

## **The right to education in the system of constitutional rights and freedoms of man and citizen in modern Kazakhstan**

Zhanna Kalkanova<sup>1</sup>, Auelkhan Sabirov<sup>1</sup>, Zachan Azhimetova<sup>1</sup>, Gulzagira Zharylkapova<sup>2</sup>

<sup>1</sup>South Kazakhstan State University named after M.Auezov, <sup>2</sup>International Kazakh-Turkish University named after H.A. Yasavi

**Abstract.** The cultural value of education as the basis of spiritual improving the individual, as a way of asserting its dignity, means of economic human well-being and conditions of comprehensive development of society determines the constitutional enshrinement of the right to education as a fundamental human and citizen rights and entails the need toproviding of guaranteesits implementation. The problem under consideration - one of the particular questions of general human rights problem in modern Kazakhstan. The education of Kazakhstan along with largerhuman resources, territory and natural resources is one of thefundamental bases of the country, enabling it to persist as a state. However, the implementation specified norms occurs in conditions of socio-economic and spiritual crisis that engulfed the country. And this applies to fully to the field of education.

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### **Introduction**

Absence of sufficiently serious and scientifically based program of action of the state on the given problem, hasty and not fully thought-out reforming of the education system can ruinously impact on the future of our country.

The projects of reform which have been initiated cause serious criticism of the scientific community.

Among the key problems requiring early resolution can be distinguished: safeguarding the rights and freedoms of man and citizen in the field of education; expansion of accessibility of education; radical improvement in the quality of education at all levels; the indigenous efficiency of the State- public and local management of education sphere; to increase budgetary funding and improving organizational and economic mechanism of development of education.

### **The aim of the research**

Under the conditions of the functioning of constitutional legislation, to enhance the effective regulation of relations of implementation personality of the constitutional right to education is required to clarify the content of the right to education and to analyze the effectiveness of the mechanisms of implementation of the constitutional right of citizens to education and develop new proposals to improve it.

### **The methods of the research**

Were used the following scientific and special legal research methods: a systematic method,

analysis and synthesis, historic-legal, formal-legal methods.

### **The main part**

The Constitution of the Republic of Kazakhstan Law "On education" and the International Covenants on Human Rights, set constitutional legal and international legal basis of human and civil rights [1].

The system of valuable reference points of modern society is determined by the representation on human rights, that is, an aggregate fundamental or basic rights belonging to everyone from birth.

Human rights are its property, the most important heritage.

They express its vital needs, as well as relations with other people, society and the state, through which people receive the greatest freedom and opportunity of self-development.

Human rights are inseparable from the social activity of the people, their social relations, and ways of being of personality.

Human rights organically woven into the social relations, they are normative form of human interaction, ordering their relations, coordinating their actions and activities, avoiding contradictions, confrontation and conflict.

In essence they are formulating the conditions and ways of life of people which are objectively necessary to ensure the proper functioning of the individual, society and state.

Constitutional recognition of the right to education as one of the fundamental human rights is

an essential characteristic of modern Kazakhstani legislation.

Having fixed this right in Article 30 of the Constitution of the Republic of Kazakhstan [2] introduced him as an element in the constitutional status of the person gave him the original value served as the basis for the establishment of a national educational legislation designed to specify the provisions of Article 30 of the Constitution, guarantees and order of their implementation, and methods of protection.

Analysis of the theoretical sources shows that the term "education" is defined in the literature is ambiguous.

This is connected with that, in research of issues engaged a number of education sciences: pedagogy, psychology, sociology, law, economics, philosophy, etc.

Thus each of Sciences is considering "education" from their positions corresponding to the subject of this science.

For example, in the "Big Soviet Encyclopedia" gives the following definition: "Education - is a process and the result of assimilation of systematic knowledge and skills ... The main way of education - teaching in various educational institutions. Significant role in the assimilation of knowledge, mental development of human plays also self-education, cultural and educational work, participation in social labor activity. "

Usually education understood as process of acquiring knowledge, not only through training in specialized institutions and self-education, but also through social activities of the individual. In our view, such a broad interpretation of education can not contribute to the elimination of legal inaccuracies.

