


INTERNATIONAL CONVENTIONAL AND INSTITUTIONAL MECHANISMS FOR ENSURING THE REALIZATION OF THE RIGHT TO EDUCATION

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The article examines international conventional and institutional mechanisms aimed at ensuring the realization of the right to education. The relevance of studying legal regulation in the context of globalization and enhanced intergovernmental cooperation in education is substantiated. Key international documents, such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and other regulatory acts establishing the foundations for the realization of the right to education, are analyzed. Particular attention is given to the role of international organizations, such as UNESCO, in promoting the principles of equality, inclusion, and accessibility in education. The main challenges related to the lack of a clear definition of the right to education in international legal acts are identified, and potential solutions are proposed. The study concludes on the need to harmonize national education systems to ensure student and teacher mobility and improve the quality of education in a global context.

Keywords: *the right to education, international conventional mechanism, international institutional mechanism, implementation, application, realization, cooperation, rights and freedoms.*

Introduction

The volume of international legal regulation in the field of education is constantly increasing both at the universal level and at the local level. States are striving to harmonize education systems, ensure comparability of degrees, and increase the mobility of students and teachers.

The normative content of the right to education itself is quite vague. To effectively regulate the sphere of educational relations and active cooperation, states need to define concepts. Having analyzed the currently existing international legal acts, we can note that none of them contains a definition of the right to education. As far as doctrine is concerned, both international relations scholars and constitutionalists usually do not examine the right to education in detail, merely mentioning that it exists.

Main part

International conventional mechanism for ensuring the realization of the right to education

A right that cannot be realized is dead and meaningless. Issues of implementation, realization and application of law have been developed in the doctrine for a long time. There are different positions regarding the use of the terms “implementation”, “realization”, “application”. The definition of “implementation” given by A.S. Gaverdovsky is still used in the literature, according to which “Implementation of international law is a purposeful organizational and legal activity of states, undertaken individually, collectively or within the framework of international organizations for the purpose of timely, comprehensive and full implementation of the obligations they have accepted in accordance with international law”⁷⁰.

S.V. Chernichenko noted that the terms “implementation”, “application”, “realization” of the norms of international law are very close and mean “the activities of participants in international legal relations to implement these norms”⁷¹.

⁷⁰ Gaverdovsky A.S. Implementatsiya norm mezhdunarodnogo prava. Kyiv. 1980. P.62.

⁷¹ Chernichenko S.V. Teoriya mezhdunarodnogo prava. V 2-h tomah. Tom 1: Sovremennyye teoreticheskie problemy. Moscow: Izdatelstvo «NIMP». 1999. P.57.

According to the definition of V.YA. Suvorova, the implementation of law is its embodiment “in the practical activities of states and other entities”⁷². A.M. Vasiliev emphasized that “only in the process of implementation is law established as an active, creative instrument of influence on the formation of social relations”⁷³.

The implementation of law is the embodiment of law in the practical activities of states and other entities. Implementation includes two types of activities - direct actual activity to achieve a socially significant result and legal and organizational support for actual activity⁷⁴. When we say “implementation of a right,” we often mean the implementation of a subjective right, but in the case of the right to education, as in many others, the implementation of a subjective right is impossible without the creation of certain conditions, i.e. without the efforts of the state. “Implementation of the rules of law” is a necessary condition for the “realization of subjective rights,” and in order to avoid confusion in terms, when talking about the efforts of states aimed at ensuring that an individual has the opportunity to realize subjective rights, we use the expression “ensuring the implementation of rights”. The implementation of legal norms does not necessarily occur through a legal relationship, however, a legal relationship, according to S.V. Chernichenko, may be “one of the channels for implementing the relevant norm”. S.V. Chernichenko argues that the activities of participants in a specific legal relationship to implement subjective rights and obligations, which are elements of this legal relationship, will ultimately be the implementation of the corresponding legal norm⁷⁵.

To understand how the right to education is realized, it is necessary to study the mechanism for implementing international legal norms relating to this right. According to V.V. Lazarev, “the totality of means ensuring the implementation of law, their application and action, constitutes a special mechanism for translating general instructions into the individual behavior of subjects of law”⁷⁶.

G.I. Kurdyukov emphasized that “the legal basis for the implementation of international law is the principle of conscientious compliance with international obligations”⁷⁷. Studying the mechanism for implementing the rules relating to the right to education, we will use the general scheme of the mechanism for implementing the rules of law, which was proposed in 1992 by V.YA. Suvorova in her work “Implementation of International Law” and has not lost its relevance at the present time.

The conventional mechanism for implementing legal norms is “a set of international legal means for implementing norms, their operation and application”⁷⁸. It includes law enforcement rulemaking (preliminary and specific), as well as control and enforcement activities. We will address each of these elements.

