

# RIGHT TO EDUCATION

## IN INTERNATIONAL LAW



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The article considers the issue of the right to education at the international law. The development of the right to education and the current international instruments which protect the right to education in international law are shown by the author. Generally recognized principles of international law in the field of education determined by international instruments are presented in the paper.

*Keywords: ilaw, education, international law, right to education, development of right to education, protection, legal instrument, international standard, universal treaty, generally recognized principles, religion.*

### HISTORICAL DEVELOPMENT OF THE RIGHT TO EDUCATION

In the modern legal, social state human rights are the fundamental aim and the basic principle of its functioning.<sup>1</sup>

At the international level educational rights were protected, for the first time, after the First World War, when a serious of minority treaties were concluded under auspices of the League of Nations. The treaties were concluded as "an adjunct to the peace treaties between the Allied and Associated Powers and the defeated nations".<sup>2</sup> The purpose of these treaties was to safeguard religious and educational rights of certain minorities who suffered after many state boundaries had been redrawn in the post-war Europe space.

The first such treaty was the Treaty between the Principal Allied and Associated Powers and Poland signed on 28 June 1919. Article 8 of the treaty protected the right of Polish nationals belonging to racial, religious or linguistic minorities to establish, manage and control at their own expense schools, with the right to use their own language and to exercise their religion freely therein.<sup>3</sup>

In 1924, the League of Nations adopted the declaration of the Rights of the Child. The Declaration did not recognize the right to education, but three its principles were implied the right to education, they are following: the child must be given the means requisite for its normal development; the child that is backward must be helped; and the child must be put in a position to earn a livelihood.<sup>4</sup> These principles of the

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<sup>1</sup>Y. K. Kubeyev, Prava cheloveka-osnovnoy priopitet sovremenogo kazakhstanskogo gosudarstva i prava // Law and State, № 2 (59), 2013, p. 42.

<sup>2</sup>Klaus Dieter Beiter, The protection of right to education in international law: including a systematic analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights, Koninklijke Brill NY, Leiden, The Netherlands, 2006, p. 25.

<sup>3</sup>Ibid.- p.25

<sup>4</sup>Geneva Declaration of the Rights of the Child, adopted 26 September, 1924, League of Nations // <http://www.un.documents.net/gdrc/1924.htm>; date May 5, 2014.

Declaration were the first steps towards the development of general international norms for the protection of the right of child and the right to education and became the foundation of the Declaration of the Rights of the Child of 1959.

### THE PROTECTION OF THE RIGHT TO EDUCATION BY INTERNATIONAL LEGAL INSTRUMENTS

Since the creation of the United Nation system the concept of human rights began widely spread all over the world.<sup>5</sup>

Several instruments, adopted at the international level contain provisions on the right to education. At the international level, instruments have been prepared by the United Nations (UN). They also include those adopted by the Specialized Agencies of the UN, presently the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labor Organization (ILO).

Article 26 of the Universal Declaration of Human Rights of 1948 recognizes that everyone has a right to education. This constitutes the first ever recognition of a general right to education.<sup>6</sup> Article 26 has been reaffirmed and made more detailed by article 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. Article 13 generally recognized the right to education and determines the general obligations of states parties in realization of the right to education. Article 14 determines specific state obligations with regard to primary education.<sup>7</sup> Those two articles "may be viewed as constituting a codification of the right to education in international law".<sup>8</sup>

The International Covenant on Civil and Political Rights contains a provision relevant to the right to education. Article 18 (4) of the Covenant protects the rights of parents to ensure the religious and moral education of their children in accordance with their convictions.<sup>9</sup>

In international law there are some instruments providing protection in education against discrimination. Thus, UNESCO Convention Against Discrimination in Education, article 3 of the Declaration on the Elimination of All Forms of Racial Discrimination of 1963, article 5 of the International Convention on the Elimination of All Forms

<sup>5</sup>L. Baishina, Role and functions of the National Human Right institutions in transnational countries with respect to Paris principles // Law and State, № 2 (59), 2013, p. 46.

<sup>6</sup>Universal Declaration of Human Rights of 10 December 1948// <http://www.un.org/en/documents/udhr> date May 05, 2014.

<sup>7</sup>International Covenant on Economic, Social and Cultural Rights of 26 December 1966 // [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty); date May 05, 2014.

