

General international and national acts on education, socialization, ethics, conscience and mind

Загальні міжнародні і національні акти про освіту, соціалізацію, мораль, совість та розум

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Universal Declaration of Human Rights of the United Nations, Constitution of Ukraine, international conventions, education, socialization, human rights, civilization, democracy.

Ключові слова:

загальна декларація прав людини ООН, Конституція України, міжнародні конвенції, освіта, соціалізація, права людини, цивілізація, демократія.

The modern democratic system is based on the fact that the proclamation of human rights simultaneously requires the determination of duties in relation to others. Each person has two contradictory sides. The goal of proclaiming rights and freedoms is the awakening of all the best qualities of a person. Recognition of the honor and dignity of everyone, especially life, as the highest value automatically generates the duty of a person to respect the rights, honor, dignity and life of other people. Accordingly, respect to society contributes to the prosperity of the nation. Rights are granted to a person to freely choose a place in the system of social relations, not limited to the implementation of exclusively private interests. Respect for society obliges to take into account, among other things, public interests. The desire to achieve private interests objectively leads to the implementation of public interests. Each person is valued by the state and has a special role, which is expressed in provision of conditions for the existence. This should eventually become the basis for the functioning of all state mechanisms in general, by making contributions to the economic development of the state. Awareness of this fact is the basis for the formation of a free person who finds the meaning of life by being useful to society, improving qualities, abilities, and talents. However, the disclosure of all the abilities of a person and formation of a person requires the socialization. It is better done through the educational institutes. They exist and function in all countries of the world. However, the legislation and social morality, the mentality of the people, the peculiarities of public relations in each country formed a different degree of access to educational institutions, and a different understanding of the rights and freedoms of a person and a citizen. In the economic sphere, a symbiosis of international legislation and relevant practices with domestic legislation and internal economic practices, together with the mentality of the people, form the legal economic order. As for the mentality, the attitude toward labor, natural environment, production means (in particular, land as one of the main means of production and at the same time national wealth), the state and its people, workers, counterparties (domestic, foreign, from own and other regions of the country), authorities, corruption (desire and opportunities for doing business honestly or with the assistance and support of certain officials, judges, etc). In the sphere of education, the traditions and mentality of the people, together with international and domestic legislation, shape attitudes towards education, teachers, domestic and foreign educational institutions, and access to educational institutions (to education) at various levels.

A significant number of works by Ukrainian and foreign scholars was devoted to issues of access to education, formation of a person's worldview, knowledge, skills and legal support for these processes. The following researchers should be named: V. Bonyak¹, S. Tsebenko², R. Shapoval³ and others. However, today's realities re-

¹ Боняк В.О. Конституційне право людини і громадянина на вищу освіту в Україні в контексті Болонської угоди / В.О. Боняк // Науковий вісник Дніпропетровського державного університету внутрішніх справ. – 2008. – № 2. – С. 68–72.

² Цебенко С. Право на релігійну освіту: до характеристики міжнародних стандартів / С. Цебенко // Вісник Львівського університету. Серія «Юридична». – 2009. – Вип. 49. – С. 8–13.

³ Шаповал Р.В. Конституційне право людини і громадянина на освіту в Україні / Р.В. Шаповал // Право і безпека. – 2011. – № 1 (38). – С. 29–35.

quire additional research into the role of international instruments and national constitutions in terms of implementation of the human right to education and socialization. Therefore, the purpose of the article is to determine the degree of compliance of the internal general normative acts of Ukraine and the acts on education with the provisions of international conventions on human rights and citizenship.

According to S. Alekseyeva, the core of humanitarian and liberal idea for humanity should be the category of innate inalienable human rights, human dignity. The main peculiarity of society in terms of civilization is freedom, a multi-valued, contradictory phenomenon that has both positive and negative sides⁴. The level of freedom of society, along with power and property, defines ideas that imply the product of the highest and most significant phenomenon characteristic of the entire universe – the mind (consciousness and, to some extent, the subconsciousness of a person). Ideas form the science are carriers of values expressed in Christianity, world perception. In the life of modern society and its history, all these factors can be of paramount importance. The crucial is which of these is currently of paramount importance and acts as dominant⁵. All of them are enshrined in global international declarations, general and internal special legislation, to a certain extent interwoven with the provisions of interstate acts. At the same time, the historical traditions of the Ukrainian people have a significant amount of their own democratic achievements. They were partially enshrined in the domestic Ukrainian legislation, but work on their accounting, in particular in the field of education, must continue.

