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PUBLIC PARTICIPATION AND THE RIGHTS OF THE CHILD: REFLECTION ON INTERNATIONAL LAW STANDARDS IN THE LEGAL SYSTEM OF THE RUSSIAN FEDERATION

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This article deals with the much debated issue of children's public participation from the perspective of legal practices in the Russian Federation. Having emerged at the level of national jurisdictions, the practice of engaging minors in decision-making processes on issues of public significance – or the practice of public participation of children – is stipulated by the UN Committee on the Rights of the Child, based on Article 12 of the UN Convention on the Rights of the Child. Public participation of minors implies that children have clearly defined opportunities to take part in decision-making processes concerning those political and public matters affecting their interests.

Albeit limited by the clause "regarding the issues concerning them," the claims for such participation are dictated by emerging standards of international law. The author has examined the process of devising these standards in Russian public law. Moreover, an analysis of the evolution of academic views on public participation of children in Russian legal scholarship is also included in this article.

Relying extensively on the method of legal analysis and the comparative analysis of the conformity of national public law standards with respect to international law, the author proposes several legal amendments to the Federal law "On the Basic Guarantees of the Rights of the Child in the Russian Federation," which would lead to anchoring more solidly the participatory right of minors in the legal system of the Russian Federation.

Keywords: the rights of the child; public participation; UN Convention on the Rights of the Child; children's associations; freedom of expression

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Table of Contents

1. Introduction

A classic understanding of public participation – or participation in the conduct of public affairs – the right guaranteed by Article 25 of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR), is associated with elections and referendums. Since General Comment No. 25 to the ICCPR introduces age limitations on the right to take part in the conduct of public affairs, children are not entitled to exercise the rights set forth in said Article 25 of the Covenant. Age limitations on electoral rights are considered a "reasonable" limitation on human rights. The principal avenue of public participation, i.e., elections and referendums, is unavailable to minors. Nevertheless, excluding children from the realm of public participation can no longer be an unconditional principle. According to emerging standards of international human rights law, minors are afforded a set of political rights guaranteeing public participation.

Additional avenues for public participation are provided for children by the UN Convention on the Rights of the Child (hereinafter: the UN CRC Convention).[1] The state parties to this most widely ratified international instrument – Russia included – enforce international legal obligations to respect and ensure the rights set forth in it. Providing the child with a wide range of human rights, the UN CRC Convention does not distinguish between political, civil, and socio-economic rights, while stipulating specific rights with respect to public participation. The opportunities for public participation are embedded in Article 12 of this Convention, guaranteeing for the child "capable of forming his or her own views" the right "to express those views freely in all matters affecting the child" (para. 1). Paragraph 2 of the same Article 12 extends this right to participation in "any judicial and administrative proceedings affecting the child."

[1] Convention on the Rights of the Child, Adopted by General Assembly resolution 44/25 of November 20, 1989, Entered into force September 2, 1990, UN Doc. A/44/49 (1989), 1577 UNTS 3.

Our primary goal is to examine how Russian statutory law dealing with issues of public participation of children conforms to standards of international human rights law. In order to achieve this aim, we discuss the following questions:

1. What are the emerging international law standards regarding the public participation of children?

2. How are these standards conceptualized in Russian legal scholarship?

3. Does Russian statutory law guarantee opportunities for the public participation of children?

4. What amendments to Russian statutory law should be proposed in order to achieve a more comprehensive implementation of the participatory rights of minors?

Concerning working definitions, public participation is understood in this study as the engagement of individuals in the conduct of public affairs, ensuring the opportunity for their direct, active, and continuous inclusion in decision-making processes. Minors are defined in this study as human beings below the age of eighteen years old, unless majority is attained earlier according to the relevant law.

2. Political Entitlements of Children: Conceptual Approaches

European scholars actively take up the issue of the political rights of minors, to which the right to take part in the conduct of public affairs intrinsically belongs. Researchers recognize the existence of limited political rights for children. For instance, arguing in favor of political rights for minors, Ruth Lister maintains that lowering the age threshold of voting rights in separate jurisdictions is a strong counterargument against not granting political rights to minors.[2] Likewise, L.J. LeBlanc claims that the UN Convention on the Rights of the Child guarantees all types of rights, including political rights.[3] Owing to the fact that the right to take part in the conduct of public affairs, as set forth in Article 25 of the ICCPR, is subject to minimum age limitations, children can neither vote, nor stand for public office. Yet public participation, as elucidated by para. 8 of General Comment No. 25 to the ICCPR, is supported by ensuring freedom of expression, assembly and association. The rights to freedom of expression, assembly, and association are subject to more flexible age limitations, enabling minors to engage in public participation. L.J. LeBlanc refers to these rights as "empowering rights" for children.[4] All these

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[2] Ruth Lister, *Why Citizenship: where, when and how Children?*, 8(2) Theoretical Inquiries in Law 705 (2007).

[3] Lawrence J. LeBlanc, *The Convention on the Rights of the Child* XVII (Lincoln: University of Nebraska Press, 1995).

