State whose policy is aimed at creating conditions for a worthy life and a free development of man.¹⁴ In view of the foregoing, it seems relevant to study the regulatory framework governing the foreign citizens' exercising of certain social rights stipulated by international regulations and enshrined in the Constitution of the Russian Federation, which are extremely important for the life order of families of external migrants in the Russian Federation, taking into account the legal status of foreigners in the Russian Federation and their age.

It should be noted that the logic of presentation herein is determined by the following. Together, St. Petersburg and the Leningrad region ranked second in terms of migration flow in 2018 after Mos-

⁸ Selected indicators of the migration situation in the Russian Federation for January–December 2018 with a breakdown by country and region [Otdel'nye pokazateli migratsionnoi situatsii v Rossiiskoi Federatsii za yanvar'–dekabr' 2018 goda s raspredeleniem po stranam i regionam] // Official website of the Ministry of Internal Affairs of the Russian Federation [Ofitsial'nyi sait Ministerstva vnutrennikh del Rossiiskoi Federatsii]. Available at: <https://xn--b1aew.xn--p1ai/Deljatelnost/statistics/migracionnaya/item/15851053/> (accessed 29.03.2019).

⁹ The Concept of Demographic Policy of the Russian Federation until 2025: approved by the Decree of the President of the Russian Federation dated October 9, 2007, No. 1351: as amended by the Decree of the President of the Russian Federation dated July 1, 2014, No. 483 // Collection of Legislative Acts of the Russian Federation. 2007. No. 42. Art. 5009; 2014. No. 27. Art. 3754.

¹⁰ Balashova T. N. Constitutional and legal problems of formation of migration policy [Konstitutsionno-pravovye problemy formirovaniya migratsionnoi politiki]. SPb.: Yuridicheskii tsentr Press Publ., 2011. PP. 37–38. (In rus.)

¹¹ Section 2.3 “Foreign Citizens’ Children” of the Annual Report of the Children’s Rights Ombudsman in St. Petersburg for 2018 [Razd. 2.3 «Deti inostrannykh grazhdan» Ezhegodnogo Doklada Upolnomochennogo po pravam rebenka v Sankt-Peterburge za 2018 god] // Official website of the Children’s Rights Ombudsman in St. Petersburg [Ofitsial'nyi sait Upolnomochennogo po pravam rebenka v Sankt-Peterburge]. Available at: http://www.spbdeti.org/files/doklad2018/2_3.pdf (accessed 29.03.2019).

¹² Constitution of the Russian Federation, adopted by nation-wide voting on December 12, 1993 (as amended by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation No. 6-FKZ of December 30, 2008, No. 7-FKZ of December 30, 2008, No. 2-FKZ of February 5, 2014, No. 11-FKZ of July 21, 2014) // Russian Newspaper [Rossiyskaya Gazeta]. 1993. December 25, No. 237; 2008. December, 31 No. 267; 2008. December, 31 No. 267; 2014. February, 07 No. 27; 2014. July, 23 No. 163.

¹³ Comment to the Constitution of the Russian Federation [Kommentarii k Konstitutsii Rossiiskoi Federatsii] / Ed. V. D. Zorkin. 2nd ed., revision. M.: Norma: INFRA-M Publ., 2011. P. 170. (In rus.)

¹⁴ Constitution of the Russian Federation.

cow.¹⁵ Regarding basic rights of minor children, foreigners most often appeal to the Office of the Children's Rights Ombudsman in St. Petersburg as to the medical care (hereinafter referred to as MC) and education for their children.¹⁶ Therefore, these are precisely the rights to health protection and MC, as well as the right to education (as those causing the most problems while exercising them) that the consideration of the conditions for the foreign citizens' exercising of certain fundamental rights will commence with.

We also need to make a number of theoretical and legal observations in respect of the categories of "subjective right" and "person subject to law" understanding. We believe it possible to agree with Yu. Ya. Baskin, according to whom "when we talk about law, we should make a preliminary remark that it (law) is subjective in nature (both while created and when acting)".¹⁷ The scholar recognized the view of law as a product of human activity to be correct.¹⁸ Analyzing the V. S. Nersesyants's scientific heritage, Yu. Ya. Baskin noted that "the law reflects the will of the body that issued it".¹⁹ Indeed, laws and statutory instruments are created by specific people, i. e. officers of state bodies vested with the relevant competence. They are guided not by their personal beliefs but by the state's social and political situation, economic conditions, as well as the need to exercise the rights and legitimate interests of the people living there in the course of the rule-making process.

