

Legal Regulation of Relations in the Field of Education



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Abstract: *The article analyzes the specifics of ensuring the protection of the right to education in case-law decisions of the European Court of Human Rights. The authors have found that there are problems in the current education systems both in Europe and Russia. These problems are solved in accordance with the case law created by the European Court of Human Rights making decisions to ensure the right to education. The authors have noted the main violations committed by governments or governmental bodies in its implementation. The authors have shown the correspondence of the norms of national education legislation of a number of European countries to the provisions of the European Convention on Human Rights. In this regard, the authors have concluded that today, the right to education in European states is not always respected due to migration policy and in the future, relations in this area will deteriorate.*

Keywords: *right to education, parents' right, complaint, violation, positive obligations, permissible restrictions, precedent, pluralism, special opinion.*

I. INTRODUCTION

The original version of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention or the Convention) adopted on November 4, 1950 did not include the right to education. As early as during the period of this Convention drafting, it was recognized that the right to education is one of the most controversial rights. Some believed that the right to education should not be included in the European Convention, which primarily protects civil and political rights, and that it should be attributed to family rights because it mostly concerns the rights of parents to influence the education of their children [1-3]. However, it was subsequently decided to treat this right within the framework of the civil rights guaranteed by the Convention.

The problematic issues of attributing the right to education

to civil, political or family rights were raised in the fundamental works by Gomen, Kharris, Zvaak [4] and others.

Some issues of enforcement of the right to education are discussed in the articles by Tulkens [5], Narutto [6], Shilovskaya et al. [7, 8] and others.

II. PROPOSED METHODOLOGY

In the research, we applied general scientific and special legal methods of cognition: the method of social and legal experiment, comparative legal method, etc. The formal legal method used as the main guideline allowed us to reveal different approaches to the interpretation of the right to education in various European countries according to local traditions and mentality.

The combination of the aforementioned methods allowed us to identify the problems that are emerging in the current education system in Europe, as well as in Russia.

The comparative legal method based on the decisions of the European Court allowed identifying controversial issues related to the recognition and implementation of certain models of education, including in terms of an individual's citizenship of the corresponding European state.

III. RESULTS ANALYSIS

We found that today European states do not always respect the right to education, as evidenced by numerous decisions of the European Court of Human Rights. We believe that in the future, due to the migration policy, relations in this area will deteriorate because of the large influx of refugees.

We determined that provisions of the European Convention and their interpretation must be decisive in order for the right to education established therein to be effective and enforceable. These provisions should be mandatory in the territory of all or effectively all states.

We found that case-law decisions of the European Court in matters related to the right to education are becoming increasingly relevant due to the latest political and demographic processes taking place both in European countries and Russia, where the case law is gradually becoming an integral part of the national legislation in general. In order to improve legislation, it is proposed to further develop and improve the provisions of the European Convention on Human Rights in the field of education and bring national laws, including the Russian legislation, into compliance with its norms.

Manuscript published on November 30, 2019.

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IV. DISCUSSION

Until the early 2000s, the European Court of Human Rights (hereinafter referred to as the European Court or the Court) considered only a few complaints concerning the assessment of state policy, representing the actual denial of access and right to education. Moreover, the Court rejected most of such complaints submitted.

However, the increasing role of education in society and its wider coverage of all aspects of public life led to the fact that certain controversial issues began to arise in its implementation. A landmark case in the field of protection of the right to education was the case of teaching in various languages in Belgium. In it, French-speaking residents of Flanders (the southern region of Belgium) complained that the refusal of the Belgian Government to teach their children in French violates their rights granted by Art. 2 of Protocol No. 1. Considering this case, the European Court noted that "such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention". On the one hand, the Belgian legislation gives Flemish-speaking children access to schools teaching in Flemish located in other neighboring areas. However, this right was not granted to French-speaking children who were forced to attend schools located far from their place of residence. Making its decision, the Court found that these circumstances indicate primarily a violation of the provisions of Art. 14 of the Convention on the Prohibition of Discrimination considered together with Art. 2 of Protocol No. 1. The court judgement stated that the exercise of the right to education and, more specifically, the exercise of the right of access to existing educational institutions was not ensured for all persons without discrimination on the basis of language [9]. In this case, the Court faced the issue of access to primary education, which was subsequently addressed in a number of other cases.

In its judgements, the European Court indicated that the right to primary education in accordance with Art. 2 of Protocol No. 1 does not exclude the introduction of compulsory primary education by the state [10]. At the same time, it was confirmed that parents have right to teach their children outside the public school system, but the state is not obliged to subsidize private primary education.