Some researchers pay attention to the specifics of the implementation of soft law norms⁷⁹, but, for example, R.M. Khalafyan, considering in his dissertation the mechanism for implementing soft law norms⁸⁰, describes a mechanism that generally coincides with the one proposed by V.YA.Suvorova, therefore, further we will consider the elements of the implementation mechanism as a whole and, where necessary, highlight the features relating to soft law.

1. Law enforcement rulemaking

Preliminary rulemaking

At the universal level there are not many preliminary norms. The provisions of the Convention on Technical and Vocational Education of 1989 can be classified as preliminary

⁷² Suvorova V.YA. Realizaciya norm mezhdunarodnogo prava // Ekaterinburg. Izdatel'stvo Sverdlovskogo yuridicheskogo instituta. 1992. P.3

⁷³ Vasiliev A.M. Pravovye kategorii: Metodologicheskie aspekty razrabotki sistemy kategorij teorii prava. M. 1976. P.172.

⁷⁴ Suvorova V.YA. Realizaciya norm mezhdunarodnogo prava // Ekaterinburg. Izdatel'stvo Sverdlovskogo yuridicheskogo instituta. 1992. P. 9.

⁷⁵ Chernichenko S.V. Teoriya mezhdunarodnogo prava. V 2-h tomah. Tom 1: Sovremennyye teoreticheskie problemy. Moscow: Izdatel'stvo «NIMP». 1999. P.61.

⁷⁶ Lazarev V.V. Primenenie sovetskogo prava. Kazan'. Izd-vo Kazanskogo universiteta. 1972. P.12.

⁷⁷ Kurdyukov G.I. Realizaciya norm mezhdunarodnogo prava v sfere vnutrigosudarstvennoj kompetencii // Mezhdunarodnoe i vnutrigosudarstvennoe pravo: problemy sravnitel'nogo pravovedeniya. Sverdlovsk, 1984. P. 24.

⁷⁸ Suvorova V.YA. Realizaciya norm mezhdunarodnogo prava // Ekaterinburg. Izdatel'stvo Sverdlovskogo yuridicheskogo instituta. 1992. P. 28.

⁷⁹ Brizkun K. A. Vliyaniye rekomendatel'nyh aktov mezhdunarodnyh organizacij na razvitiye mezhdunarodno-pravovyh i vnutrigosudarstvennyh norm Rossijskoj Federacii: diss. ... kand. yurid. nauk. M., 2011.

⁸⁰ Khalafyan R.M. Normy mezhdunarodnogo «myagkogo prava» v pravovoj sisteme Rossijskoj Federacii: diss. ... kand.yurid.nauk. Kazan', 2016. P. 35.

norms. This convention, of all universal acts, covers the largest number of issues relating to education and educational relations, and at the same time, its wording is extremely general and requires specification. When analyzing the Convention, among the “other measures” provided for by the convention to implement its provisions, experts highlight cooperation between states as a separate area, the purpose of which will be to specify the provisions of the convention⁸¹.

Many preliminary rules concerning the right to education are contained in bilateral treaties. Almost all agreements on cooperation in the field of education between the two states contain the wording “will promote cooperation”, “will take all possible measures to organize cooperation” and the like, without establishing clear obligations. In the future, if states really intend to cooperate in the field of education, to specify the provisions of these agreements, they adopt cooperation programs in the field of education or separate agreements on cooperation directly in the educational field, which already provide for specific steps towards rapprochement.

The main body of preliminary rulemaking is the so-called “soft law” norms: UNESCO resolutions and recommendations, almost all documents of the Bologna process and other acts of regional integration associations aimed at creating a single educational space.

There are different points of view regarding what “soft law” is. According to the point of view of M.YU. Velizhanina, soft law can be called “a set of legally non-binding international norms that do not contradict the basic principles and norms of international law, do not contain legal obligations and are enshrined in advisory acts of international organizations and political acts of states”.

R.M. Khalafyan proposes to use a narrower definition of soft law in order not to blur the boundaries of the concept: “international soft law is a set of international legally non-binding (recommendatory) norms containing “models”, “standards” of behaviour, embodied in decisions of international organizations and their bodies, intergovernmental conferences”⁸².

In our opinion, trying not to “blur” the boundaries of soft law, one can limit it too much. I.I. Lukashuk wrote about the norms of “soft law” that they can be of great importance and are not so much legal as moral and political. And their importance is especially great in new areas of international legal regulation, and the field of education is one of the “young” areas; the formation of an array of norms around it began only in the second half of the twentieth century. According to I.I. Lukashuk, the norms of “soft law” perform a very important function: “they provide preliminary, pre-legal regulation, paving the way for law”⁸³. This is especially true in the field of education, where it is very difficult for states to develop a common position and agreement to adopt specific “hard” norms. Moreover, in the educational sphere, the specification of preliminary “soft” norms often also occurs at the expense of other “soft” norms and this, oddly enough, contributes to a more effective implementation of the right to education and the intensification of integration processes in the field of education.

