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LEGAL REGULATION OF THE STUDY OF THE LANGUAGE OF INSTRUCTION IN GENERAL SECONDARY EDUCATION INSTITUTIONS IN GERMANY, POLAND AND FRANCE BY MIGRANT CHILDREN

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Kudriavtseva O.M. Legal regulation of learning by migrant children the language of instruction in general secondary education institutions in Germany, Poland and France.

The scientific article analyzes the legal regulation of learning by migrant children the language of instruction in general secondary education institutions in Germany, Poland and France. It is substantiated that the language competence of a “migrant student” in the legal systems of the indicated states is not considered a prerequisite for access to education, but is legally transformed into the subject of the positive obligation of the state to eliminate actual barriers to the realization of the right to education. All three states, Germany, Poland, France, proceed from the same basic principle: a child’s lack of proficiency in the language of instruction at school, or proficiency in it at a level insufficient for the educational process, cannot be a basis for restricting or postponing the realization of the right to education.

Based on the analysis of constitutional provisions, laws on education, and subordinate regulations, it was established that Germany has a language integration model in which the obligation of German as the language of instruction is combined with a legal requirement for the states to provide intensive and individual language support within the school system. Poland has an integration model based on the consolidation of the right of foreign children to free education and additional Polish language classes, which ensures rapid adaptation to the educational process in conditions of mass migration. The French model is centralized, in which the language integration of migrant students is institutionalized through nationwide mechanisms for specialized French language training and the gradual inclusion of children in regular classes.

It has been proven that all three models have in common the recognition of language support as an integral element of guaranteeing equal access to education and implementing the principle of the best interests of the child, in accordance with the UN Convention on the Rights of the Child.

It is established that the differences between the models are due to the peculiarities of the state system, the degree of centralization of educational policy and the legal traditions of migrant integration. It is concluded that effective legal regulation of learning the language of instruction by migrants consists in transferring the burden of linguistic adaptation from the child to the state as the bearer of positive obligations in the field of ensuring the right to education.

Key words: right to education, migrant children, language of instruction, linguistic integration, positive obligations of the state, international human rights standards, legal regulation.

Кудрявцева О.М. Правове регулювання вивчення дітьми-мігрантами мови, якою здійснюється викладання в закладах загальної середньої освіти в Німеччині, Польщі та Франції.

В науковій статті проведено аналіз правового регулювання вивчення дітьми-мігрантами мови, якою здійснюється викладання в закладах загальної середньої освіти Німеччини, Польщі та Франції. Обґрунтовано, що мовна компетентність «учня-мігранта» в правопорядках зазначених держав не розглядається як передумова доступу до освіти, а юридично трансформується у предмет позитивного обов’язку держави щодо усунення фактичних бар’єрів у реалізації права на

освіту. Всі три держави, Німеччина, Польща, Франція, виходять з однакового базового принципу: не володіння дитиною мовою викладання в школі, або володіння нею на рівні, не достатньому для навчального процесу, не може бути підставою для обмеження чи відтермінування реалізації права на освіту.

На основі аналізу норм конституцій Німеччини, Польщі, Франції, законів про освіту, підзаконних нормативно-правових актів встановлено, що в Німеччині діє модель мовної інтеграції, в якій обов'язковість німецької мови як мови навчання поєднується з правовою вимогою до земель забезпечувати інтенсивну та індивідуальну мовну підтримку в межах шкільної системи. У Польщі діє інтеграційна модель, заснована на закріпленні права дітей-іноземців на безоплатну освіту та додаткові заняття з польської мови, що забезпечує швидку адаптацію до навчального процесу за умов масових міграцій. Французька модель є централізованою, в ній мовна інтеграція учнів-мігрантів інституціоналізована через загальнонаціональні механізми спеціалізованого навчання французької мови та поступового включення дітей до регулярних класів.

Доведено, що спільним для всіх трьох моделей є визнання мовної підтримки невід'ємним елементом гарантування рівності доступу до освіти та реалізації принципу найкращих інтересів дитини, відповідно до Конвенції ООН про права дитини.

Встановлено, що відмінності між моделями зумовлені особливостями державного устрою, ступенем централізації освітньої політики та правовими традиціями інтеграції мігрантів. Зроблено висновок, що ефективне правове регулювання вивчення мови навчання мігрантами полягає у перенесенні тягаря мовної адаптації з дитини на державу як носія позитивних зобов'язань у сфері забезпечення права на освіту.

Ключові слова: право на освіту, діти-мігранти, мова навчання, мовна інтеграція, позитивні обов'язки держави, міжнародні стандарти прав людини, правове регулювання.