[4] *Id.*

rights and freedoms ensure minors a real opportunity to express their own views on matters of public significance affecting their rights and interests.[5]

As a matter of fact, almost every issue of public policy regards children. If we consider, e.g., the problems of education, healthcare or social security, all these issues concern children, as they are included among the recipients of public services. Mary Donnelly and Ursula Kilkelly, who studied the processes of involvement of minors in decision-making in the field of healthcare in the context of Article 12 of the UN CRC Convention, formulate three reasons for children's participation:

- significant role of participation of minors in decision-making for implementing the rights of the child;
- ability of minors to bring the arguments regarding certain issues of public significance, which often remain unnoticed by adults;
- the urgency of fulfilling international legal obligations with respect to Article 12 of the UN Convention on the Rights of the Child.[6]

Including children in the political sphere is significant not only from the perspective of individual rights, but also from the vantage point of what the Organization for Security and Cooperation in Europe began to call "good governance," i.e., the process ensuring, *inter alia,* accountability in public administration, not to mention public participation in decision-making. The concept of good governance was conceived by the 1991 OSCE Lund Recommendations on the Effective Participation of National Minorities in Public Life.[7] According to the explanatory report appended to these Recommendations, "inclusive and participatory processes" serve "the objective of good governance by responding to the interests of the whole population." The theme of good governance was a decade later taken up by the UN in the framework of a 2000 Commission on Human Rights Resolution "The Role of Good Governance in the Promotion of Human Rights" proclaiming that good governance is based on "transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people."[8] Hence, the success of good governance

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5 Paulo David, *A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture* 16 (Boston: Martinus Nijhoff, 2006); Thomas Hammarberg & Alfhid Petren, *The Political Influence of Children* in *Children's Rights, Turning Principles into Practices* 62 (A. Petren & J. Himes, eds., Stockholm: Save the Children, Sweden, 2000); Shabnam N. Ahmed, *The Breached Contract: What Society Owes Its Children for Minimizing Their Constitutional Rights*, 50(3) Howard Law Journal 860 (2007).

6 Mary Donnelly & Ursula Kilkelly, *Child-Friendly Healthcare: Delivering on the Right to be Heard*, 19(1) Medical Law Review 33 (2011).

7 The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note (Lund Recommendations) (September 1999), para. 16 (Jul. 22, 2016), available at http://www.osce.org/hcnm/32240.

8 UN Commission on Human Rights, Commission on Human Rights Resolution 2000/64 The Role of Good Governance in the Promotion of Human Rights, April 27, 2000, E/CN.4/RES/2000/64 (Jul. 22, 2016), available at http://www.refworld.org/docid/3b00f28414.html.

substantially depends on well-organized avenues for enhanced citizen participation in decision making, allowing individuals to express their dissatisfaction with the political course of the state in a constructive manner.

Current theories of law and democracy emphasize the significance of the broadest possible representation of civil society in decision-making processes. For instance, Jurgen Habermas, in his Theory of Deliberative Democracy, claims that all subgroups of civil society should participate in deliberating on the most contested political issues.[9] In his book "Legitimation Crisis" Habermas suggested that political decisions should be made after free and open discussion, i.e., deliberation by citizens with the goal of reaching a compromise.[10] Citizens should discuss all issues of common interest according to strict rules of discourse established by law. Representation during such deliberations should be as complete as possible. This ensures that all perspectives on contested political issues are considered, enabling marginalized social groups to express their opinion. As a subgroup of civil society, minors possess distinct rights and interests and, therefore, should be represented in decision-making concerning these rights and interests. Children are capable of contributing to political discussions by virtue of expressing their own attitudes towards the problems discussed.[11] "The idea of political rights for children," – insist F. Earls and M. Carlson – "requires a concept of the child as capable and competent, rather than needy and helpless; it also requires adults to accept children as active and valuable members of society."[12] Yet the realities of decision-making processes do not always reflect such an ideal. For instance, J. Rutherford remarks that even when adolescents find opportunities to express criticism of decisions by public authorities, e.g., in petitions, calls to the call-lines on TV programmes, or by virtue of other similar methods, their opinions are often ignored because of a lack of effective legal mechanisms that would ensure their opinions being heard[13] leading to a situation where political opinions of this segment of the population go unnoticed, during the decision-making processes.

Looking for effective mechanisms allowing public authorities to consider the political opinions of children, separate jurisdictions went further than merely mentioning the political rights of minors in their statutory laws and adopted concrete measures aimed at including minors in the processes of democratic decision-making.

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9 Jurgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Cambridge: The MIT Press, 1996).

10 Jurgen Habermas, *Legitimation Crisis* (Great Britain: Polity Press, 1989).

11 Sylvie Langlaude, *On How to Build a Positive Understanding of the Child's Right to Freedom of Expression*, 10(1) Human Rights Law Review 36–37 (2010).

12 Felton Earls & Maya Carlson, *Adolescents as Collaborators: In Search of Well-Being* in *The Jacobs Foundation Series on Adolescence. Youth in Cities: A Cross-National Perspective* 69 (M. Tienda & W.J. Wilson, eds., Cambridge: Cambridge University Press, 2002).

13 Jane Rutherford, *One Child, One Vote: Proxies for Parents*, 2 Minnesota Law Review 1472 (1998).

Among such measures are new institutions and forums for considering the views of children on issues of public significance. For example, in 2001 New Zealand adopted a document entitled "New Zealand's Agenda for Children," which included *inter alia* plans for establishing a special forum where children and youth could efficiently express their views regarding the direction of national politics.[14] In 2004 Great Britain launched four mandates appointing Children's Commissioners in England, Scotland, Wales, and Northern Island.[15] These and other initiatives of national governments aim at consulting with minors to avoid situations when children's rights and interests are inadequately represented by adults.