The cardinal democratic transformation of society, the return to modern civilization, achievement of civil peace, harmony, and public peace are increasingly associated with the law, the rule of law, justice, and human rights. Ideals of democracy are universally recognized and serve as one of the basic values of the UN. Democracy provides an environment for the protection and effective implementation of human rights. These values are reflected in the Universal Declaration of Human Rights (hereinafter – the Universal Declaration)⁶ and further developed in the International Covenant on Civil and Political Rights⁷, which establishes a body of political rights and civil liberties, the International Covenant on Economic, Social and Cultural Rights⁸ and national legislation of various countries. Ukraine is a party to these international documents, and therefore the legislation in our country, and primarily the main law – the Constitution of Ukraine dated June 28, 1996, No 254k/96-VR (hereinafter – the Constitution)⁹ – is a reflection of the basic principles of democracy. The democratic European values that have taken place in the sphere of education have found expression in the World Declaration on Higher Education for the 21st century¹⁰, in the Joint Declaration of the Ministers of Education of Europe “European Space in Higher Education”¹¹.

The preamble of the International Covenant on Civil and Political Rights states that, in accordance with the principles proclaimed in the UN Charter, the recognition of the inherent dignity of all members of the human family and their equal and inalienable rights is the foundation of freedom, justice and peace in the world¹². Therefore, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by **teaching** and **education** to promote respect for these rights and freedoms...¹³.

⁴ Алексеев С.С. Право: Азбука. Теория. Философия: опыт комплексного исследования / С.С. Алексеев. – М.: Статут, 1999. – С. 24.

⁵ Ibid. – С. 25–27.

⁶ Загальна декларація прав людини ООН від 10.12.1948 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/995_015.

⁷ Міжнародний пакт про громадянські й політичні права від 16.12.1966 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/995_043.

⁸ Міжнародний пакт про економічні, соціальні і культурні права від 16.12.1966 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/995_042.

⁹ Конституція України № 254к/96-ВР від 28.06.1996 р. / Верховна Рада України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

¹⁰ Всемирная декларация о высшем образовании для XXI века: подходы и практические меры от 09.10.1998 г. // Законодательство об образовании. Документы международного права по вопросам образования [Electronic resource]. – Access mode : http://www.conventions.ru/view_base.php?id=1496.

¹¹ Спільна декларація міністрів освіти Європи «Європейський простір у сфері вищої освіти»: Болонья, 19.06.1999 р. / Міністри освіти Європи // Законодавство України : сайт [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/994_525.

¹² Міжнародний пакт про громадянські й політичні права від 16.12.1966 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/995_043.

¹³ Загальна декларація прав людини ООН від 10.12.1948 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/995_015.

In Ukraine, the state promotes the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine (Article 11). Everyone is guaranteed the right to freedom of thought and speech, to freely express their views and convictions (Article 34). Everyone has the right to freedom of outlook and religion (Article 35). In general, the first and especially the second section of the Constitution is constructed in the form of proclaiming various basic and specific human and citizen rights, providing the state with certain guarantees for their observance, etc.¹⁴

It can be concluded that the norms of the Constitution of Ukraine developed in accordance with the democratic principles, consistent with the Universal Declaration, which affected their content. However, the first article of the Universal Declaration immediately establishes the duties of each person in relation to others¹⁵, in the Constitution these duties include *not aggressing the rights and freedoms, honor and dignity of other people* are already enshrined at the end of the section, together with the duty to protect the Motherland, to respect the state symbols, not to harm nature, cultural heritage, pay taxes¹⁶. At first glance, the establishment of the rights alone in the Constitution contributes to democratic transformation in society. However, we consider such a statement to be false. When granting to all people the rights, it is necessary to specify duties at once. Relations between free people in civil society should be formed only in this way, through understanding that the mind and conscience, honor and dignity of each are expressed in duties to others, to society by self-development and self-control of their behavior, relations between free people in civil society should be formed. The established duties to respect both their rights and freedoms and all other people is thus the main legal mechanism to ensure their proper implementation. Dominance in legal relationships of the rights, as well as the dominance of duties, the violation of their harmonious interaction. The entire legislative system should be formed with the aim of achieving the balance between the subjective rights and obligations of the parties to legal relations.

At a time when the preamble of the Universal Declaration establishes the main legal means for ensuring rights and freedoms, namely "through national and international progressive measures", and ensuring the respect for these rights and freedoms "through education", the Constitution of Ukraine does not specify the appropriate means for fulfillment of the fundamental rights of Ukrainian citizens. Although it is not necessary to explain it thoroughly in the Constitution (this is a task of narrower special legislation), in general terms, the means of ensuring human rights and freedoms should be determined by the Constitution.