Formulation of the problem.

Due to the mass displacement of the population caused by the full-scale war in Ukraine since February 2022, in EU Member States, in particular, Germany, France, and Poland, there has been an urgent need to adapt national legal regulations on education to ensure the child's right to education and effective integration. In particular, in Germany, as of the beginning of 2025, about 227,000 children and adolescents from Ukraine were studying in schools [1], in Poland the estimate varies between 134,000–152,000 schoolchildren [2], in France as of December 2022 there were over 19,236 students from Ukraine, however, centralized quarterly records are less detailed compared to Germany and Poland [3]. This indicates the relevance of a comparative legal analysis of the legal regulation of the study of languages taught in Germany, Poland, and France in order to identify the means by which these states ensure the fulfillment of their international obligations to ensure the child's right to education and non-discrimination. For Ukraine, such a study has both theoretical and practical significance, since the state is currently developing a set of instruments to ensure the right to education of children – citizens of Ukraine, who arrive on the territory of Ukraine from the territory occupied by Russia, or arrive from the territory of Russia, where they were deported or forcibly. These children have undergone Russification, not individually do not speak or speak the Ukrainian language at a level insufficient for study.

The state of development of this problem.

In the article Vasylychenko O.P., Deshko L.M., Lotyuk O.S. "Ensuring the acquisition of general secondary education by persons with special educational needs in wartime conditions: novelties of Ukrainian legislation" provides a comprehensive analysis of novelties of the national legislation of Ukraine in the field of ensuring the right to general secondary education in martial law conditions, with an emphasis on vulnerable groups of education seekers, in particular persons with special educational needs [4]. The authors argue that the right to education in wartime conditions is transformed from a formally guaranteed right into a right that requires active positive actions of the state, including the adaptation of educational procedures, forms of teaching and communication tools. Although the subject of the study is inclusive education, the approaches proposed by the authors to the interpretation of the positive obligations of the state, the principle of equality and non-discrimination are universal in nature and directly correlate with the problems of language adaptation of migrant children, for whom the language barrier also acts as a systemic obstacle to the realization of the right to education.

In the article Deshko L. «The right to education and the principle of equality: from an idea in the works of Professor Hersch Lauterpacht to enshrining in the Universal Declaration of Human Rights»

the evolution of the idea of the right to education through the prism of the principle of equality is traced – from the doctrinal developments of G. Lauterpacht to its enshrining in the Universal Declaration of Human Rights of 1948 [5]. The author argues that equality in access to education cannot be reduced to formal equality before the law, but requires material fulfillment through the elimination of actual barriers, including linguistic, social and cultural. This concept is methodologically significant for the analysis of models of linguistic integration of migrants in the education systems of European states, as it allows interpreting the state's obligation to ensure the study of the language of instruction as a manifestation of the implementation of material equality in the sphere of education.

Article by Olshevsky I.P. «The role of the decisions of the European Court of Human Rights in improving national mechanisms for ensuring the right to education in the member states of the Council of Europe» is devoted to the analysis of the practice of the European Court of Human Rights as a source of development of national mechanisms for guaranteeing the right to education [6]. The author shows that the Court consistently considers the right to education as «practical and effective», and not theoretical or illusory, which requires states to eliminate indirect forms of discrimination. In this context, the decisions of the ECHR on access to education for persons in a vulnerable position create a legal basis for assessing language requirements in schools as a potential restriction of the right to education if the state does not provide adequate mechanisms for language support.

In the study of Borislavska O.M. «State language and constitutional identity of Ukraine: the nature of relationships» the constitutional and legal nature of the state language as an element of constitutional identity and a symbol of state sovereignty [7]. The author argues that the state language performs an integrative function, but its establishment must occur in a manner compatible with the principles of human rights and non-discrimination. These conclusions are of direct importance for the analysis of legal models of language policy in education, as they allow conceptualizing the tension between the mandatory nature of the language of instruction and the need to create adaptation mechanisms for persons who do not speak it.

A similar issue is considered in a broader theoretical dimension by Slinko T., Tkachenko E. in the article “Guaranteeing constitutional national identity by constitutional control bodies”, which examines the role of constitutional jurisdiction bodies in protecting national identity, including the language component [8]. The authors argue that constitutional identity is not a static category and must be consistent with international human rights standards. This approach is relevant for the study of educational language policy, as it allows us to consider the requirement of teaching in the state language not in isolation, but in the context of the balance between the sovereign powers of the state and its international legal obligations to protect the right to education. Taken together, the analyzed works form a holistic scientific basis for the study of the legal regulation of learning the language of instruction by migrants, combining the approaches of constitutional law, international human rights protection and educational law. They allow us to substantiate the key thesis that language policy in education should be considered not exclusively as an instrument of national identity, but as a legally regulated mechanism for implementing the principle of equality and the positive obligations of the state in the field of ensuring the right to education.

