

---

# МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ МЕН ТАРИХЫ ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА THEORY AND HISTORY OF STATE AND LAW

DOI 10.31489/2021 L2/38-43  
UDC 342.7

B.Zh. Aitimov<sup>\*,1</sup>, P.S. Berzin<sup>2</sup>, Sh. Yermetaev<sup>1</sup>

<sup>1</sup>Zhetysu University named after I. Zhansugurov, Taldykorgan, Kazakhstan  
(E-mail: bola\_30081978@mail.ru, ORCID ID 0000-0001-7928-8550,  
Scopus Author ID 56809373000, chingiz.ermetaev@mail.ru)

<sup>2</sup>Taras Shevchenko National University Kyiv, Kyiv, Ukraine  
(E-mail: berzin.pavel@gmail.com, ORCID ID 0000-0003-4146-7910, Scopus Author ID 57210787892)

## Right to education: new conditions for implementation

The article examines the right to education, the implementation of which requires new approaches and new decisions on the part of the state. The global pandemic has revealed that states are not ready to switch to distance learning. With the transition to distance learning it became clear that the concept of the “right to education” is already understood differently, and therefore this right needs to be considered more broadly than we imagined in the traditional learning format. The objectives of the study are to define the concept of “the right to education” in accordance with the legislation of the Republic of Kazakhstan, conduct a theoretical analysis of the present situation and the further development of the education system, its legislative development. When writing a scientific article, sociological methods were used, such as observation and survey of students. This helped to study the legal nature of the “right to education” more deeply to learn from the inside what problems exist in the implementation of this right and propose ways to improve it. Examining the current state and ways of improving the education system in Kazakhstan, the authors classified the right to education by type and were able to propose measures to improve learning in a distance format.

*Keywords:* the right to education, a pandemic, digitalization, distance education technologies, the Internet, the right of access, student-centered learning, the health of students.

### Introduction

According to article 30 of the Constitution of the Republic of Kazakhstan, citizens (note that only citizens) are guaranteed free secondary education, and it is compulsory [1]. Looking at the compulsory secondary education, it seems that the guarantee of free secondary education applies to everyone, both citizens of the Republic of Kazakhstan, and citizens of other states and stateless persons. But this is not the question of our article.

In connection with the spread of a new coronavirus infection (COVID-19), the World Health Organization declared a pandemic in 2020. This affected not only the economy and the health of our citizens but also made huge changes in the education process, including changing and expanding the scope of the human right to education. All educational organizations in the world, including Kazakhstan, were forced to switch to a remote mode of work, apply e-learning and distance education technologies to continue learning and maintain the continuity of the educational process. The issue of methodological support of education and organization of close interaction of the teacher (lecturer) with the student has become especially relevant with the urgent transition to distance learning.

---

\*Corresponding author's e-mail: bola\_30081978@mail.ru

How is the right to education realized in the context of a complicated sanitary and epidemiological situation? What are the implications of this on the possibility of realizing the right to education in schools, colleges and universities? What changes are being made to the relevant regulatory legal acts due to this situation? To what extent is the right to education actually being realized in our country?

#### *Methods and materials*

When writing a scientific article, general scientific methods were used, such as analysis, synthesis, generalization in the study of the accessibility of the right to education when switching to a distance learning format; methods of empirical research when comparing the traditional format of education with distance learning. Also sociological methods such as observing distance teaching, polling the opinions of recipients of educational services were applied.

#### *Results*

First of all, we would like to touch upon the very definition of the word “Education”. What it is? What does it mean? What functions does it perform?

In accordance with article 1, paragraph 9–1 of the Law “On Education” of the Republic of Kazakhstan, education is a continuous process of upbringing and training, carried out for the purpose of moral, intellectual, cultural, physical development and the formation of professional competence [2]. Human education is implemented in preschool organizations, organizations of secondary, secondary specialized, higher and postgraduate education, as well as in organizations of additional education. In addition to education in special bodies, there is also self-education, in which a person realizes the right to self-education by visiting self-education portals, sites, social networks (for example, youtube.com, instagram.com, etc.), technical training programs (for example, driving lessons), massive online courses, etc.