If we consider “soft law” not only as a set of norms, but also as moral and political regulation, in our opinion, it should not be limited only to advisory acts of international bodies and organizations, as well as joint statements and communiqués of states. We should not rely on formal aspects when defining what “soft law” is. In our opinion, the most important are the substantive and legal implementation aspects taken together. “Soft law” depends not so much on the form in which its norms are expressed and in what source they are contained, but more on whether states make efforts to implement them. And by and large, we can determine whether this or that phenomenon of legal reality is “soft law” only after the fact. If states make massive efforts to implement certain regulations, then these regulations are “soft law”, i.e. have that degree of binding force that forces states to act in a certain way, despite the absence of a strictly defined obligation. If no action is taken, then there is no right, there are only vague intentions, or

⁸¹ Kondratyuk A.V. Mezhdunarodno-pravovoe regulirovanie sotrudnichestva gosudarstv v sfere obrazovaniya. Diss. kand. yur. nauk. Sankt-Peterburg, 2007. P.54.

⁸² Khalafyan R.M. Normy mezhdunarodnogo «myagkogo prava» v pravovoj sisteme Rossijskoj Federacii: diss. ... kand.yurid.nauk. Kazan', 2016. P. 28.

⁸³ Lukashuk I.I. Mezhdunarodnoe pravo. Obshchaya chast': ucheb.dlya studentov yurid.fak. i vuzov/ I.I.Lukashuk; Ros.akad.nauk, In-t gosudarstva i prava, Akadem.pravovoj un-t. Izd. 3-e, pererab. i dop. Moscow: Volters Kluver. 2007. P. 140

expressions of politeness, or any other words that are in no way supported by actions. Returning to the acts regulating educational issues, it is worth noting that both the Salamanca Convention of European Higher Education Institutions “Shaping the Future” and the Gothenburg Declaration of Students on the Development of the Bologna Process are traditionally included in the literature among the sources of Bologna Process law. And this is justified. In the educational sphere, we consider it possible to include acts adopted by influential but powerless subjects as “soft law” norms: higher educational institutions, as well as subjects of educational relations - students and teachers, or their associations. This is partly due to the historical context of the development of educational relations and the wide autonomy that European universities have historically enjoyed. However, the most important thing for the mentioned documents is that their provisions were taken into account in the communique of the Prague meeting of ministers responsible for higher education in Europe, i.e. States consider it necessary to take them into account in the formation of the European educational space and direct efforts towards their implementation.

Specific rulemaking

In the field of education, it is not so easy to identify primary and specific norms, because if we expand this chain from Article 13 of the International Covenant on Economic, Social and Cultural Rights, the remaining conventions adopted at the universal level can be considered specific norms in relation to it. On the other hand, each of these conventions continues to be specified in other international legal acts. Thus, the articles on the right to education in the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities are specific provisions of the provisions enshrined in the International Covenant on Economic, Social and Cultural Rights. At the same time, certain provisions of the Convention against Discrimination in Education are specific rules regarding the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. UNESCO's recommendations on the recognition of courses and certificates of higher education, on the status of teaching staff in higher education institutions can be considered as specific acts for the Convention on Technical and Vocational Education.

When considering regional regulation of the education sector, we drew attention to the fact that many international treaties aimed at creating a common space for higher education contain very vague formulations that do not even have basic definitions, this is especially true for acts adopted within the Commonwealth of Independent States. V.YA. Suvorova wrote that “Concretization and interpretation are closely related. Concretization is unthinkable without interpretation, and interpretation often turns into concretization”⁸⁴. This relationship is especially evident when analyzing legal acts of the European region. Specification here is most closely intertwined with interpretation and is carried out mainly in the process of enforcement by the European Court of Human Rights.

2. Results of control activities

Control activities are aimed at establishing factual circumstances and their assessment from the point of view of compliance with the requirements of international law; it is based on the collection and assessment of information.

R.M. Khalafyan raises the question of the admissibility of using the very concept of “international control” in relation to the norms of soft law⁸⁵. According to the definition of R.M. Valeev, international control is “the activity of subjects of international law or bodies created by them, based on generally accepted principles and norms of modern international law, which consists in verifying compliance by states with international legal obligations and taking measures

⁸⁴ Suvorova V.YA. *Realizaciya norm mezhdunarodnogo prava* // Ekaterinburg. Izdatel'stvo Sverdlovskogo yuridicheskogo instituta. 1992. P. 31.

⁸⁵ Khalafyan R.M. *Normy mezhdunarodnogo «myagkogo prava» v pravovoj sisteme Rossijskoj Federacii: diss. ... kand.yurid.nauk. Kazan', 2016. P. 60.*

to fulfill them”⁸⁶. R.M. Khalafyan proposes to use the concept of monitoring instead of the concept of control in relation to soft law norms, but in our opinion, such a narrowing of the concept is inappropriate. First, the literature identifies two approaches to international control: narrow and broad. In his monograph R.M. Valeev draws attention to the fact that many international lawyers adhere to a narrow approach, according to which international control is a verification of the fulfillment of obligations assumed under a treaty⁸⁷. However, even if we take a broad approach and include in the concept of control the adoption of certain measures to fulfill obligations, we should not replace one concept with another. In the literature there is no clear distinction between international control and monitoring, and in treaties monitoring is often prescribed as part of control, one of its procedural stages, and there is no need to focus on the use of one or another term, so further we will operate with the concept of control in the mechanism for implementing all acts, regardless of their rigidity.