The purpose of this article – to identify the features of the model of legal regulation of the study by migrant children of the language taught in general secondary education institutions in Germany, Poland and France.

Presenting main material.

The German model of legal regulation of the study of the language of instruction in schools by migrants consists of the norms of the Basic Law of Germany, federal legislation, and the legislation of the states. It is characterized by the absence of a single codified act for migrants and at the same time the presence of a system of interrelated norms that ensure the mandatory study of German as a language of instruction while maintaining individual mechanisms of language support.

The constitutional basis of regulation is the Basic Law of the Federal Republic of Germany, which, on the one hand, does not establish a subjective “right to education”, but guarantees state supervision of the school system (Article 7 of the Grundgesetz) and the principle of equality before the law (Article 3 of the Grundgesetz), which in legal practice is interpreted as a prohibition of discrimination on linguistic or national grounds in access to compulsory school education [9].

On this basis, the Federal Constitutional Court has repeatedly emphasized that disabled children who are legally in the territory of Germany are subject to the state laws on compulsory school education on

an equal basis with German citizens, and language barriers cannot be a reason for refusing to enroll in school. Key provisions on the organization of language training for migrant students are contained in the school laws of individual states. Thus, the School Law of the state of North Rhine-Westphalia explicitly stipulates the obligation of schools to provide “language support for students with a migrant background” in order to ensure their full participation in the educational process (§ 2, § 36 Schulgesetz NRW) [10]. Similar provisions are contained in the Schulgesetz Baden-Württemberg (§ 1, § 14) [11] and the Schulgesetz Berlin (§ 3, § 15) [12]. A characteristic feature is that the language of instruction is defined as German, but the state legislation at the same time obliges school authorities to create additional tools for its acquisition by children for whom it is not their native language.

Decisions and recommendations, which, although not having the force of law, actually define uniform standards of educational policy in all states. Of key importance is the decision “Integration durch Bildung” of October 25, 2007 (in subsequent editions), which for the first time systematically enshrined the approach according to which the acquisition of the German language is considered a central condition for educational integration, and language support is considered a cross-cutting task for the entire school, and not just for preparatory classes [13]. After 2015, due to the sharp increase in the number of refugee children, special recommendations were adopted for the education of “neu zugewanderte Kinder und Jugendliche” (newly arrived children and youth), which provide for the creation of so-called preparatory or “welcome” classes (Vorbereitungs- or Willkommensklassen) with intensive study of the German language with the subsequent integration of students into regular classes [14]. An important feature of the legal framework is the clear distinction between school language education and integration courses for adult migrants. The latter are regulated by the Residence Act (Aufenthaltsgesetz), in particular § 44, which establishes the right and in some cases the obligation to attend integration courses in the German language and orientation in the legal system of the Federal Republic of Germany [15]. These courses do not apply to school-age children, which emphasizes the autonomy of the educational sphere and the priority of school mechanisms for linguistic integration. At the same time, the Asylum Act (Asylgesetz) and the acts adopted to implement it indirectly affect access to school, determining the legal status of the child and the territorial competence of the states regarding the organization of education [16].

In the context of its international obligations, Germany has consistently integrated the provisions of the UN Convention on the Rights of the Child, in particular Articles 28 and 29, as reflected in the official reports of the Federal Government to the UN Committee on the Rights of the Child [17]. This is reflected in the requirement that language measures do not lead to segregation or a reduction in educational standards for migrant children, but on the contrary, ensure that they have equal opportunities in the general education system.

Thus, the peculiarity of the German model of legal regulation of learning the language of instruction by migrants lies in the combination of the obligation of German as the language of instruction with the legally enshrined obligation of the state to provide individualized, intensive and institutionally supported language assistance within the school system. The federal nature of education allows the states to adapt language support tools to local needs. As a result, the German model is not reduced to an assimilation requirement of “language proficiency for access to education”, but functions as a legal mechanism for integration through education, in which mastering the language of instruction is both a child’s right and a state’s duty.

The legal regulation of migrants’ learning of the language of instruction in Polish schools is distinguished by its universality, inclusiveness and adaptive mechanisms, formed in response to the state’s obligation to guarantee the right to education and at the same time ensure effective socio-cultural integration. In the Polish legal system, the key regulatory document that establishes general rules for education, including language requirements for non-Polish citizens, is the “Law on Education” (Ustawa – Prawo oświatowe) of 14 December 2016 [18].