The right to education is one of the human rights, which refers to the “social” human rights, is approved in Article 30 of the Constitution of the Republic of Kazakhstan. Also, the human right to education is considered as one of the fundamental rights in international documents, such as the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948 [3], the International Covenant on Economic, Social and Cultural Human Rights [4], the Convention on the Rights of the Child [5], etc., which impose some obligations on our state to realize the right to education of every person.

The compulsory level of secondary education is established by each state. Although the human right to education is affirmed in Article 26 of the Universal Declaration of Human Rights, which states that “everyone has the right to education. Education should be free, at least for primary and general education. Primary education should be compulsory”. The Republic of Kazakhstan not only adheres to the norms established by the Universal Declaration, but also establishes in the Constitution of the Republic of Kazakhstan that in our country secondary education is compulsory, which implies the education of 9 grades. Getting a general education, i.e., the completion of 11 grades is free. Our state, in order to implement the principle of “stimulating human education and the development of giftedness” specified in the Law of the Republic of Kazakhstan “On Education”, also develops special programs for the fullest development of the potential of especially gifted children that are implemented in special schools for gifted children, Nazarbayev Intellectual Schools [2].

Also, the Universal Declaration speaks about the availability of technical, vocational and higher education. In accordance with this, in our country there is an opportunity to receive secondary specialized (vocational) or higher education on the basis of secondary and general education. For admission to universities graduates, i.e., people who have received a general secondary education (11 classes), pass entrance exams in the format of a unified national test. To obtain higher education on the basis of grant funding applicants apply for and have an opportunity to win grants on a competitive basis or study on a paid basis. Getting a second higher education is carried out only on a paid basis.

A person with a higher education has the right to acquire postgraduate education by enrolling in a magistracy (scientific and pedagogical or specialized direction), residency and doctoral studies. On a competitive basis they can enter and study in leading foreign organizations by becoming a scholarship holder of the international scholarship “Bolashak”.

Why does a person need education? The education is required for a person to fit into the dominant mode of society, to be on the same wavelength with it, successfully adapt and engage in useful activities and develop. Thanks to a similar worldview, mentality and consciousness, people communicate, they find a common language. And education plays an important role in this. To live, people need to be able to under-

stand everything that is happening around them, and for this they need the ability to think and understand, need a certain breadth of horizons, a certain height of development. An educated person can always integrate into any society in a diplomatic and loyal way.

We would like to note that education is a process and product of the formation of human conscious development, that is, mind, intellect, character and even physical abilities of a person. Thanks to the emergence of the phenomenon of education and its development, culture was born: the experience of human society, which does not disappear but continues to live even after the death of an individual, being transmitted from person to person. And this is the continuity of generations. Thus, education is not only the need to have documents of any kind of education, but the transfer of cultural knowledge, which is carried out through kindergartens, schools, colleges and universities.

At the moment, according to statistics in 2019, the number of people with higher education in Kazakhstan is about 30 %, and another 44 % have secondary vocational education. Among the CIS countries, our country ranks third after Russia (56 %) and Ukraine (32 %), and if we compare this figure with developed countries, then we are still lagging behind. For example in Canada more than 57 %, in Japan more than 50 %, in Israel 49 %, in USA 46 % of people have higher education [6].

In the developed countries of the world a large number of the population is professionally educated, this is the trend in the XXI century. And our society needs to strive to be educated as much as possible.

The Republic of Kazakhstan is trying to fulfill all the obligations that are approved in the international legal documents, but of course, in a pandemic, it wants the best. Because one of the main principles of state policy in the field of education is the priority of the development of the education system.

#### *Discussion*

Despite all the efforts of our state, there are many imperfections in the organization of the education process. At the very beginning, when there was only talk about the transfer of the education system to digital technologies, it was clear that the organization of traditional lessons in a remote format should be carried out in other ways than in the traditional format. And as time went on, with the urgency of transferring the entire educational process to a new format while maintaining the number of classroom hours and the planned workload of teachers (lecturers) at the beginning of the academic year growing, decisions were required. And in fact it turned out differently, when many so-called achievements of our educational system did not take into account the rights of the recipients of educational services.