The landmark decision related to the protection of the right to education was the ruling in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, in which parents of school children objected to the Act on Compulsory Sex Education dated May 27, 1970 introduced in public schools in Denmark. They argued that sex education involves ethical and moral aspects and contradicts their Christian beliefs, so they preferred to educate their children themselves in this area. However, state educational authorities refused to allow them to excuse their children from studying this subject. In its decision, the Court noted that when the state performs any functions that it assumes in the field of education, it must respect the parents' rights and ensure that such education and training are consistent with their religious and philosophical convictions. However, in this case, the state retains a real opportunity to avoid it for parents wishing to keep their children away from integrated sex education. Danish legislation allows parents to educate their children in

state-subsidized private schools that are not bound by such strict obligations or conduct their homeschooling while experiencing the obvious inconvenience associated with the need to resort to one of these alternatives. Therefore, by a majority of votes (six against one), the European Court decided that in this case, there was no violation of the right to education [11].

Later, the Court faced a number of similar complaints. However, when considering them, it has already used broader approaches to the interpretation and implementation of the right to education. For instance, in the case of Folgero and others v. Norway, children of parents of the Norwegian Humanist Association attended public elementary school. However, in the process of their study, the curriculum was changed, as a result of which, two different subjects (Christianity and Philosophy of Life) were replaced by one general subject covering Christianity, religion and philosophy (abbreviated KRL). The Bible and Christianity, as well as the Evangelical-Lutheran dogma, which is the official religion of Norway, were taught within the scope of this subject. The KRL program included the study of other Christian teachings, world religions and philosophies, as well as ethics. Previous rules for elementary schools used to allow parents to demand that their children were excused from lessons of Christianity. However, according to the Norwegian Education Act adopted in 1998, students could be exempted from studying only those sections of the subject that, in the opinion of their parents, included studying and adhering to other religions or philosophy of life that differed from their own views. For several years, the applicants have been unsuccessfully demanding from the Norwegian authorities a complete exemption of their children from studying this course. At the same time, as the European Court noted, obviously the organizers of the course suggested that by teaching the basics of Christianity, other religions and philosophy it was possible to create an atmosphere of openness and acquisition of comprehensive knowledge in schools. However, their intention was consistent with the principles of pluralism and objectivity enshrined in Art. 2 of Protocol No. 1 to the Convention. The Court simultaneously pointed out that the system of partial exemption from studies may expose parents to the risk of forced disclosure of details of their personal lives and potential conflicts resulting therefrom could force them to refrain from making such demands. In addition, in certain cases, especially with regard to religious activities, the amount of partial exemption could be limited due to the complexity of differentiated education. According to the Court, this can hardly be considered compatible with parents' right to respect for their beliefs, which follows from the norms of Art. 2 of Protocol No. 1. In addition, the European Court was not convinced that the state-mentioned opportunity to educate their children in private schools exempts from the obligation to ensure pluralism in public schools open to all. The decision of the Grand Chamber of the European Court established that in this case, there was a violation of the requirements of Art. 2 of Protocol No. 1 to the Convention. However, when making the decision in this case, the opinions of the judges of the Grand Chamber were divided (nine votes "for", eight votes "against").

This indicates that there are problems related to the formation of common approaches to the interpretation and evaluation of the practical implementation of the right to education in general and its individual aspects [12].

It should be noted that the European Court subsequently examined several complaints regarding the content of educational institutions' curricula concerning the introduction and teaching of subjects related to religion, philosophy and sexual education of children. In one of its decisions, the judicial authority stated that the establishment and planning of curricula fall within the competence of states. In this regard, the Court cannot assess these issues, since the adoption of such decisions can be quite reasonable and different in a certain period and in different countries [13].

In another landmark case, the Court faced the issue of limiting the right to education. In the case of *Temel and others v. Turkey*, the European Court of Human Rights indicated that the expulsion of applicants from university constituted a restriction of their right to education. The main issue was the proportionality of the established and adopted measures to the actions of the applicants since they did not commit any reprehensible actions, did not resort to violence and did not try to disrupt the university's establishment but were prosecuted only for filing petitions to the school authorities and for views expressed therein. In addition, neither their views nor the form of their expression can be considered an activity that could lead to the polarization of the university community on a linguistic, national, religious or denominational basis.

In its ruling on this case, the Court noted that the right to education in principle does not exclude the possibility to apply various disciplinary measures, including temporary or permanent dismissal from the educational institution. However, these measures should be applied in order to ensure compliance with its internal rules and order and should not impair the right to education or contradict other rights guaranteed by the Convention or its Protocols. In this case, the applicants were expelled from the university as a result of the exercise of their right to free expression of their opinion. The court found that application of such a disciplinary measure as their exception from the university should not be considered as reasonable or proportionate to their actions. Despite the fact that the sanction applied to the applicants was subsequently canceled by the competent authorities of the state, the European Court in its decision agreed to that and also noted that by the time of its cancellation the applicants had already missed two academic semesters and as a result of the lengthy proceedings had not received any compensation for this damage [14].