Moreover, the requirements of laws and statutory instruments as a set of existing legal norms are objective in nature for participants in legal relations, for whom subjective rights as a set of legal powers arise based thereon.²⁰

Part 2 of article 17 of the Constitution of the Russian Federation grants fundamental rights to every person from birth.²¹ That is, from that moment on, all people have the corresponding subjective rights regardless of their citizenship. At the same time, we believe it is correct to define the person subject to law only as a reasonable person with free will. The person subject to law is traditionally denoted in legal literature by the category of "person", an "individual" person. The person subject to law as an active participant in legal relations and this category are correlated as follows: the pattern of an individual enshrined in law is an auxiliary means of thinking, the most convenient arrangement of regulatory material. The recognition of minor children as persons subject to law is a legislative fiction. The rule of law grants rights to them, but the true persons subject to law in the exercise of children's rights will be their legitimate representatives — sane people²² with full legal capacity, that is, the ability to independently exercise their subjective rights and obligations,²³ the age limit of which achievement is enshrined in the relevant sectoral legislation.²⁴ Parents (or legal representatives within substitute families) taking care of children, both in the physical sense and in the legal one, who are aware of the sense and nature of the

¹⁵ Selected indicators of the migration situation in the Russian Federation for January-December 2018 with a breakdown by country and region [Otdel'nye pokazateli migratsionnoi situatsii v Rossiiskoi Federatsii za yanvar'-dekabr' 2018 goda s raspredeleniem po stranam i regionam] // Official website of the Ministry of Internal Affairs of the Russian Federation [Ofitsial'nyi sait Ministerstva vnutrennikh del Rossiiskoi Federatsii]. Available at: <https://xn--b1aew.xn--p1ai/Deljatelnost/statistics/migracionnaya/item/15851053/> (accessed 29.03.2019).

¹⁶ Section 2.3 "Foreign Citizens' Children" of the Annual Report of the Children's Rights Ombudsman in St. Petersburg for 2018 [Razd. 2.3 «Deti inostrannykh grazhdan» Ezhegodnogo Doklada Upolnomochennogo po pravam rebenka v Sankt-Peterburge za 2018 god] // Official website of the Children's Rights Ombudsman in St. Petersburg [Ofitsial'nyi sait Upolnomochennogo po pravam rebenka v Sankt-Peterburge]. Available at: http://www.spbdeti.org/files/doklad2018/2_3.pdf (accessed 29.03.2019).

¹⁷ Baskin Yu. Ya. Essays on the philosophy of law: studies. Allowance [Ocherki filosofii prava: ucheb. posobie]. SPb.: Leningrad State University named after A. S. Pushkin [Leningradskii gosudarstvennyi universitet im. A. S. Pushkina], 2006. P. 91. (In rus.)

¹⁸ Baskin Yu. Ya. Op. cit. P. 4.

¹⁹ Baskin Yu. Ya. Op. cit. P. 46.

²⁰ Polyakov A. V., Timoshina E. V. The general theory of law: a textbook [Obshchaya teoriya prava: ucheb. posobie]. SPb.: Publishing House of St. Petersburg State University, publishing house of the faculty of law of St. Petersburg State University [Izdatel'skii Dom Sankt-Peterburgskogo gos. universiteta, Izdatel'stvo yuridicheskogo fakul'teta Sankt-Peterburgskogo gos. universiteta], 2005. P. 369. (In rus.)

²¹ Constitution of the Russian Federation.

²² Petrova A. A human embryo — a subject or object of law? [Chelovecheskii ehmbriion — sub"ekt ili ob"ekt prava?] // Law, society, state: questions of theory and history: collection of materials all-Russian student scientific conference, Moscow, 24–25 apr. 2015 [Pravo, obshchestvo, gosudarstvo: voprosy teorii i istorii: sb. materialov Vseros. stud. nauch. konf., Moskva, 24–25 apr. 2015 g], M.: RUDN [Rossiiskii universitet druzhby narodov], 2015. PP. 257–259. (In rus.)

²³ Polyakov A. V., Timoshina E. V. Op. cit. P. 383.

²⁴ Vitruk N. V. The general theory of the legal status of the individual [Obshchaya teoriya pravovogo polozheniya lichnosti]. M.: NORMA Publ., 2008. 448 p. (In rus.) Access from the legal reference system "Consultant-Plus".

rights granted to children, and who assess the need for their exercising, attach the body of legal relations to children, who can personally continue participating therein as they grow older.²⁵

Thus, the general conditions for the foreigners' exercising of fundamental rights as legal ones are their consciousness and will, which allow them to independently assess the situation that requires the exercise of their rights, as well as reaching the age limit of legal capacity. i.e. the legal age allowing them to independently exercise their rights. The pre-condition, premise for the exercise of fundamental rights by children will be the availability of their legal representatives who temporarily compensate for the lacking legal capacity.

The Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948 (hereinafter referred to as the UDHR) and the documents adopted in furtherance thereof, in particular, the International Covenant on Economic, Social and Cultural Rights, adopted on December 16, 1966 by Resolution 2200 (XXI) at the 1496th Plenary Meeting of the UN General Assembly (hereinafter referred to as the Covenant), attach the right to health protection, education, housing, social security, which, *inter alia*, is associated with the protection of motherhood and childhood (article 25, 26, 16, 22 of UDHR,²⁶ articles 12, 13, 11, 10 of the Covenant²⁷). In the legal literature, these fundamental rights are classified as social ones.²⁸

Moreover, already at the level of international treaties, the possibility of restrictive conditions for foreign citizens' exercising of such rights is enshrined. Thus, pursuant to subclause "c", clause 1 of article 8 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, adopted by Resolution 40/144 of the United Nations General Assembly on December 13, 1985 (hereinafter — the Declaration), aliens lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the right to health protection, medical care, social security, social services, and education, provided that undue strain is not placed on the resources of the State.

