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## INTERNATIONAL PROBLEMS FOR GUARANTEEING THE RIGHT OF AN INDIVIDUAL TO HIGHER EDUCATION

### PROBLEMAS INTERNACIONALES DE GARANTIZAR EL DERECHO DE UN INDIVIDUO A LA EDUCACIÓN SUPERIOR

Ph. D. Anna Gubareva<sup>1</sup>

E-mail: [ashipova@mail.ru](mailto:ashipova@mail.ru)

Ph. D. Kseniya Kovalenko<sup>2</sup>

E-mail: [kovalenko1288@mail.ru](mailto:kovalenko1288@mail.ru)

<sup>1</sup> Ural State Law University. Yekaterinburg. Russian Federation.

<sup>2</sup> Altai State University. Barnaul. Russian Federation.

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#### ABSTRACT

The article shows that the character of education development and its intensive pace depend on many factors. Undoubtedly, they depend on the character of the state policy and factors of culturological and anthropological character. An important parameter of a nation potential is its human potential which includes a set of anthropological features which can be implemented. A special emphasis is given to the population intellectual potential of the country which to a great extent determines the possibilities in the educational sphere. Thus, disputes concerning assessments in the academic programs of higher schools are productive if the average level of education of young students corresponds to the level of the covered academic course.

#### Keywords:

Education, development, state policy, nation, intellectual potential, higher school

#### RESUMEN

El artículo muestra que el carácter del desarrollo educativo y su ritmo intensivo dependen de muchos factores. Indudablemente, dependen del carácter de la política estatal y de los factores de carácter culturoológico y antropológico. Un parámetro importante del potencial de la nación es su potencial humano que incluye un conjunto de características antropológicas que pueden ser implementadas. Se hace especial hincapié en el potencial intelectual de la población del país que determina en gran medida las posibilidades en el ámbito educativo. Así, las disputas relativas a las evaluaciones en los programas académicos de las escuelas superiores son productivas si el nivel medio de educación de los jóvenes estudiantes corresponde al nivel del curso académico cubierto.

#### Palabras clave:

Educación, desarrollo, política estatal, nación, potencial intelectual, escuela superior.

## INTRODUCTION

Today there is no doubt that higher education is an integral part of economic, social and political development of states and their societies. In the contemporary conditions of increased globalization, higher education is designed to play a special role in the scientific and technical progress of any state. The Russian Federation is no exception in this respect, because it has to transfer the whole national economy from the fourth technological level of development to a higher level in accordance with “The Conception of the Long-Term Social and Economic Development of the RF over the period till 2020”. So, as early as in 2012, Putin stated that to achieve such a goal as the creation of a new type of economy, the leading role is to belong to universities as “the centers of fundamental science” and “the cadre basis for innovative development”. By this statement, the task of achieving international competitiveness of the higher school of the Russian Federation has become the priority task for the state. At the Gaidar Forum-2017, the Deputy Chairman of the Economic Council under the RF President Kudrin stated that it is necessary “to reinforce the work of higher schools as centers of innovation”. At present, the state puts a special emphasis on the development of an individual's potential.

The budget system costs are expected to increase from 3.7% of the GDP to 4.0%-4.3% of the GDP by 2024. In general, the emphasis is made on continual and flexible education of people with a possibility of upgrading their qualification and retraining throughout their life as well as improving their computer, technological, entrepreneurial, financial, civil and medical knowledge of the XXI century”. Thus, again, the task of achieving international competitiveness of the higher school of the Russian Federation has been established as the national task.

Considering the above established task, we should speak about the so-called “soft power” of national higher education and its attractiveness as a means of long-term political influence on the international arena. It concerns Russia, because since 2003 it is a party to the Bologna process aimed at creating a common European space for higher education. Russia is constantly strengthening its position in the international market of educational services of higher education stating that the development of innovations in the economy enables to improve the intellect, turn the creative potential of a person into a factor of economic development and national competitiveness.

Undoubtedly, questions and different matters connected with ensuring the protection of the right of an individual to education are extremely important as well as the role played by international inter-governmental organizations,

or the IIGO, with the status of specialized institutions of the UN: the UNESCO, the World Bank, the WTO and others. After the International Covenant on Economic, Social and Cultural Rights came into force in 1976, there were significant changes in the international human rights law (a branch of international law), which have strengthened the status of the right of an individual to education in international law.