Classes in schools are conducted using WhatsApp, online.mektep.kz, daryn.online, ZOOM programs. At the same time, conducting a lesson by creating a group in WhatsApp deprived students of such rights as the right to accessibility of visual and auditory communication with the teacher, the right to be heard, the right to be personally oriented, etc. Despite the fact that they were visually unaware of the presence and help of the teacher, the students passed the summative assessment for sections (SAS) and the system of criteria-based assessment of knowledge (SCBAK) in the form of test tasks, tests, essays, etc. This completely contradicted such principles as “equality of the rights of all to receive quality education”, “accessibility of education at all levels for the population, taking into account the intellectual development, psychophysical and individual characteristics of each person” approved in the Law of the Republic of Kazakhstan “On Education”, since conducting classes through the above-mentioned programs and social networks does not always take into account the peculiarities of each student. For example, if the student is physically disabled or has special needs, underdeveloped, etc. then in this case, his interests and rights were not taken into account.

Universities and colleges conducted classes in the format of webinars using the programs ZOOM, Moodle, Google Meet, Teams, etc. Webinars are conducted with the same consideration as in traditional form, two academic hours of lectures are equivalent to two hours of a webinar (astronomical 1 hour 40 minutes). This system is not effective because these are completely different forms of conducting classes. In lectures in a traditional format the lecturer can control and direct the attention of students, while adjusting the content of the lecture depending on the circumstances (timing, fatigue, etc.). Lecturing without stopping without direct contact with the audience puts a strain on the teacher's ligaments and will not allow receiving feedback from students. Students' attention dissipates within 15–20 minutes, as evidenced by our survey among students. Almost 90 % of them answered that after 15–20 minutes it is difficult to concentrate on the topic of the lecture due to the lack of real emotional contact with the teacher. They get tired constantly looking at the screen, the light of which shines on the eyes, and listening to the lecturer does not allow to absorb all the materials on the topic in full. In universities and colleges the situation with access to information resources, to educational and methodological materials was simpler. Many universities and colleges gave

access to electronic journals of students, electronic libraries, uploaded lecture materials, video lectures and materials of practical lessons, SWS on their websites. As can be seen, students are also not provided with the rights of visual (emotional) communication with the teacher, to be heard, student-oriented learning.

The right to education presupposes not only the educational process, but also access to cultural, educational, scientific events of the school, university, college and society as well. This is approved both in international legal acts and in national legislation. Article 26, paragraph 2 of the Universal Declaration of Human Rights states that education should be directed towards the full development of the individual and the increase of respect for the rights of others. Also, the Law of the Republic of Kazakhstan “On Education” contains the principle of “unity of teaching and upbringing”. In the very concept of “education” given in the law, it is clear that we must be the first to give a person an upbringing, and then teach. As the great sage Al-Farabi said, “Education given without morality and upbringing is the worst enemy of humanity” [7]. And we must not ignore this and must admit that, at the time of the quarantine measures, cultural rights were limited, which must be directly rectified in the learning process. These are such rights as the right to access to cultural values, the right to use the material and technical base of cultural institutions, to use the achievement of scientific and technological progress in the learning process, to engage in physical culture, to participate in cultural life, to use native language and culture, freedom of creativity, etc.

And all this happens even if the student has access to the Internet. If the network can say about the lack of implementation of the above rights to education.

### *Conclusion*

With the transition to the distance format the rights to education of a person have expanded since there are many obstacles for a person to receive educational services. The right to education as an initial human right was conditionally divided into the following: the right of access to educational resources; the right to take tests remotely; the right of visual (emotional) communication (contact) with a teacher, the right to consultation (assistance), the right to be heard, the right to personality-oriented learning.

Note that despite the fulfillment of obligations by signing the UN convention, the quality of education in our country is still inadequate, despite 99.8 % literacy rate people in Kazakhstan forget to take into account the most important indicator that is the quality of education.

The ministry of science and education of Kazakhstan still has a lot to do in order to keep up with the level of education of developed countries, to try to qualitatively adopt foreign experience.