With regard to the exercising of the right to housing, the issue is resolved therein as follows. Pursuant to subclause "d", clause 2 of article 5 of the Declaration, foreigners may own property subject to the restrictions provided for by the state's domestic legislation.²⁹ Thus, external migrants can resolve their housing problem through the acquisition of housing.

According to part 1 of article 41 of the Constitution of the Russian Federation, everyone shall have the right to health protection and medical aid. Medical aid in state and municipal health establishments shall be rendered to individuals gratis, at the expense of the corresponding budget, insurance contributions, and other proceeds.³⁰ That is, the Constitution of the Russian Federation already limits the possibility of MC provision on a gratis basis to persons not being Russian citizens.

The Federal Law (hereinafter — the Federal Law) No. 323-FZ of November 21, 2011 "On Basics of Health Protection of the Citizens in the Russian Federation", (hereinafter — the Federal Law "On Basics of Health Protection of the Citizens in the Russian Federation") is fundamental in the sphere of regulating the protection of public health in our country (article 3 of the aforementioned Federal Law). The fundamental principles of health care under article 7 of this Federal Law include the priority of children's health protection.

Pursuant to article 19 of the Federal Law "On Basics of Health Protection of the Citizens in the Russian Federation", the right of foreign citizens residing and staying in our country to MC is established by the legislation of Russia and relevant international treaties of the Russian Federation. Stateless persons permanently residing in the Russian Federation enjoy the right to MC on equal terms with Russian citizens, unless otherwise provided for by international treaties of the Russian Federation. The procedure

²⁵ Petrova A. *Op. cit.* PP. 259–260.

²⁶ Universal Declaration of Human Rights: was adopted by the United Nations General Assembly December 10, 1948 [Vseobshchaya deklaratsiya prav cheloveka: prinyata General'noi Assambleei OON 10 dek. 1948 g.] // Russian Newspaper [Rossiyskaya Gazeta], 1995. April 5, No. 67.

²⁷ International Covenant on Economic, Social and Cultural Rights: adopted by Resolution 2200 (XXI) at the 1496th Plenary Meeting of the UN General Assembly on December 16, 1966 [Mezhdunarodnyi pakt ob ehkonomicheskikh, sotsial'nykh i kul'turnykh pravakh: prinyat Rezolyutsiei 2200 (XXI) na 1496-om plenarnom zasedanii General'noi Assamblei OON 16 dek. 1966 g.] // Gazette of the Supreme Soviet of the USSR [Vedomosti Verkhovnogo Soveta SSSR]. 1976. No. 17 (1831). Art. 291. (In rus)

²⁸ Constitutional law of Russia: a course of lectures [Konstitutsionnoe pravo Rossii: kurs lektsii] / Yu. L. Shulzhenko [and others]. M.: Yurлитinform Publ., 2013. PP. 289–290 (In rus.) (Constitutional law of the Russian Federation)

²⁹ Current International Law [Deistvuyushchee mezhdunarodnoe pravo]. Vol. 1. M.: Moskovskiy nezavisimyy institut mezhdunarodnogo prava Publ., 1996. PP. 255–259.

³⁰ Constitution of the Russian Federation.

for providing MC to foreign citizens is determined by the Government of the Russian Federation.³¹ The Rules for the Medical Care Provision to Foreign Citizens in the Russian Federation, approved by Decree No. 186 of the Government of the Russian Federation dated March 6, 2013 (hereinafter — the Rules) are currently in force.

According to the Rules, external migrants are insured persons pursuant to Federal Law No. 326-FZ of November 29, 2010 “On Compulsory Medical Insurance (hereinafter — the CMI) in the Russian Federation” and are entitled to get MC free of charge in terms of the CMI.³² According to article 10 of the aforementioned Federal Law, they include a number of categories of foreign citizens temporarily and permanently residing in the Russian Federation,³³ i.e. those possessing a temporary residence permit (hereinafter referred to as the TRP) and a residence permit (hereinafter referred to as the RP) allowing to reside in the Russian Federation, respectively (article 2 of the Federal Law No. 115-FZ of July 25, 2002 “On the Legal Status of Foreign Citizens in the Russian Federation”),³⁴ including children from birth until they reach the age of 18. Insured persons also include persons entitled to MC under the Federal Law No. 4528-1 of February 19, 1993 “On Refugees” (hereinafter — the Federal Law “On Refugees”), that is, foreigners applying for refugee status, whose application is being considered on the merits, and their family members, including children under 18; persons recognized as refugees and their family members, including children under 18; as well as persons who have received temporary asylum and their family members, including children under 18 (unless otherwise provided by international treaties of the Russian Federation).³⁵

Emergency medical care in situations that pose a threat to the patient’s life is provided to foreign citizens free of charge. Emergency MC, including a specialized one, is provided to external migrants in situations, which require urgent medical intervention but do not pose a threat to the patient’s life. State and municipal medical establishments of the systems provide this type of MC to foreign citizens free of charge.

Emergency medical care (with the exception of emergency, including secondary emergency medical care) and elective medical care are provided to external migrants on the basis of agreements for paid medical services or voluntary medical insurance agreements and / or agreements concluded in favour of foreign citizens who are insured persons under the Federal Law No. 326-FZ of November 29, 2010 “On Compulsory Health Insurance in the Russian Federation” in the field of CMI.