Thus, one of the changes was the establishment of the mandate of the Special Rapporteur on the Right to Education within the UN Commission for Human Rights in 1998. We cannot but mention that the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights came into force in 2013 establishing the procedure of considering individual complaints concerning the violations of the said rights by the member state. It should be noted, however, that nowadays, in the conditions of globalization, the term “the right to education” needs clarification.

## DEVELOPMENT

To prove it, we can refer to the report of the Special Rapporteur on the Right to Education within the UN Commission for Human Rights Muñoz Villalobos who in 2004 mentioned in his report that he “*shares the opinion of his predecessor that it is necessary to further clarify the concept and semantic elements of the right to education as one of the basic human rights*”.

Analyzing the influence of the international law fragmentation on the Russian legal system in the sphere of education, the Russian opponent. Podshyvalova (2012), underlines that “*international norms regulating the sphere of education do not have competitive regulation at other levels. However, there is no single uniform term of the right to education – such a conclusion can be derived from the 1948 Universal Declaration of Human Rights; the International Covenant of Economic, Social and Political Rights; the Convention against Discrimination in Education of 15 December 1960; the Convention on the Rights of the Child of 20 November 1989*”. Another author Semenova (2010), rightly puts that different cultures use different terms to determine the content of the term “education”.

It should be noted that the International Standard Classification of Education (UNESCO, 2011) includes quite a general notion of “education”: “*processes, by means of which the society transfers the acquired knowledge, understandings, world outlooks, values, skills, competences and patterns of behavior from generation to generation. This process includes also communication with the purpose of education*”.

A more substantial definition of the term “higher education” is provided by the 2003 Report of the World Bank entitled “Knowledge Societies: New Challenges for Tertiary Education”: *“Higher education is not just a final level in the traditional system of education, but an important element in the development of human resources for any country in the world. In contemporary conditions of continuous education, the higher school provides not only a high level of qualification necessary for all types of labour market but also a high qualification of teachers, doctors, nurses, civil servants, engineers, entrepreneurs, scientists dealing with natural and social studies, and many other categories of workers. Those who have received the qualification necessary for improving their potential and developing analytical skills are the driving force of the national economy and the foundation of the civil society; they teach children, lead effectively the government and take important decisions which have a significant impact on the life of the whole society”*.

We cannot underestimate the definition of “higher education” provided for by one of the UNESCO Recommendations where “higher education” includes all types of academic courses, trainings and preparation for scientific research at the final level of universities and other educational establishments which have been recognized as educational institutions of higher education by the competent state authorities” .

It is important that the 1948 Universal Declaration of Human Rights and the 1966 International Covenant of Economic, Social and Cultural Rights unanimously consider higher education as the common good.

The recognition of higher education as the common good has also been confirmed by some international instruments at the regional level: by declarations, communiqués of conferences and meetings of ministers of higher education of the 1999 Bologna declaration state parties.

However, the mentioned documents emphasize that higher education is recognized as “the common good”, “public responsibility” as well as “public obligation”. Thus, in January 2001, the Special Rapporteur of the UN Commission for Human Rights Katarina Tomaševski underlined: *“It becomes difficult but necessary to prove that education is a common good and that studying at school is a public service”*.

Hüfner (2003), gives a more reasonable answer to the question whether higher education is the common good. He considers that higher education as the common good has dual character: public and personal.

However, the Russian lawyer specializing in international law Semenova (2010), thinks that it is not correct to say that higher education is a public and private (personal) good. She considers that not all the education can be considered a public and private good proving that those specialists who receive education in the humanities often become unemployed and, consequently, the received education can hardly be called a good . Semenova’s (2010), arguments seem controversial to some extent, since she critically speaks of higher education substantiating her position by the situation with higher education in Russia.

In this connection, the understanding of higher education offered by Hüfner (2003), seems correct and fully reflecting the functional essence of this sphere, because higher education can really be perceived as of dual character: as a public good (a common good) and a personal good (a means of improving personal and social competitiveness of an individual). It should be noted that the right of a person to higher education has been recognized in many international legal instruments. Even after the Universal Declaration of Human Rights was adopted, the UN Charter still does not detail the notion of “the right of an individual to higher education” but rather limiting the notion to “the general right” to education. It is also silent on the issue of equality of access to higher education and of a possibility to gain free higher education leaving such issues at the discretion of each state. Nevertheless, it can be said that contemporary international law provides for significant grounds to guarantee a person the right to higher education.

