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Implementing the Right to Education in the Integration Legal Systems of the European Union countries: Research Methodology and Areas of Improvement

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ABSTRACT

The purpose of the research: Implementing the right to education in the European Union countries is considered. Main content: It has been established that implementation of the right to education plays an important role in the system of human and citizen rights and freedoms, and has complex connections with many of them. It is noted that in most European countries the right to education is socially oriented. European countries are characterized by the following: continuous education; compulsory primary education; standardized ways of organizing the educational process, regulating participation of students, parents and teachers in it; great attention is paid to financing and protecting the right to education. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions: Despite the diversity of educational systems in the European region, the member states of the Council of Europe recognize the need to promote the free access of young Europeans to the intellectual resources of the member states of the Council of Europe, as well as to the study of European culture, languages, history and culture of other countries by all citizens.

KEY WORDS: Administrative law, education, methodology, right to education, law.

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Implementación del derecho a la educación en los sistemas jurídicos de integración de los países de la Unión Europea: Metodología de investigación y áreas de mejora

RESUMEN

El propósito de la investigación: Implementar el derecho a la educación en los países de la Unión Europea. Contenido principal: Se ha establecido que la implementación del derecho a la educación juega un papel importante en el sistema de derechos y libertades humanos y ciudadanos, y tiene conexiones complejas con muchos de ellos. Se observa que en la mayoría de los países europeos el derecho a la educación tiene una orientación social. Los países europeos se caracterizan por lo siguiente: educación continua; educación primaria obligatoria; formas estandarizadas de organizar el proceso educativo, regulando la participación de estudiantes, padres y docentes en el mismo; se presta gran atención a la financiación y protección del derecho a la educación. Metodología: La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico así como métodos de análisis y síntesis. Conclusiones: A pesar de la diversidad de sistemas educativos en la región europea, los Estados miembros del Consejo de Europa reconocen la necesidad de promover el libre acceso de los jóvenes europeos a los recursos intelectuales de los Estados miembros del Consejo de Europa, así como al estudio de la cultura europea, idiomas, la historia y la cultura de otros países por parte de todos los ciudadanos.

PALABRAS CLAVE: Derecho administrativo, educación, metodología, derecho a la educación, derecho.

Introduction

The right to education is one of the most important rights and freedoms of persons and citizens. Acquisition a high-quality education is a conceptual direction of Ukraine's development in the first half of the 21st century. The problem of free access to education and, as a result, increasing the literacy level of the population, affects the process of domestic and international development in economic, social, political and other spheres. Qualitative transformation of these characteristics directly depends on implementation of the analyzed right.

Analysis of conditions for implementation of the right to education shows that qualitative transformations, legal regulation were inextricably linked with the process of transformation of human rights and freedoms, historical stages of the education system

formation, changes in the society as well as with political and economic situation in the states. This right was first legally formalized in the Universal Declaration of Human Rights dated 10 December, 1948 (Art. 26) (Law of Ukraine, 2008), which has become one of the grounds of the up-to-date development of the theory of constitutional human rights.

The right to education acquires its first international legal characteristics here. The first and most important characteristic is generality: “Everyone has the right to education.” The next point is free primary and general education, compulsory primary education and universal access to education. Parents are given the right to choose the type of education for their minor children. Much attention is paid to the orientation of education. According to the declaration, education should contribute to the development of individuals and respect for their rights. According to A. Boiko, this means that “with the help of education, the process of becoming a personality as a social being takes place, its socialization is carried out, that is, the process and result of assimilation and active reproduction of socio-cultural experience (knowledge, values, norms, traditions) by an individual takes place on the basis of his/her activities, communications and relationships” (Boiko, 2008).

Consolidation of the right to education in the international law dates back to the middle of the 20th century, and at present implementation of the right to education, protection of children’s rights and prevention of discrimination in the sphere of educational relations are quite widely regulated by the norms of international law; and this fact guarantees implementation of these positive provisions in national legislation of the most countries.

The purpose of the research - implementing the right to education in the European Union countries is considered.