<sup>8</sup>Ibid., p. 86.

<sup>9</sup>International Covenant on Civil and Political Rights of 16 December 1966 // <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, date May 5, 2014.

of Racial Discrimination of 1965, article 9 of the Declaration on the Elimination Discrimination against Women of 1987 and article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 provide protection against discrimination in the field of education on the respective bases of religion, race and gender.

Two other significant instruments in protection rights of the child to education are the Declaration of the Rights of the Child of 1959 and the Convention on the Right of the Child of 1989. The Declaration protects the right to education in Principle 7, the Convention in article 28 and 29.

The provision of the Convention, like article 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, "may be said to constitute a codification of the right to education in international law".<sup>10</sup> Besides, the new elements of the protection of the right to education are introduced in the Convention. Article 28(1)(d) provides states parties to make educational and vocational information and guidance available and accessible to all children. According to article 28(1)(e) states parties take measures to encourage regular attendance at school and the reduction of drop-out rates.<sup>11</sup>

A series of instruments have been adopted to protect educational rights of refugee and stateless persons. Article 22 of the Convention Relating to the Status of Refugees of 1951 and the Convention Relating to the Status of Stateless Persons of 1954 concerns the educational rights of refugee and stateless persons, respectively. Article 6 of the Declaration on the Right of Disabled Persons of 1975, Rule 6 of the Standard Rules on the Equalisation of Opportunities for Persons and Disabilities of 1993 describe the entitlements of disable persons in the field of education. Principle 4,7 and 16 of the Principle for Older Persons of 1991 describe the educational entitlements of older persons.

### GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW IN THE FIELD OF EDUCATION

Generally recognized principles of international law in the field of education are universal standards which provide the right to education determined by international legal standards. Among the major recognized international principles on the right to education are the following:

1. Prohibition of discrimination in the exercise of the right to education

According to the Convention against Discrimination in Education the term "discrimination" includes "any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education".<sup>12</sup>

The examples of discrimination in education sphere can be as depriving any person or group of persons of access to education of any type or at any level and limiting any person or group of persons to education of an inferior standard, as establishing or maintaining separate educational systems or institutions for persons or groups of persons: separate education for boys and girls, the difference in access

<sup>10</sup>Klaus Dieter Beiter, The protection of right to education in international law: including a systematic analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights, Koninklijke Brill NY, Leiden, The Netherlands, 2006, p. 88.

<sup>11</sup>Convention on the Rights of the Child of 20 November 1989 // <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, date May 5, 2014.

<sup>12</sup>Convention against Discrimination in Education of on 14 December 1960 // [http://www.un.org/womenwatch/directory/convention\\_against\\_discrimination\\_in\\_education\\_10739.htm](http://www.un.org/womenwatch/directory/convention_against_discrimination_in_education_10739.htm); date May 5, 2014.

to education the citizens of this State and foreign nationals.

2. Equality of opportunities in education

This principle of the right to education implies free and fair access to the institutions of the education system on the basis of capacity of everyone, without any privilege or discrimination and includes the requirement of respect for gender equality in the educational process and providing all public education institutions of the same level with similar conditions relevant to the quality of education.

3. Priority of preserving national culture and language during the organization of the educational process, the integration of the system education, the formation of educational policy. A state assumes the obligation to contribute those categories of citizens who wish to express their characteristics and develop their culture, language, religion, traditions and customs, including the learning of native language and to be taught in their native language.

4. Compulsory of primary education, available and free to all. Compulsory primary education is the minimum standard adopted by the international community.

5. The system of standards regulating the legal status of participants in the educational process is also could be considered in international humanitarian law. They are students, teachers, educational institutions. These standards can be attributed to the conditions of the realization of the right to education.

The provisions of international acts in the field of private education are one of the aspects of the right to education: to freedom of parents and legal representatives to choose the type of educational institution for training of children. In addition, these rules contain norms providing non-governmental educational institution with the minimum requirements for education which are set or approved by the state.