In some cases, the Court ruled that there were no violations of the right to education, despite the fact that, at first glance, they did take place. For example, in the *Orsus* case, the applicants claimed that their children were placed in separate Romani classes of secondary schools due to their lack of knowledge of the Croatian language. In addition, the scope of the program for the Romani in these schools was 30% less than the official curriculum of the country, which, in their opinion, was the violation of their right to education. However, the European Court unanimously recognized that in this case, the requirements of Art. 2 of Protocol No. 1 were not violated. In this decision, it noted in particular that any

difference in the treatment of applicants was based on their language skills and that enrollment of the Romani children into separate classes was used only in four elementary schools of a certain region, where the number of the Romani children was particularly large. At the same time, their enrollment in separate classes was a positive and necessary action designed to assist them in acquiring knowledge and allowing them to master the curriculum successfully. Thus, the actions of the authorities were not connected with national or ethnic origin, but with insufficient knowledge of the Croatian language, which does not constitute violations of the right to education [15, 16].

Several landmark cases were associated with a new problem that has arisen in the educational institutions of European countries – the wearing of Islamic hijab and other similar religious clothes. In its decisions, the European Court generally recognized that in a democratic society, the government has the right to impose restrictions on the wearing of Islamic hijab if its wearing contradicts the purpose of protection of the rights and freedoms of others, public order and public safety. In the *Karaduman* case, the Court acknowledged the absence of violations of the right to education and agreed with the measures taken at universities to combat some fundamentalist religious movements that exerted some pressure on students, who did not adhere to the extreme tenets of their religion or professed another religion. The court also noted that higher education institutions can regulate the administration of rituals and the wearing of symbols of religion by imposing certain restrictions, for example, on the place and manner of practicing one's religion, in order to ensure the peaceful coexistence of students with different convictions and thereby maintain public order and protect beliefs of others [17].

A similar decision was made later in the case of *Leyla Sahin*, in which the Court considered it legitimate not to impose a ban on wearing hijabs in universities, but only in the context of Turkish political realities. Since in the current situation in Turkey, when the constitutional structure of the state is seriously threatened by religious factors, the state has the right to take tough measures to restrict the relevant rights. In fact, this decision formulated a provision whereby the ban on wearing religious clothes is justified if it begins to be perceived by society as a threat to democracy and freedom. Nevertheless, not all judges of the European Court of Human Rights fully agreed with this thesis.

For instance, the Belgian judge of the European Court F. Tulken expressed her special opinion on the above case. The judge noted that none of the Council of Europe member states ban the wearing of religious symbols in institutions of higher education where young people and adults study since they are less subject to any kind of religious pressure. The judge also questioned the thesis of the direct connection between wearing the hijab and Islamic fundamentalism, which threatens the foundations of the Turkish state (Dissenting opinion of Judge F. Tulken on *Leyla Sahin v. Turkey* dated November 10, 2005 [5]).

According to S.V. Narutto, in its decisions on compliance with Art. 2 of Protocol No. 1, the European Court of Human Rights proceeds not only from the obligation of the state, including positive obligations ensuring the observance of every person's right to education, but also takes into account that the development of the right to education, the content of which varies in relation to time, place, different economic and social conditions, mainly depends on the needs of the democratic society as such [6].

In Russia, the provisions of the European Convention and their interpretation must be decisive in order for the right to education established therein to be effective and enforceable [18]. In addition, the case-law decisions of the European Court in cases related to the right to education are becoming increasingly relevant due to the latest political and demographic processes taking place both in European countries and Russia [8].

V. CONCLUSION

Developing the conceptual provision on the harmonization of national state norms with the norms of the Human Rights Concept in the field of rights to education, states need to develop a mechanism allowing to ensure a balance of public and private interests. This can be achieved by changing the educational policy and strict control over the observance of fundamental rights and freedoms in this area.

Due to the above, state bodies are obliged to observe strictly the obligations assumed in the educational sphere. The subjects of these relations have the right to appeal against unlawful decisions applying to the relevant judicial bodies at the initial stage within the state and only then go to the European Court of Human Rights, especially since it has not yet formed a common opinion on a specific problem in its interpretation and implementation.

In this article, we did not reflect on such identified issues as functions, rights, responsibilities and liability of special human rights bodies in the field of education, as well as on a mechanism for implementation of the aforementioned problems at the state level. These matters may become the subject of our subsequent research.

APPENDIX

It is optional. Appendixes, if needed, appear before the acknowledgment.

ACKNOWLEDGMENT

It is optional. The preferred spelling of the word "acknowledgment" in American English is without an "e" after the "g." Use the singular heading even if you have many acknowledgments. Avoid expressions such as "One of us (S.B.A.) would like to thank" Instead, write "F. A. Author thanks" Sponsor and financial support acknowledgments are placed in the unnumbered footnote on the first page.

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