1. Literature review

O.Biloskurska emphasizes that obtaining a certain level of education guarantees a person’s spiritual and cultural development, acquisition of professional knowledge, abilities and skills, possibility of their implementation in the future, and it ultimately contributes to the satisfaction of needs in full-fledged, worth living conditions.” - (Biloskurska, 2022). The right to education is guaranteed to everyone by the Constitution of Ukraine (Art. 53) (Law of Ukraine, 1996). And in Art.3 of the Law of Ukraine “On

Education” it is stipulated that “everyone has the right to quality and affordable education... No one can be limited in the right to receive education. The right to education cannot be limited by the law.” (Law of Ukraine, 2017).

In his thesis work O. Melnychuk summarizes that “in ensuring the right to education private and public interests are expressed and combined; on the one hand these interests make it possible to recognize and protect the right of everyone to implementation of such an opportunity, and on the other hand, they enable to guarantee belonging of this opportunity to the entire society. Such an organic combination of public and private interests in this sphere is conditioned by importance of the need to acquire education for the purpose of harmonious development of a specific person, the state and the society in general.” (Melnychuk, 2015). Undoubtedly, the level of compulsory education established by law and provided by the state is an achievement of the socio-economic development of the society. And in this sense, the right to education should be recognized as a natural human right. After all, the right to education in its content is a constituent part of the more general right to human development. The natural declaration of the right to education also provides for the right to protection of this right against any interference (in particular, from the state) in its implementation.

In addition to that, separate issues related to the problems of implementing the right to education are covered in the scientific works by such present-day Ukrainianscientists as: Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna and others who devoted their works to research of this topic (Halaburda et al., 2021). These works constitute a scientific basis for further research of the specified instruments and actually initiate a scientific discussion regarding prospects for their legislative improvement.

At the same time, it is worth noting that at the current stage, it is quite relevant to conduct a study in the context of the useful positive experience of the EU member states regarding legislative regulation of the field of education and the further improvement of ideas and concepts for harmonization of Ukrainian legislation with the law of the European Union in terms of the regulation of educational activities.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers regarding methodological approaches to understanding implementation of the right to education in the countries of the European Union, etc.

With the help of the epistemological method, peculiarities of implementation of the right to education in the countries of the European Union, etc., were clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened and peculiarities of implementing the right to education in the countries of the European Union, etc. were determined. Thanks to the existing methods of law, we managed to analyze peculiarities of implementing the right to education in the countries of the European Union, etc.

3. Results and discussion

It should be noted that that in the second half of the 20th century in European practice, an effective system of judicial protection of human rights (the European system of human rights protection) was formed, which is a set of legal norms contained in European conventions and incorporated into the national legislation of European states, regarding the protection of human rights, as well as activities of the Council of Europe and its bodies, aimed at implementation of these rights by the member states of the Council of Europe (Nalyvaiko *et al.*, 2018).

In European countries, the natural and inalienable nature of the human right to education is supported (Tylchych *et al.*, 2022). Legislation of these countries is aimed at the formation of an effective educational space as the main regulator of social life. In most European countries the right to education is socially oriented. European countries are characterized by the following: continuous education; compulsory primary education; standardized ways of organizing the educational process, regulating the participation of students, parents and teachers in it; great attention is paid to financing and protecting the right to education; availability of technical professional education in the form of development of educational standards; creation of higher special schools and universities (Nalyvaiko *et al.*, 2018).

The Council of Europe, as an international organization uniting 46 states, makes considerable efforts to create effective mechanisms for ensuring and protecting human rights and freedoms. The history of its creation is connected with opening of the Congress

of Europe, which took place in The Hague on 7-10 May, 1948. This European-wide forum was initiated by the International Committee of the Movements for European Unity. Congress meetings were held within the framework of three sections, namely commissions on political, economic and political issues. On the initiative of these commissions, a proposal was made for the development and adoption of the main European act - the Charter of Human Rights. This was one of the significant results of the work of the Congress. In addition to that, the idea of creating a special judicial body designed to monitor compliance with the provisions of the Charter of Human Rights was expressed. The basis of the activity of such a judicial body was supposed to be the ability to apply necessary sanctions in case of non-compliance with the Charter of Human Rights (Kobrusieva *et al.*, 2021).