The rights to give the child to the non-governmental educational institution is caused, first of all, with the recognition of the legitimacy of organizational and legal support of the establishment or maintenance of private educational institutions. It is necessary to observe that according to the requirements of the Convention Against Discrimination in Education the establishment or maintenance of a private educational institutions is not the discrimination only if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

### RIGHT TO EDUCATION AND THE PRINCIPLE OF SECULARISM

One of the cases which judged by the European Human Rights Court relevant to the right to education is the case of Leyla Şahin v. Turkey. This case originated in an application against the Republic of Turkey lodged with European Commission of Human Rights by a Turkish national, Ms Leyla Şahin on 21 July 1998.

On 23 February 1998 the Vice-Chancellor of Istanbul University issued a circular which provides that female students wearing traditional Muslim headscarves must not be admitted to lectures, courses and tutorials. At that time Ms Leyla Şahin (an applicant) who was wearing a Muslim headscarf because of her religion was a student of the Faculty of Medicine at Istanbul University.

On 12 March 1998 the applicant was not allowed to pass her written exam as she was wearing a Muslim headscarf. On 20 March 1998 the university administration refused to include her in the list of participants for the seminar, on 16 April 1998 she was refused admission to lecture

and on 10 June 1998 – for another written exam, all for the same reason.<sup>13</sup>

The applicant lodged an application to the Istanbul Administrative Courts with a petition to issue an order in favor of the abolition of the circular, as the circular violate her rights to religion and right to gain education. The application was rejected by the courts. Courts decided that under the applicable law and in accordance with the decisions of the Constitutional Court and the State Council of Turkey the Vice-Chancellor of the University was competent to regulate with the acts students' dress in order to maintain order. Due to the common practice of the courts neither regulation referred to students' dress nor the individual measures taken against violators of the rules were not illegal.

The European Court considers that the circular issued by the administration of the University of Istanbul on 23 February 1998 which imposes restrictions to place and manner on implementation of the law on the right to wear the traditional Islamic headscarf on university premises was really an act of interference by the public authority with the exercise the right to practice the religion by the applicant.

However, a circular was issued pursuant to statutory powers of the university administration as they had been supplemented by the Constitutional Court of Turkey, adopted in 1991. In addition, many years before the State Council of Turkey took the position that wearing the traditional Muslim headscarf is incompatible with the fundamental principles of the Republic.<sup>14</sup>

As for the method of relevant legal norms application used by the administration of the University the European Court notes that regulation about wearing a traditional Islamic headscarves had been existed a long time before the applicant was admitted to study at the University. Thus, Turkish law had a basis for the act of public authorities intervention in the exercise of practice the religion by the applicant and this rule of law was available to citizens and quite predictable. From the moment when the applicant entered the University she understood and knew about rules regulating the wearing of Islamic headscarves.

This act of interference pursued the legitimate aims of protecting the rights and freedoms of others and of public order. The principle of secularism, the separation of educational institutions from religion, as it has been interpreted by the Constitutional Court of Turkey, was the main issue which the ban on the wearing of religious symbols in universities were dictated by. This idea of secularism is submitted quite consistent with human values underlying the European Convention of Human Rights to the European Court and the maintenance of this principle may be considered as necessity to protect the democratic system of government in Turkey.

Therefore, taking into account the principle of discretion reserved by the States parties of the Convention the European Court concluded that the rules established by the administration of the Istanbul University and the specific measures taken by it for the performance of rules were justified by pursued objectives, so they can be considered as «necessary in a democratic society». So, the right to gain education was not violated by the Istanbul University and the Republic of Turkey had no violation of the Convention of the present case.

The similar case relevant to relations of the right to education and

<sup>13</sup>Leyla Şahin v. Turkey // <http://www.tjisl.edu/slomansonb/SahinTurk.pdf>

<sup>14</sup>In Turkey religious dress perceived by many as a symbol of political bias and its public wearing equates to promote Islam in politics and public life and violate the principle of separation of state and religion which is a fundamental principle of the Turkish state. Hence, there is the ban on headscarves for public sector employees and students in public schools.

the principle of secularism took place in France and was submitted to the Human Rights Committee by Bikramjit Singh.

