

## **LEGAL EXPERIENCE OF THE REALIZATION OF THE RIGHT TO EDUCATION IN FOREIGN COUNTRIES**

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*The article states that the right to education, including the right to free general secondary education, is reflected in the constitutions of most countries of the world. However, in some countries, although the right to education is not reflected in the Constitution, the right to education, as well as the obligation to receive general secondary education, is reflected in other legislative acts of those countries.*

*Keywords: Constitution, Azerbaijan, education, globalization, humanitarian relations.*

The modern world is characterized by the mutual relations of peoples and the solidarity that unites humanity. The world is unified in unity. The globalization of the economy, the increase of humanitarian relations and regional integration necessitate the convergence of the legal systems of different countries. In such conditions, the comparative study of the legal experience of the realization of the right to education in foreign countries is of special-relevance. In other words, we cannot build walls between ourselves and people who live in other countries, in other parts of the Earth. The concept of necessary international cooperation, or at least simple existence, requires us to look at the legislation of foreign countries, including those that include the right to education.

The famous French scientist in comparative law Marc Ancel (1902-1990) writes: “Comparative law is characterized as a set of systematized knowledge, which is a fundamental characteristic of any science. Comparison does not require any single universal method, but the use

of several possible methods, and what matters is not which one is the best, but what place each of them occupies in the research process.- Scientists, writers, actors and other artists use the experience of foreign countries. Science has no boundaries. For example, every physician considers as a priority to get benefit from the positive experience of a foreign country.- In this case, why should legal science limit itself within the framework of a state?” [5, p. 102].

The other French scientist in comparative law Rene David states: “The modern world is characterized by interrelations of peoples, solidarity that unites humanity. The world has become a single whole. We cannot isolate ourselves from people who live in other states,- other parts of the globe. Necessary international interaction, or at any rate mere existence, requires that we open our windows and look at foreign law” [5, p. 10].

German scientists in comparative law Konrad Zweigert and Hein Kötz state: “Comparative law originated in Paris in 1900 during the International Congress of Comparative Law. The congress was a serious stimulus for the development of the science of comparative law, or at least the method of comparative law, and the discussion that unfolded at it, gave impetus to productive research in this new field of law”.

We consider it necessary to note that comparison takes one of the important places among cognitive tools. Its role in the factor of cognition is reflected in such expressions: “cognition is impossible without comparison”, “everything is known by comparison”, “compari-

son is the mother of cognition”, etc. Comparison is an integral part of human intelligence.

It does not matter how many legal systems the comparative legal studies cover. For the purpose of comparison, the legal system of the Republic of Azerbaijan and the legal system of any foreign country can be chosen or the comparison can cover all existing legal systems on the world, starting with the legal systems of at least two states.

Comparative jurisprudence uses not only the comparative method, but the entire methodological arsenal of jurisprudence. The comparative-legal method is based on analyzing the legal systems of foreign countries.

According to N.H.Jafarli, “in the modern era, the general theoretical conclusions drawn without reference to the information provided by comparative law cannot have a generalized, universal character” [4, p. 30].

A.I.Guliyev states, “comparative jurisprudence tries to explain the meaning and role of law, and using the experience of different peoples of the world for this” [2, p. 35].

Y.A.Tikhomirov states: “The difference in national legislative norms, which makes it difficult for the states to approach each other from a legal point of view, gives rise to the desire to approach them by resorting to a special method. It is intended to replace inconsistent norms of national legislation with unified legal norms that uniformly regulate public relations and create a basis for their commonness.

Legal regulation of both interstate relations and internal relations of states in the same way helps to increase their efficiency and prevent legal conflicts» [6, p. 59].

We would like to note that after the collapse of the USSR, all the allied republics that became independent states adopted a new constitution. The constitutions of the countries that are members of the Commonwealth of Independent States are quite similar to each other. Equally, all this applies to the norms related to the right to education. According to Kh.I.Hajiyev’s view point, “When conducting comparative legal studies, the lawyers of the Republic of Azerbaijan should focus on the legislation of the countries that were previously part of the same state and whose legislation is closer to ours” [3, p. 4].

The validity of normative legal acts covers a certain period of time and territory. Both normative legal acts previously in force in the territory of one country, and normative legal acts currently in force in different countries can be the subject of comparison. That is, both diachronic (historical) and synchronic approaches can be made. But in modern times, it is more common to compare normative legal acts (synchronic approach).

In our opinion, studying the legal experience of the realization of the right to education in foreign countries has the following positive aspects:

1) Studying the legislative acts of foreign countries related to the realization of the right to education helps to deepen knowledge about the said issue in;

2) creates a basis for improving the legislation of the Republic of Azerbaijan regarding the realization of the right to education.

Indeed a comparative legal research on the right to education makes it possible to clarify the place of this right in the legal systems of states, forms an idea of global processes and trends in the field of legal regulation of education and their possible impact on development.

