

Realization of Constitutional Norms on Accessibility and Quality of Education in the Russian Federation as a Social State

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Abstract

The article is devoted to the problems of increasing the effectiveness of the realization of constitutional norms on the accessibility and quality of education in the Russian Federation as a social state.

The basis of relevant scientific discussions is the search for the best directions in the realization of the norms of the Constitution of Russia, which in Art. 43 fixes the right to education (part 1), guarantees "the general accessibility and free of preschool, basic general education and secondary vocational education in state or municipal educational institutions and enterprises" (Part 2), fixes the possibility "to receive free higher education in the state or municipal educational institution and at the enterprise on a competitive base" (part 3).

The authors of the article attempt to substantiate the relevance of the objective identification of the evaluation of educational activity on the part of: the scientific community (primarily as a constitutional value); trainees (their legal representatives), potential trainees and teaching staff - in the part of systematic improvement of its legal regulation.

Keywords: Activity; Constitution; Economy; Education; Law.

1. Introduction

1.1. Introduction of the Problem

The Russian Constitution in Art. 43 fixes the right to education (Part 1), which significance provokes numerous discussions in the development of the theory and practice of the Russian social state; there are positions according to which the researched right is identified with natural law, with constitutional value, etc. In this context, particularly interesting are studies, the main leitmotif of which is the scientific analysis of the constitutional right to education as the constitutional value of the Russian social state.

2.2. Importance of the Problem

The problematic issues of the realization of constitutional norms in the field of education were raised in the fundamental works of M.V. Matveyev [1], A.L. Sergeyev [2], L.B. Sitdikova, A.L. & Shilovskaya [3], T.N. Novikova [4], S.A. Myshenko [5], T.E. Petrosyan [6], V.V. Rybakova [7], I.V. Tyapkina [8], O.V. Stulnikova [9] and others.

Selected issues of comparison of the constitutional right to education with the values of the Russian social state are considered in the articles of T.N. Matyusheva [10], M.A. Zadorina [11], A.N. Kozyrin [12], A.A. Kirillovich [13], D.S. Ivakina [14], E.A. Kashtanova [15], I.F. Nikitina [16, 17], M.V. Vinogradova et al. [18], M.V. Vinichenko et al. [19] and others.

2. Method

In the research process the authors were guided by general methods of scientific knowledge (analysis, synthesis, induction, analogy, deduction), general academic (systemic, structural-functional, etc.) and private scientific (comparative legal and formal legal methods, sociological research methods) methods of analysis of state-legal phenomena and processes in the area of realization of the constitutional right to education.

Since the studied constitutional law in the Russian Federation is realized by a wide range of subjects of the relevant legal relations, the authors of the article could not but turn to the structural and functional method, which, in particular, allows to study the processes of interaction of federal and regional normative legal acts, to reveal and analyze the features of the organizational structure and internal functioning of organizations that carry out educational activities in the Russian Federation.

The use of a comparative legal technique has enabled to characterize the process of functioning not only of Russian but also foreign educational organizations, the formation of new approaches to the essence and forms of educational activity, to identify the most distinctive tendencies and patterns in their development, to identify and substantiate the possibility of using their legal regulation experience.

Based on the application of the formal legal method, the constitutional and legal status of the educational activity of the Russian Federation was studied, the place and role of the right to education in the system of constitutional values was characterized. Furthermore, this method allowed the authors of the article to reveal shortcomings (contradictions, gaps) in the legal regulation of edu-

educational activities and develop proposals aimed at overcoming them.

3. Results

It was revealed that the most accurate in terms of clarifying the essence of the analyzed category are doctrinal, in which the right to education is identified with the constitutional value of the Russian Federation.

We believe that the realization of the right to education (Part 1, Article 43 of the Constitution of Russia) should guarantee "the general availability and free of preschool, basic general and secondary vocational education in state or municipal educational institutions and enterprises" (Part 2, Article 43 of the Constitution of Russia), "to obtain higher education in a state or municipal educational institution and at the enterprise free of charge on competition basis" (Part 3, Article 43 of the Constitution of Russia) and it is possible only with the development of Russia as a social state.

It is defined that the right to education – constitutional law – should be characterized as a constitutional value and as a public good of a social state.

It is found that the constitutional norms and characteristic of educational activity as a constitutional value does not exclude the constant improvement of the mechanism for realization this constitutional right, with the obligatory and systematic monitoring of the opinions of trainees (their legal representatives), potential trainees and teaching staff on the effectiveness of this process.

