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CONSTITUTIONAL AND LEGAL PRINCIPLES REGULATING THE RIGHT TO EDUCATION: CURRENT STATE AND DEVELOPMENT PROSPECTS

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Pyroha I., Zaborovskyy V. Constitutional and legal principles regulating the right to education: current state and development prospects.

Purpose. The purpose of this article is an in-depth analysis and systematization of the constitutional and legal principles that underlie the regulation of the right to education in modern society. This article is aimed at highlighting the current aspects of the constitutional provision of educational rights, assessing the current state of these principles and considering possible prospects for development in the future.

Research methods. The methodological basis of the scientific article is a complex of general scientific and special scientific methods of cognition, the application of which allowed to reveal the essence of the constitutional and legal principles of regulation of the right to education under modern conditions.

Results and conclusions. Within the framework of scientific research, attention is focused on the challenges and opportunities facing the paradigm of the constitutional and legal foundations of the regulation of the right to education, namely: globalization of legal systems (active world integration, exchange of ideological and cultural assets), digital revolution (rapid development of the technology market), geopolitical conflicts (obstacles in access to education, deterioration of the quality of education), demographic changes (the growing population creates a demand for proper provision of high-quality education for citizens) and inclusive education (taking into account the special needs of students in the process of providing educational services).

The consequences of the existence of such challenges, which are manifested in the emergence of new standards and approaches in the constitutional and legal regulation of the right to education, are indicated, in particular: quality and accessibility of education, inclusiveness of education, universality of education, flexibility and adaptation in education, digitalization of education, etc.

Key words: constitutional right to education, prospects for the development of the constitutional right to education, universal accessibility, quality of education, inclusiveness of education, e-education, distance learning, global cooperation, adaptation, flexibility, human rights, educational standards, social development.

Пирога І., Заборовський В. Конституційно-правові засади регулювання права на освіту: сучасний стан та перспективи розвитку.

Мета даної статті полягає у глибокому аналізі та систематизації конституційно-правових принципів, які лежать в основі регулювання права на освіту в сучасному суспільстві. Наукова робота

спрямована на висвітлення актуальних аспектів конституційного забезпечення освітніх прав, оцінку сучасного стану даних принципів та розгляд можливих перспектив розвитку в майбутньому.

Методи дослідження. Методологічною основою наукової статті є комплекс загальнонаукових та спеціально-наукових методів пізнання, застосування яких дозволило розкрити сутність конституційно-правових засад регулювання права на освіту в сучасних умовах.

Результати та висновки. В рамках наукового дослідження акцентується увага на викликах та можливостях, які стоять перед парадигмою конституційно-правових засад регулювання права на освіту, а саме: глобалізації правових систем (активної світової інтеграції, обміну ідейними, культурними надбаннями), цифрової революції (стрімкого розвитку ринку технологій), геополітичних конфліктів (перешкоджання в доступі до освіти, погіршення якості освіти), демографічних змін (зростаюча чисельність населення створює попит на належне забезпечення якісною освітою громадян) та інклюзивної освіти (врахування особливих потреб здобувачів у процесі провадження освітніх послуг).

Зазначено наслідки існування таких викликів, які проявляються у появі модернізованих стандартів та підходів щодо конституційно-правового регулювання права на освіту, зокрема: якості та доступності освіти, інклюзивності освіти, універсальності освіти, гнучкості та адаптації в освіті, цифровізації освіти тощо.

Ключові слова: конституційне право на освіту, перспективи розвитку конституційного права на освіту, універсальна доступність, якість освіти, інклюзивність освіти, електронна освіта, дистанційне навчання, глобальна співпраця, адаптація, гнучкість, права людини, освітні стандарти, соціальний розвиток.

Introduction

In the conditions of the modern dynamic world legal order, education acts as a driving force of social and state transformations, guarantees the social and economic development of society. The constitutional right to education, as one of the fundamental human rights, is recognized as an important factor in ensuring individual social development, as well as the harmonious functioning of society as a whole.

The constitutional provision of the right to education is not only a guarantor of the realization of personal ambitions and aspirations of each person, but also a key factor in the development of national culture, economy and social structure. In this context, the analysis of the constitutional and legal principles governing the right to education is extremely important to ensure adequate functioning of the educational system and ensure adequate guarantees for citizens.