As in the Basic Law of the Republic of Azerbaijan, right to education is reflected also in: Article 42 of the Constitution of the Republic of Turkey dated October 18, 1982, Article 55 of the Constitution of Turkmenistan dated May 18, 1992, Article 41 of the Constitution of the Republic of Uzbekistan dated December 8, 1992, Article 43 of the Constitution of the Russian Federation dated December 12, 1993, Article 49 of the Constitution of the Republic of Belarus dated March 15, 1994, Article 35 of the Constitution of the Republic of Moldova dated July 29, 1994, Article 41 of the Constitution of the Republic of Tajikistan dated November 6, 1994, Article 30 of the Constitution of the Republic of Kazakhstan dated August 30, 1995, Article 53 of the Constitution of Ukraine dated June 28, 1996, Article 46 of the Constitution of the Kyrgyz Republic dated April 11, 2021, Article 19 of the Constitution of the Arab Republic of Egypt dated January 15, 2014, Article 20 of the Jordanian Constitution of January 1, 1952, Article 29 of the Constitution of the Syrian Arab Republic dated February 26, 2012, Article

34 of the Constitution of the Republic of Iraq dated October 15, 2005, Article 40 of the Constitution of Kuwait dated November 11, 1962, Article 49 of the Constitution of Qatar dated April 29, 2003, Article 17 of the Constitution of the United Arab Emirates dated July 18, 1971, Article 13 of the Constitution of Oman dated 6 November 1996, Article 30 of the 1992 Constitution of the Kingdom of Saudi Arabia, Article 30 of the Constitution of the Islamic Republic of Iran dated November 15, 1979, Article 39 of the Constitution of the Republic of Tunisia dated January 26, 2014, Article 53 of the Constitution of the People's Democratic Republic of Algeria dated November 28, 1996, Article 53 of the Constitution of the Yemen Arab Republic of 1991, Article 32 of the Constitution of the Kingdom of Morocco dated July 29, 2011, Article 7 of the Constitution of the Kingdom of Bahrain dated February 14, 2002, Article 13 of the Malaysian Constitution of 27 August 1957, Article 49 of the Constitution of the Kingdom of Thailand dated August 24, 2007, Article 5 of the Constitution of the Argentine Republic of May 1, 1853, Article 17 of the Constitution of the People's Republic of Bangladesh dated December 16, 1972, Article 24 of the Constitution of the Kingdom of Belgium of February 7, 1831, Article 23 of the Constitution of the Kingdom of the Netherlands dated February 17, 1983, Article 21 of the Constitution of the Kingdom of Sweden dated February 27, 1974, Article 16 of the Constitution of the Republic of Finland dated June 11, 1999, Article 112 of the Constitution of the Republic of Latvia dated February 15, 1922, Article 41 of the Constitution of the Republic of Lithuania dated October 25, 1992, Article 37 of the Constitution of the Republic of Estonia dated June 28, 1992 and Article 205 of the Brazilian Constitution dated October 5, 1988.

Article 205 of the Brazilian Constitution states that education is the right of everyone and the duty of the state and the family. It is carried out and promoted in cooperation with society with the aim of the full development of the individual, preparing him for citizenship and qualification for work.

Article 10 of the Constitution of the Republic of Lebanon dated May 23, 1926, Article 57 of the Constitution of the Islamic Republic

of Mauritania dated July 12, 1991 states that matters related to education are regulated by law, and Article 12 of the Constitution of the Republic of Sudan dated July 1, 1998 states that the state mobilizes its resources for the development of the education system and science.

The right to education was not reflected in the Australian Constitution, which came into effect on January 1, 1901. Issues related to education in Australia are regulated by the "Education Act" adopted by the Government in 2013 and effective from January 1, 2014. According to that legal document, children between the ages of 5 (five) and 16 (sixteen) or 17 (seventeen) (depending on the state or territory) are required to receive general secondary education [1].

Though the right to education is not reflected in the Constitution of the following countries as the United States of America, Australia, Austria, Germany, France, the Republic of Djibouti, Norway and Switzerland, the right to education and the obligation to receive general secondary education are reflected in other legislative acts of those countries.

The following laws regarding education have also been adopted in the states that are members of the Commonwealth of Independent States:

1) The Law of the Kyrgyz Republic dated April 30, 2003 "On Education" consisting of 54 articles;

2) Law of the Republic of Kazakhstan "On Education" dated July 27, 2007, which consists of 68 articles;

3) The Education Code of the Republic of Belarus dated January 13, 2011, which consists of 297 articles;

4) Law of the Russian Federation dated December 29, 2012 "On education in the Russian Federation" consisting of 111 articles;

5) The Law of Turkmenistan "On Education" dated May 4, 2013, which consists of 43 articles;

6) The Law of the Republic of Tajikistan "On Education" dated July 22, 2013, which consists of 69 articles;

7) The Education Code of the Republic of Moldova dated June 17, 2014, which consists of 157 articles;

8) The Law of Ukraine “On Education” dated September 5, 2017, which consists of 84 articles;

9) The Law of the Republic of Uzbekistan “On Education” dated September 23, 2020, which consists of 75 articles.