The United Nations Children's Fund (UNICEF), established on December 11, 1946 by UN General Assembly Resolution A/RES/57 (I)⁸⁸, has some control functions. UNICEF staff collect information on the state of the education system in various countries and, based on the results, publish materials designed to point out existing problems to states⁸⁹.

In the field of education, the UN Special Rapporteur on the right to education is primarily responsible for collecting and assessing information. And if the institution of the special rapporteur itself belongs to the institutional mechanism and will be discussed further, then the reports prepared by it can be clearly attributed to the results of control activities, in which a huge amount of data is processed on the state of the education sector in different countries and which are subsequently used for law enforcement.

At the same time, it cannot be said that control in the mechanism for realizing the right to education is effective. Unfortunately, the reports of the UN Special Rapporteur on the right to education are only taken into account by the UN General Assembly and do not have a decisive influence on states that are not inclined to listen to the conclusions contained in the reports if they are not satisfied with them for some reason.

3. Application of the law

In the scientific literature, there are different positions regarding the use of the concept “application of law”. A.M. Vasiliev classifies the application of law as a means of implementation and puts it on a par with the concepts of “compliance”, “execution”, “use” of legal norms. However, L.P. Anufrieva also cites a “narrow” or “special” meaning of the concept, according to which “the application of law is its authoritative exercise that occurs in the event of an offense or a dispute about the law”⁹⁰. She emphasizes that it is in this sense that “application of international law” is meant in Article 38 of the Statute of the International Court of Justice, and is also used in the practice of international organizations and their institutions⁹¹. In the context of the mechanism for implementing the rules relating to the right to education, we consider application in a narrow sense, i.e. in cases where the right has been violated in one way or another.

There are not many bodies carrying out law enforcement activities regarding the right to education and their practice is not very extensive.

At the universal level, there is the Committee on Economic, Social and Cultural Rights, which was created in accordance with the Optional Protocol to the International Covenant on

⁸⁶ Valeev R. M. *Mezhdunarodnyj kontrol'*. Kazan', 1998. P. 19.

⁸⁷ Valeev R. M. *Mezhdunarodnyj kontrol'*. Kazan', 1998. P. 16.

⁸⁸ UN General Assembly Resolution A/RES/57 (I) on Establishment of an International Children's Emergency Fund, United Nations Digital Library System, <https://digitallibrary.un.org/record/195819?ln=en&v=pdf>

⁸⁹ Education for Some More than Others? A Regional Study on Education in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS). UNICEF regional office for CEE/CIF. 2007.

⁹⁰ Anufrieva L.P. *Sootnoshenie mezhdunarodnogo publichnogo i mezhdunarodnogo chastnogo prava: pravovye kategorii*. Moscow: Spark. 2002. P. 282.

⁹¹ Anufrieva L.P. *Sootnoshenie mezhdunarodnogo publichnogo i mezhdunarodnogo chastnogo prava: pravovye kategorii*. Moscow: Spark. 2002. P. 282.

Economic, Social and Cultural Rights⁹², and is authorized to consider communications from individuals about violations of their rights established by the International Covenant on Economic, Social and Cultural Rights. The Committee may also investigate gross or systematic violations of these rights. Based on the results of consideration of communications, he can only present to the parties "his views on the communication with his recommendations" (clause 1 of Article 9) and invite the state to provide additional information about the measures taken in connection with its recommendations. To date, the Committee has not yet developed a stable practice specifically in terms of protecting the violated right to education, since the Committee received the authority to consider individual communications relatively recently (the Optional Protocol to the Covenant entered into force on 05/05/2013).

According to A.H. Abashidze, "there is no doubt that the Committee's views on individual complaints will be in demand conceptually both by regional human rights mechanisms to ensure economic, social and cultural rights, and by the states parties themselves to the International Covenant on Economic, Social and Cultural Rights to improve national legislation and increasing the effectiveness of domestic remedies"⁹³. It is likely that when practice concerning the right to education becomes more extensive, such influence will be traceable.

Two examples of violations of the right to education considered by the Committee on the Rights of Persons with Disabilities can also be considered as examples. Both communications were submitted in relation to Sweden (Communication O.O.J. dated 03/18/2015 (CRPD/C/18/D/28/2015⁹⁴) and Communication D.I. dated 07/08/2015 (CRPD/C/17/D/31/2015⁹⁵)). Both communications were declared inadmissible for failure to exhaust domestic remedies, but in the O.O.J. the position of the Committee on state responsibility for possible violations that another state may commit is interesting. The Committee considers that the expulsion by a State party of a person to a jurisdiction where he or she may face a risk of violation of the Convention may, in some circumstances, entail the responsibility of the expelling State and on this basis applies the principle of extraterritorial effect of the Convention on rights of persons with disabilities.