3. International Legal Standards of Public Participation of Children

3.1. Provisions of the UN Convention on the Rights of the Child

As mentioned previously, the UN Convention on the Rights of the Child stipulates a set of political and participatory rights for minors. Although this instrument does not directly mention the right of a child to engage in public participation, the concept of limited participation of children in the conduct of public affairs has evolved from national legal norms. In 2009 the UN Committee on the Rights of the Child commented on the emergence of this widespread phenomenon, broadly conceptualized as the "participation" of children. Limited opportunities for those under 18 years of age to engage in decision-making on matters affecting them are derived from Article 12 of the UN CRC Convention on the right to express one's views. More particularly, this Article 12 reads:

> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The overriding meaning of this article, as interpreted by the UN Committee on the Rights of the Child, addresses the participatory claims of minors regarding

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[14] Maree Brown & Jaleh McCormack, *Placing Children on the Political Agenda: New Zealand's Agenda for Children* in *The Politics of Childhood: International Perspectives, Contemporary Developments* 185–207 (J. Goddard et al., eds., New York: Palgrave Macmillan, 2005).

[15] Williams Kane & Croke Rhian, *Institutional Support for the UNCRC's "Citizen Child"* in *Children and Citizenship* 184–187 (A. Invernizzi & J. Williams, eds., Los Angeles: Sage, 2008).

decision-making processes. In particular, in General Comment No. 12 to the UN CRC Convention, the UN Committee claims that "[a] widespread practice has emerged in recent years, which has been broadly conceptualized as 'participation,' although this term itself does not appear in the text of Article 12. This concept is now widely used to describe ongoing processes, including information-sharing and dialogue between children and adults based on mutual respect, where children can learn how their views and those of adults are taken into account and shape the outcome of such processes."[16] Although such a broad interpretation of the clause "affecting them" does not entitle children to a general political mandate, the states promised to develop and implement programmes to promote effective participation by children in decision-making processes, including participation in families and schools and at the local and national levels during the 27th special session of the UN General Assembly. This statement is fixed by the final document of this session, entitled "A world fit for children," para. 32(1).[17] Nevertheless, the above-mentioned General Comment No. 12 to the UN CRC Convention emphasizes that the right of the child to express his or her views as set forth in Article 12 represents one of the four main principles of this Convention, consonant with non-discrimination, the right to life and development, and the primary consideration of the child's best interests.[18] In particular, the UN Committee on the Rights of the Child emphasizes that "[t]he right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention."[19] The said document implies that Article 12 of the UN CRC Convention does not merely proclaim that the right should be implemented, but also establishes a legal standard which should be applied when interpreting all other rights.

3.2. The Council of Europe on Public Participation of Children

At the level of the Council of Europe (hereinafter: the CoE), several child-specific treaties were adopted: the 1996 European Convention on the Exercise of Children's Rights;[20] the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;[21] and the 2008 European Convention on the

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16 UN Committee on the Rights of the Child, General Comment No. 12 The Right of the Child to be Heard, July 1, 2009, UN Doc. CRC/C/GC/12, para. 3 (Jul. 22, 2016), available at http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf.

17 UN General Assembly, Twenty Seventh Special Session, Resolution [on the report of the Ad Hoc Committee of the Whole (A/S-27/19/Rev.1 and Corr.1 and 2)] S-27/2. A World Fit for Children, October 11, 2002, UN Doc. A/RES/S-27/2 (Jul. 22, 2016), available at http://www.unicef.org/worldfitforchildren/files/A-RES-S27-2E.pdf.

18 General Comment No. 12, *supra* note 16, para. 2.

19 *Id*.

20 CoE, The European Convention on the Exercise of Children's Rights, January 25, 1996, ETS No. 160.

21 The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, October 25, 2007, ETS No. 201.

Adoption of Children (revised).[22] However, focusing on certain procedural issues, these treaties do not include or provide for claims for the public participation of minors. The provisions on public participation can be found in the 1950 CoE Convention for the Protection of Human Rights Fundamental Freedoms (hereinafter: the European Convention)[23] guaranteeing the rights to freedom of expression (Article 10), assembly and association (Article 12), and in its Protocol No. 1,[24] Article 3, which stipulates the right to free and periodic elections. These treaties do not explicitly set minimum age limitations for implementing participatory rights. Yet the principles of establishing such limitations are outlined in the jurisprudence of the European Court of Human Rights (hereinafter: the ECtHR). Concerning the electoral rights stipulated in Protocol No. 1 to the European Convention, the ECtHR establishes that compliance with the requirements of Article 3 of Protocol No. 1 should satisfy the conditions when implementing the rights in question does not "impair their very essence and deprive them of their effectiveness."[25] More particularly, commenting on the restrictions of the right to vote, the Court reaffirmed in the 2004 case of Melnychenko v. Ukraine the provisions of General Comment 25 (1996) to the ICCPR, according to which any restrictions on the right to stand for election, such as minimum age, must be justifiable on the basis of objective and reasonable criteria.[26] Moreover, in the 2005 case of Hirst v. the United Kingdom, the ECtHR has determined that "the imposition of a minimum age may be envisaged with a view to ensuring the maturity of those participating in the electoral process."[27] The Court continued that "[a]ny departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1."[28]

Noteworthy is also the fact that the issue of the existence of the political rights of children was officially considered by international human rights organs in 1987 when the former European Commission of Human Rights dealt with the case of Irka Cederberg-Lappalainen v. Sweden.[29] The applicant's daughter was attending

[22] CoE, The European Convention on the Adoption of Children (revised), November 27, 2008, ETS No. 202.

[23] CoE, Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, ETS No. 005.

[24] Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, November 1, 1998, ETS No. 155.

[25] ECtHR, Hirst v. the United Kingdom (No. 2), Judgment of October 6, 2005, (2006) 42 EHRR 41, [2005] ECHR 681, para. 62.

[26] ECtHR, Melnychenko v. Ukraine, Appl. No. 17707/02, Judgment of October 19, 2004, ECHR 2004-X, para. 28.

[27] Hirst v. the United Kingdom (No. 2), *supra* note 25.

[28] *Id*.