In order to improve legislation it is offered to read as follows in Paragraph 12 of Art. 3 of the Federal Law No. 273-FZ of December 29, 2012 "On Education in the Russian Federation" ("Basic Principles of State Policy and Legal Regulation of Relations in the Sphere of Education"):

- "a combination of state and contractual regulation of relations in the sphere of education with observance of the constitutional principle of Russia as the social state."

4. Discussion

The Russian Constitution in Art. 43 fixes the right to education (Part 1), ensures "the general availability and free of preschool, basic general and secondary vocational education in state or municipal educational institutions and enterprises" (Part 2), enshrine the right "to receive free higher education in state or municipal educational institution and at the enterprise on a competitive basis" (Part 3).

It is hard to overestimate the significance of this right in the development of the theory and practice of Russian constitutional system; there are even positions according to which the researched right is identified with natural law. Thus, according to the opinions of some scholars, "the recognition of the natural right to education (Part 1, Article 43 of the Constitution of the Russian Federation) reflects the highlighted basic ideas of the concept of natural human rights" [10].

However, the direction of our research first of all is connected with the analysis of the right to education as a constitutional right; though, in this case we do not find similar allegations about the fact that the right to education is "the constitutional (basic) natural subjective right of a person to acquire knowledge and skills, a certain level of which is guaranteed by the state in dependence on its socio-economic opportunities, with the goal of comprehensive development of the individual and preparing for social life" [7].

The approaches of scientists in which the right to education is identified with the constitutional value of the Russian Federation are the most accurate in terms of understanding the essence of the category being analyzed. Such an approach can be found both in the papers of constitutionalists and representatives of legal science in general. Thus, V.V. Rybakova notes that "access to education

as a constitutional value proclaimed by the Constitution of the Russian Federation is based on the principle of equality, which is to specify this constitutional right in relation to individual levels of education." [7]. E.A. Kashtanova rightly emphasizes that "the right to education is a constitutional value, since the person, his rights and freedoms are recognized by the Constitution of the Russian Federation as the highest value (Article 2) [15].

However, pluralism of scientific positions determines the possibility and expediency of a brief analysis and other doctrinal positions on this issue. So, for example, scholars argue that:

- the right to education "should be understood as freedom because it is free from excessive interference by the state" [16];
- the right to education is "a constitutional and legal means of involving a person in knowledge and culture" [14];
- the right to education "means subjective law, the actual ability of a person to possess and use knowledge and skills to improve his educational and cultural level, guaranteed by the state and international law," [12];
- the right to education should be considered as "the genuine ability of a person to possess and use knowledge and skills in order to improve his cultural level, personal interests and the interests of the whole society" [9];
- the right to education is "an opportunity to get the non-discriminatory access to education of a certain content, level and quality in the defined time and within the borders of a certain territorial remoteness of the place where the education was given from the place of residence" [6].

"Specific" definitions are very important in this list, their aim is to structure and study certain aspects ("types", "levels", etc.) of the analyzed constitutional law. As observed by I.F. Nikitina, "the legal construct of the right to education is distinguished by a complex structural organization, based on the allocation of appropriate types and levels of education" [17].

So, for example, scientists allocate the right to vocational education by which they offer to understand "behavioral attitudes that are envisaged in the norms of objective law, fixing legally significant opportunities for a person and a citizen in the practical realization of their right to education in secondary and higher professional educational institutions" [8]. Other authors identify "the opportunity to acquire knowledge, skills and competences (of a certain level and amount) during the mastering of basic professional educational programs and use them to carry out professional activities in a certain area of perform operations on a particular profession or specialty" with the constitutional right to professional education [11].

It is offered to define the Constitutional right to secondary vocational education "as a subjective human right (who has a basic general education), which is an enshrined in the Constitution of the Russian Federation opportunity for the access and use of knowledge, skills, proficiency and competencies for the professional development of the individual, activity in accordance with the qualification specified in the diploma of secondary vocational education for one or another profession, specialty of a skilled worker, an employee or a middle-level specialist" [11].

Accordingly, in the dissertational studies which are carried out on the speciality 12.00.02, under the right for higher education it is offered to understand "a state-guaranteed possibility of a person with the required level of basic education to get professional knowledge, skills, abilities, competencies and their official recognition in order to meet the needs of society and the state in training highly-qualified specialists, as well as personality in intellectual, cultural and moral development in a higher educational institution or scientific organization for established educational programs and standards" [5].