Two communications concerning the right to education were also considered by the Committee on the Elimination of Racial Discrimination (communication by Murat Er dated 20.12.2006 (CERD/C/71/D/40/2007⁹⁶) in relation to Denmark and communication by D.R. dated 01.06.2008 (CERD/C/75/D/42/2008⁹⁷) in relation to Australia). In the Murat Er case, a violation of the International Convention on the Elimination of All Forms of Racial Discrimination was found due to the fact that a situation of refusal to undergo training after training on the basis of Turkish or Pakistani origin was found and the state failed to carry out an effective investigation and did not provide effective remedies to the applicant legal protection. In a message from D.R. the alleged violation of the right to access higher education was appealed, but the Committee found no violations.

Separately, it is worth paying attention to the cases considered by the Human Rights Committee, whose competence includes consideration of communications regarding violations of the International Covenant on Civil and Political Rights. Although the right to education is

⁹² Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on 10 December 2008 by sixty-third session of the General Assembly by resolution A/RES/63/117, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-economic-social-and-cultural-rights>

⁹³ Abashidze A.H., «Izmenilos' li otnosheniye k voprosu o pravovom obespechenii ekonomicheskikh, sotsial'nykh i kul'turnykh prav cheloveka spustya 50 let s momenta prinyatiya Mezhdunarodnogo pakta ob ekonomicheskikh, sotsial'nykh i kul'turnykh pravakh?» // 50 let Mezhdunarodnym paktam o pravakh cheloveka: materialy nauchno-prakticheskoy konferentsii / Moscow: RUDN. 2017. P. 47.

⁹⁴ Decision adopted by the Committee under article 2 of the Optional Protocol, concerning communication No. 28/2015 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRPD%2FC%2F18%2FD%2F28%2F2015&Lang=en

⁹⁵ Decision adopted by the Committee under article 2 of the Optional Protocol, concerning communication No. 31/2015 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRPD%2FC%2F17%2FD%2F31%2F2015&Lang=en

⁹⁶ Opinion of the Committee on the elimination of racial discrimination under article 14 of the International convention on the elimination of all forms of racial discrimination on Seventy-First session concerning Communication No. 40/2007, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CERD%2FC%2F71%2FD%2F40%2F2007&Lang=en

⁹⁷ Opinion of the Committee on the elimination of racial discrimination under article 14 of the International convention on the elimination of all forms of racial discrimination on Seventy-Fifth session concerning Communication No. 42/2008, <https://undocs.org/Home/Mobile?FinalSymbol=CERD%2FC%2F75%2FD%2F42%2F2008&Language=E&DeviceType=Desktop&LangRequest=d=False>

provided for in the International Covenant on Economic, Social and Cultural Rights, the practice of the Human Rights Committee illustrates the inextricable link between the right to education and other rights. In particular, the Committee considered more than twenty communications, which highlighted the impact of the organization of the education system in the state on the implementation of the rights provided for by the International Covenant on Civil and Political Rights, including the right to freedom of thought, conscience and religion, the right to private life, the right to participate in public life, the right to participate in free and fair elections.

International institutional mechanism to ensure the realization of the right to education

The international institutional mechanism for the implementation of norms relating to the right to education is a set of bodies and organizations, as well as the states themselves, that carry out activities to implement the right. V.YA. Suvorova identifies the following forms of activity within the institutional mechanism: negotiations, consultations, meetings, conferences, as well as judicial proceedings and consideration of issues in conciliation commissions⁹⁸. The mechanism for ensuring the realization of the right to education contains many of the listed forms.

Judicial and quasi-judicial proceedings were examined in the previous paragraph, describing law enforcement practice relating to the right to education. In this paragraph we will consider other forms of organizational and legal support for the implementation of the right to education.

One of the most common forms is meetings and conferences of various officials of cooperating states. Meetings and conferences play a particularly noticeable role in integration processes in the European space. Since the launch of the Bologna Process, meetings of ministers responsible for higher education have been held every two years, following which communiqués are adopted that reflect the results and prospects for the implementation of Bologna Process activities.

The Prague Communiqué of the Meeting of European Ministers Responsible for Higher Education “Towards the European Higher Education Area”⁹⁹, adopted in May 2001, two months after the Salamanca Convention and the Gothenburg Declaration, emphasized that the ministers took into account both of these documents and appreciated the active participation in the Bologna Process of the European University Association and the Association of National Unions of Students in Europe, and also supported the thesis that higher education should be seen as a public good and students are full members of the higher education community. The communiqué then comments on the six objectives of the Bologna Process and places emphasis on certain points: lifelong learning, the need to involve universities and students in shaping the European Higher Education Area, and helping to make the European Higher Education Area attractive.