Elective MC is subject to the external migrant’s submission of the written guarantees to fulfill the obligation to pay the actual cost of medical services or prepay for medical services based on the estimated scope of such services (except when the MC is provided to foreign citizens who are insured within the scope of the compulsory medical insurance).³⁶

With regard to providing MC to children under 18, including external migrants, the following legal problem arises. Pursuant to part 2 of article 54 of the Federal Law “On Basics of Health Protection of the Citizens in the Russian Federation”, as a general rule, children over the age of 15 or drug addicted minors over the age of 16 are entitled to give the informed consent to medical intervention or to reject it.³⁷

Based on the foregoing, we can conclude that adolescents are considered capable with respect to solving the basic issues of providing MC to them until they are 18.

We find it possible to agree with the position of the Children’s Rights Ombudsman in St. Petersburg, according to which this circumstance contradicts the Family Code of the Russian Federation, which states

³¹ “On Basics of Health Protection of the Citizens in the Russian Federation”: Federal Law of the Russian Federation No. 323-FZ of November 21, 2011: as amended by Federal Law of the Russian Federation No. 18-FZ of March 6, 2019 // Collection of Legislative Acts of the Russian Federation. 2011. No. 48. Art. 6724; 2019. No. 10. Art. 888.

³² The Rules for the Medical Care Provision to Foreign Citizens in the Russian Federation, approved by Decree No. 186 of the Government of the Russian Federation dated March 6, 2013 // Collection of Legislative Acts of the Russian Federation. 2013. No. 10. Art. 1035.

³³ “On Compulsory Medical Insurance in the Russian Federation”: Federal Law of the Russian Federation No. 326-FZ of November 29, 2010: as amended by the Federal Law of the Russian Federation No. 6-FZ of February 6, 2019 // Collection of Legislative Acts of the Russian Federation. 2010. No. 49. Art. 6422; 2019. No. 6. Art. 464.

³⁴ “On the Legal Status of Foreign Citizens in the Russian Federation”: Federal Law of the Russian Federation No. 115-FZ of July 25, 2002: as amended by the Federal Law of the Russian Federation No. 528-FZ of December 27, 2018 // Collection of Legislative Acts of the Russian Federation. 2002. No. 30. Art. 3032; 2018. No. 53. Part 1. Art. 8454.

³⁵ “On Refugees”: Federal Law of the Russian Federation No. 4528-1 of February 19, 1993: as amended by the Federal Law of the Russian Federation No. 528-FZ of December 27, 2018 // Russian Newspaper [Rossiyskaya Gazeta]. 1997. June 3. No. 126; 2018. December 29. No. 295.

³⁶ The Rules for the Medical Care Provision to Foreign Citizens in the Russian Federation.

³⁷ “On Basics of Health Protection of the Citizens in the Russian Federation”.

that a person under 18 years of age (full age) is recognized to be a child. Rights and legitimate interests of the child are protected by the parents (persons replacing them). Parents are responsible for the upbringing and development of their children; they are obliged to take care of health, physical, mental, spiritual and moral development of their children (articles 54, 56, 63 of the Family Code of the Russian Federation).³⁸ S. Yu. Agapitova, Children's Rights Ombudsman in St. Petersburg, repeatedly appealed to the Ministry of Health of the Russian Federation for amendments to this regulation. However, the position of the Russian Ministry of Health is that minors are able to make independent decisions regarding their health by the age specified.

A number of tragic incidents, which happened to young residents of our city suggest that this is not so.³⁹ This imperfection of the legislation also poses a threat to the well-being of foreign teenagers while their staying in our country.

The fundamental right to education is reflected in article 43 of the Constitution of the Russian Federation. Pursuant to part 4 of the above-mentioned Article, basic general education is mandatory. Parents or persons in law parents shall enable their children to receive a basic general education.⁴⁰ Let us consider the conditions for the external migrants' implementation of the right to education at Russian schools.

Pursuant to Federal Law No. 273-FZ of December 29, 2012 "On Education in the Russian Federation" (hereinafter — the Federal Law "On Education in the Russian Federation"), foreign citizens have equal rights with the citizens of the Russian Federation to receive primary general, basic general and secondary general education on a public and free of charge basis (part 2 of article 78 of the aforementioned Federal Law).⁴¹ Thus, the legal status of external migrants in our country is not a factor determining the conditions for the exercise of the right to general education. Moreover, based on the Federal Law "On Refugees", persons recognized as refugees are entitled to assistance when enrolling their children in educational establishments (article 8 of the aforementioned Federal Law).⁴² People granted temporary asylum have a more restricted list of rights than refugees. The current statutory instruments do not grant this right to them on an equal basis with refugees, as well as the rights to be considered in the future.⁴³

As a general rule, the "consumers" of state services in the field of general education are minors who are enrolled to Russian schools starting from the age of 6.5 years in the absence of contraindications for health reasons, but no later than 8 years old (part 1 of article 67 of the Federal Law "On Education in the Russian Federation").⁴⁴

According to the Procedure for Admitting Citizens to Study Based on the Programs of Primary General, Basic General and Secondary General Education, approved by Order No. 32 of the Ministry of Education and Science of Russia dated January 22, 2014, a set of documents for admitting a child to an educational establishment is submitted by his/her legal representatives.⁴⁵ Thus, to start the exercising the child's right to education, it is required that the parent compensates for his/her lack of legal capacity. In accordance with the aforementioned Procedure, foreign children who are legally staying in

³⁸ Family Code of the Russian Federation dated December 29, 1995, No. 223-FZ: as amended by the Federal Law of the Russian Federation No. 35-FZ of March 18, 2019 // Collection of Legislative Acts of the Russian Federation. 1996. No. 1. Art. 16; 2019. No 12. Art. 1225.