In accordance with article 53 of the Constitution, complete general secondary education is compulsory, and citizens belonging to national minorities are guaranteed the right to study in their native language or to study their native language in state and municipal educational institutions or through national cultural societies¹⁷. The right of everyone to education is also defined in article 26 of the Universal Declaration, according to which, everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit¹⁸. As can be seen, the above norm has been consolidated in Article 53 of the current Constitution. Paragraph 2 of Article 26 of the Universal Declaration is important; it states that education shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace¹⁹. In the Constitution, there is no corresponding norm. However, its content has found its further development in another regulatory act of a narrower action.

The Law of Ukraine "On Education" dated May 23, 1991 No. 1060-XII (hereinafter – the Law of Ukraine "On Education") states that education is the basis of intellectual, cultural, spiritual, social, economic development of

¹⁴ Конституція України № 254к/96-ВР від 28.06.1996 р. / Верховна Рада України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

¹⁵ Загальна декларація прав людини ООН від 10.12.1948 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/995_015.

¹⁶ Конституція України № 254к/96-ВР від 28.06.1996 р. / Верховна Рада України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

¹⁷ Ibid.

¹⁸ Загальна декларація прав людини ООН від 10.12.1948 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/995_015.

¹⁹ Ibid.

society and the state²⁰, and the international democratic principles in the special Ukrainian legislation on education are declared and fulfilled, at least the secondary education in Ukraine can be obtained free of charge, and having good knowledge and skills a person can enter a higher educational institution and have a free higher education.

Article 51 of the above Law establishes the rights of pupils and students, formulated in eighteen parts of the article, corresponding to the basic principles of rights of a human, including a child, and paragraph 1 of Article 52 – their duties. Particular attention should be paid to the observance by students of legislation, moral and ethical norms. Paragraph 1 of Article 55 of the Law of Ukraine “On Education” defines the list of rights of pedagogical and scientific staff, and Article 56 – a list of their duties²¹. The above standards are the reflection of all the necessary foundations of the education. The upbringing of children in such educational institutions, where the fulfillment of all the duties of pedagogical and scientific staff is a reality, the goal of the society, which implementation is considered the main task. Thus, the obligation to provide all educational institutions of Ukraine with such workers should be entrusted to the state. Including the provision of pedagogical universities with specialists who, in turn, themselves meet the requirements established by the law, able to teach the basics of the profession, and also to form the basis of morale among future specialists of educational institutions of Ukraine. The education system is a vicious circle wherein one generation is brought up taking into account the values and knowledge of the previous one, a system where morality, conscience and intelligence should be preserved and multiplied, requiring assistance and direct and qualitative intervention of the state.

The rights and duties of pedagogical and academic staff established by the Law of Ukraine “On Education” testify to the absence of their harmonious combination. Such a huge array of responsibilities is catastrophically insufficient for the rights guaranteed by this Law. The rights must be expanded. While the state does not form an adequate system of both material and non-material incentives for academic activity, the quality of the work will be as high as the state appreciates and respects this profession. The duties imposed on the employees of educational institutions will be fulfilled to the extent that the authorities fulfill their duties to ensure the conditions of their work. Under modern conditions, it is necessary to concern the problem of the formation of a new academic staff of educational institutions. The times when the older generation was acting conscientiously to fulfill its duties, despite the conditions, quickly passed. Capitalistic realities are reflected in views on the life of a new generation, dictate their own rules that must be taken into account to ensure a morally healthy future for the whole nation. Therefore, modern legislation should pay more attention to the responsibilities of parents, teachers and other persons engaged in educational and upbringing activities. We need norms that stipulate responsibility for improper performance of their duties, as well as norms that will provide benefits and privileges to bona fide individuals.

Paragraph 3 of Article 59 of the Law of Ukraine “On Education” specifies the duties of parents, respecting the dignity of the child, cultivating diligence, kindness, charity, respect for the state language, regional or minority languages, other languages and native language, elder people, folk traditions and customs; fostering respect for the national, historical, cultural values of the Ukrainian and other peoples, respect for the historical and cultural heritage and the environment, love for the country, respect for the laws, rights, fundamental freedoms of a human²². These provisions fully comply with and are further developed by the earlier provision of the paragraph 1 of article 29 of the Convention on the Rights of the Child dated 20 November 1989 (the “Convention”)²³. It is obvious that the provision of the national Ukrainian legislation on education is based on the norms of international legislation adopted earlier.