This law ensures the right to education in public schools on equal terms with Polish citizens for all school-age children, regardless of citizenship, which also covers migrant children, including those who arrived from Ukraine after 24 February 2022, under temporary protection of the EU (Temporary Protection Directive implemented in Poland by the Law of 12 March 2022 on assistance to citizens of Ukraine) [19].

Under the conditions provided for by law, linguistic support for migrants in education is provided through a number of legislative and regulatory mechanisms, in particular through additional classes in Polish as a language of instruction, preparatory classes (classes préparatoires / godziny języka polskiego)

and compensatory lessons that allow children to adapt to the Polish educational program. According to the education system defined in Articles 165 and 166 of the Act on Education Law, non-Polish-speaking students who do not have sufficient knowledge of Polish to successfully study in a regular class are entitled to free additional Polish language lessons organized by a school or local government and lasting up to 24 months [18]. The Regulation of the Minister of National Education of 23 August 2017 on the education of persons who are not Polish citizens details this mechanism, in particular regarding the organization of preparatory classes and the minimum number of hours of Polish language per week [20]. According to this Regulation, preparatory classes may include at least six hours of Polish language per week as part of a course adapted to the needs of students who do not have sufficient knowledge of Polish.

These measures are complemented by the right to participate in compensatory lessons in other subjects, which ensure the elimination of gaps in knowledge due to differences in the curricula of the country of origin and Poland, as well as the possibility of using the support of teaching assistants who speak the language of the student's country of origin, a tool designed to facilitate communication and learning in the field of cultural differences [21]. In addition, the legislation provides that migrants have equal access to learning foreign languages, which is an important component of the integration process and the formation of key competences in a multilingual Europe [22].

Along with general education legislation, the right to education and linguistic support is also confirmed by Poland's international legal obligations, in particular Article 70 of the Constitution of the Republic of Poland, which guarantees the right to education without discrimination and which is universally accessible to all persons residing in the country, including migrants and asylum seekers.

It is important to emphasize that the main emphasis in the Polish model of legal regulation is not on compulsory proficiency in Polish for access to school, but on guaranteeing the right to education with simultaneous support in language acquisition as a key element of integration into the educational process. This is also reflected in the practical additional norms established by the law of March 12, 2022 on supporting citizens of Ukraine, which allocate additional funding for local authorities to implement educational tasks, including language support and the involvement of pedagogical assistants [19]. Such measures strengthen the mechanism for implementing language policy in schools, facilitating access to education for migrant children and reducing the risks of social isolation.

In view of the above, the Polish model of legal regulation of the study of the language of instruction by migrants is characterized by a comprehensive approach that combines universal access to education, the state's obligation to create favorable conditions for mastering the Polish language, adaptive educational mechanisms (preparatory and compensatory classes), as well as support for cultural diversity through the possibility of studying the native language as an additional one. This approach is aimed at minimizing barriers to access to education, strengthening the integration potential of education for migrants and at the same time maintaining national standards of education in Poland. The French model of legal regulation of the study of the language of instruction by migrants in schools is based on a combination of the constitutional principle of equal access to education, a unitary organization of the education system and clearly institutionalized mechanisms of linguistic adaptation, integrated into the national policy of school integration of foreigners. Unlike federal models, in France, key rules are set at the national level, and local education authorities implement them within the framework of certain ministerial regulations.

The regulatory framework is the French Education Code (Code de l'éducation), which enshrines the fundamental principle of compulsory and free school education for all children residing in the territory of the Republic, regardless of citizenship or migration status. According to Article L111-1 of the Code de l'éducation, the right to education is guaranteed to every child, and the state's educational policy is aimed at ensuring equality of opportunity and integration into the republican community, which in legal doctrine is interpreted as the state's obligation to eliminate language barriers that impede access to education [23]. Articles L131-1 and L131-6 of the same Code establish the compulsory nature of school education for children aged 3 to 16, including foreign children, which automatically extends to them the requirements and guarantees regarding language support [23].