³⁹ Svetlana Agapitova presented the Report for 2018 at the Legislative Assembly [Svetlana Agapitova predstavila v ZAKSE Doklad za 2018 god] // Official website of the Children's Rights Ombudsman in St. Petersburg [Ofitsial'nyi sait Upolnomochennogo po pravam rebenka v Sankt-Peterburge]. Available at: <http://www.spbdeti.org/id7617> (accessed 29.03.2019).

⁴⁰ Constitution of the Russian Federation.

⁴¹ "On Education in the Russian Federation": Federal Law of the Russian Federation No. 273-FZ of December 29, 2012: as amended by the Federal Law of the Russian Federation No. 17-FZ of March 6, 2019 // Collection of Legislative Acts of the Russian Federation. 2012. No. 53. Part 1. Art. 7598; 2019. No 10. Art. 887.

⁴² "On Refugees": Federal Law of the Russian Federation No. 4528-1 of February 19, 1993: as amended by Federal Law of the Russian Federation No. 528-FZ of December 27, 2018 // Russian Newspaper [Rossiyskaya Gazeta], 1997. June 3. No. 126; 2018. December 29 No. 295.

⁴³ 1) On Refugees; 2) The Procedure for Providing Temporary Asylum in the Russian Federation: approved by Decree No. 274 of the Government of the Russian Federation dated April 9, 2001: as amended by Decree No. 631 of the Government of the Russian Federation dated May 25, 2017 // Collection of Legislative Acts of the Russian Federation. 2001. No 16. Art. 1603; 2017. No. 23. Art. 3330.

⁴⁴ "On Education in the Russian Federation"

⁴⁵ The Procedure for Admitting Citizens to Study Based on the Programs of Primary General, Basic General and Secondary General Education, approved by Order No. 32 of the Ministry of Education and Science of Russia dated January 22, 2014: as amended by Order No. 19 of the Ministry of Education of the Russian Federation dated January 17, 2019 // Russian Newspaper [Rossiyskaya Gazeta]. 2014. April 11, No. 83; The official Internet portal of legal information <http://www.pravo.gov.ru>, February 5, 2019.

the Russian Federation are enrolled to Russian educational institutions.⁴⁶ However, according to article 5 of the Federal Law No. 115-FZ of July 25, 2002 “On the Legal Status of Foreign Citizens in the Russian Federation”, the period of temporary stay of migrant children who arrived in the Russian Federation on a visa-free basis may not exceed the total of 90 days during each period of one hundred and eighty days.⁴⁷ At the same time, the Federal Law “On Education in the Russian Federation” does not include the end of the period of legal stay of a migrant child in the Russian Federation into the grounds for early expulsion of a student from an educational institution.⁴⁸

To comply with the migration regime, foreign children are often have to travel to their homeland in the middle of the school year. A three-month break in the process of education can adversely affect the quality of their learning of the educational program.

In the interests of foreign children, the Directorate for Migration Affairs of the Main Administration of the Ministry of Internal Affairs of the Russian Federation for St. Petersburg and Leningrad Region is considering extending the stay of children of migrants who arrived in the Russian Federation without a visa for the purpose of employment, as well as those who received temporary residence permit, residence permit, or who have already acquired the citizenship of the Russian Federation, when applying to the territorial departments of the authority before the legal period of the child’s stay in Russia expires. In each case, the legal grounds for the stay of the child and his parents in the Russian Federation, as well as the circumstances of the family’s life order in our country, are assessed.⁴⁹ The position on the possibility to extend the stay of foreign children was developed by the Office of the Federal Migration Service of Russia for St. Petersburg and the Leningrad Region in cooperation with the St. Petersburg Prosecutor’s Office and continues to be implemented after the transfer of authority to provide public services in the field of migration to the Ministry of Internal Affairs of Russia.

Unfortunately, practice shows that foreign citizens inappropriately care about the exercise of their children’s rights while in Russia. For example, they refuse to pay for medical services provided to their children, which is subsequently reported by the healthcare institutions to the Office of the Children’s Rights Ombudsman in St. Petersburg, whose experts inspect such situations. Moreover, adult foreigners, having legalized their stay in the Russian Federation for a long period, do not timely care about the legalization of a child’s stay in our country,⁵⁰ which actually takes the child out of the legal environment thus posing a threat to his/her well-being.