In psychology, education is often determined not so much as a process of acquiring of systematic knowledge, as a result of the learning process as "a totality of organized knowledge and associated skills and abilities defining social and spiritual maturity of a person."

This definition also cannot be taken as a basis in determining the legal status of a citizen, because it depends not so much on legal possibilities as from individual characteristics of man.

In pedagogy in addition to the generally accepted definition of education, which occurs in the "Big Soviet Encyclopedia", also understands as professional activities on training and education, having the aim of forming a certain type of personality.

However, the right on education, as a constitutional, covers all segments of the population,

not just the teachers, so the definition for the legal science also cannot be taken as a basis.

In the economy the education often means the totality of education and upbringing institutions, which is characterized as an independent economic system [3].

In the sociology the education is often defined as a formal process on the basis of which society transmits values, skills and knowledge from one person or group of people to other people.

At the same time, according to some sociologists, education in the world characterized by the following features [4]:

a) the education imposes certain cultural values, in particular, the pursuit of competition and deference to authority;

b) for the transfer of such values need formal organizations;

c) the whole process of training is aimed at socialization of people students;

d) the content of education can sometimes come into conflict with the interests of students.

Definition of education as a self-system of training and education of members of society is quite interesting from the standpoint of jurisprudence since any system can be described by legal characteristics: object, legal content, subjects, their rights and responsibilities, etc. [5]

The right to education in unity with other human rights and freedoms exists until the formation of system of rights and regardless of the state.

The state only recognizes the right on education and obliged to take all measures to that everyone can take advantage of this right.

Therefore, the government should create a legal mechanism which provides the realization of the right to education.

Representation about formation and action of mechanism of legal maintenance depends on what is understood by the term "the right." If one proceeds from the concept of natural law, then its action starts even before the publication of state legal acts.

This approach is especially topical for the modern Kazakhstani theory of law where naturally-legal theory has only recently have proliferated. But at the same time they received official recognition in the act of higher legal force of the Constitution of the Republic of Kazakhstan.

This position of the state has found a direct expression in the Preamble, Article 30 of the Constitution.

In item 1 of article 30 explicitly provides that the rights and freedoms belong man from birth, rather than are bestowed him by the State or someone else.

Since the kernel of the natural rights are human rights and freedoms, his claim to the state, then the formation of a mechanism to ensure the personal rights of the individual, including the right to education begins from the create a positive legal system[6].

When the modern state and right theory discuss the question of action of rights, in the vast majority of cases it mean implementation already have been formulated and have entered into force the rules of conduct.

The term "action" and "realization" are often used interchangeably.

This is one of the most important socio-economic rights enshrined according to the Declaration of the rights and freedoms of man and citizen in the Constitution of the Republic of Kazakhstan. First the right to education was enshrined in Part 1 of Article 26 of the Universal Declaration of Human Rights of 1948, which states that "everyone has the right to education. Education shall be free, at least as for the elementary and fundamental stages [7].

Primary 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 merit. "

The Constitution of the Republic of Kazakhstan in Article 30 enshrines the following: everyone has the right to education; is guaranteed accessibility and gratuity of pre-school, general secondary and vocational education in state and municipal educational institutions and enterprises; everyone is entitled to a competitive basis get a free higher education in the state or municipal educational institution or enterprise; basic general education is compulsory.

Parents or guardians provide that their children receive basic general education; The Republic of Kazakhstan establishes state educational standards and supports various forms of education and self-education.

The state, on the basis of exceptional importance for the development of education of intellectual, cultural and economic potential of the country in the Law of the Republic of Kazakhstan "On Education" has proclaimed the field of education a priority.