In accordance with paragraph 1 of the Article 13 of the International Covenant on Economic, Social and Cultural Rights, states-parties to the present Covenant recognize the right of everyone to education; education should focus on the development of the human personality and dignity, and should strengthen respect for human rights and fundamental freedoms; education should provide all participants with the possibility to be useful in a free society, promote mutual understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups and promote the work of the United Nations in maintaining peace. Subparagraph e (paragraph 2) of the Article 13 of the said International Covenant states that States recognize that the full im-

²⁰ Про освіту : Закон України № 1060-XII від 23.05.1991 р. / Верховна Рада УРСР // Відомості Верховної Ради УРСР. – 1991. – № 34. – Ст. 451.

²¹ Ibid.

²² Ibid.

²³ Конвенція про права дитини від 20.11.1989 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/995_021.

plementation of this right requires the active development of a network of schools of all levels, establishment of a satisfactory system of scholarships and constant improvement of material support of academic staff²⁴. The above norm, especially regarding the need to constantly improve the material support of academic staff, is of great importance and is underestimated in Ukrainian society. This profession in any developed country should be one of the most respected and highly paid. New generations are the hope and future of the state. Academic staff ensures the development of a human. Therefore, the return of the generally established prestige of the profession through constant improvement of material and non-material conditions of academic activity is the core of any reform to improve the education system. In many countries of the world (including in Ukraine), the Teacher's Day was introduced. In other countries (for example, in China, Japan, Singapore), respect to the professions of a teacher is part of the national mentality, and this profession is highly paid compared to other professions. It should be so. The person who teaches others, especially educates, shapes their respect for freedom, democracy, honor, dignity, humanistic values, influences the development of morality, conscience and mind in society, should not themselves feel the lack of material support. The pupils and students should see that their teachers live in harmony with the humanistic principles. Students from childhood should form an idea that to live well they do not have to steal, cheat, abuse randomly or accidentally received opportunities. They must realize that in a democratic state honest work, coupled with respect for the state and other people, allows avoiding material problems and being a free person protected by domestic and international law.

In a democratic state, a person builds relations with respect for others, for the state, and thus for himself/herself. The proclamation of rights and freedoms is nothing more than the proclamation of rights, freedoms and duties. What makes democracy an effective mechanism for achieving moral, spiritual, social, and economic progress? The ideas guided by society, its moral and spiritual values, create the foundation for building a democratic, rule-of-law state. Achievement of the highest goal of democracy, which is civil society, seems possible due to the liberal and humanistic values inherent in the minds of people, reflected in the equality of rights and freedoms, through education and through comprehension of the basic laws of life, conscience and mind.

It can be summarized that, the degree of conformity of the provisions of the Constitution and Ukrainian legislation on education with the provision of the international conventions is quite high. However, domestic legislation should pay more attention to the regulation of both rights and responsibilities of all participants in the process of socialization of a person – the pupils and teachers, educators, mentors, and parents. To provide the norms of the Constitution that proclaim rights and freedoms with the declarative nature, it is first necessary to expand the content of the norms on rights with the corresponding duties that are their logical continuation and exist inseparably with them, while formulating accordingly the provisions of the Constitution. Secondly, it is necessary to educate the interests of the formation of civil society by introducing activities in the educational process that promote the study and perception of legislation in terms of morality, conscience and democracy.

From the above, it follows that the state imposes the duty to raise the child, first of all, on the family. However, the question arises, who is responsible for development of the listed values of their parents. According to the law, the same applies to the family in which they grow, that is, the values pass from generation to generation. Taking into account modern democratic tendencies, we believe that it is the state that has to ensure the proper level of spirituality of the whole population, primarily by educating children through the introduction of basic ideas in the educational process. The child should have the choice to start building the life with respect to the outside world, even when the parents have a different opinion on this matter. All families are different and have different views, and general democratic principles are unchanging. Therefore, the state should be responsible for those rights and duties related to the education of conscious citizens.

Summary

The article compares the compliance of the provisions of the Constitution of Ukraine and the legislation on education with the provisions of international conventions that guarantee the right to education and socialization. It is proposed to specify duties of participants in educational relations in Ukrainian legislation.

²⁴ Міжнародний пакт про економічні, соціальні і культурні права від 16.12.1966 р. / Генеральна Асамблея ООН // Сайт Верховної Ради України [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/995_042.

Анотація

У статті проведено порівняння відповідності положень Конституції України та законодавства про освіту положенням міжнародних конвенцій, що гарантують право на отримання освіти і проходження соціалізації. Запропоновано в українському законодавстві, крім прав учасників освітніх відносин, передбачити їхні обов'язки.

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