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State guarantees of the right to education as an element of a social state: a constitutional-comparative analysis

Abstract

This article presents a comparative constitutional analysis of guaranteeing the right to education in various states. As international experience has shown, discrimination and segregation in education can lead to serious negative consequences, not only in the life of an individual (marginalization, poverty, impossible participation in society and the protection of their rights), but also of society and the state in general (revolutions, world wars, low economic development, etc.). Modern states, recognizing the importance and significance of education as one of the highest values of natural human nature, in the framework of international cooperation, have actually undertaken to recognize the right of each citizen to access education, and guarantee this right at the constitutional level. Therefore, the authors intend to consider various approaches in different states, the constitutional consolidation of the right to education. The corresponding approach corresponds to the idea of the social state as a modern tendency of the state development.

Keywords: right to education, social state, constitution, state guarantees.

Introduction

The right to education is considered as an essential and inalienable human right. As a result, the right to education exists before constitutional norms. The main task of the latter is to recognize, consolidate, and guarantee the right to education, since it is not possible to exclude or cancel such a right, otherwise a person will be denied recognition of his natural nature. In addition, education helps protect children from abuse or exploitation of child labor, and is also important for society, as it minimizes

xenophobia and achieves stable and harmonious relations between different nations.

The importance of education is difficult to overestimate since it is associated with a fundamental element of the status of a person in society, namely, the status of a free person. The free-forming potential of human nature is impossible without the transfer of accumulated experience and knowledge of previous generations, which is not conceivable without free education and freedom of education. Even the fact of restriction or imprisonment is not a

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reason for the exclusion of the right to education. All of the above represents a certain interest of legal scholars to the problem of regulation and guaranteeing the right to education at the constitutional level.

Methods

The methodological basis of the research is formed on the basis of the application of various general scientific methods and ways of scientific knowledge (analysis, synthesis, deduction, induction), as well as specific scientific methods – formal legal, comparative legal and interpretative.

Discussion and results

The axiological nature of the right to education is due to the extensive discretion of its impact on the achievement of generally valid goals of both universal prosperity of citizens and their access to economic benefits, and the formation of a democratic society and the rule of law. Thus, education in the vast majority of modern states is regarded as a natural, inalienable right, which is under state protection and guaranteed by it.

The principle of the inalienability of the right to education is determined by the constitutional imperative of the sociality of the state, the determining result of which is a “fair and moral social order that guarantees the minimum social standards of quality and standard of living; fiduciary (in relation to the people) duties are carried out (i.e., in the best interests of the people), constitutionally guaranteed social support and assistance is provided” (Aristov, 2017; Osman, et al, 2018). In this context, we can talk about access to education for all as a presumption of social justice that implements the idea of human rights.

Based on the concepts of human rights, specific guarantees of the right to education can be established in each state. Socialist constitutions proclaimed the right to education as an obligatory element of the legal status of a person of a privileged nature (Constitution of the RSFSR 1918) (<http://www.rusconstitution.ru>). Most often, such constitutions guarantee free of charge both general and vocational and higher education (USSR (<http://www.rusconstitution.ru>), Cuba (<https://www.gacetaoficial.gob.cu>)), while education is not only a right, but also an obligation (Constitution of the PRC) (<https://www.wipo.int/>).

Updated in 2019, the text of the Constitution of Cuba adheres to the idea of free and accessible education for all throughout life. Paid education is considered an exception

(<https://www.gacetaoficial.gob.cu>). Previously, the current edition established paternalistic guarantees to a greater extent that exclude the fact that anyone could not receive education and proclaimed declarative ideas about the accessibility of education for all without exception (<https://www.gacetaoficial.gob.cu>).

The Vietnam Socialist Republic enshrined the combination principle of training with practice at the constitutional level (1980 Constitution (<https://worldconstitutions.ru>)), with the aim of ensuring quality training for workers and the upbringing of the revolutionary next generation. Private education was excluded. The Union of Communist Youth of Ho Chi Minh, family and society was entrusted with the responsibility for raising the younger generation. The current Constitution of the Republic of Vietnam, considering modern economic development, guarantees the attraction of financing for the development of a network of educational institutions, provides the possibility of grant support for education (<http://constitutionnet.org>).

Guaranties of education in Germany appear to be interesting. First, the structure of the German Constitution of 1949 (<https://www.gesetze-im-internet.de>) is determined by the results of the Second World War, by virtue whereof the first chapter is devoted exclusively to human and civil rights. Second, despite the secularism of state power, religious education is a common subject in a general school, with the exception of denominational schools. In this case, the parent himself determines whether the child will receive a religious education or not (Art 7 (3) Der Religionsunterricht ist in den öffentlichen Schulen mit Ausnahme der bekenntnisfreien Schulen ordentliches Lehrfach. Unbeschadet des staatlichen Aufsichtsrechtes wird der Religionsunterricht in Übereinstimmung mit den Grundsätzen der Religionsgemeinschaften erteilt).

The state guarantees the right to education that is free from discrimination and meets high standards of quality education. This conclusion follows from the provisions of Art. 7 p. 4 of the German Constitution, which sets out the possibility of establishing private schools, which should be provided not only with material and technical facilities, but also with an appropriate level of teacher training. In addition, this school should not encourage a segregated approach to students due to social, property, gender and other grounds.

Ironically, the US Constitution does not set out the right to education as such, since this issue is regulated by special legislation (<https://www.usconstitution.net>).

Considering the peculiarity of constitutional regulation in the UK, the lack of a single consolidated document, which could be called a constitution, in contrast to the existing many constitutional acts, none of them directly regulates the right to education as such. The issue of education is regulated by the special Education Act 1996 (Education Act 1996) (<http://www.legislation.gov.uk>). Of particular importance in protecting and guaranteeing the right to education is judicial practice, which examines various aspects of the educational process, in particular truancy of minors (Jenkins v. Howells [1949] 2 KB 218); "Bath and North East Somerset Council v. Warman [1999] ELR 81. Absenteeism is considered one of the most serious violations of guarantees for a high-quality education, which can cause prosecution of and recovery of legal costs from parents (Korf, 2010; Sheralieva, 2016).

The Indian Constitution (<http://legislative.gov.in>) contains a fairly streamlined wording on the guarantee of education only if the state has the corresponding economic opportunity. The organization of the educational process, including technical and medical issues, is part of the so-called competing competence of the Union and the states. Borstal institutions stand out of the crowd. The meaning of such institutions is reduced to the organization of training in penitentiary institutions.

It is noteworthy that the Constitution of Afghanistan (Article 44) provides special guarantees of women's rights to education, pointing to the need to develop a balanced education for women, while this article also refers to nomads (<http://www.afghanembassy.com>). Education is based on the principles of religious norms (Islam), as well as academic principles.

Afghanistan at the constitutional level, provides the right not only to citizens, but also to foreigners to create private higher education institutions.

Finland is recognized as a state leader in affordable quality education. Moreover, its constitution contains literally one article devoted to education, which states that everyone has the right to free general education, has a guarantee for another education in accordance with his/her abilities, and his/her financial situation should not affect the opportunity to study (<https://www.constituteproject.org>).

Summary

Having examined some constitutions of various states regarding the constitutional regulation of the right to education, we can conclude that the constitutions adopted in

modern times, without fail, contain provisions on the right to education. Some of the constitution describe in detail certain opportunities and guarantees in education. Some constitutions have no mention of education at all. Nevertheless, education is one of the most important modern natural human rights, which can be guaranteed on the one hand by the constitution, and on the other, by the practice of its implementation and judicial protection.

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