The facts are related to Act No. 2004-228 of 15 March 2004, which, in conformity with the principle of secularism, covers the wearing in public primary schools, secondary schools and lycées of symbols and clothing manifesting a religious affiliation.<sup>15</sup>

Bikramjit Singh, an Indian national of the Sikh faith, started his studies at the lycée Louise Michel in 2002. He was initially given permission to wear the patka and then, after September 2003 at the age of 17, he wore the keski.<sup>16</sup> In September 2004, the author arrived at school in his keski as he had done the previous year. The author and his family considered the keski as a compromise between, on the one hand, the requirements of his ethnic and religious traditions, and on the other hand, the principle of secularism. At first, the principal of the lycée formally prohibited the author from entering the classroom wearing the keski. Subsequently, on 11 October 2004, the author was allowed to continue his studies but sitting apart. He was sent to the school canteen, where he studied on his own and where a teaching assistant provided him with school books on request. He received no teaching during the three weeks that he spent in the canteen

The author applied to Cergy-Pontoise Administrative Court. The court ordered the principal of the lycée to convene a disciplinary board. The board was duly convened and issued a ruling for the immediate and permanent expulsion of the author. The reason for the expulsion was given as follows: "Breach of Act No. 2004-228 of 15 March 2004, insofar as, after the dialogue phase, the pupil refused to remove the head covering which completely covered his hair, thereby manifesting his religious affiliation in a conspicuous manner".

The Committee recognizes that the principle of secularism is itself a means by which a State party may seek to protect the religious freedom of all its population, and that the adoption of Act No. 2004-228 responded to actual incidents of interference with the religious freedom of pupils and sometimes even threats to their physical safety.

However, in the present case the Committee notes that the author Sikh men wear a turban or keski not as religious symbols but as an integral part of their identity and mandatory religious requirement. The Committee also notes that under explanation of State party the ban on the wearing the religious symbols refers only to the symbolism and clothes that explicitly show the religious affiliation and does not extend to discreet religious symbols and the Council of State takes decisions in this regard on a case-by-case. The Committee is of the view that the State party has not provided conclusive evidence that by wearing keski the author could pose a threat to the rights and freedoms of other students or public order in the school. The Committee is also thinks that the penalty of permanent exclusion from the public school of the pupil was disproportionate and has led to serious consequences for the author to gain education to which he, like any person of his age, was entitled in the State party.<sup>17</sup>

<sup>15</sup>Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session) Communication No. 1852/2008 // Communication No. 1852/2008 // [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f106%2fd%2f1852%2f2008&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f106%2fd%2f1852%2f2008&Lang=en)

<sup>16</sup>The keski is a small light piece of material of a dark colour, often used as a mini-turban, covering the long uncut hair considered sacred in the Sikh religion.

<sup>17</sup>Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session) Communication No. 1852/2008 // [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f106%2fd%2f1852%2f2008&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f106%2fd%2f1852%2f2008&Lang=en)

## CONCLUSION

In the modern society, at the time of globalization education becomes its fundamental foundation. The improvement of education system is one of the priority of a state development, is one of the resources of the development of economy, science, culture and society as whole.

Today the world communities pay special attention to development of the education sphere. A special role is given to the right to education. Although there is a range of universal and regional conventions have been adopted in the sphere of education there is a gap between the right to education as prescribed by international law and realization of such a right. They are not only the states with weak economy development as Africa. The problem of violation of right to education also takes place in well developed states. The distinction is that the violations take different aspects.

If in poor countries people cannot read even one sentence or children go to school but they do not acquire the minimum required skills, in well developed countries right to education links with civil and political rights and the right to freedom of thought, conscience, religion, the right to hold opinions, the right to freedom of expression during the process of education can be violated.

Two cases above mentioned show that the protection of right to education is one of the issues which still need refinement and its relation with the principle of secularism is obvious. The principle of secularism does not mean the contradiction to religion it is a freedom of religion. If States see the explicitly to the religious affiliation and it

threat to society or to state values it can take measures by a state to prevent it. But each decision must be taken a case-by-case.