The central element of the French model is the administrative-legal mechanism for adapted education for students who do not have a sufficient command of French, enshrined in the by-laws of the Ministry of National Education. The basic document is Circular No. 2012-141 of 2 October 2012 "Organisation de la scolarité des élèves allophones nouvellement arrivés", which introduced the legal category of élèves allophones nouvellement arrivés (newly arrived allophone students) and established the obligation of public schools to provide them with specialized instruction in French as the language of schooling

(français langue de scolarisation) [24]. A legal feature of the French approach is that proficiency in French is not a prerequisite for access to school, but, on the contrary, is considered as an outcome of the educational process. This provision is confirmed by subsequent circulars of the Ministry of Education, in particular Circular No. 2014-088 of 9 July 2014, which details the role of academic centers in the school adaptation and integration of migrant children [25]. In the context of the mass arrival of children from Ukraine after 2022, France adapted the already existing regulatory model without creating a separate “emergency” regime for language education. This is reflected in the official explanations of the Ministry of National Education on the admission and education of Ukrainian children, which explicitly state that they are subject to the general education regime for élèves allophones, with the possibility of studying in Unités pédagogiques pour élèves allophones arrivants and receiving individualized language support. Thus, the temporary protection granted in accordance with EU law did not change the logic of linguistic integration, but only activated the already existing legal and institutional mechanisms. Language support for migrant students is a tool for implementing the principle of the best interests of the child, and not a discretionary measure of educational policy.

Thus, the French model of legal regulation of learning the language of instruction by migrants is characterized by unitarity, regulatory centralization and clear administrative institutionalization of language support. Its key feature is the recognition of the French language as an integral element of republican integration with the simultaneous legal obligation of the state to ensure that every child has the opportunity to master it within the framework of school education. Linguistic integration in France is not a condition for admission to school, but functions as a purposeful public-legal mechanism for the implementation of the right to education, reflecting the assimilation-integration, but human rights-oriented model of the state’s educational policy.

Based on the comparative legal analysis of the legal regulation of learning the language of instruction by migrants in schools in Germany, Poland and France, it was found that in all three countries independent but conceptually related legal models have been formed, united by a common goal – ensuring real access of a migrant child to the right to education by eliminating the language barrier, but different institutionally, with different implementation mechanisms and the ratio of integration and unification. In Germany, a model operates, which is based on a combination of constitutional principles of equality and state supervision of education with the autonomy of the states in regulating school issues. The absence of a single federal law dedicated to the linguistic integration of migrant students is compensated by an extensive system of state Schulgesetze and the coordinating role of the Kultusministerkonferenz. A characteristic feature is that German is recognized as a mandatory language of instruction, but its mastery is not a prerequisite for admission to school, but is ensured through the legal obligation of the state to organize preparatory and integration language programs. Thus, the German model demonstrates the legal concept of “integration through education”, where language support is an element of equality of educational opportunities, and not a tool of selection.

The Polish model, unlike the German one, was formed within the framework of a unitary state with decentralized education management and has a clear legislative basis in the Law «Prawo oświatowe». Its key feature is the direct normative recognition of the right of foreign children to education on equal terms with Polish citizens, including the right to free additional Polish language classes and training in preparatory classes. The Polish legal model is distinguished by a high level of normative specification of language support (specified terms, minimum number of hours, organizational forms), which has especially intensified after 2022 due to the mass arrival of children from Ukraine. At the same time, this model traces a pragmatic integration approach aimed not at assimilation, but at rapid adaptation to the educational process while preserving the possibilities of cultural and linguistic identity. The French model is characterized by a high degree of normative centralization and administrative institutionalization. It is based on the Education Code and an extensive system of ministerial circulars. Its defining feature is the consolidation of the special status of élèves allophones nouvellement arrivés and the functioning of UPE2A and CASNAV as mandatory elements of state education policy. The French model most consistently implements the assimilation-integration concept, within which the French language is considered a key tool for the inclusion of a child in the republican space, but at the same time the state assumes a full legal obligation to ensure the conditions for its mastery within the school system.

Conclusions.

All three states, Germany, Poland, France, proceed from the same basic principle: the linguistic incompetence of a migrant child cannot be a reason for restricting or postponing the exercise of

the right to education. At the same time, the differences between the models are manifested in the way this principle is legally mediated: in Germany – through federative normative multi-level and recommendatory standards, in Poland – through detailed legislative regulation and adaptation tools, in France – through centralized administrative and legal management of linguistic integration.

From the standpoint of legal science, these models demonstrate different options for the balance between the right of the state to determine the language of instruction and the positive obligation to ensure the effective implementation of the child's right to education in accordance with international standards, in particular the UN Convention on the Rights of the Child. A comparative analysis allows us to conclude that the most effective from the point of view of human rights logic are those legal mechanisms that transform the requirement of proficiency in the language of instruction from a formal condition into an institutionally guaranteed process, the responsibility for which rests with the state, and not with the migrant child or his or her family.

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