The law contains the basic principles of state policy in the field of education, namely: 1) the humanistic nature of education, the priority of universal human values, human life and health, free personal development, training in citizenship, hard work, of respect to human rights and freedoms, love of nature, the Motherland and family; 2) the unity of the cultural and educational space, including the

protection and development of the education system, national cultures and regional cultural traditions and peculiarities in conditions of multi-ethnic state; 3) general availability of education, adaptability of education system to the levels of the and features of the development and preparation of students, pupils; 4) secular character of education in state and municipal educational institutions; 5) the freedom and pluralism in education; 6) democratic, State-public character of education management and autonomy of educational institutions [8].

Defining education as a complex multi-level system, legislation classifies the right to education on the basis of types of educational programs and types of educational institutions and proclaims warranty, "accessible and free pre-school, general secondary and vocational education in state and municipal educational institutions, as well as on a competitive basis getting higher education in state and municipal educational institutions [9].

Consequently, the right to education can be structured depending on the level of education, based on which it is realized, and legal construction of this right is a complex multi-level education: the right to secondary education, the right to vocational education, the right to higher education, the right to postgraduate education.

Should be noted that all elements of the right to education, have an independently, logically completed assignment. Each can be used separately and can be traced in some autonomy and independence as elements (levels) of the education system and elements of the right to education.

However, possessing certain independence, the structural elements of the legal structure of the right to education reveal the presence of clearly defined dependence and relationship between themselves in the process of using the legal possibilities. Thus, analyzing the possibility of implementing elements of the right to education can be assumed that the right to secondary education is an absolute right from the standpoint that it does not require human conditions that precede the process of its implementation [10].

For admission to school, from the child does not require special knowledge allowing him to use his right to secondary education. For all others levels of education and elements of the right to education is characterized by the fact that opportunity their implementation appears in humans only in a certain situation, namely, after the realization of the right to receive the previous level.

A person can go to in secondary and higher professional schools only if it has average (full) education.

Consequently, in the issue of implementation of the legal possibilities can be traced a certain hierarchy, subordination of some structural elements of the right to educating others.

The normative content of the constitutional right to secondary and higher professional education formed on the basis of current legislation of the Republic. Legislation on education is quite extensive and includes: international sources, the Constitution of the Republic of Kazakhstan, the relevant laws, regulations, regulating relations in the sphere of secondary and higher education, local regulations of educational institutions.

The right to secondary and higher professional education is enshrined in international and in intrastate legal acts i.e. the right to education is a basic and fundamental human rights provided for in international legal acts and guaranteed to the constitutional order. It is important to note that norms of international law on education extend general order of operation of international law in the Republic of Kazakhstan.

According to the Constitution, the universally recognized norms and principles of international law and international treaties of the Republic of Kazakhstan are an integral part of its legal system.

It is known that the right to education is governed by many international legal acts, such as such as the Universal Declaration of Human Rights (1948), the Convention against Discrimination in Education (Paris, 14 December 1960), the International Covenant on Economic, Social and Cultural Rights (New York, December 19, 1966), Convention the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), etc. In addition, the constitutions of most countries this right found its firmly established and guarantee.

The basis of international standards of right to education set out in Article 26 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights. In these documents specifies the modalities the full implementation of the right to education: compulsory and free primary education for all; availability of secondary, vocational and higher education; freedom of parents to choose schools for their children and to ensure the religious and moral education of children in accordance with their own convictions.

In the above-mentioned international documents provide that for each person education should be free at the elementary level and the general and publicly available at the level of technical and professional.

Higher education shall be equally accessible to all in the presence of the necessary knowledge and abilities.

General principles enshrined in Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights, concretized and complemented by international legal acts adopted by UNESCO [11], ILO (International Labor Organization) and other specialized agencies of UN.

Among the acts adopted by these institutions, particular importance is the World Declaration on Higher Education, adopted by the World Conference on Higher Education, held in October 1998 in Paris. In its 17 papers Declaration revises the objectives and functions of higher education, emphasizes, among other items, the role of lifelong education and the value of basic education.

This allows take a new look at higher education, bringing to the forefront necessity ensure equitable access to higher education for all, based on the virtues of students with special attitude towards women and disadvantaged population groups.