Taken together, such international instruments establishing the right of an individual to higher education constitute the international normative basis for comprehensive observance, enforcement and protection of the said right. At the same time, there is no doubt that under the conditions of globalization the purposes of education on the whole, and of higher education in particular, are being transformed and expanded. Thus, the goal of education stated in the Declaration from the point of view of its orientation and direction toward a full and harmonious development of a man’s nature implies full development of a human potential striving to the maximum personal competitiveness of an individual.

*We should understand that in the era of globalization, the importance of culture in its widest meaning covering education and science is significantly increasing. The specific character of culture in that it plays an active role of promoting national political interests leads to a dangerous situation when one state dominates over another state.*

In this connection, the task of international organizations is primarily concerned with the development of universal international mechanisms of regulating relations in the cultural sphere for establishing an equitable dialogue. As a result, the role and importance of many external institutions is not only retained but is increasing.

At the same time, culture cannot but experience a significant impact of growing globalization and, consequently, becomes its object. One of the most important components of globalization of culture is the formation of a single "educational space" which means integration of national educational systems and development of international cooperation of educational systems.

At present, it is difficult to overestimate the importance of the sphere of education: nowadays more than a million of students all over the world receive education in higher educational establishments. In many countries, higher education has become a rather complicated institute, including not only major state and private educational systems but also the whole collection of specialized schools. Universities and other establishments have grown in size - having now rather complex systems of administration. Due to these reasons, they need serious financing by the state as well as by private funds.

Besides, the sphere of higher education has turned into a big business: educational establishments have the staff of several thousand employees and teach hundred thousands of students who are given a wide range of specializations. As early as 1970, Professor of the California University Martin Trou determined such a transfer which happens in every developed society: from elite to mass higher education, and later on, to universal access.

It should be stated that the universal access to higher education has been provided, at least, in industrially developed countries. In the US, Canada, the Republic of Korea, Finland, Japan, etc., the level of relevant age student groups has increased till 70% while in the countries of Europe and Asia this level amounts to 50%. As for developing countries, they are lagging behind, and a major growth in the number of students is expected in the coming decade. The world market of educational services was formed at the turn of XX - XXI centuries. The volume of sales was several million US dollars and the level of academic mobility was several million people annually. At the present stage of globalization, there is a very strong competition in the world market of educational services. Thus, the maximum expansion and active stimulation of export of higher education has become one of the most important priorities in the state policy of many countries. National systems of education are under constant massive

attack: they have to adapt to the demands of the global economic sphere. Higher education, professional training and retraining of the personnel have become an important aim. First of all, it can be explained by the fact that education of foreign students today makes the quality of education better and significantly contributes to the development of new, highly required, competitive programmes of training, etc., and secondly, foreign graduates make a contribution to the development of science.

Due to these reasons, such states as the US, Great Britain, Germany, France, Australia, permanently conduct different events aimed at considerably increasing the number of foreign students. We cannot but agree with Gorshkova, but there is another dangerous trend developing in Russia nowadays: the Ministry of Education pushes schools of higher education to develop international cooperation and offer privileges.

An overwhelming trend in the conditions of globalization is a comprehensive and gradual movement to a new economy of knowledge and high technologies which must become one of the leading sectors of the Russian economy, which contribution in the GDP is expected to be equal to the contribution of the oil and gas sector and the sector of raw materials. Increased competitiveness of the Russian higher education must become a criterion for assessing its high quality as well as guarantee Russia a leadership position in the export of educational services.

*We consider that every state nowadays faces a very serious problem: how to provide a healthy balance between the function of higher education as a public good and commercialization of its services, retaining at the same time its academic values and spirit.*

It inevitably puts on the agenda a whole set of questions which are directly related to clarification of the specific character and enjoyment of the right to higher education in the conditions of contemporary globalization, among which we can distinguish the following questions:

- If higher education is one of the grounds for successful social and economic development of states nowadays, is higher education a sphere of economy?
- Does the introduction of a tuition fee in a school of higher education undermine the right of a man to higher education and does it not lead to discrimination of students who are economically and socially disadvantaged?
- Which factors determine the international agenda in the sphere of higher education?

All these factors together with an increasing demand for higher education prove the necessity to look for such a



decision which would increase the access to the systems of permanent education.

It is in the XXI century that some negative trends of globalization in the sphere of education have come to light, thus providing the specialists with a ground to state that “the idea of the public good has collapsed” in respect to the sphere of higher education.