Therefore, we consider the main goal of this study to be a detailed analysis and study of the constitutional and legal foundations of the regulation of the right to education through the prism of progressive social development. So, our main task is to outline the key challenges and perspectives of the constitutional and legal foundations of the regulation of the right to education, which will allow us to better master this field and lay the foundation for further research in the field of modernization of the constitutional and legal foundations of educational rights.

Constitutional principles of the right to education: theoretical analysis

As rightly noted by U. Parpan, the constitutional right to education has a programmatic and purposeful nature, which requires constant improvement of legislation in the field of education and related social relations that are connected with the realization of this right. In particular, as the author notes, one of the key features of the right to education is that this right combines both «negative» and «positive» components of individual freedom. The latter, in particular, should be understood as the subjective right of a person to choose the forms and methods of education, in which the influence of the state is unacceptable, and the positive obligations of the state to create and ensure the proper functioning of the education system. At the same time, the author emphasizes the existence of four fundamental principles of the constitutional right to education, namely: freedom of education, equal access to education, equality in education and state support for education [1, c. 94].

It should be emphasized that the principles of the right to education have a universal character and are concentrated primarily in acts of an international nature. At the same time, it is necessary to take into account the fact that each specific country has its own specificity of legal regulation of this or that issue, which is determined by the traditions of the legal system, the development of society and the state as a whole.

At the same time, we agree with the position of O. Kuznichenko and M. Ilchenko, who claim that the constitutional right to education is one of the most important and, at the same time, one of the most difficult

rights among the entire array of human rights. Thus, the fruitful legislative work, the result of which was the adoption of the Law of Ukraine «On Education» on September 5, 2017, as well as a number of related normative acts, put on the agenda the issue of the quality and completeness of the constitutional and legal guarantees of the right to education, methods of implementation and protection of this rights [2, с. 29].

At the same time, on February 28, 2022, the President of Ukraine, Volodymyr Zelenskyi, signed an application for joining the EU, which only strengthens the relevance of scientific research on the systematization of the constitutional and legal foundations of the regulation of the right to education in a common union with European integration processes. Of course, another reason for considering the constitutional and legal regulation of the modern foundations of the right to education was the entry into force of the Decree of the President of Ukraine dated February 24, 2022 No. 64/2022 «On the introduction of martial law in Ukraine», approved by the Law of Ukraine dated February 24, 2022 No. 2102 -IX, as a result of unjustified military aggression by the Russian Federation [3].

Note that the Law of Ukraine «On Education» among the main principles of the state's educational policy puts forward the following: people-centeredness; Rule of Law; ensuring the quality of education and the quality of educational activities; ensuring equal access to education without discrimination on any grounds, including disability; development of an inclusive educational environment; scientific nature of education; diversity of education; integrity and continuity of the education system; transparency and publicity of the adoption and implementation of management decisions; responsibility and accountability of education management bodies; integration with the labor market; academic integrity; academic freedom; financial, academic, personnel and organizational autonomy of educational institutions within the limits defined by law; humanism; democracy and others [4].

At the same time, in order to more fully master the theoretical block of the study, below we present the key international standards that establish the general principles of regulation of the constitutional right to education:

- *The Universal Declaration of Human Rights* (1948) – affirms the principle of non-discrimination and proclaims the right of every person to education. Establishes free, universal access and equality in the right to education [5];
- *Convention against discrimination in the field of education* (1960) – guarantees the right to universal access to education and to equal conditions in relation to the quality of education [6];
- *International Covenant on Economic, Social and Cultural Rights* (1966) – declares the right of every person to accessible education at all levels, including vocational and technical secondary education [7];
- *The Convention on the Rights of the Child* (1989) – recognizes the child's right to education, promotes the development of various forms of education, both general secondary and professional, ensuring the availability of education for all children and, in necessary cases, its free education [8];
- *World Declaration on Education for All* (1990) – ensuring universal access to education for all persons and promoting the strengthening of the principles of justice [9];
- *Dakar Declaration or Millennium Declaration* (2000) – guaranteeing education for all with mandatory consideration of the needs of vulnerable groups of people [10].

Guarantees of accessible and quality education: modern aspects

*«Education is the greatest of earthly goods, if it is of the highest quality.
Otherwise, it is completely useless»*

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We agree with the writer in that the indicator of the quality of education is a direct counterpart of the quality of life of a person and society. Today, not only the level of knowledge, skills, and abilities are inherent in education, but also the quality of personal, worldview, and cultural development of future generations. That is why the issue of quality and availability of education should be considered primarily from the standpoint of social values.