It is worth noting that during the work of the Congress a number of resolutions were adopted, indicating the desire for a closer European association in the form of an economic and political union of states. Thus, the first stage envisaged creation of the European Assembly to strengthen political integration. It was then that the name of the European Union appeared for the first time in the documents; activities of this union were supposed to unify the norms on human rights and those that guarantee their observance on the territory of each of the European states (Zhukova *et al.*, 2023).

The main result of the work of the Congress consisted in establishment of the Council of Europe in London in 1949. The Council of Europe with its headquarters in Strasbourg (France) continues its work today. According to the Statute of the Council of Europe, signed by representatives of France, Belgium, Great Britain, Denmark, Italy, Luxembourg, Ireland, Norway, the Netherlands and Sweden, the principles of the Council's work include in particular, cooperation of member states, democracy and freedom, promotion and protection of human rights and freedoms, etc. After its establishment, the Council of Europe worked on the issue of establishing a specialized judicial body for protection of human rights, known as the European Court of Human Rights (hereinafter - the ECtHR, the Court). (Nalyvaiko *et al.*, 2022).

Currently, the ECtHR is a legal and socio-cultural institution, it is personification of the highest degree of fair legal proceedings for many states. Despite its importance, the European Court of Human Rights is a derivative executive mechanism in the guaranteed

implementation of human rights, which is regulated by the Convention for the Protection on Human Rights and Fundamental Freedoms (hereinafter the European Convention on Human Rights) (hereinafter the Convention or the European Convention) (Tertyshnik & Fomenko, 2022).

It is important to note that the norms of the European Convention, adopted under the auspices of the Council of Europe in 1950, formed the basis of the European system of human rights protection (Matviichuk *et al.*, 2022).

European judicial protection also includes European case law, a significant part of which is the interpretation of the provisions of the European Convention contained in the decisions of the ECtHR (Reznik *et al.*, 2021).

The modern development of European integration affects many spheres of activity of the member states of the Council of Europe, in particular exercise of social rights, which in present-day conditions are considered as a necessary prerequisite for democracy (Adashys, 2021). Ensuring the latter, along with the rule of law and respect for human rights, is considered the main goal of the Council of Europe. In order to achieve goal No. 4 (high-quality education) in the sphere of sustainable development, the Council of Europe has set itself the goal of ensuring equal access for all women and men to affordable and high-quality professional and higher education by 2030; this in turn involves not only implementation of an effective educational policy, but also functioning of the well-established, effective supranational mechanism for the protection of the right to education, advocated by the European Court of Human Rights (Leheza *et al.*, 2022).

The right to education belongs to human rights of the second generation. This is important for understanding the nature of this right. Yes, its implementation involves direct participation of the state. Declaration of economic, social and cultural rights is oriented towards the future. It sets the vector of development. According to the relevant rights, the programmatic, framework character is recognized. Their filling in with a specific legal content changes as social reforms are carried out, welfare increases, the state's economy is generally improved, etc.

However, the right to education is not absolute, as it may be subject to clearly permitted restrictions, because by its nature it requires regulation by the state. Therefore, state bodies have a certain discretion in this area, but it is the ECtHR that has the

authority to issue a decision in the last instance regarding compliance with the requirements stipulated by the European Convention. Today, each state usually determines its own legislation for regulatory and legal regulation of such a significant branch of the economy as education. However, significant importance in creation of this or that normative legal act is given to international documents that form the basic prerequisites that must be reflected in national documents.

At the international level, recommendations on the normative and legal regulation of education are developed by such organizations as UNESCO, UNICEF, ILO. In addition to that, there is legislation at the regional level, which is also worth paying attention to when considering the issue of normative and legal regulation of the field of education. There are also a number of legislative acts in the sphere of education that are included in the international humanitarian law (Villasmil Espinoza *et al.*, 2022).

