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THE RIGHT TO EDUCATION: INTERNATIONAL STANDARDS AND THEIR INFLUENCE ON THE CONSTITUTIONAL LEGISLATION OF THE MEMBER STATES OF THE COUNCIL OF EUROPE

Bysaga Yu.M.,

J.S.D., professor,

*Head of Department of Constitutional Law and Comparative Jurisprudence,
Uzhhorod National University*

ORCID ID: <https://orcid.org/0000-0002-8797-5665>

Bysaga Yu.M. The right to education: international standards and their influence on the constitutional legislation of the member states of the Council of Europe.

The article draws attention to the UN Charter, which proclaims the task of reaffirming faith in basic human rights, in the dignity and value of the human person, in the equality of men and women, and in the equality of rights of large and small nations. Attention is focused on the principle of UN activity - implementation of international cooperation in the promotion and development of respect for human rights and basic freedoms for all, without distinction of race, sex, language and religion. International acts on human rights of a universal nature are characterized, in which for the first time at the international level everyone's right to education was enshrined: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention against Discrimination in Education of 1960, the Convention on the rights of the child of 1989. Attention is drawn to the minimum standards of the right to education that the state must ensure. The relationship between the right to education, which was first enshrined at the international level in the Universal Declaration of Human Rights, and human dignity and the value of the human personality is defined. Emphasis is placed on the right to education and criteria for determining the degree of respect and observance of fundamental norms related to this human right throughout the world. The article also raises the question of the influence of international standards of the right to education on the constitutional legislation of the member countries of the Council of Europe - Bulgaria, Poland, Ukraine and other countries.

Key words: the right to education, equality, children's rights, the prohibition of discrimination, the mechanism of ensuring the right to education, international standards of the right to education, national standards of the right to education.

Бисага Ю.М. Право на освіту: міжнародні стандарти та їх вплив на конституційне законодавство країн-учасниць Ради Європи.

В статті приділено увагу Статуту ООН, в якому проголошується завдання знову утвердити віру в основні права людини, у гідність і цінність людської особистості, у рівноправність чоловіків і жінок і в рівність прав більших та малих націй. Акцентується увага на принципі діяльності ООН - здійснення міжнародного співробітництва у заохоченні та розвитку поваги до прав людини й основних свобод для всіх, без розрізнення раси, статі, мови та релігії. Характеризуються міжнародні акти з прав людини універсального характеру, в яких вперше на міжнародному рівні отримало закріплення право кожного на освіту: Загальна декларація прав людини, Міжнародний пакт про економічні, соціальні і культурні права 1966 року, Конвенція проти дискримінації в галузі освіти 1960 року, Конвенція про права дитини 1989 року. Звертається увага на ті мінімальні стандарти права на освіту, які має забезпечити держава. Визначається взаємозв'язок права на освіту, яке

вперше отримало своє закріплення на міжнародному рівні в Загальній декларації прав людини, і людської гідності та цінності людської особистості. Акцентується увага на праві на освіту і критеріях для визначення міри поваги і дотримання в усьому світі основоположних норм, які стосуються цього права людини. Також в статті підіймається питання впливу міжнародних стандартів права на освіту на конституційне законодавство країн-учасниць Ради Європи – Болгарії, Польщі, України та інших країн.

Ключові слова: право на освіту, рівність, права дітей, заборона дискримінації, механізм забезпечення права на освіту, міжнародні стандарти права на освіту, національні стандарти права на освіту.

Formulation of the problem.

The right to education is one of the basic human rights. It is the key to the development of the human personality, ensuring a person's safe existence and a dignified life. But children are born in different families - not all of them have the opportunity to create conditions for a child's high-quality education. There are also conditions that negatively affect a person's realization of the right to education - wars, occupation, genocide, natural disasters. Nevertheless, at the international level, the minimum standards of the right to education, which the world community and the state must provide to a person, have been established.

In legal science, the issue of the right to education was investigated by L. Deshko [1-4], V. Prodan [5] and other scientists. Many scientific works were devoted to the protection of human rights, including the right to education [6-8]. At the same time, today, the role of the international community in ensuring everyone's right to education in order to achieve the goal of sustainable human development is becoming increasingly important.