[29] European Commission of Human Rights, Irka Cederberg-Lappalainen v. Sweden, Appl. No. 11356/85, admissibility decisions of March 4, 1987.

a pre-school in Malmö City of Sweden, the Constitution of which guarantees to every citizen the right to freedom of expression and to arrange and participate in demonstrations (the Instrument of Government, chapter 2, section 1). Pre-school children were arranged to take part in a peace demonstration with the participation of the personnel and the parents. The applicant claimed that she was never asked by the pre-school about the forth-coming demonstration. The applicant's child did not attend the peace demonstration and stayed at home with the mother, who had taken a week's holiday. After having exhausted national court channels, the applicant's complaint reached the European Commission, alleging *inter alia* that permitting pre-school children to participate in a demonstration is a violation of the child's right to have its integrity respected and that the action of the authorities violates the right to freedom of peaceful assembly. Ms. Cederberg-Lappalainen maintained that "freedom" must include the right to abstain from acting. Having found the application manifestly ill-founded, the Commission argued that by making the participation of children in a demonstration dependent on the consent of parents, the authorities observed the child's right to have its integrity respected. Moreover, by deciding to stay at home with her daughter, the applicant exercised the freedom to abstain from participation in public events. Although this application was not examined on its merits in order to establish whether in a democratic state public authorities could arrange demonstrations involving children of an age at which they cannot be assumed to have an opinion of their own, this case opened the official discussions on the existence of political rights of minors.

Promoting child participation was marked as one of the four strategic objectives[30] of the Council of Europe Strategy for the Rights of the Child (2012–2015).[31] Such an objective was established to respond to the criticism of a lack of "respect" for the opinions of children, in particular, when "children have little access to information and their views in public and private life are rarely sought or given due consideration."[32] In accordance with this Strategy:

> All children have the legal right to be heard and taken seriously in all matters affecting them, whether in the family or alternative care environments; day-care; schools; local communities; health care, justice and social services; sport, culture, youth work and other recreational activities aimed at young people under the age of 18; and policy-making at domestic, European and international levels.[33]

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[30] Three other objectives are: promoting child-friendly services and systems; eliminating all forms of violence against children; and guaranteeing the rights of children in vulnerable situations.

[31] Council of Europe Strategy for the Rights of the Child (2012–2015), February 15, 2012, CM(2011)171 (Jul. 22, 2016), available at http://www.coe.int/t/DGHL/STANDARDSETTING/CDcj/StrategyCME.pdf.

[32] *Id*. at 3.

[33] *Id*. at 8.

The value of this Strategy for the promotion of minors' public participation lies in its approach to the role of monitoring the rights of the child. This document recognizes the existing number of CoE treaties, either with implications for the rights of the child or child-specific legal instruments, and proposes to act by implementing the existing standards "through a more proactive mainstreaming of the rights of the child into the Council of Europe monitoring bodies and human rights mechanisms."[34] Such mechanisms include the European Court of Human Rights and other Council of Europe mechanisms and conventional committees.[35] The renewed Strategy for the Rights of the Child 2016–2021[36] again highlights children's participation among the five priority areas of children's rights protection.[37] In order implement this priority, the CoE commits to "taking a participatory approach to the rights of the child in all dimensions of this Strategy and to support its member States in doing so."[38]

In 2012 the Council of Europe adopted the recommendation on the participation of children and young people under the age of 18.[39] Section 1 of this Recommendation defines participation as follows:

> having the right, the means, the space, the opportunity and, where necessary, the support to freely express their views, to be heard and to contribute to decision making on matters affecting them, their views being given due weight in accordance with their age and maturity.

In order to facilitate the public participation of children, this recommendation introduced to the governments of the Member States of the CoE the following

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[34] Council of Europe Strategy for the Rights of the Child (2012–2015), at 11.

[35] The European Committee of Social Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Group of Experts on Action against Trafficking in Human Beings, the European Commission against Racism and Intolerance, the Enlarged Partial Agreement on Sport, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Committee of Experts of the European Charter for Regional or Minority Languages, as well as a range of conventional committees, including the Convention Committee on the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

[36] Council of Europe Strategy for the Rights of the Child (2016–2021) (Jul. 22, 2016), available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8.

[37] Four other priority areas are: equal opportunities for all children; a life free from violence for all children; child-friendly justice for all children, and rights of the child in the digital environment. *Id*. at 4.

[38] *Id*. *supra* note 36.

[39] Council of Europe, the Committee of Ministers, Recommendation CM/Rec(2012)2 on the Participation of Children and Young People under the Age of 18, Adopted by the Committee of Ministers on March 28, 2012 at the 1138th meeting of the Ministers' Deputies (Jul. 22, 2016), available at https://www.google.fi/?gfe_rd=cr&ei=-Y6TV6K8H4uA8QfuwJ_4Cg&gws_rd=ssl#q=the+Recommendation+on+the+participation+of+children+and+young+people+under+the+age+of+18.

measures: – to provide legal protection for children and youth in order to participate in drafting constitutions, legislation and regulations; – to undertake periodic reviews to determine the extent to which children and youths' opinions are heard and taken seriously in existing legislation, policies and practices, and to ensure that in these reviews, children and young people's own assessments are given due weight; – to provide children and youth with effective remedies through child-friendly means of submitting complaints as well as optimizing judicial and administrative procedures; – to ensure safeguards for children and youth who are especially vulnerable to rights violations; – to review restrictions in law or in practice, limiting children or youth's right to be heard in all matters affecting them; – to take a co-ordinated approach to strengthening children and youth's participation and to ensure that participation is mainstreamed in decision and policy-making structures; – to establish an appropriate and independent human rights institution, such as an ombudsperson/commissioner for children's rights; and – to allocate adequate financial resources and secure optimal human resources to support children and young people's participation in both formal and informal settings.[40]