The Declaration ascertains that higher education has acquired unprecedented importance in today's society as an essential component of the cultural, social, economic and political development and as a cornerstone upon which base the creation of endogenous capacity, strengthening of human rights and promoting sustainable development, democracy and peace under conditions of justice. In the document is proclaimed the diversity of educational systems, creating stronger links between higher education, research, and the labor market, especially given the growing problem of unemployment; determined by way of movement the project to its implementation in the field of assessing the quality, the use of new technologies and financing.

Should be noted other international instruments on secondary and higher vocational education.

Particular importance for Kazakhstan legislation has normative legal acts that are taken by Commonwealth of Independent States.

Such acts include: agreement on "uniform educational space and enhancing the social status of students education system and science in the CIS member states," the Convention "On the Recognition of Studies, programs and of documents on education, academic degrees and titles in the CIS countries", "Agreement on cooperation in the formation of a unified (general) educational space of the Commonwealth of Independent States", etc.

Also the sphere of education in our country regulates a number of agreements on cooperation in science and education, which the Republic of Kazakhstan has entered with other countries [12].

The right to secondary and higher education is sufficiently developed, quite widely reflected in the Kazakhstan legislation and can be implemented in the system of secondary and higher vocational schools. However, in the existing Kazakh legislation, there are many problems, contradictions and gaps related to the right to education.

It is interesting to elaborate on the existing contradictions between the Constitution and laws of the Republic of Kazakhstan in the field of education, in particular the Law of the Republic of Kazakhstan "On Education." Constitution in Part 2 of Article 30 guarantees accessibility and gratuity of pre-school, general secondary and vocational education in state educational institutions and enterprises.

From the content of the analyzed the constitutional norm follow that all of these types of education therein, are free if it is obtained in the state or municipal educational institutions and enterprises.

But in the Law of RK "On education" is not mentioned free and publicly accessible secondary vocational education. With regard to average vocational training, the law not only bypasses the question of accessibility and free, directly restricts this right by setting accessibility of secondary professional education on a competitive basis.

Here there is not only a contradiction, but also a violation of constitutional norms that set the opposite position.

But the institutions of secondary vocational education prefer to be guided by law and nobody do not object, do not defend their constitutional right to accessibility and gratuity of secondary vocational education [13].

### Conclusion

The question of allocating the right to free education to the number of social requires explanation.

The mentioned right can be attributed to cultural rights, which assume access to cultural treasures - museums, archives, libraries, since it is about the spiritual benefits.

Citizens have the right to creative activities in accordance with their abilities through self-select their areas of application forms of and the implementation of professional education.

However, education is closely connected with the material side of life, identifying employment opportunities, generate income.

Education is a spiritual boon, but to a large extent defining possibility of access to material goods, so the right to education can confidently include to social human rights.

The right to the secondary and higher professional education as one of the fundamental

human rights and freedoms at the turn of the century getting in a number of topical problems and the world community and individual states, and personality, as it provides essential life needs and interests, ensures decent standard of living and free development.

### Resume

Relevance of research topic based on the place of the right to secondary and higher vocational education in the system of constitutional rights and freedoms of man and citizen in the modern state. Constitutional right to secondary and higher vocational education is one of the basic human and civil rights enshrined in Constitution of RK.

In accordance with Part 1 of Article 1 of the Law of the Republic of Kazakhstan "On Education" RK proclaims that the sphere of education a priority.

Radical changes occurring at the present stage in the Kazakh society, in the forefront the problem of priority of universal values - the recognition of the inalienable human rights and freedoms, as well as the state's responsibility not only for their formal fixation in legislation, but also to create the conditions of their actual implementation, and protection.

Comprehensive development of man is not only the supreme goal, but the main source of a new order in the Kazakh society.

In connection with this, a comprehensive study of the problem of human rights, including the right to secondary and higher vocational education is an important goal, both in theoretical and practical terms.

### Corresponding Author:

Dr. Kalkanova Zhanna  
South Kazakhstan State University named after M. Auezov

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