Two years later, in September 2003, the next conference of ministers of higher education took place in Berlin. Much of the final communiqué “Realizing the European Higher Education Area”¹⁰⁰ is devoted to achievements related to the goals of the Bologna Process. The need to create common criteria and methods for assessing quality is emphasized, and at the same time the need to comply with the principle of university autonomy, according to which responsibility for ensuring quality rests with the universities themselves. A noticeable process of restructuring of higher education associated with the development of a system of comparable qualifications has been noted and further steps for the development of this system have been identified. A significant increase in student mobility and the need to improve statistical recording of student mobility were also noted. The implementation of the European Credit Transfer System (ECTS) is also considered satisfactory and is increasingly becoming a common basis for the creation of national credit systems.

⁹⁸ Suvorova V.YA. Realizatsiya norm mezhdunarodnogo prava // Ekaterinburg. Izdatel'stvo Sverdlovskogo yuridicheskogo instituta. 1992. P. 38-42.

⁹⁹ “Towards the European higher education area”, Communiqué of the meeting of European Ministers in charge of Higher Education in Prague on May 19th 2001, https://www.ehea.info/media.ehea.info/file/2001_Prague/44/2/2001_Prague_Communique_English_553442.pdf

¹⁰⁰ “Realising the European Higher Education Area”, Communiqué of the Conference of Ministers responsible for Higher Education in Berlin on 19 September 2003, www.ehea.info/media.ehea.info/file/2003_Berlin/28/4/2003_Berlin_Communique_English_577284.pdf

The communiqué notes the particular importance of the Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region¹⁰¹, which must be ratified by all countries participating in the Bologna Process, and the networks of the European Network of National Information Centres on Academic Mobility and Recognition (ENIC) and the National Information Center on Academic Recognition (NARIC) together with national authorities should promote the implementation of the provisions of the Convention.

In the Berlin Communiqué, for the first time, the thesis about the need to expand the Bologna process in order to strengthen the ties between the European higher education area and the European scientific research area appears; for this purpose, it is proposed to include in the process a third cycle of education - postgraduate studies (doctoral studies).

In 2005, the Bergen Communiqué “The European Higher Education Area - Achieving the Goals”¹⁰² was adopted, and in 2007 the London Communiqué “Towards the European Higher Education Area: responding to challenges in a globalized world”¹⁰³ was adopted. In these communiqués, the range of issues covered remained the same as in the previous ones.

In 2009, another conference was held at which the Leuven Communiqué “The Bologna Process 2020 - The European Higher Education Area in the new decade”¹⁰⁴ was adopted. This communiqué was adopted 10 years after the start of the Bologna process and shortly after the global economic crisis. In these circumstances, the achievements of the first decade of the construction of the European Higher Education Area were assessed and it was emphasized that it is necessary to maintain sufficient higher education resources to continue to fulfill such tasks as: preparing students for life as active citizens of a democratic society; preparing students for future careers and developing their personalities; creating and maintaining a broad base of advanced knowledge and stimulating research and innovation. At the same time, the policy of reforming higher education must comply with the principles of institutional autonomy, academic freedom and social justice and be carried out with the active participation of students and staff of higher education. The communiqué also set goals for the development of a “Europe of Knowledge” for the decade until 2020.

As a result of the Bucharest forums on April 26-27, 2012, the communiqué “Making the Most of Our Potential: Consolidating the European Higher Education Area”¹⁰⁵ was adopted. This document highlights the real achievements of the Bologna Process: higher education structures in Europe have become more comparable and compatible, quality assurance systems have increased trust, higher education qualifications are becoming more comparable across countries, and the involvement of different stakeholders in higher education has increased. However, many goals were not fully achieved and the parties again set themselves the goals of ensuring quality higher education for all, increasing the employability of graduates and increasing mobility to improve learning, as well as ensuring the highest possible level of public funding for universities.

In the communiqué of the conference of ministers of higher education, adopted on May 14-15, 2015 in Yerevan¹⁰⁶, in addition to the achievements of the Bologna process, shortcomings are also noted: the implementation of structural reforms is uneven, and the Bologna instruments are sometimes used incorrectly, superficially or in a bureaucratic formal manner. The serious challenges facing the European higher education area, namely the ongoing socio-economic crisis, high unemployment, increasing marginalization of youth, demographic changes, new patterns of

¹⁰¹ Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165), <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=165>

¹⁰² “The European Higher Education Area - Achieving the Goals” Communiqué of the Conference of European Ministers Responsible for Higher Education, Bergen, 19-20 May 2005, http://www.ehea.info/media.ehea.info/file/2005_Bergen/52/0/2005_Bergen_Communique_english_580520.pdf

¹⁰³ London Communiqué “Towards the European Higher Education Area: responding to challenges in a globalised world”, https://www.ehea.info/Upload/document/ministerial_declarations/2007_London_Communique_English_588697.pdf