As for the practical implementation of strategic objectives to enhance public participation of children at the level of the Council of Europe, children's views have been taken into account by the Committee of Ministers in developing f recommendations on children's rights. In particular, the "Guidelines on Child-friendly Justice," adopted by the Committee of Ministers in 2010, take into consideration the responses from almost 3,800 children in 25 member States. Children's views were also taken into account in the drafting process of the Guidelines on child-friendly health, the recommendation on child-friendly social services, and the Recommendation on the participation of children and young people under the age of 18.[41]

3.3. The Convention and the Legal System of the Russian Federation

The Soviet Union ratified the UN CRC Convention in 1990, in accordance with the Decree of the USSR Supreme Council of June 13, 1990.[42] The Convention entered into force in the Soviet Union on September 15, 1990. As the successor state of the Soviet Union, the Russian Federation is bound by international legal obligations imposed by the UN CRC Convention. In respect of implementing the participatory rights of minors, the provisions of this Convention are to a large extent incorporated into the laws of the Russian Federation. The exception, nevertheless, deals with the right to express views on matters affecting the child in judicial and administrative processes.

40 Recommendation CM/Rec(2012)2, at sec. III.

41 Council of Europe Strategy for the Rights of the Child (2016–2021), *supra* note 36.

42 Указ Верховного Совета СССР от 13 июня 1990 г. № 1559-I «О ратификации Конвенции о правах ребенка», Ведомости СНД СССР и ВС СССР, 1990, № 26, ст. 497 [Decree of the USSR Supreme Council of June 13, 1990. On Ratification of the Convention on the Rights of the Child, Gazette of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR, 1990, No. 26, Art. 497].

Such a general right is currently lacking in the statutory law of the Russian Federation. This problem has been highlighted in the 2012 document called "National Strategy of Actions in the Interests of Children in 2012–2017," approved by the Edict of the President of the Russian Federation.[43] This strategy fairly remarks that although there are certain opportunities provided by the 1993 RF Constitution and statutory law ensuring the opportunities of engaging minors in the processes of decision-making regarding the issues of public significance. This document suggests that although there are such specific opportunities, a lack of effective mechanisms of ensuring the participation of children in public life and in deciding on matters regarding their life and interests is one of the major problems facing children.

"National Strategy of Actions in the Interests of Children in 2012–2017" also points out that many children's and youth associations, youth councils, chambers, and parliaments, as well as school self-government bodies are operating in the Russian Federation. Nevertheless, according to this document, the possibilities of minors participating and meaningfully engaging in political life are implemented "rather weakly" due to the "insufficient elaboration of the necessary legal foundation" for such participation. As a matter of fact, there is no federal law regulating the activities of consultative bodies, comprising children and youth. The federal Youth Parliament under the aegis of the State Duma of the Federal Assembly of the Russian Federation, for instance, was established on the basis of the 2011 Decree of the State Duma, not on the basis of any federal law. This lack of federal legal regulation still exists, despite the fact that such bodies promote children's public participation. J. Wall emphasizes the significance of consultative bodies, including those comprising children, pointing out that as of 2014 children's parliaments have been set up in more than 30 states in the world, such as: India (which was the first state having introduced children's parliaments), Sri-Lanka, Norway, Finland, Germany, Slovenia, Bolivia, Ecuador, Brazil, Nigeria, Zimbabwe, Congo, Burkina-Faso, Liberia, New Zealand, and Great Britain.[44] The World Parliament of Children, having convened in Paris in 1999, is worth special mention, conducting several sessions in 1999 upon the initiative of the French National Assembly.[45] This World Parliament convened 350 children and youth representatives from 175 member states of the United Nations in order to discuss matters of public significance. The issues discussed were *inter alia*

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[43] Указ Президента РФ от 1 июня 2012 г. № 761 «О Национальной стратегии действий в интересах детей на 2012–2017 годы», Собрание законодательства РФ, 2012, № 23, ст. 2994 [Edict of the President of the Russian Federation No. 761 of June 1, 2012. On National Strategy of Actions in the Interests of Children in 2012–2017, Legislation Bulletin of the Russian Federation, 2012, No. 23, Art. 2994].

[44] John Wall, *Democratising Democracy: The Road from Women's to Children's Suffrage*, 18(6) The International Journal of Human Rights 646 (2014).

[45] Information regarding the World Parliament of Children is reproduced on the official web-page of the UNESCO organization (22 Jul. 2016), available at http://unesdoc.unesco.org/images/0011/001184/118448Eo.pdf.

the conflicts at the end of the twentieth century, e.g., in Kosovo. Having discussed these tragic events, the children of the different states of the world were united in the belief in the utmost importance of peace. October 24, 1999 the participants of that forum summarized their hopes for peace, solidarity, education, culture, economic development, human rights, and environmental protection in a document entitled "Youth Manifesto for the 21st Century."[46] This manifesto was sent to all the heads of states and to the United Nation. Studies have shown that children are genuinely concerned with the problems of environmental protection and human rights and are willing to pursue such common goals.