The position of the Children’s Rights Ombudsman in St. Petersburg seems to be fair. According to the position, the adult migrants’ ignorance of the Russian legislation regarding the most important issues of the life order of their children in the Russian Federation should be eliminated through awareness-building among newly arrived foreigners in Russia carried out by the relevant agencies (in St. Petersburg this is Multicultural Relations and Migration Policy Implementation Committee).⁵¹ Such an approach will allow external migrants to timely assess the possibility and risks of a child moving to Russia and make an informed and grounded decision on family migration to the Russian Federation with children.

Article 40 of the Constitution of the Russian Federation secures everyone’s right to housing.⁵²

Moreover, according to part 3 of the above-mentioned article “Low-income people and other persons mentioned in law and in need of a home shall receive it gratis or for reasonable payment from the state, municipal and other housing stocks according to the norms fixed by law”.⁵³ The limitation of the circle of persons entitled to obtain housing from public funds by citizens of the Russian Federation is worked out in the Housing Code of the Russian Federation. For instance, residential premises are not provided to foreign citizens and/or stateless persons under contracts of social rent (part 5 of article 49 of the Housing Code of the Russian Federation). Moreover, residential premises are not provided to foreign citizens and/or stateless persons under lease agreements for residential premises of the housing fund

⁴⁶ See *ibid.*

⁴⁷ Federal Law No. 115-FZ of July 25, 2002 “On the Legal Status of Foreign Citizens in the Russian Federation”.

⁴⁸ “On Education in the Russian Federation”

⁴⁹ Section 2.3 “Foreign Citizens’ Children” of the Annual Report of the Children’s Rights Ombudsman in St. Petersburg for 2018 [Razd. 2.3 «Deti inostrannykh grazhdan» Ezhegodnogo Doklada Upolnomochennogo po pravam rebenka v Sankt-Peterburge za 2018 god] // Official website of the Children’s Rights Ombudsman in St. Petersburg [Ofitsial’nyi sait Upolnomochennogo po pravam rebenka v Sankt-Peterburge]. Available at: http://www.spbdeti.org/files/doklad2018/2_3.pdf (accessed 29.03.2019).

⁵⁰ Children of Migrants Suffer from Parents’ Irresponsibility [Deti migrantov stradayut iz-za bezotvetstvennosti roditel’] // Official website of the Children’s Rights Ombudsman in St. Petersburg [Ofitsial’nyi sait Upolnomochennogo po pravam rebenka v Sankt-Peterburge]. Available at: <http://www.spbdeti.org/id7125> (accessed 29.03.2019).

⁵¹ See *ibid.*

⁵² Constitution of the Russian Federation.

⁵³ See *ibid.*

for social use (part 3 of article 91.3 of the Housing Code of the Russian Federation). Exceptions to these rules may be provided for by an international treaty of the Russian Federation.⁵⁴

Article 35 of the Constitution of the Russian Federation guarantees the right to private property.⁵⁵ Current Russian legislation does not restrict foreign citizens' right to enter into civil law contracts for residential premises (in particular, contracts for their purchase and sale and/or lease from private individuals). Thus, external migrants can resolve the housing issue in respect of themselves and their minor children, which they are obliged to take care of, by entering into relevant transactions. For foreign citizens who have a residence in Russia, that is, those who have a temporary residence permit or residence permit, as well as refugees, this provision is strengthened by art. 1195 of the Civil Code of the Russian Federation according to which their personal law is Russian law.⁵⁶ In accordance with clause 2 of article 20 of the Civil Code of the Russian Federation, the place of residence of children, who have not reached 14 years of age, shall be recognized as the place of residence of their legal representatives.⁵⁷ As regards minors temporarily staying in the Russian Federation together with their parents of a similar legal status, from the formal legal point of view, we believe it is correct to note that they should live with the parents because of the family relationship imposing duties on the latter to care for the children.

Moreover, pursuant to article 8 of the Federal Law "On Refugees", refugees have the right to use residential premises from the housing fund for temporary settlement⁵⁸ included into residential premises of the specialized housing fund (clause 6, part 1 of article 92 of the Housing Code of the Russian Federation).⁵⁹

Pursuant to article 39 of the Constitution of the Russian Federation "everyone shall be guaranteed social security at the expense of the State in old age, in case of an illness, disableness, loss of the bread-winner, for upbringing of children and in other cases established by law. State pensions and social allowances shall be established by law".⁶⁰

The previously prepared thesis on prosecutor's supervision of the implementation of legislation in the field of migration notes that "a child of a migrant worker has equal rights with the citizens of the state of employment <...> to receive social benefits. Taking the objects into account, they can be classified as social payments (pensions, benefits, compensation, etc.)".⁶¹ At the same time, according to the current pension legislation (part 1 of article 3 of the Federal Law No. 166-FZ of December 15, 2001 "On the State Provision of Pensions in the Russian Federation",⁶² part 3 of article 4 of the Federal Law No. 400-FZ of December 28, 2013 "On Insurance Pensions"⁶³), as a general rule, the right to receive pensions is granted to foreign citizens and stateless persons permanently residing in the Russian Federation, that is, those who have obtained a residence permit (article 2 of the Federal Law No. 115-FZ of July 25, 2002 "On Legal Status of Foreign Citizens in the Russian Federation"⁶⁴). Refugees are also entitled to pensions⁶⁵. Thus, taking into account the current legislation, it does not seem possible to

⁵⁴ Housing Code of the Russian Federation dated December 29, 2004, No. 188-FZ: as amended by the Federal Law of the Russian Federation No. 60-FZ of April 15, 2019 // Russian Newspaper [Rossiyskaya Gazeta], 2005. January 12, No. 1; 2019. April 17, No. 84.