However, such a "narrowing" of concrete forms of the realization of the constitutional right to education makes the researchers ask the following question. "Meanwhile, the Constitution of the Russian Federation, – writes M.A. Zadorina, – does not directly name the right to secondary vocational education and does not contain and does not disclose the concept of "the right to secondary voca-

tional education". In the legislation on education, there is no definition of such a right. This circumstance creates the ambiguity - whether this right is constitutional and how it is related to the right to education. In addition, there are questions about those who is eligible for secondary vocational education and what should be understood by this right According to Part 2 Art. 43 Ch. 2 "Rights and Freedoms of Man and Citizen" of the Constitution of the Russian Federation the general availability and free of secondary professional education in state or municipal educational institutions and enterprises are guaranteed; the possibility of obtaining secondary vocational education is not called a right" [11].

In our opinion, an answer to this question is in the Constitution of the Russian Federation; Part 1 Art. 55 defines that "enumeration of fundamental rights and freedoms must not be interpreted as denying or diminution of other generally accepted rights and freedoms of a person".

We also consider such issues as controversial and far-fetched. In the opinion of some authors, "The Constitution of the Russian Federation establishes for Russian citizens, in addition to the obligations stipulated by international agreements of the Russian Federation, the obligation to obtain a basic general education. The Law on Education is an obligation to obtain a secondary general education. In this connection, the following question arises: is this not an additional responsibility for the citizens of the Russian Federation, which contradicts not only the Constitution of the Russian Federation, but also international treaties ratified by Russia?" [1].

It is obvious that the actual level of the public relations' developing makes it of such level, but a corresponding character of constitutional rights and duties "removes" a question of such level on the conformity of the necessity of the Russian Constitution.

There is also a scientific approach according to which the constitutional right to education is interpreted in the context of its "expansion", identifying the widest range of participants in the relevant legal relations. Let's give a fairly typical example. T.N. Matyusheva states that the tendency to expand the constitutional regulation of the right to education, due to his appointment in society, defined the proclamation, guaranteeing the right to education, consolidating the foundations of educational policy. The actual task of the science of constitutional law is to establish the correlation between general, special and individual in the realization of the right to education by students of the magistracy [10].

In fact, those authors who carry out their research realize that it is doesn't matter how high the authority of the constitutional norms is, because they are not automatically realized [20]; in their opinion, "the constitution ... does not have its own implementation mechanism."

Accordingly, with this approach, the circle of participants and objects of constitutional and legal relations on the realization of the constitutional right to education is widened. The researchers note that "in particular, the possibility of obtaining education regardless of sex, race, nationality, language, origin, place of residence, attitude to religion, beliefs, membership in public organizations (associations), age, state of health, social, property and official position, the existence of a criminal record are guaranteed; inadmissibility of limiting the rights of citizens to vocational education on grounds of sex, age, state of health, the existence of a criminal record beyond the limitations that can be established only by law; the creation of an educational system and appropriate socio-economic conditions for obtaining education; general availability and free of preschool, primary general, basic general, secondary (complete) general education and primary vocational education from the point of view of reproducing the provisions of Art. 43 of the Constitution of the Russian Federation" (E.A. Kashtanova refers to such authors as: Zrazhevskaya T.D. Implementation of constitutional legislation. Problems of theory and practice: The dissertation of doctor of juridical sciences. Voronezh, 1999; Kutafin O.E. Subject of constitutional law. Moscow: Jurist, 2001; Luchin V.O. Implementation of constitutional norms: general and special. Constitutional reform in the USSR: urgent problems. AS

USSR, Institute of state and law; [Editor: E.K. Glushko and others]. Moscow: IGPN, 1990; Parkhomenko A.G. Ideas of Russian constitutionalism and their implementation in the domestic constitutional (state) law: The dissertation of doctor of juridical sciences. Moscow, 1999 and others. See: E.Kashtanova.)

In their opinion, "in such cases the guarantees are specific power, that provide achieving of a certain social result, which can be reasonably examined as some extended in comparison to the Constitution of the Russian Federation rules of announcement. The guarantee of constitutional provisions, including the field of rights and freedoms, in particular rights of getting an education, is provided with other means, as a rule, with dispersed in various legislative and subsidiary legislations of federal and regional levels" [20].

In the writers of the article's opinion such an "expansive" approach like implementation of subjective and objective right to get an education is in compliance with its substance and specificity.

So, for example, scientists point out that "the guarantees of implementation of the rights to get an education should be based on certain assessment tools of problem areas of educational implementation, to provide firstly an objective assessment to the educational situation and necessity of guarantying intervention into its solution by society and government; secondly, they should provide social enforceability emerging from constitutional requirements of certain guarantees of an educational development; thirdly positive development of state and public institutes providing functionality of educational sphere should be provided" [20].