Article 32, para. 1 of the 1993 RF Constitution guarantees the citizens of the Russian Federation the right to take part in the management of state affairs either directly or via their representatives. Hence, the Constitution does not explicitly base the right to vote and to hold office on full legal capacity and maturity. Yet reference to full legal capacity is incorporated into para. 2 of the same article, denying the right to vote and to hold office to those citizens who had been found legally incapable by a court of law. Hence, a number of electoral laws in the Russian Federation stipulate that the right to vote and to hold office shall be granted or restricted to those citizens who have reached the age of 18.[47] Yet in 2000 the State Duma of the Federal Assembly of the Russian Federation considered the draft law No. 23045-3 proposing a lower minimum age limit for participation in elections.[48] This draft law was proposed by a group of deputies, including Mr. Semenov, Mr. Koptev-Dvornikov, Mr. Barannikov,

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[46] Information regarding the World Parliament of Children, *supra* note 45.

[47] Федеральный закон от 26 ноября 1996 г. № 138-ФЗ «Об обеспечении конституционных прав граждан Российской Федерации избирать и быть избранными в органы местного самоуправления», Собрание законодательства РФ, 1996, № 49, ст. 5497 [Federal law No. 138-FZ of November 26, 1996. On Ensuring Constitutional Right of Citizens to Elect and to be Elected in Organs of Local Self-Government, Legislation Bulletin of the Russian Federation, 1996, No. 49, Art. 5497]; Федеральный закон от 12 июня 2002 г. № 67-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации», Собрание законодательства РФ, 2002, № 24, ст. 2253 [Federal law No. 67-FZ of June 12, 2002. On Basic Guarantees of Electoral Rights and the Right to Participate in the Referendum in the Russian Federation, Legislation Bulletin of the Russian Federation, 2002, No. 24, Art. 2253].

[48] Проект закона № 23045-3 «О внесении изменений в Федеральный закон «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации», Федеральный закон «О выборах депутатов Государственной Думы Федерального Собрания Российской Федерации» и Федеральный закон «О выборах Президента Российской Федерации», Федеральный закон «Об обеспечении конституционных прав граждан Российской Федерации избирать и быть избранными в органы местного самоуправления» в связи со снижением возраста приобретения гражданами активного избирательного права, права на участие в референдуме» [Draft law No. 23045-3 "On amending Federal law 'On Basic Guarantees of Electoral Rights and the Right to Take Part in the Referendum of the Citizens of the Russian Federation,' Federal law 'On Elections of Deputies to the State Duma of the Federal Assembly of the Russian Federation,' Federal law 'On Elections of the President of the Russian Federation,' and Federal law 'On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and to be Elected in Organs of Local-Self-Government' with the reference to lowering the age of obtaining the right to elect and the right to take part in the referendum"] (Jul. 22, 2016), available at http://www.duma.gov.ru.

and Mr. Dines, all of whom favored granting to minors who turned 16 years old on the day of voting the right to take part in elections. However, this draft law was rejected in the State Duma.[49] In particular, the Duma objected that the right of citizens to take part in state elections and local self-government, as set forth under Article 32 of the 1993 RF Constitution, is an essential political right entitling individuals to take part in the conduct of public affairs. Read in conjunction with Article 60 of the Constitution, granting to citizens of the Russian Federation a full range of rights after reaching the age of 18, the right to participate in elections belongs to all legally competent citizens. Respectively, according to the opinion of the Committee of the State Duma, the right to take part in elections should be exercised by citizens of the Russian Federation who have attained "full legal capacity and civil maturity allowing an individual to keep up with the conscientious approach towards realization of his or her political rights and carrying out responsibility for decisions."

The 1993 RF Constitution does not introduce an age limitation with respect to the freedom of expression (Article 29), freedom of association (Article 30), freedom of assembly (Article 31), nor the right to petition public authorities (Article 33). Such an approach is in accordance with the provisions of the UN CRC Convention and the official interpretations of UN Committee on the Rights of the Child, and UN Committee of Human Rights, guaranteeing the right to take part in the conduct of public affairs, stipulated in the ICCPR General Comment No. 25. Although a child is not entitled to a full political mandate, various provisions of Russian law grant minors opportunities to take part in public law relationships:

To start with, Article 19 of the 1995 Federal law "On Public Associations" stipulates that children who have reached the age of 8 years can take part in children's associations.[50] Article 4 of the same federal law claims that "children's public

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[49] Заключение на проект федерального закона "О внесении изменений в Федеральный закон 'Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации', Федеральный закон 'О выборах депутатов Государственной Думы Федерального Собрания Российской Федерации' и Федеральный закон 'О выборах Президента Российской Федерации', Федеральный закон 'Об обеспечении конституционных прав граждан Российской Федерации избирать и быть избранными в органы местного самоуправления' в связи со снижением возраста приобретения гражданами активного избирательного права, права на участие в референдуме», внесенный депутатами Государственной Думы В.О. Семеновым, В.Е. Коптевым-Дворниковым, А.Е. Баранниковым, И.Ю. Динесом [Concluding observation on draft law "On amending Federal law 'On Basic Guarantees of Electoral Rights and the Right to Take Part in the Referendum of the Citizens of the Russian Federation,' Federal law 'On Elections of Deputies to the State Duma of the Federal Assembly of the Russian Federation,' Federal law 'On Elections of the President of the Russian Federation,' and Federal law 'On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and to be Elected in Organs of Local-Self-Government' with the reference to lowering the age of obtaining the right to elect and the right to take part in the referendum,' submitted by the deputies of the State Duma V.O. Semenov, V.E. Koptev-Dvornikov, A.E. Barannikov, and I.Iu. Dines] (Jul. 22, 2016), available at http://www.duma.gov.ru.