### **А. Ш. Рақышева: Халықаралық құқықтағы білімге деген құқық.**

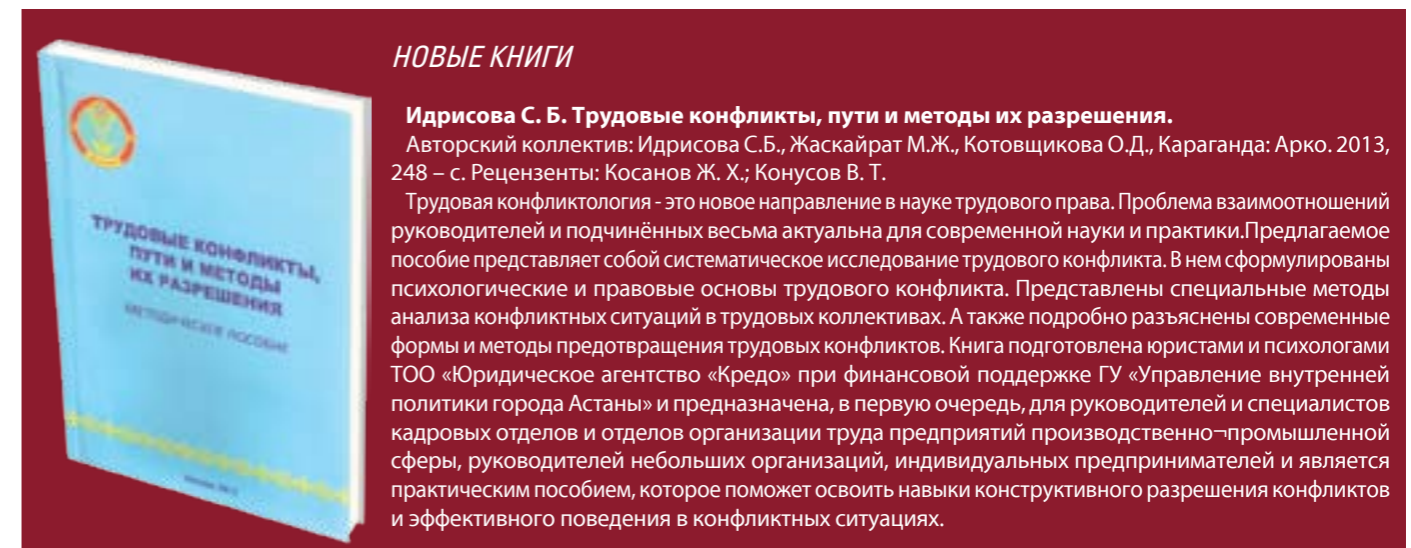
Бұл мақала халықаралық құқықтағы білімге деген құқықтарды қорғаудың кешендік зерттелуіне арналады. Автор білімге деген құқықтың даму тарихын, сол сияқты білім саласындағы халықаралық стандарттарды зерттеу негізіндегі білімге деген құқықтарды қорғау бойынша жалпымен танылған қағидалардың анықталуын қарастырған.

*Түйінде сөздер: халықаралық құқық, білімге деген құқық, қорғау, заңдық құралдар, жалпымен танылған қағидалар.*

### **А. Ш. Рақышева: Право на образование в международном праве.**

Статья посвящена комплексному исследованию защиты права на образование в международном праве. Автором прослеживается историческое развитие права на образование, а также на основе изучения международных стандартов в сфере образования определяются общепризнанные принципы международного права по защите права на образования.

*Ключевые слова: право, развитие права, международное право, право на образование, защита, юридический акт, общепризнанные принципы, школы права.*



## НОВЫЕ КНИГИ

### **Идрисова С. Б. Трудовые конфликты, пути и методы их разрешения.**

Авторский коллектив: Идрисова С.Б., Жаскайрат М.Ж., Котовщикова О.Д., Караганда: Арко. 2013, 248 – с. Рецензенты: Косанов Ж. Х.; Конусов В. Т.

Трудовая конфликтология - это новое направление в науке трудового права. Проблема взаимоотношений руководителей и подчинённых весьма актуальна для современной науки и практики. Предлагаемое пособие представляет собой систематическое исследование трудового конфликта. В нем сформулированы психологические и правовые основы трудового конфликта. Представлены специальные методы анализа конфликтных ситуаций в трудовых коллективах. А также подробно разъяснены современные формы и методы предотвращения трудовых конфликтов. Книга подготовлена юристами и психологами ТОО «Юридическое агентство «Кредо» при финансовой поддержке ГУ «Управление внутренней политики города Астаны» и предназначена, в первую очередь, для руководителей и специалистов кадровых отделов и отделов организации труда предприятий производственно-промышленной сферы, руководителей небольших организаций, индивидуальных предпринимателей и является практическим пособием, которое поможет освоить навыки конструктивного разрешения конфликтов и эффективного поведения в конфликтных ситуациях.