From the above we can conclude that realizing the right to education during a pandemic allows us to classify it into the following types:

- the right of access to educational, cultural, scientific resources (the right of access to educational and methodological materials; cultural values, to use the material and technical base of cultural institutions, to use the achievement of scientific and technological progress in the learning process);
- the right to remotely participate in the educational process (the right to remotely submit test papers, drop off the test within a day; drop off the place of participation in the classroom, pass test papers, etc.);
- the right of visual (emotional) communication (contact) with the teacher (the right to personal, group consultation; the right to accompanying help; the right to be heard; the right to personally oriented learning);
- cultural rights necessary for implementation in the learning process (the right to participate in cultural life, to engage in physical culture, to use the native language and culture, freedom of creativity, etc.).

### References

- 1 Конституция Республики Казахстан. (Принята на Республиканском референдуме 30 августа 1995 г.) (с изм. и доп. по состоянию на 23.03.2019 г.) // [https://online.zakon.kz/Document/?doc\\_id=1005029](https://online.zakon.kz/Document/?doc_id=1005029).
- 2 Закон Республики Казахстан от 27 июля 2007 года № 319-III «Об образовании» (с изм. и доп. по состоянию на 08.01.2021 г.) // [https://adilet.zan.kz/rus/docs/Z070000319\\_](https://adilet.zan.kz/rus/docs/Z070000319_).
- 3 Всеобщая декларация прав человека. (Принята Генеральной Ассамблеей ООН 10 декабря 1948 г.) // <https://adilet.zan.kz/rus/docs/O4800000001>.
- 4 О ратификации Международного пакта об экономических, социальных и культурных правах Закон Республики Казахстан от 21 ноября 2005 г. № 87 // [https://adilet.zan.kz/rus/docs/Z050000087\\_](https://adilet.zan.kz/rus/docs/Z050000087_).
- 5 Конвенция о правах ребенка (Нью-Йорк, 20 ноября 1989 г.) // [https://online.zakon.kz/Document/?doc\\_id=1006721](https://online.zakon.kz/Document/?doc_id=1006721)
- 6 United Nations Educational, Scientific and Cultural Organization Institute for Statistics // World Development Indicators database (SE.PRM.ENRR, SE.TER.ENRR) // <https://en.unesco.org>.

7 Тәрбиесіз берілген білім — адамзаттың қас жауы [Электрондық ресурс]. — Қолжетімділік тәртібі: <http://massaget.kz/kyizdarga/psihologiya/33322/>.

Б.Ж. Айтимов, П.С. Берзин, Ш. Ерметаев

## Білім алу құқығы: жүзеге асырудың жаңа жағдайлары

Мақалада мемлекет тарапынан жаңа бағыттар мен жаңаша шешімдерді талап ететін білім алу құқығы қарастырылған. Әлемдік пандемия мемлекеттердің қашықтықтан оқыту форматына көшуге дайын еместігін көрсетті. Қашықтықтан оқытуға көшумен «білім алу құқығының» өзгеше түсіндірілетіні, осыған байланысты білім алу құқығын дәстүрлі форматтағы ұғымнан кеңірек қарастыру қажеттігі туындады. Зерттеудің мақсаты ҚР заңнамасына сәйкес «білім алу құқығының» түсінігін анықтап, білім жүйесінің, оның заңнамалық дамуының қазіргі жағдайы мен келешегін теориялық талдау. Ғылыми мақаланы жазуда байқау, білім алушылардың сауалнамасы сияқты әлеуметтік әдістер қолданылды. Өз кезегінде, осылардың көмегімен «білім алу құқығының» заңдық табиғатын тереңірек зерттеуге, бұл құқықты жүзеге асыруда қандай мәселелер туындап отырғанын білуге және оларды шешудің жолдарын ұсынуға мүмкіндік туды. Авторлар Қазақстандағы білім жүйесінің қазіргі жағдайы мен оны жетілдірудің жолдарын зерттей келе, білім алу құқығын түрлік ерекшеліктері бойынша жіктеген және қашықтықтан оқыту форматын жақсартудың іс-шараларын ұсынған.

*Кілт сөздер:* білім алу құқығы, пандемия, цифрландыру, қашықтықтан оқыту технологиялары, Интернет, қолжетімділік құқығы, тұлғалық бейімделген оқыту, білім алушылардың денсаулығы.