[50] Федеральный закон от 19 мая 1995 г. № 82-ФЗ «Об общественных объединениях», Собрание законодательства РФ, 1995, № 21, ст. 1930 [Federal law No. 82-FZ of May 19, 1995. On Public Associations, Legislation Bulletin of the Russian Federation, 1995, No. 21, Art. 1930].

association is an association of citizens under 18 years of age who had united for the pursuits of common activities." The state provides support for activities of public associations with respect to children and youth. The City of Saint-Petersburg, for instance, supports 37 such associations as of May 10, 2016, the minimum age of the participants of which is 8.[51]

2. In respect of exercising the freedom of expression as a mode of public participation, such an opportunity for minors can be realized via the right to petition public authorities. Since neither Article 33 of the 1993 RF Constitution nor Article 2 of the 2006 Federal law "On the Procedure of Consideration of Petitions by the Citizens of the Russian Federation"[52] sets age limitations for petitioning, children's associations can exercise the right to petition in order to inform public authorities of the specific needs of children. The right to submit petitions to public authorities is stipulated in Article 27 of the Federal law "On Public Associations," in accordance with which such associations have the right to put forward initiatives on issues within their own competence and to address petitions to state and municipal authorities.

3. The legislation of the Russian Federation permits minors to exercise freedom of expression in order to take part in the conduct of public affairs via participating in the sessions of public authorities. Federal law "On State Support of Public Associations for Children and Youth" stipulates that members of such associations can take part in the sessions of state organs if such sessions concern the interests of minors.[53]

4. Statutory law introduces higher minimum age limitations for minors in order to facilitate public participation via the freedom of assembly. Minors who had reached the age of 16 have the right to organize public meetings on the basis of Article 5 of the Federal law "On Gatherings, Meetings, Demonstrations, Processions, and Pickets."[54] Concerning citizen participation in meetings and conferences regarding issues of local self-government in certain municipal territories, Article 27 of the Federal law "On the

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[51] Региональный реестр молодежных и детских общественных объединений, пользующихся государственной поддержкой Санкт-Петербурга [Registry of State-Supported Associations for Children and Youth in the City of Saint-Petersburg] (Jul. 22, 2016), available at http://kpmp.gov.spb.ru/media/uploads/userfiles/2016/05/26/%D0%A0%D0%B5%D0%B5%D1%81%D1%82%D1%80_2016_6djfAaK.pdf.

[52] Федеральный закон от 2 мая 2006 г. № 59-ФЗ «О порядке рассмотрения обращений граждан Российской Федерации», Собрание законодательства РФ, 2006, № 19, ст. 2060 [Federal law No. 59-FZ of May 2, 2006. On the Procedure of Consideration of Citizen's Petitions in the Russian Federation, Legislation Bulletin of the Russian Federation, 2006, No. 19, Art. 2060].

[53] Федеральный закон от 28 июня 1995 г. № 98-ФЗ «О государственной поддержке молодежных и детских объединений», Собрание законодательства РФ, 1995, № 27, ст. 2503 [Federal law No. 98-FZ of June 28, 1995. On State Support of Public Associations for Children and Youth, Legislation Bulletin of the Russian Federation, 1995, No. 27, Art. 2503].

[54] Федеральный закон от 9 июня 2004 г. № 54-ФЗ «О собраниях, митингах, демонстрациях, шествиях и пикетировании», Собрание законодательства РФ, 2004, № 25, ст. 2485 [Federal law No. 54-FZ of June 9, 2004. On Gatherings, Meetings, Demonstrations, Processions, and Pickets, Legislation Bulletin of the Russian Federation, 2004, No. 25, Art. 2485].

Basic Principles of Organization of Local Self-Government in the Russian Federation" grants such an opportunity to those who had reached the age of 16.[55]

The process of developing conceptual views on the political rights of the child in Russia has been going on under the auspices of the UN CRC Convention. The academic literature in this field indicates a significant leap in conceptualizing the political rights of minors. Soviet legal scholarship denied the full legal personality of minors. Children were considered as legally "incapable," and their parents and other legal representatives were entitled to participate in legal relationships on behalf of their children.[56] Only a decade ago Russian legal scholars remained cautious about recognizing the notion that minors have political rights. For instance, Professor Chirkin denied the existence of the political rights of minors.[57] Similarly, Professors Zariaev and Malkov argued in favor of limited political rights for children, such as the right to assembly and the right to association.[58] At present Russian legal scholarship has arrived at the point where it can answer the question regarding the existence of the political rights of minors affirmatively.[59]

Although the participatory meaning of Article 12 of the UN CRC Convention regarding the right of the child to express his or her views on matters concerning him or her is stipulated by international human rights institutions, such a right is lacking in the Federal law "On Basic Guarantees of the Rights of the Child in the Russian Federation." In particular Section II of this Federal law ensuring the rights of the child in the Russia concentrates on such issues as the means of protecting the rights of the child in education; ensuring the right of the child to health care; protecting the right of the child to choose his/her profession, professional education, and professional activities; protecting the rights of the child in the field of leisure and recreational activities; protection of children from information intending to harming the child mentally, morally , intellectually, or physically; measures of counteracting child trafficking; and the protection of children in dangerous life situations. This

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55 Федеральный закон от 6 октября 2003 г. № 131-ФЗ «Об общих принципах организации местного самоуправления в Российской Федерации», Собрание законодательства РФ, 2003, № 40, ст. 3822 [Federal law No. 131-FZ of October 6, 2003. On General Principles of Organization of Local Self-Government in the Russian Federation, Legislation Bulletin of the Russian Federation, 2003, No. 40, Art. 3822].

56 Малеин Н.С. Гражданское право и права личности в СССР [Nikolay S. Malein, *Civil Law and the Rights of a Personality in the USSR*] 113–114 (Moscow: Yuridicheskaya literatura, 1981).

57 Чиркин В.Е. Юридическое лицо публичного права [Veniamin E. Chirkin, *Legal Entity in Public Law*] (Moscow: Norma, 2007).

