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Legal regulation of the status of a teacher in international acts and legislation of foreign countries

The article is devoted to the analysis of the legislative regulation of the status of a teacher in various legal systems and international law. In particular, universal and regional specialized acts in the field of fixing the status of a teacher and his social guarantees, as well as the features of such regulation in some foreign legal systems are considered. The author in his scientific study analyzes the international acts of the United Nations, the International Labor Organization, UNESCO in the field of registration of the teacher's status. Particular attention is paid to the countries whose education systems occupy leading positions in the ranking of countries: Finland, China. The Finnish education system occupies a leading position in terms of the level of school education, the experience of which is analyzed by the world educational community as a "Finnish phenomenon". A scientific study of the teacher's status was carried out using data from international ratings, such as the Global Teacher Status Index, PISA (Programme for International Student Assessment). The author focuses on the activities of independent professional associations for the protection of teachers' rights in foreign countries and their role in strengthening the status, providing social guarantees, and protecting rights. A critical analysis of the principles of the activities of the Kazakhstan Branch Trade Union of Educational and Scientific Workers for compliance with its generally accepted standards of the International Trade Union Confederation has been carried out. The article assesses the law of the Republic of Kazakhstan "On the status of a teacher" from the position of compliance not only with international law standards, but also with the requirements of modernity.

Keywords: teacher, education system, international agreement, social guarantees, foreign legislation, Finnish experience, salary, teacher's rights, trade unions, international rankings.

Introduction

Justification of relevance. The sphere of education was, is and will always be the most important part of the life of society and the state at all stages of its development, therefore, the legal regulation of this area has always been given paramount importance. The Kazakh society at the present stage of its development has not become an exception, especially since the current trends in the development of the human community require special attention from the state to the profession of a teacher, its legal and social status. The prestige and high status of a teacher depends on how the state policy will be built towards him.

The main purpose of this study is a comprehensive analysis of the legal regulation of the status of a teacher in international law and the legislation of foreign countries and the Republic of Kazakhstan.

If we turn to the issue of securing the status of a teacher on a planetary scale, then it is given considerable attention in the documents of international law. An important part of the international block of documents are international acts in the field of human rights protection, adopted within the framework of the UN, as treaties of a universal nature that have an imperative character.

Methods and materials

The author used the method of legal formal logic in the form of deduction and induction in the process of scientific research of the chosen topic. Thanks to deduction, it was possible to make a conclusion from the general (UN and ILO international standards) to the particular to the relevant law or a set of laws of a certain direction. The induction method was used to analyze the legislative acts and features of the education system in China, Finland and the Republic of Kazakhstan, on the basis of which the final conclusion was formulated. When conducting a scientific study through a comparative legal analysis of education systems, state policy, legislation on regulating the status of a teacher in Kazakhstan and foreign countries, the main advantages

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and disadvantages of certain states were identified. By applying the analogy method, studies were carried out on the activities of trade unions in Finland, on the basis of which conclusions were drawn about the need for the transition of domestic trade unions to the principles of independence, autonomy and voluntariness, which will undoubtedly give its positive results not only in raising and improving the status of a teacher, but also the entire education system as a whole.

Discussion

The Declaration of the Rights of Man (1948) in Article 26 establishes the provision that: “Everyone has the right to education. Education should be free, at least in terms of primary and general education. Primary education should be compulsory. Technical and vocational education should be open to all, and higher education should be equally accessible to all on the basis of everyone's ability”. [1].

International Covenant on Economic, Social and Cultural Rights, 1966, which regulates in Article 13: “the right of every person to education... Primary education must be compulsory and free for all... Access to secondary specialized and higher education”. Convention on the Rights of the Child (1989), where Article 28 establishes the right of children to education. It is these documents that are the basic international acts aimed at the implementation of fundamental human rights and freedoms [2].

As for registration of the status of a teacher, at the international level it is enshrined in the UNESCO / ILO Recommendation “On the Status of Teachers” (adopted on 05.10.1966 by the Special Intergovernmental Conference on the Status of Teachers).