The purpose of this article is to describe the normative-legal mechanism of establishing international standards of the right to education and its influence on the constitutional legislation of the member states of the Council of Europe.

Presentation of the research material.

In the preamble of the UN Charter dated June 26, 1945 [9], among others, the task of reaffirming faith in basic human rights, in the dignity and value of the human personality, in the equality of men and women, and in the equality of the rights of large and small nations is declared. In turn, among the goals and principles of this organization's activity is the implementation of international cooperation in the promotion and development of respect for human rights and basic freedoms for all, without distinction of race, gender, language and religion (item 3, article 1). This goal, in combination with the given task, proves that the protection of human rights and freedoms is one of the main goals and the most important principle of the UN's activities.

Carrying out the tasks defined for the UN, adhering to the established goals and principles, realizing the obligations assumed, the General Assembly on 10.12.1948 adopted and proclaimed the Universal Declaration of Human Rights «as a task to which all peoples and all states must strive in order to every person and every body of society, constantly bearing in mind this Declaration, sought through enlightenment and education to promote respect for these rights and freedoms and to ensure, through national and international progressive measures, their general and effective recognition and implementation both among the peoples of the member states of the Organization, and among the peoples of those territories under their jurisdiction» [10].

Economic, social and cultural rights are defined: the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure; the right to a standard of living necessary to maintain health and well-being; the right to education; the right to participate in the cultural life of society (Articles 22-27).

It is established that every person has the right to such a social and international order in which all his rights and freedoms can be fully exercised, it is emphasized that every person has responsibilities to society, it is emphasized that in the exercise of his rights and freedoms, each a person should be subject to only such restrictions as are established by law exclusively for the purpose of ensuring due recognition and respect for the rights and freedoms of others, the caveat is established that no state, group of persons or individual can claim the right to engage in any activity or perform actions aimed at on the destruction of the rights and freedoms set forth in this Declaration (Articles 28-30).

Thus, the Universal Declaration of Human Rights dated December 10, 1948 is recognized in the world as a historical document that formulates general provisions on the dignity and value of the human

personality. It is a criterion for determining the degree of respect and observance of fundamental norms related to human rights throughout the world.

The legal norms enshrined in the Universal Declaration of Human Rights dated December 10, 1948 are of a recommendatory nature for UN member states. Instead, the norms of law enshrined in international legal acts, which were developed and adopted on its basis, are considered mandatory for compliance by the states that have joined them.

Adopted by the General Assembly on 12/16/1966, the International Covenant on Economic, Social and Cultural Rights [11] consists of a preamble and 31 articles, which are divided into 5 parts. The preamble states that the rights proclaimed in this document derive from the inherent dignity of the human person, and the ideal of a human person free from fear and need can only be realized if there are conditions under which everyone can enjoy their economic, social and cultural rights .

The text declares: the right of peoples to self-determination (Article 1); the procedure for the fulfillment of the obligations stipulated by the document by the participating states (Articles 2-5); the right to work (Article 6); the right to fair and favorable working conditions (Article 7); the right to form trade unions and strike (Article 8); the right of every person to social security (Article 9); protection of the family, motherhood and children (Article 10); the right to an adequate standard of living, which includes the right to housing and food (Article 11); the right to the highest attainable level of physical and mental health (Article 12); the right of every person to education (Article 13); action plan regarding the introduction of mandatory free general primary education (Article 14); the right to participate in cultural life, to use the results of scientific progress and to protect interests related to one's own creativity (Article 15).

It is worth noting that, in addition to the declaration and definition of this or that right, the International Covenant on Economic, Social and Cultural Rights of 16.12.1966 provides an approximate list of those measures that must be implemented by the participating states to ensure the specified rights, namely: development of programs vocational training, ways and methods of achieving productive employment in conditions that guarantee basic economic and social human rights.