¹⁰⁴ “The Bologna Process 2020 - The European Higher Education Area in the new decade”, Communiqué of the Conference of European Ministers Responsible for Higher Education, Leuven and Louvain-la-Neuve, 28-29 April 2009, www.ehea.info/media.ehea.info/file/2009_Leuven_Louvain-la-Neuve/06/1/Leuven_Louvain-la-Neuve_Communique_April_2009_595061.pdf

¹⁰⁵ “Making the Most of Our Potential: Consolidating the European Higher Education Area”, Bucharest Communiqué, https://www.ehea.info/Upload/document/ministerial_declarations/Bucharest_Communique_2012_610673.pdf

¹⁰⁶ Yerevan Communiqué, https://ehea.info/media.ehea.info/file/2015_Yerevan/70/7/YerevanCommuniquéFinal_613707.pdf

migration and inter- and intra-state conflicts, as well as extremism and radicalization, have required an updated development concept. The updated concept included the following goals:

- Enhancing the quality and relevance of learning and teaching;
- Fostering the employability of graduates throughout their working lives in rapidly changing labour markets;
- Making education systems more inclusive;
- Implementing agreed structural reforms;
- The governance and working methods of the EHEA must develop to meet the challenges.

This communiqué is characterized by its emphasis on “enhancing the quality and relevance of learning and teaching” as one of the main areas of cooperation, which echoes the approach to education that is gaining momentum at the universal level. “Quality education” is one of the already mentioned “2015 Sustainable Development Goals”, and states at the regional level also highlight this goal as the main one and propose steps to achieve it.

Even greater emphasis on improving the quality of education and organizing lifelong learning was placed in the latest Paris Communiqué¹⁰⁷, adopted in May 2018. In addition, emphasis is placed on the need to strengthen the social aspect of education.

It can be concluded that meetings, as an element of the institutional mechanism for ensuring the realization of the right to education, play a very important role, especially at the regional level. During meetings regarding the implementation of the provisions of the Bologna Process, states not only report on the progress of reforms; when developing final communiqués, goals and objectives are clarified, the course of cooperation is adjusted, and the highest priority areas of development are determined.

Activities of international bodies and organizations

There are few international bodies and organizations whose goal is to ensure the realization of the right to education.

The main universal organization is UNESCO, within which the texts of international treaties affecting the right to education are developed, as well as programs of cooperation and assistance to states in ensuring the right to education. In particular, it is UNESCO that is responsible for ensuring universal, inclusive and equitable quality education and lifelong learning based on the Education 2030 Framework for Action¹⁰⁸, develops programs, and encourages international exchange of persons involved in the educational process. The structure of the UNESCO education sector includes 6 institutes and 2 educational centers, which are designed to help individual states cope with specific challenges in the field of education. Among them are the International Bureau of Education, the UNESCO International Institute for Educational Planning, the UNESCO Institute for Lifelong Learning, the UNESCO Institute for Information Technologies in Education, and the UNESCO International Center for Technical and Vocational Education and Training.

There is also a Committee on Conventions and Recommendations of the Executive Council of UNESCO, which has the power to consider individual communications of alleged violations of rights, including the right to education. Based on the results of its work, the Committee approves a report, which may contain recommendations that are formulated either in a general form or in relation to a specific communication. The main criticism of the committee's activities is that it is not well known and overly politicized¹⁰⁹, but despite some shortcomings, the Committee's activities regarding the right to education are quite intensive, and the adoption of the 2030 Agenda for Sustainable Development has contributed to even greater intensification. In particular, one of

¹⁰⁷ Paris Communiqué, Paris, May 25th 2018, www.ehea.info/Upload/document/ministerial_declarations/EHEAParis2018_Communique_final_952771.pdf

¹⁰⁸ Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, https://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf

¹⁰⁹ Mingazov L.H. Zashchita prav cheloveka v ramkah YUNESKO//Mezhdunarodnaya zashchita prav cheloveka: uchebnik/pod red. A.H.Abashidze. Moscow: RUDN. 2017. P. 169.

the latest reports of the Committee on Conventions and Recommendations (202 EX/46¹¹⁰), adopted on 16.10.2017, covers issues of general monitoring of the implementation of regulations in the field of education, as well as issues of implementation of individual conventions and recommendations in the light of the implementation of Goal 4 ("Quality education") in the field of sustainable development. With regard to the implementation of the 1960 Convention and Recommendation against Discrimination in Education, the Director of the Division of Policy and Lifelong Learning Systems of the Education Sector noted that "the monitoring of the right to education was crucial to guarantee government accountability and transparency". In considering the implementation of the 1993 Recommendation on the Recognition of Courses and Certificates in Higher Education, information was provided on the work carried out in each region, as well as on the development of a preliminary draft of a Global Convention for the Recognition of Higher Education Qualifications.