The Recommendation is not by its nature a legally binding international act (it is not subject to ratification by countries and is not signed on behalf of states), but all member states of the ILO and UNESCO, regardless of whether they voted for it or approved it, are obliged to know and adhere to its provisions. In accordance with the provisions of the Recommendations, the national laws of many countries on the regulation of the rights and status characteristics of teachers have been amended [3].

The 1966 Recommendation contains norms that formulate provisions that establish international standards for the teaching profession in a wide range of aspects affecting the most important professional, social, ethical and material rights and interests of teachers, aimed at improving their socio-economic, professional and social (state-political) status. Thus, both UNESCO and the International Labor Organization consider salary to be a key factor influencing the status of a teacher. Moreover, teachers' salaries should compare favorably among professions that require similar skill levels.

In 1974, at the meeting of the XVIII General Assembly of UNESCO in Paris, the Recommendation on the status of scientists was adopted, which today remains the most complete act specifying the rights, obligations, social responsibility of scientists to society, determining the role and importance of science in the modern world.

It would not be out of place to mention such documents as the Charter of Scientists (1948) and the Declaration of the Rights of Scientists (1969), adopted by the World Federation of Scientists, as well as the Declaration of the Rights and Duties of Scientists, supported by this federation in Lisbon in 1990. These documents are the basis for regulating the legal status of teachers involved in research activities.

The regional international act in the field of registration of the status of a teacher is the “Model Law of the CIS on the Status of a Teacher”, adopted by the Inter-Parliamentary Assembly of the CIS Member States on December 4, 2004. The model law determines the principles of state policy, regulates legal, socio-economic relations related to the activities of a teacher, and is aimed at creating conditions that ensure a qualitative improvement in the legal status of teachers, the implementation of guarantees for their social security.

Kazakhstan is an active participant in the international educational process; therefore, when developing a draft law, the most progressive ideas of foreign countries in this area were taken into account. I would like to draw attention and bring the features of the legislative regulation of the legal status of a teacher, the social guarantees provided by some foreign countries.

Results

According to the study “Global Teacher Status Index 2018” (Global Teacher Status Index), China topped the list of countries in which teachers have a high social status. The Global Teacher Status Index is the first comprehensive attempt to compare teacher status around the world. This research was developed by the Varkey Charity Foundation. The main criteria for identifying such status were: the effectiveness of the

education system, the attitude of the public, employers to teachers (teacher assessment), the availability of education and the level of wages, the range of legal and social guarantees [4].

Today, China is leading not only in the ranking of countries with a high social status of teachers, but also as a state that considers the education sector as the foundation on which the general situation in the country is built, i.e. development of the national economy and society. Based on this, every year the Chinese Government allocates huge sums for the modernization and continuous improvement of the education system, the widespread informatization of education, the implementation of social programs to improve the working and living conditions of teachers. Thus, according to the Ministry of Education of the People's Republic of China, in just over 10 years, 167.3 billion yuan were invested in the construction of housing for teachers and lecturers, where apartments with a total area of 200 million square meters were built at the expense of these funds [5; 147].

The Chinese government provides state support to families in difficult economic situations and unable to provide higher education to their children at their own expense. Especially for such families, social programs have been developed, which are as follows: a system of incentive scholarships, a system for providing opportunities for part-time work while studying, a system for providing assistance in especially difficult situations, a system for reducing or exempting tuition fees, a system of state subsidies to help.

The legal status of a teacher in China is determined by the laws: "Law on Education in the PRC", 1995 and "Law on Teachers", 1993. In China, teachers are not civil servants, but at the legislative level it is determined that teachers' salaries should not be lower than either higher than that of civil servants, and grow steadily. Among other things, Chinese teachers can count on medical care at the level of a government official.