Б.Ж. Айтимов, П.С. Берзин, Ш. Ерметаев

## Право на образование: новые условия реализации

В статье рассмотрено право на образование, реализация которого требует новых подходов и решений со стороны государства. Мировая пандемия показала, что государства не готовы к переходу на обучение в дистанционном формате. С переходом к дистанционному обучению стало понятно, что понятие «право на образование» уже воспринимается по-другому. В связи с этим данное право нужно рассмотреть более широко, чем мы себе представляли в традиционном формате обучения. Целями исследования являются определение понятия «право на образование» в соответствии с законодательством РК, теоретический анализ настоящей ситуации и дальнейшее развитие системы образования, его законодательное развитие. При написании научной статьи были использованы социологические методы, такие как наблюдение, опрос обучающихся. Это, в свою очередь, помогло глубже изучить правовую природу «права на образование», изнутри узнать, какие проблемы существуют при реализации этого права, и предложить пути его улучшения. Авторы, исследуя современное состояние и пути совершенствования системы образования в Казахстане, классифицировали право на образование по видам и предложили мероприятия по улучшению обучения в дистанционном формате.

*Ключевые слова:* право на образование, пандемия, цифровизация, дистанционные технологии образования, Интернет, право доступа, личностно-ориентированное обучение, здоровье обучающихся.

## References

1. Konstitutsia Respubliki Kazakhstan. Priniata na Respublikanskom referendume 30 avgusta 1995 g.) (s izmeneniiami i dopolneniiami po sostoianiiu na 23.03.2019 g.) [Constitution of the Republic of Kazakhstan (adopted at the republican referendum on August 30, 1995) (with changes and additions as of 23.03.2019)] *online.zakon.kz* Retrieved from // [https://online.zakon.kz/Document/?doc\\_id=1005029](https://online.zakon.kz/Document/?doc_id=1005029) [in Russian].
2. Zakon Respubliki Kazakhstan ot 27 iuliia 2007 g. No. 319-III «Ob obrazovanii» (s izmeneniiami i dopolneniiami po sostoianiiu na 08.01.2021 g.). [Law of the Republic of Kazakhstan dated July 27, 2007 No. 319-III «On Education» (with changes and additions as of 08.01.2021)] *adilet.zan.kz* Retrieved from // [https://adilet.zan.kz/rus/docs/Z070000319\\_](https://adilet.zan.kz/rus/docs/Z070000319_) [in Russian].
3. Vseobshchaia deklaratsiia prav cheloveka. Priniata Generalnoi Assambleei OON 10 dekabria 1948 g. [Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948] *adilet.zan.kz* Retrieved from // <https://adilet.zan.kz/rus/docs/O4800000001> [in Russian].
4. O ratifikatsii Mezhdunarodnogo pakta ob ekonomicheskikh, sotsialnykh i kulturnykh pravakh. Zakon Respubliki Kazakhstan ot 21 noiabria 2005 g. No. 87. [On the ratification of the International Covenant on Economic, Social and Cultural Rights Law of the Republic of Kazakhstan dated November 21, 2005 № 87.] *adilet.zan.kz* Retrieved from // [https://adilet.zan.kz/rus/docs/Z050000087\\_](https://adilet.zan.kz/rus/docs/Z050000087_) [in Russian].
5. Konventsiia o pravakh rebenka (Niu-York, 20 noiabria 1989 g.) [Convention on the rights of the child (NY, November 20, 1989)] *online.zakon.kz* Retrieved from // [https://online.zakon.kz/Document/?doc\\_id=1006721](https://online.zakon.kz/Document/?doc_id=1006721) [in Russian].

6 United Nations Educational, Scientific and Cultural Organization Institute for Statistics // World Development Indicators database (SE.PRM.ENRR, SE.TER.ENRR) [in English].

7 Tarbiesiz berilgen bilim — adamzattyn qas zhauy [Education without breeding is the worst enemy of mankind]. //massaget.kz. Retrieved from //massaget.kz/kyizdarga/psihologiya/33322 [in Kazakh].

Букеетов университет