Convention against Discrimination in Education of 1960 [12]: the said Convention, which was adopted by the United Nations Educational, Scientific and Cultural Organization during its 11th session in October-December 1960, provides in articles 1, 3 and 5: "Article 1. 1. For the purposes of this Convention, the term "discrimination" includes any difference, exclusion, limitation or preference based on race, colour, sex, language, religion, political or other opinion, national or social origin , economic condition or birth, which has as its object or effect the destruction or violation of equality of treatment in the field of education, and in particular: (a) Closing to any person or group of persons access to education of any type or level; (b) Restricting the education of any person or group of persons to an education of inferior quality; (c) Establishing or maintaining separate systems of education or educational institutions for individuals or groups of individuals, except as provided for in Article 2 of this Convention; or (d) Imposing upon any person or group of persons conditions which are incompatible with human dignity. 2. For the purposes of this Convention, the term "education" means all types and levels of education and includes access to education, the level and quality of education, as well as the conditions under which it is provided. Article 3. In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties undertake to: (a) Repeal any legislative provisions and administrative instructions, as well as stop administrative practices, which have a discriminatory... Article 5. 1. States - the parties to this Convention agree that: (a) Education should be aimed at the full development of the human personality and at increasing respect for human rights and fundamental freedoms; it shall promote mutual understanding, tolerance and friendship among all peoples, racial or religious groups, and shall promote the peace-keeping activities of the United Nations; ...";

The norms of the Convention on the Rights of the Child of 1989 state that "A child must be registered immediately after birth and from the moment of birth has the right to a name and the acquisition of citizenship, as well as, to the extent possible, the right to know his parents and the right to their care" [13]. Thus, the Convention enshrines the obligation of parents and the state to register the child immediately after birth, as well as to give the newborn a name. The Convention also enshrines the state's obligation to create such a normative-legal and organizational-legal mechanism so that a newborn child acquires citizenship. Parents, if the child knows them, are obliged to take care of him.

International treaties on human rights of a universal nature are a structural element of the regulatory and legal mechanism for ensuring the fulfillment of the duties of a person and a citizen. Among such

international treaties, those that contain the duties of a person and a citizen, as well as testify to the need to create an effective regulatory and legal mechanism to ensure the fulfillment of these duties, were found: Universal Declaration of Human Rights (Article 1, Article 29), International Covenant on civil and political rights (Article 19, Article 24), International Covenant on Economic, Social and Cultural Rights (Preamble), Convention on the Rights of the Child of 1989 (Article 7). It is noted that the member states of these international treaties on human rights undertook to create effective national mechanisms for ensuring the fulfillment of the duties of a person and a citizen enshrined in these treaties.

According to the Constitution of Belgium, “Everyone has the right to education in conditions of observance of fundamental freedoms and rights. Access to education is free until the end of compulsory schooling. All students who are subject to compulsory schooling have the right to spiritual and religious education at the expense of the community” [14]. The Constitution of Poland states that “the method of performing school duty is determined by law. ...Education in public schools is free. The law may allow the paid provision of some educational services by public higher education institutions. ... Parents have the freedom of choice for their children in schools other than public schools. Citizens and institutions have the right to establish primary, secondary and higher schools, as well as educational institutions. The conditions for the creation and operation of non-public schools, as well as the participation of public authorities in their financing, as well as the principles of pedagogical supervision of schools and educational institutions, are determined by law. ... Public authorities provide citizens with general and equal access to education. For this purpose, they create and support systems of individual financial and organizational assistance to pupils and students. The conditions for providing assistance are determined by law. ...The autonomy of higher schools is ensured in accordance with the principles defined by law” (Article 70) [15]. In Art. 33 of the Italian Constitution stipulates the obligation to take state exams for admission to schools of various types and degrees, for their graduation, for access to professional activities. According to Art. 34 “Education is open to everyone. Primary education for at least eight years is compulsory and free of charge” [16]. In part 2 of Art. 53 of the Constitution of Ukraine states that «Complete general secondary education is mandatory» [17].

Conclusions.

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention against Discrimination in Education of 1960, the Convention on the Rights of the Child of 1989 established the minimum standards of the right to education that the state must ensure. There is a relationship between the right to education, which was first enshrined at the international level in the Universal Declaration of Human Rights, and human dignity and the value of the human personality. One of the criteria for determining the degree of respect for human rights, the international community also determines the worldwide provision of the fundamental human right to education. The international standards of the right to education were woven into the constitutions of the states, in particular, of all member states of the Council of Europe, and received their further development in the constitutional legislation.

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