58 Заряев А.В., Малков В.Д. Ювенальное право: Учебник для вузов [Alexander V. Zariaev & Vadim D. Malkov, *Juvenile Law: A Textbook for Higher Educational Establishments*] (Moscow: Yustitsinform, 2005).

59 Морева Р.Б. Конвенция ООН о правах ребенка как источник международного права, 4 Ученые записки Российского государственного социального университета (2010) [Roxana B. Moreva, *UN Convention on the Rights of the Child as a Source of International Law*, 4 Scholarly Notes of the Russian State Social University (2010)].

Federal law, nevertheless, is silent regarding concrete measures ensuring the political rights of minors. Deliberate or not, such an omission remains intact, despite this issue being discussed in the United Nations.

Yet the right of the child to express his or her views on issues of public significance can be seen in several items of legislation in the Russian Federation. For example, Article 13 of the 1995 Law of Sverdlovskaia Oblast "On the protection of the Rights of the Child"[60] stipulates the right of the child to freely express his/her views:

> The child capable of forming own opinion has the right to be heard in decision-making regarding any issue which concerns his interests in any judicial or administrative process. Authorities making such decisions are obligated to consider the views of the child who had reached the age of 10 years unless such consideration goes against of the best interests of the child.

Article 17 of the same law guarantees the right of the child to freedom of association:

> The child has the right to take part in public association on his own will and in accordance with the legislation of the Russian Federation.
>
> In accordance with federal legislation, the educational establishments on the initiative of the students older than 8 years of age can set up public associations of students which are not public associations set up by political parties or children's religious associations.
>
> Executive authorities of Sverdlovskaia Oblast assist the activities of public associations which ensure personal development, creative skills, social activity of children, and entailing the children in cultural and sport life.

4. Bringing National Law in Conformity with International Law Standards

Hence, the author of his article argues for the necessity of amending the Federal law "On the Basic Guarantees of the Rights of the Child in the Russian Federation." In particular, such amendments could be appended to Article 16 of the federal law "Ensuring the Right of the Child to Express His/Her Views Freely":

> of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child

[60] Закон Свердловской Области от 23 октября 1995 г. № 28-ОЗ «О защите прав ребенка», Областная газета, 1995, 31 октября, № 118 [Law of Sverdlovskaia Oblast No. 28-OZ of October 23, 1995. On Protection of the Rights of the Child, Regional Newspaper, October 31, 1995, No. 118].

> For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the laws of the Russian Federation

Moreover, it would be reasonable to define the requirement of state support of the activities of children's associations as a primary goal of state policy in respect of children's rights. Although international law standards dictate that a child is an equal right holder along with others, Article 4, para. 2 of the Federal law "On the Basic Guarantees of the Rights of the Child in the Russian Federation," focusing on the goals of state policy with respect to children's rights, mentions only supporting public associations that "pursue activities regarding the protection of rights and legitimate interests of the child." The urgency of state support of the activities of children's associations is left out of this article. Such an omission suggests that a child is still regarded in Federal law as an object of legal protection, not as a full-scale right-holder. Accordingly, the author is in favor of amending Article 4, para. 2 of the Federal law "On the Basic Guarantees of the Rights of the Child in the Russian Federation" by adding the following provision:

> State policy in the sphere of children's rights is based inter alia on the principle of state support of public associations, children's associations, and other organizations pursuing those activities promoting the protection of rights and legitimate interests of the child.

The amendments proposed would facilitate a deeper respect for the international legal obligations of the Russian Federation regarding the implementation of Article 12 of the UN CRC Convention. In the end, such legal amendments would lead to a more thorough incorporation of the participatory rights of the child into the realm of Russian public law.

5. Conclusion

We have examined the issues of the involvement of minors in the conduct of public affairs. Children, representing a particular subgroup of civil society, are lacking in general political standing. The author of this article suggests that minors can influence public affairs, albeit differently from adults. The limited rights of the child to take part in public affairs was interpreted by the UN Committee on the Rights of the Child as a corollary of the right to express one's views, guaranteed in Article 12 of the UN CRC Convention. Such a right is limited by a range of issues relevant to minors as well as by the level of maturity of the child. Children can express their views only regarding those political issues directly affecting their rights and interests.

These issues are especially relevant to Russia where the Soviet-era denial of children's legal personality still surfaces in the statutory law, challenging the notion of children's effective involvement in public decision-making. As a state party to this Convention, the Russian Federation is subject to international legal obligations to respect and ensure the rights set forth in the above-mentioned Article 12 of the UN CRC Convention. Although Soviet legal scholarship denied the existence of the political rights of minors, modern Russian legal scholarship acknowledges such rights, which is a positive development.

This article examined the prospects of minors to engage in those political issues affecting their interests, e.g., Russian children, starting from the age of eight can be members of children's associations; children, starting from 16 can take part in local assemblies. No age limitations are set for taking part in children's parliaments and children's councils, as well as in addressing public authorities personally and through the mass media. Those minors capable of forming and expressing their opinions on political issues can utilize these modes of public participation. The engagement of children in political decision-making contributes not only to protecting the rights of the child, but also engenders fresh alternatives that go unnoticed by adults.

The right of the child to freely express views on all matters concerning his or her interests, juxtaposed with the obligation of public authorities to take these opinions into consideration, is presently lacking in the Federal law "On the Basic Guarantees of the Rights of the Child in the Russian Federation." Yet such a right can be discovered in separate items of legislation in the Russian Federation. This is why the author of this article proposes an amendment to this Federal law – an amendment that would achieve the goal of a more comprehensive realization of the participatory rights of minors in the legal system of the Russian Federation.

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