*It is worth noting that the UNESCO on the matters of education, science and culture determines globalization as a specific and quite significant focus in its own activities in the sphere of higher education.*

The UNESCO Strategy Project on Human Rights says that the common objective for the said strategy is to intensify the contribution of the UNESCO in the enjoyment of human rights in the conditions of the globalization era. Moreover, we should intensify the specific activities of the UNESCO in promoting human rights, in particular through higher education and scientific research as well as protecting these rights within its jurisdiction. The implementation of this strategy will contribute to the creation of a globalized culture of human rights which is a significant step to create globalization with a human face.

Recently, the system of higher education has been experiencing such problems as much worse quality of education, marginalization, the cost of tuition, privatization of educational establishments and narrow national strategies by educational establishments in the sphere of development.

Scholars and economists are particularly concerned with the question: is the system of higher education more closely connected with the organization of the economic system under the conditions of globalization? But the trend which reflects the movement of many countries to the market economy does not necessarily imply such an organization of the system of higher education. But at the same time, in the opinion of Hufner (2003), there are two distinguished trends proving the presence of such changes. The first trend is the transition from elite higher education to mass higher education, the costs for which the society is not able to cover itself. Therefore, schools of higher education are forced to look for new ways of replenishing their resources, though public funds still remain the most important source of income for their existence.

Consequently, schools of higher education are becoming more independent financially as well as institutionally. Such a transition from the state-regulated system of higher education to the market-oriented system (“deregulation”) has many implications in the organizational sphere. To avoid or minimize “quazi-market” as well as “state” flaws

is possible only by way of trial and error. If the process goes in the conditions of strict temporary and financial limitations caused by the reduction of public funds, it is not clear if such a transition will lead to a more efficient use of scarce resources. Examples, for instance of Holland, enable to make a conclusion that the process is far from being complete, and that mistakes on both sides must be corrected.

On the whole, it may be stated that the majority of the systems of higher education in Europe are still undergoing the transition in both former socialistic as well as western countries. The second trend by Hufner (2003), is internalization of state systems of higher education due to Europeanization (the Bologna process) and globalization in which the major role is played by such international organizations as the World Bank and WTO. In the conditions of liberalization of services trade, some “obligations” have been transferred from the state to international global organizations. In the opinion of Hufner (2003), everyone understands why we should beware of globalization.

It should be emphasized that if to consider the right to higher education not in the connection with its content, it can lead to a series of implications, and in particular: education is considered as an optional service but not as the right; this service remains peripheral in the organizational structure of the model of the just and equal society, because this model does not have any substantive content which would provide for a possibility to correlate it with other rights stipulated by human rights instruments; the process of rendering the services may be delayed, suspended, or completely terminated, in particular, when we deal with cultures and persons who are discriminated.

The negative effects of the current stage of globalization are considered by the proponents of the utilitarian approach as a contingency (force majeure) and serve as the conceptual basis for their statements, under which the right of a person to education (including to higher education) is replaced by “access”, and the principle of “equal opportunities” which “does not work” in unfavourable social and economic conditions. Besides, tuition fee for higher education undermines the right of a person to higher education and leads to the discrimination of students who are socially and economically in more disadvantaged conditions. At the current stage of human development, we should agree to the statement contained in “the sociological encyclopedia” that education can never be equally accessed by different social and status groups.

The availability of education is determined by the character of the social stratification of the society. Moreover, the financing of education generally, and of higher education

in particular, cannot be considered as a purely economic matter or exclusively from the economic point of view despite the fact that the world nowadays lives by economism. Tangian S.A (2004), says that financing of education is a political matter in its widest meaning. In fact, inequality amounts to an economic problem as well as a social, cultural, moral and political problem. Its extreme forms are a source of tensions in the society and can lead to serious political disturbances. *“The most dangerous threat to the humanity is not only poverty of some countries, but inequality of countries”, said René Maheu, the General Director of the UNESCO Executive Board at its session in October 1965. He also underlined that “...man can sustain endless sufferings...but he cannot tolerate inequality”.*

It is obvious that international economic strategies which are implemented without considering social needs must be replaced by more flexible models promoting the respect to human rights. An overemphasis on the market relations in the sphere of higher education can undermine the economic system which does not provide for the allocation of resources for the purpose of fully exercising the right of an individual to higher education.

We cannot ignore the fact that problems relating to the observance of the right of an individual to higher education are accompanied not only by social and economic difficulties but also by discrimination in its different forms, segregation, stigmatization, etc.