⁵⁵ Constitution of the Russian Federation.

⁵⁶ Civil Code of the Russian Federation. Part III dated November 26, 2011, No. 146-FZ: as amended by the Federal Law of the Russian Federation No. 292-FZ of August 3, 2018 // Collection of Legislative Acts of the Russian Federation. 2001. No. 49. Art. 4552; 2018. No. 32. Part I. Art. 5085.

⁵⁷ Civil Code of the Russian Federation. Part I dated November 30, 1994, No. 51-FZ: as amended by the Federal Law of the Russian Federation No. 339-FZ of August 3, 2018 // Collection of Legislative Acts of the Russian Federation. 1994. No. 32. Art. 3301; 2018. No. 32. Part II. Art. 5132.

⁵⁸ "On Refugees"

⁵⁹ Housing Code of the Russian Federation.

⁶⁰ Constitution of the Russian Federation.

⁶¹ Dobysh M. A. Prosecutor's supervision over the execution of laws in the sphere of migration relations [Prokurorskii nadzor za исполнением zakonov v sfere migratsionnykh otnoshenii]: Dissertation of PhD in Juridical sciences: 12.00.11. M., 2012. P. 58. (In rus.)

⁶² "On the State Provision of Pensions in the Russian Federation": Federal Law of the Russian Federation No. 166-FZ of December 15, 2001: as amended by the Federal Law of the Russian Federation No. 536-FZ of December 27, 2018 // Collection of Legislative Acts of the Russian Federation. 2001. No. 51. Art. 4831; 2018. No. 53. Part 1. Art. 8462.

⁶³ "On Insurance Pensions": Federal Law of the Russian Federation No. 400-FZ of December 28, 2013: as amended by the Federal Law of the Russian Federation No. 25-FZ of March 6, 2019 // Collection of Legislative Acts of the Russian Federation. 2013. No. 52. Part 1. Art. 6965, 2014. No. 2. Part 2 (amendment); 2019. No. 10 Art. 895.

⁶⁴ "On the legal status of foreign citizen in the Russian Federation".

⁶⁵ "On Refugees".

acknowledge the statement that a child of an external migrant temporarily residing in the Russian Federation, like his/her parent, is entitled to obtain pensions.

Adolescents who have reached the age of 14 are entitled to apply for a pension on their own.⁶⁶ Moreover, as mentioned above, the personal law of these categories of foreigners is Russian law, which also applies when determining their civil capacity (clause 1 of article 1197 of the Civil Code of the Russian Federation).⁶⁷ Therefore, they are entitled to dispose of their pension independently subject to article 26 of the Civil Code of the Russian Federation.⁶⁸ Adults independently get and spend their pensions in their interests.

As for underage children, their legal representatives qualify for pensions. Funds are credited to a separate nominal account opened by the legal representative and are spent in the interests of the child (clause 1 of article 28 of the Civil Code of the Russian Federation, clause 1 of article 37 of the Civil Code of the Russian Federation).⁶⁹

In addition to pensions, Russian law provides for a wide range of social support measures. Let us dwell on the conditions for the provision of the benefits stipulated by the Federal Law No. 81-FZ of May 19, 1995 "On State Benefits to Citizens with Children" to foreign citizens, depending on their legal status. According to article 1 of the aforementioned Federal Law, benefits are provided to foreign citizens and refugees permanently residing in the Russian Federation, as well as those temporarily residing in the Russian Federation and foreign citizens subject to compulsory social insurance for temporary disability and in connection with the motherhood.⁷⁰ Thus, the possibility of providing such benefits to temporarily staying foreign citizens, including those who arrived to work, is not observed.

Let us dwell on social support measures provided for by the law of St. Petersburg, where a contradiction was revealed in the legal regulation thereof.

Pursuant to clause 1 of article 17 of the Law of St. Petersburg No. 728-132 of November 22, 2011 "Social Code of St. Petersburg", a number of child allowances are provided to refugees and foreign citizens residing in St. Petersburg.⁷¹ In turn, the Decree of the Government of St. Petersburg regulating the provision of such allowances provides for their payment only to people possessing a residence permit.⁷²

Thus, St. Petersburg regulations contain a contradiction in terms of determining the circle of foreigners living in St. Petersburg to be provided with child allowances. We believe that it should be eliminated. Moreover, in terms of its meaningful content, we believe it possible to mention the thought of V. S. Soloviev, whose work was highly appreciated by Yu. Ya. Baskin: positive law is "a compulsory requirement to implement the certain minimum good".⁷³ Given that the regulatory framework is formed by a public territorial entity subject to its social, economic and political conditions, as well as that persons who have

⁶⁶ Rules for applying for an insurance pension, a fixed payment to an insurance pension subject to the increase of a fixed payment to an insurance pension, a funded pension, including those provided by employers, and a pension as part of state pension provision, their purpose, establishment, recalculation, and adjustment, including to persons without permanent residence in the Russian Federation; as well as rules for the verification of the documents required for the pensions establishment and/or transferring from one type of pension to another in accordance with the Federal Laws "On Insurance Pensions" and "On funded Pension" and "On the State Provision of Pensions in the Russian Federation": approved by order No. 884n of the Ministry of Labour of the Russian Federation dated November 17, 2014; as amended by Order No. 43n of the Ministry of Labour of the Russian Federation dated January 28, 2019 // Russian Newspaper [Rossiyskaya Gazeta], 2015. January 16. No. 6; The official Internet portal of legal information <http://www.pravo.gov.ru>, February 21, 2019.