Article 2 of the Law “On Education in the Russian Federation” defines education as the following: “Education is a single purposeful process of education and training, which is a socially significant good and is carried out in the interests of a person, family, society and the state, as well as a set of acquired knowledge, skills, values, experience and competence of a certain volume and complexity for the purposes of intellectual, spiritual, moral, creative, physical and (or) professional development of a person, meeting his educational needs and interests”.

Article 2 of the Law of Ukraine “On Education” states: “The legislation of Ukraine On Education is based on the Constitution of Ukraine and consists of this Law, special Laws, other pieces of legislation in the area of education and science and international agreements of Ukraine made in accordance with the procedure established by law. Subordinate legislation cannot narrow the content and scope of the constitutional right to education, as well as autonomy of educational agents and academic freedoms of participants of the educational process as established by law.

Letters, policies, regulations, other documents by executive authorities, except for orders registered by the Ministry of Justice of Ukraine and documents that regulate inner activity of the authority, are not regulatory legal acts and cannot establish legal standards. The educational agent has a right to independently make decisions on any issues within its autonomy established by this Law, special Laws and/or constituent documents, in particular regarding issues that are not regulated by the legislation”.

The content of the concept of “right to education” is disclosed in Article 3 of the Law of Ukraine “On Education” in the following order: “Every person has a right to high-quality and affordable education. The right to education includes a right to obtaining education throughout life, a right to affordability of education, a right to tuition-free education in cases

and according to the procedure specified by the Constitution and Laws of Ukraine.

Equal opportunities for access to education are created in Ukraine. No one can be restricted in their right to obtain education. The right to education is guaranteed regardless of the age, sex, race, health status, disability, nationality, ethnic origin, political, religious or other views, colour, place of residence, language, origin, social and material position, criminal record, as well as other circumstances and characteristics.

Individual’s right to education can be exercised by means of its obtaining at different levels of education, in different forms and of different types, including by obtaining pre-school, complete general secondary, out-of-school, vocational, professional pre-higher, higher education and adult education.

Every person has a right to access to public educational, scientific and information resources, including Internet resources, e-textbook and other multimedia educational resources, according to the procedure established by the legislation.

The State performs social protection of education seekers in cases established by legislation, and ensures equal access to education for persons from socially vulnerable groups.

The State creates conditions for obtaining education by persons with special educational needs basing on their individual needs, capacities, abilities and interests, and provides for detecting and correcting facts that prevent exercising rights and meeting the needs of the above persons in the area of education.

Foreigners and stateless persons obtain education in Ukraine in accordance to the legislation and/or international agreements of Ukraine.

A person who is recognized as a refugee or as requiring additional protection according to the Law of Ukraine “On refugees and persons requiring additional or temporary protection” has a right to education on a par with citizens of Ukraine.

The right to education cannot be restricted by law. The Law may contain special conditions for access to a certain level of education, speciality (profession)”. In Ukraine the State ensures: free-of-charge basis of the pre-school, complete general secondary, vocational

education and training , pre-tertiary vocational and higher education according to educational standards; development of the preschool, complete general secondary, vocational education and training, professional pre-higher, higher and postgraduate education in accordance to the legislation.

The right to tuition-free education is ensured: for seekers of the preschool and complete general secondary education – by means of development of the network of institutions of education of all forms of ownership and their financial provision according to the procedure established by the legislation and to the extent sufficient to ensure the right to education for all citizens of Ukraine, foreign citizens and stateless citizens who permanently or temporarily live in Ukraine; for seekers of out-of-school, vocational education and training , pre-tertiary vocational and postgraduate education – at institutions of education or from other educational agents on expense of funding from the state and/or local budgets according to the order established by the legislation; for seekers of higher education – at institutions of education on expense of funding from the state and/or local budgets according to the order established by the legislation.

The State guarantees obtaining the complete general secondary education according to education standards to all citizens of Ukraine and other persons legally residing in Ukraine. The State guarantees free-of-charge provision with textbooks (including e-textbooks), handbooks for all seekers of complete general-secondary education and educational workers according to the procedure established by the Cabinet of Ministers of Ukraine.

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**ПРАВА НА ОБРАЗОВАНИЕ В**  
**ЗАРУБЕЖНЫХ СТРАНАХ**

В статье указывается, что право на образование, в том числе право на бесплатное общее среднее образование отражено в конституциях большинства стран мира. Однако в некоторых странах, хотя право на образование не отражено в Конституции, право на образование, как и обязанность получения общего среднего образования, отражено в других законодательных актах этих стран.

**Ключевые слова:** Конституция, Азербайджан, образование, глобализация, гуманитарные отношения.