In realizing the right to education, especially the right to primary education, UNICEF plays a significant role, within the framework of which it conducts research on the state of the education system in various regions, monitors the quality of education, as well as develops and implements standards and programs. The priority themes of UNICEF developments in the field of education are equal access and universal primary education, gender equality in access to education, as well as the implementation of an educational cluster for emergencies and post-crisis situations.

The only specialized body whose activities are aimed exclusively at ensuring the realization of the right to education is the UN Special Rapporteur on the right to education.

The mandate of the UN Special Rapporteur on the right to education was established in 1998. Paragraph 6 of Commission on Human Rights Resolution 1998/33¹¹¹ establishes the following functions of the Special Rapporteur on the right to education:

- To report on the status, throughout the world, of the progressive realization of the right to education, including access to primary education, and the difficulties encountered in the implementation of this right, taking into account information and comments received from Governments, organizations and bodies of the United Nations system, other relevant international organizations and non-governmental organizations;
- To promote, as appropriate, assistance to Governments in working out and adopting urgent plans of action, wherever they do not exist, to secure the progressive implementation, within a reasonable number of years, of the principle of compulsory primary education free of charge for all, bearing in mind, inter alia, levels of development, the magnitude of the challenge and efforts by Governments;
- To take into account gender considerations, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education;
- To make his or her reports available to the Commission on the Status of Women whenever they concern the situation of women in the field of the right to education;
- To develop a regular dialogue and discuss possible areas of collaboration with relevant United Nations bodies, specialized agencies and international organizations in the field of education, inter alia the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund, the United Nations Conference on Trade and Development and the United Nations Development Programme, and with international financial institutions, such as the World Bank;
- To identify possible types and sources of financing for advisory services and technical cooperation in the field of access to primary education.

In the almost twenty years since the establishment of the mandate of the UN Special Rapporteur on the right to education, more than 40 reports have been prepared on various issues

¹¹⁰ Report of the committee on conventions and recommendations, dd. 16 October 2017, <https://unesdoc.unesco.org/ark:/48223/pf0000259588>

¹¹¹ "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights", Commission on Human Rights resolution 1998/33, <https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN-4-RES-1998-33.doc>

related to the right to education. In addition to annual reports and reports on visits to individual states, thematic reports were published based on the results of activities, which raised issues of the right to education of certain categories of people (girls¹¹², disabled people¹¹³, people in emergency situations¹¹⁴ and persons in detention¹¹⁵). The reports also highlighted certain problems that states face in ensuring the realization of the right to education: equality of opportunity in the learning process, financing of education, ensuring the safety of educational institutions, regulatory support for quality education, protecting education from commercialization. The Special Rapporteur on the right to education, who held this post from 2010 to 2016, Professor Kishore Singh, did not ignore the pressing issue of the right to education in a digital environment, as well as the issue of the relationship between the right to education and the right to lifelong learning¹¹⁶.

International legal and institutional mechanisms for the implementation of norms related to the right to education are the basis for the implementation of the right to education, for the embodiment of this right. Of course, not everything in these mechanisms works smoothly; certain difficulties arise, especially when specific actions are required. As in many areas of international law, in the implementation of the right to education, a lot of attention is paid to words: reports, meetings, development of plans and programs. This may be partly due to the “youth” of the education sector as a focus of international law. For full implementation, a gradual transition from words to actions is necessary. One of the most obvious steps is to develop a more effective mechanism for monitoring the implementation of rules relating to the right to education, for example, expanding the powers of the Special Rapporteur on the right to education.

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¹¹³ Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, “The right to education of persons with disabilities”, Report of the Special Rapporteur on the right to education, Vernor Muñoz, <https://www.ohchr.org/Documents/Issues/Disability/A.HRC.4.29.doc>

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МЕЖДУНАРОДНЫЕ КОНВЕНЦИОННЫЕ И ИНСТИТУЦИОНАЛЬНЫЕ МЕХАНИЗМЫ ОБЕСПЕЧЕНИЯ РЕАЛИЗАЦИИ ПРАВА НА ОБРАЗОВАНИЕ

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В статье рассматриваются международные конвенционные и институциональные механизмы, направленные на обеспечение реализации права на образование. Обосновывается актуальность изучения правового регулирования в условиях глобализации и усиления межгосударственного сотрудничества в сфере образования. Проанализированы ключевые международные документы, такие как Всеобщая декларация прав человека, Конвенция о правах ребенка и другие нормативные акты, устанавливающие основы реализации права на образование. Особое внимание уделено роли международных организаций, таких как ЮНЕСКО, в продвижении принципов равенства, инклюзии и доступности образования. Выявлены основные проблемы, связанные с отсутствием четкого определения права на образование в международных правовых актах, и предложены пути их решения. Сделан вывод о необходимости гармонизации национальных образовательных систем для обеспечения мобильности студентов и педагогов, а также повышения качества образования в глобальном контексте.

Ключевые слова: *право на образование, международный конвенционный механизм, международный институциональный механизм, имплементация, применение, реализация, сотрудничество, права и свободы.*