⁶⁷ Civil Code of the Russian Federation. Part 3.

⁶⁸ Civil Code of the Russian Federation. Part 1.

⁶⁹ See *ibid*.

⁷⁰ "On State Benefits to Citizens with Children: Federal Law of the Russian Federation No. 81-FZ of May 19, 1995; as amended by the Federal Law of the Russian Federation No. 264-FZ of July 29, 2018 // Collection of Legislative Acts of the Russian Federation. 1995. No. 21. Art. 1929; 2018. No. 31. Art. 4853.

⁷¹ St. Petersburg Social Code: Law of St. Petersburg dated November 22, 2011, No. 728-132; as amended by the Law of St. Petersburg dated April 11, 2019, No. 175-38 // Newsletter of the Administration of St. Petersburg [Informatsionnyi byulleten' Administratsii Sankt- Peterburga]. 2011. No. 46; The official website of the Administration of St. Petersburg <https://www.gov.spb.ru/>, April 16, 2019.

⁷² On the implementation of Chapter 5 "Social Support for Families with Children" of the Law of St. Petersburg "St. Petersburg Social Code": Decree of the Government of St. Petersburg dated May 22, 2013, No. 343; as amended by the Decree of the Government of St. Petersburg dated December 17, 2018, No. 946 // Official website of the Administration of St. Petersburg <https://www.gov.spb.ru/>, May 27, 2013; December 20, 2018.

⁷³ Soloviev V. S. Works: in 2 volumes. [comp., Total. Ed. and entry. Art. A. F. Losev and A. V. Hulygi; note S. L. Kravets [and others] [Sochineniya: v 2 t. /sost., obshch. red. i vstup. st. A. F. Loseva i A. V. Gulygi; primech. S. L. Kravtsa [i dr.]]; Academy of Sciences of the USSR, Institute of Philosophy [AN SSSR, Institut filosofii]. M. : Mysl' Publ., Vol. 1. 1988. P. 450. (Philos. Heritage. T. 104). (In rus.)

received TRP should take measures to improve their family's life in order to avoid the TRP cancellation (clause 1 of article 7 of the Federal Law No. 115-FZ of July 25, 2002 "On the Legal Status of Foreign Citizens in the Russian Federation"),⁷⁴ we believe that this conflict can be resolved both by providing statutory benefits to foreign migrants who have received TRPs as stipulated by the legislation of St. Petersburg, and by creation of consistent regulation, securing their payment only to persons with a residence permit.

Legal representatives of children shall apply to the Administrations of the districts of St. Petersburg to arrange the benefits. A number of benefits paid to children under 7 are transferred to plastic cards issued to parents and can be spent to pay for children goods at qualified trade entities.⁷⁵ This secures the interests of preschoolers as final "beneficiaries" of the benefits.

The study proves that external migrants who have created strong legal ties with the Russian Federation, i.e. permanent residents, as well as refugees, possess the largest range of opportunities. The latter need special support due to extremely intensive changes in their legal status, which happen against their will, and need to quickly adapt to the conditions of the host community.⁷⁶

Summing up, we would like to note that family migration is assessed as allowing both to increase the benefits of a change of place of residence and to minimize the risks of failures associated with migration.⁷⁷ Successful adaptation of external migrants to the conditions of the host Russian community is possible with their timely familiarization with the legislation of the Russian Federation. Important adaptation factors include the creation by the state apparatus of conditions for the foreigners' exercising of their basic rights, namely, the observance of the statutory instruments requirements, which may be the basis of external migrants' subjective rights, by the agencies involved in ensuring the rights of full-age foreigners and their children in the field in question (providing relevant public services) and the proper exercise by the prosecution authorities of supervisory powers in respect of them, taking into account special way of foreign citizens' exercising the rights arising from their legal status.

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⁷⁴ "On the Legal Status of Foreign Citizen in the Russian Federation".

⁷⁵ 1) St. Petersburg Social Code; 2) On the implementation of Chapter 5 "Social Support for Families with Children" of the Law of St. Petersburg "St. Petersburg Social Code".

⁷⁶ Public prosecutor's supervision over the implementation of migration legislation: current issues: handbook [Prokurorskii nadzor za ispolneniem migratsionnogo zakonodatel'stva: aktual'nye voprosy: posobie] / A. V. Palamarchuk [and others]; Prosecutor General's office of the Russian Federation, Academy of the Prosecutor General's office of the Russian Federation [Gen. prokuratura Ros. Federatsii, Akademiya Gen. prokuratury Ros. Federatsii]. M., 2014. P. 71. (In rus.)

⁷⁷ Balashova T. N. Op. cit. P. 37.

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