It should be noted that in most cases this is not about expansion of mentioned right involving an arbitrator but exactly about implementation of constitutional provisions. For example, in decision of the Constitutional Court of the Russian Federation of 07 June, 2000 (Decision of the Constitutional Court of the Russian Federation of 07.06.2000 No. 10-P "On the case on verification of the constitutionality of certain provisions of the Constitution of the Republic of Altai and the Federal Law" On general principles for the organization of legislative (representative) and executive organs of state power of the subjects of the Russian Federation "Bulletin of the Constitutional Court of the Russian Federation No. 5. 2000) No. 10-P was formed a legal position about "Part 1 Art.59 of the Constitution of the Altai Republic, which imposes that parents or substitutes must provide their children with a secondary education, it does not contradict the Constitution of the Russian Federation, because it indicates only active promoting at the side of the mentioned persons to implement the rights of minors, who wants to continue their studying to get an education when the state creates certain conditions, i.e. if with the responsibility for the realization of children's right to receive secondary (complete) general education, the responsibility assumed by the Republic of Altai to ensure such conditions".

In this regard there is a reasonable opinion about "the existing legislation of the Russian Federation does not establish responsibilities for non-realization of a secondary education and all the other levels of general education in contrast to the failure of many other duties, which can be defended in court [21]. In this regard, the reviewing duty is more a moral characteristic and in this role is more similar to the duty, envisaged in Part 3 Art. 44 of the legislation of the Russian Federation, requiring to save historical and cultural heritage of each person" [1].

So, the right to get an education is a constitutional right and it is characterized by researchers as a constitutional and public value, "to get which is impossible without well-focused systematic and vigorous action of a person who gets it, what makes it necessary to assign a number of obligations about getting this benefit with a simultaneous establishment of the responsibilities of the state about getting certain guarantees of getting an education on the person» [1].

These researches add that "meanwhile the person's duty to get a secondary general education is "soft", what is confirmed by a number of the legislation provision envisaging an ability not to complete this duty. The most important part of the right to get an education is the ability of a person to make a choice in the process

of realization of their educational rights. Educational legal capacity and legal capacity are not the same phenomena. The possibility of the existence of limited educational capacity and educational incapacity by a logical consequence of the existing law" [1]. Thus, in the relevant literature on constitutional right it can be detected that the sufficient amount of scientific research, devoted to the constitutionally legal regulating of the educational activity, difficulties of increasing the efficiency of realization of educational rights. It is hard to not agree with statements that are contained there, stating that education is "one of the most important spheres of social life. Because of its specific filling with various social institutes, academic subjects, systems of methodology of filing and receiving of information, structure of educational institutions building, the future of the people and the direction of their spiritual and intellectual development depend. That's why the education is one of the main state's functions in each developed country, to implement what plenty of physical and human resources are spent annually [2].

It would be useful to emphasize that some scientists are quite rightly link perspectives of economic development and minimization of crisis problems directly to the improving of educational activity. Moreover, the authors actually equate education with the sector of the economy that is no longer certain. "The successful development of the Russian economy, as has been noted by N. V. Novikova, which is a priority area of the activity of our state, directly depends on the efficiency of the functioning of the whole education system. The educational sphere is a subject of juridical regulation not only because of being linked to the citizens' realization of the constitutional right to education, but also because of being a sector of the economy, defining the future of the state" [4]. But, in general, we imagine that one of the most perspective directions of scientific researches is "the informative analysis of the main received promotion manner of the realization of economic activity of educational organizations", which, as has been noted by A. A. Kirillovich, are "additional sources of their financing at the present stage" [13].

The Russian Constitution in the Art. 43 defines the right to get an education (Part 1) but guarantees "general availability and free of pre-school, basic general and secondary education in state or municipal educational institutions and in enterprises" (Part 2), enhances the opportunity to "on a competitive basis free get higher education in state or municipal institution and in enterprises" (Part 3).

5. Conclusion

Thus, the analysis allows to insist that the characteristic of the educational activity as a constitutional value does not exclude the constant improvement of the mechanism of realization of this constitutional right with necessary and systematic monitoring of the trainees (their legal representatives'), potential trainees and pedagogical staff's opinions about the efficiency of this process. Realization of the constitutional norms about the accessibility and quality of the education in the Russian Federation as in a social state assumes the embodiment of this postulate in the legislation; so, we believe that it is advisable that:

P. 12 Art. 3 ("The main principles of state politics and juridical regulation of relationships in the field of education") of the Federal act of 29 December 2012 No. 173-FZ "About education in the Russian Federation" to explain in the following edition:

- "a combination of the state and contractual regulation of relationships in the sphere of education following constitutional principle of social character of the Russian state".

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