It is obvious that while implementing the state policy of the RF in the sphere of higher education by participating, for example, in international integration processes (like the Bologna process and the creation of the common European space for higher education), it is essential to guarantee the observance of the right of an individual to higher education.

It should be mentioned again that “the sphere of education is developing as a part of public life and anthropological existence”. Due to this fact, it is not possible to overcome discrepancies and problems in the system of education only in the educational sphere: education takes roots in culture and develops into social and state institutions. The character of education development and its intensive pace depend on many factors. Undoubtedly, they depend on the character of the state policy and factors of the culturological and anthropological character. An important parameter of the potential of the nation is its human potential which includes a set of anthropological features which can be implemented. A special emphasis is given to the intellectual potential of the population of the country which to a great extent determines the possibilities in the educational sphere.

Thus, disputes concerning assessments in the academic programmes of higher schools are productive if the average level of education of young students corresponds to the level of the covered academic course. For example, if students are not able to articulate their thoughts, the seminars are mostly reduced to the revision of basics of school knowledge. Thus, if the background knowledge of students is significantly reduced, any form of the final control will be fictitious. If education is considered as an integral part of the activities of the state, then we should not forget about common laws of developing all the elements of national statehood. If the educational element is in degradation, it is a sign of a crisis in the state.

*“If the state fails to contribute to the public development and the full realization of the human potential, the social organism is being mutated and gives rise to pride law which suppresses the humanistic meaning of the state and, consequently, the meaning of educational institutions. Let us underline here again that the degradation of the state and, consequently, of the system of education to the state of a pride despite all its destructiveness is quite a complicated process in which the very essence of the national statehood is being mutated”.*

## CONCLUSIONS

Thus, since the state has been deprived of its anthropological element, the state has been deprived of its anthropological meaning, instead having now legal and technological regulators. “The machinery of the government” has lost its role of being a means to provide law and order in the country and, in fact, has given a possibility to people to act with almost complete impunity, justifying their actions either by reference to the law which does not prohibit this or that act which is close to being immoral or to the legislation which is expected to protect their civil rights. In the opinion of Panishchev (2016), in the system of education it can lead to such situations when students lacking such principles will still insist on being granted a diploma of higher education. Students demonstrate lack of responsibility believing that nobody and nothing can make them obtain profound knowledge for achieving such a goal as the diploma of higher education. Very often diplomas are granted to those people who are not morally eligible for that.

“It is a publicly dangerous thing for the system of higher education nowadays, for the development and functioning of the state in the today’s world which under the present situation and in its classical form will not be viable for a long time”. It should be noted that any state, the process of its formation and preservation, is a result of the spiritual life of the nation. It is the state that forms the cultural

traditions of the nation, and the system of education is designed to create possibilities for the fulfillment of people's potential intellectually as well as spiritually. Higher schools work with people who possess certain level of knowledge, morality and skills which were acquired earlier (before their studies at the university).

The present generation is under constant pressure of different negative factors which have an adverse impact on the moral and intellectual development of young people: destructive series characters, pornographic sites, etc. In response to such factors the Russian system of higher education applies such measures as considerable reduction in the number of schools of higher education; simplification of academic programmes; introduction of correctional pedagogical elements in their structure, etc. The reduction of the number of universities is accompanied by the simplification of academic programmes which is achieved inter alia by introducing different Bachelor's programmes. In its turn, the reduction of academic hours narrows the possibilities of the teacher making the quality of undergraduates' training worse. However, such measures cannot be applied endlessly, because sooner or later the country will face an imminent deficit of professionals.

Nowadays, scholars offer different alternatives to solve such problems. For example, there is an initiative to consistently apply legal measures relating to criminal liability, punishment for the corruption of young people, etc. In the opinion of Panishchev (2016), the society and public authorities must elaborate a common approach to what is acceptable and unacceptable. *"It is the duty of the state to protect the rights of citizens and legitimately punish those who by producing something obscene and morally disgusting encroach on the morality and spirituality of the nation; the civil society should provide relevant conditions for comprehensive development of the nation and for a constructive dialogue with government institutions"*. The author is against the constitutional ban of the state ideology. He is sure that only the availability of such ideology will contribute to the elaboration of a common policy in the system of education, *"which will take into account not only the content of textbooks and manuals used at the university, but the conditions of the informational space which determine the education and character building of younger generations"*.

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