Despite the direct enshrinement of this right in key international documents related to human rights, such as the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights, the primary text of the Convention for the Protection of Human Rights and Fundamental Freedoms does not reflect the right to education and belongs to the “protocol rights”, which, however, does not diminish its increasing importance in the precedent practice of the ECtHR. Protocol No. 1 to the Convention was adopted on 20 March, 1952, that is, before the entry into force of the main treaty. This situation was due to the fact that some countries that participated in the process of establishing the Council of Europe resisted establishment of any social and economic rights in general (Horbalinskiy *et al.*, 2023).

From year to year, the HUDOC database is replenished with new cases that touch on certain aspects of the right to education. It is important to mention that in many cases the ECtHR considers Art.2 of Protocol No. 1 to the Convention in relation to its other articles, such as Art.8 (right to respect for private and family life), Art.9 (freedom of thought, conscience and religion), Art. 10 (freedom of expression) and Art.14 (prohibition of discrimination) of the Convention, which is one of the features of considering cases related to violation of the right to education (Leheza *et al.*, 2022).

Speaking about the peculiarities of the structure of Art.2 of Protocol No. 1 to the Convention, it is worth paying attention to the wording of the first sentence. Under the

impossibility of denying the right to education we mean the positive obligation of the state to guarantee access of every person to education at educational institutions operating during a specific moment of time (access to educational institutions of various educational levels, including primary, secondary, higher education and specialized courses), as well as the opportunity to benefit from the acquired education, i.e. the right to official recognition of the completed course of study in accordance with the rules in force in each specific state (Belgian linguistic case, § 3–5 of «the Law» part). And since the right to education requires regulation by the state, the latter has the right to establish admission criteria for admission to an educational institution and mandatory entrance exams (in 2022, in Ukraine, this is a multidisciplinary test) (Leheza *et al.*, 2022).

Within the scope of the interpretation of the first sentence of Article 2 of Protocol No. 1 to the Convention, the following question seems interesting: does the state have the right to limit access to education? Note that according to Art. 2 of Protocol 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms “Right to Education”, “no one can be denied the right to education. While performing any assumed functions in the sphere of education and training, a state respects the right of parents to provide such education and training in accordance with their religious and worldview beliefs. The ECtHR has repeatedly noted the importance of fundamental principles and non-discrimination in implementation of the right to education (for example, the case “Çam v. Turkey” (§ 64) or «Sanlısoy v. Turkey» (§ 59).

Conclusions

Therefore, the European system of human rights protection as a set of European conventions and legal norms on the protection of human rights incorporated into the national legislation of European states, as well as the activities of the Council of Europe and its bodies regarding their implementation by the member states of the Council of Europe is one of the most successful systems, because those goals set by the European states has been achieved and are being successfully implemented to this day. Of course, it is difficult to imagine European law without existence of this system, since it is not international law in the traditional sense, but a special law included in the legal systems of the states. And a special place in this process is occupied by the right to education and its implementation

based on the European standards.

At the same time, it is worth noting that European-style education is one of the main constituent indicators of any state, welfare needed to humans. In Ukraine, implementation of the right to education mainly meets the criteria established at the international level. In addition to that, as a result of the reforms of the Bologna format carried out in Ukraine, the system of education and science (providing its corresponding proper improvement and development) will meet European standards in the future. The experience of the leading European states in the Bologna system is of interest to Ukraine, as a participant in this process, because it can reveal positive and negative aspects that our state can already take into account for its policy in the field of international cooperation in the education system.

The judgments of the ECtHR are one of the ways to protect human rights in Europe, as the case law of the Court (in particular in cases of violation of the right to education) is taken into account on a daily basis in judgments issued by national courts, in the legislation adopted by parliaments, as well as in decisions of national authorities. The content, which is now put into the concept of the right to education ECtHR, significantly differs from the content included to this right when Protocol No. 1 to the Convention was signed by the founders of the Council of Europe, when many states carried out compulsory regulation of issues of education and upbringing of children and youths in conditions of totalitarian regimes, and the right to access to education was not fully guaranteed.

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