Thus, quality education at the current stage is one of the essential conditions for the successful existence of any country. In particular, at the level of the world community, it is recognized that education, well-being and health of a person are the main vectors of the development of his standard of living, and the quality of education is a priority in the development of civil society. In particular, current civilizational challenges in many countries have led to a real educational boom, to a wave of deep reforms or modernization of education systems.

So, as for the quality of education, it should be noted that this concept is somewhat abstract in nature and is interpreted by different scientists in different meanings. In particular, we can offer broad and narrow approaches to understanding the term «quality of education». Thus, under a broader approach, «the quality of education» should be understood as the full compliance of the educational process with the adopted legislative norms, customary law, social order, etc. In turn, with a narrower approach, the «quality of education» is revealed to us from the angle of certain individual characteristics of the person, the educational system, and the educational environment as well.

Thus, among the components of quality education, we can distinguish such categories as:

- a properly constructed educational process, and accordingly, a proper result in the end;
- a higher level of education of a person formed by the public;
- the norms of functioning of the educational system are fairly and easily presented.

In turn, the criterion of the availability of education is also subject to interpretation in two meanings. More narrowly, accessible education refers to the process of teaching and developing lessons and courses that directly address the diverse needs of students. People come from different backgrounds, have different social and cognitive skills, and have different exposure to digital resources. Ultimately, this approach extends to schools and universities to remove any barriers that may arise from such differences and make education easily accessible without compromising any content. In a broader approach, accessible education includes: equality of technical opportunities, geographic opportunities, material opportunities and inclusive opportunities.

With regard to the inclusive approach in education, it will be appropriate to refer to the precedent practice of the European Court of Human Rights, namely, the case «G.L.v. Italy», which concerned a young person with severe learning difficulties who was provided with sufficient educational support and care in a kindergarten (aged 4-6) «so that she could use the educational and social services offered by the school on an equal basis with other students», as provided by Italian law. But after the primary school opened, the local authority stopped support, telling the parents that the local care budget was spent on adults with muscle conditions, so they could not support the young man. The parents appealed to a local judge, the Court of Appeal and the Supreme Court of Italy, which confirmed that the lack of a local government budget was a strong enough argument not to be able to provide the support they wanted. However, the European Court disagreed, calling it discrimination because the lack of budget only affected this young person and not the other pupils. The court further reasoned «Without support, [the young person] could not have continued to attend primary school in conditions equivalent to those enjoyed by students without disabilities, and this difference in treatment was caused by her disability». The Court also emphasizes the need for inclusive education for social integration: «the discrimination suffered by the applicant is even more serious because it took place in the context of primary education, which provides the basis for education and social integration and the first experience of living together». «The court also recalls that when the limitation of fundamental rights affects a particularly vulnerable segment of the population that has experienced significant discrimination in the past, the discretionary powers of the state are significantly reduced». This means that the state must have very strong relevant arguments for limiting the right to inclusive education [11].

Prospects for the development of the constitutional right to education

The active processes of globalization and integration of legal systems, the rapid digital revolution and the widespread introduction of e-learning have their influence on the constitutional and legal principles of regulating the right to education, leading to the emergence of new, in accordance with the challenges of the times, principles. In particular, the following are the main factors that influenced the trend of the formation of modern foundations of educational rights:

- *globalization of legal systems*: active world integration, exchange of ideas and cultural heritage created the need to recognize the universal right to education for all people, regardless of their place of residence or stay;
- *digital revolution*: the rapid development of technologies changes the concept of learning and access to knowledge, and also leads to the emergence of new forms of education, such as distance learning and the use of electronic resources;
- *geopolitical conflicts*: Military conflicts and political instability can lead to the termination of access to education and the deterioration of the quality of education in certain regions;
- *demographic changes*: the growing population and demographic changes can create a challenge to provide all citizens with quality education.

- *inclusive education*: providing education for people with special needs and implementing the principles of inclusive education is becoming an important component of the right to education under modern conditions.

Conclusions

Thus, having analyzed the theoretical and practical components of the constitutional and legal regulation of the right to education, we note that the latter, as a result of various conditions of a human and man-made nature, changes and adapts to the current challenges of today, including such updated standards as: quality and accessibility of education, inclusiveness of education, universality of education, flexibility and adaptation in education, digitization of education, etc.

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