The peculiarity of the high social status of a teacher lies in the fact that the Chinese teacher has an indisputable authority in society. Not a single Chinese family will allow itself to doubt the methodology of a teacher, let alone question the competence and professionalism of a teacher. Moreover, the Chinese society is not puzzled by the question, what measures should be envisaged in the legislation in order to protect the teacher from insults or pressure from anyone (parents or inspecting authorities)? A feature of the demographic situation in China is that basically one child is brought up in the family, so parents invest in their child as much as possible and completely trust the teacher at all stages of his growing up. The main tenet of the attitude of Chinese society towards the status of a teacher lies in the fact that the teacher is the beginning of everything — without a teacher there is no scientist, cosmonaut, doctor, minister, builder... Perhaps this is the secret of high respect for the teacher, or maybe it is wonderful Chinese national tradition.

According to the results of the same study (GEMS Foundation), Singapore is the leader in terms of wages (\$ 45,755 per year). This is followed by South Korea, USA, Germany, Japan (over \$ 40,000 per year) [4].

As for the peculiarities of the European education system in the issue of registration of the legal status of a teacher, the legislative regulation in foreign countries is largely decided depending on whether he works in the public or private education sector.

If a teacher serves in the public sector of education, they are given the status of civil servants (Austria, Belgium, Greece, Denmark, Spain, Italy, Luxembourg, Portugal, Finland, France, Germany, USA and Canada). The status of a civil servant for a teacher implies:

- recruitment through competitive selection;
- periodic evaluation of the teacher's activities;
- the establishment of a state-guaranteed high pension.

One of the basic principles of public service is the guarantee of life tenure on it, provided that acts and actions are not committed that are incompatible with the status of a public servant. This means that a teacher who was appointed before retirement is not subject to dismissal, except in cases that discredit the high status of a teacher.

The Finnish education system is considered one of the most progressive in the field of school education. According to the International Program for Education Control Program PISA (Programme For Student Assessment) and the Organization for Economic Cooperation and Development (OECD), Finland occupies a leading position in terms of the level of school education, the experience of which is analyzed by the world educational community [6].

Finnish educators who carry out educational activities in the private sector are also civil servants under the Finnish Teacher Training Act (2003). A mandatory requirement for a teacher is the presence of a master's degree. The teacher has a high social status and authority in society; the profession of a teacher is in demand.

This is confirmed by the fact that annually the competition for pedagogical specialties when entering the university reaches 20 people per place. In the Table 1 you can see how much demand there is for teachers with a master's degree and how this affects their salaries [7].

Position name	Without a master's degree, without a teacher education	Master's degree and the presence of pedagogical education	Difference
Elementary School Teacher	1 849,59 eur	2 197,56 eur	347,97 eur
Correction teacher, secondary school	2 121,89 eur	2 754,71 eur	632,82 eur
Subject teacher, secondary school	2 022,49 eur	2 735,71 eur	713,22 eur
Subject teacher, high school	2 069,96 eur	2 900,96 eur	831 eur

Finns are aware of the importance of lifelong learning, which in their understanding means the importance of every stage of education, from early childhood education to adult education and training. The Finnish education system is a single process that consists of a phased transition of an individual from one level to another: from early childhood education to adult education and training.

Every year, the Finnish government allocates approximately 15.5 % of the expenditure side of the budget to finance the education system. At the same time, the total public spending on higher education in Finland is 21.7 % of all education spending. In terms of one university student, these costs amount to about 8 thousand euros per year. Education remains free for both Finns and foreigners. Finnish students receive a financial allowance from the state: a scholarship and an additional payment for housing [8; 12].

The Education Workers' Union of Finland (OAJ) is a labor market organization that advocates for the interests of professionals in education, training and research. If we take the historical aspect of the development of this issue, the unionization of teachers in trade unions began in the 1880s, while the creation of the Trade Union of Educational Workers of Finland (OAJ) dates back to 1973 [9].

The Finnish trade union has a strong influence on education policy and plays an active role in the regulation and development of the education, training and research sector. OAJ is the sixth largest union in Finland and the largest member union of Akava, the Confederation of Professional and Management Personnel Trade Unions of Finland and the JUKO Public Sector Negotiation Organization.

During the existence of the OAJ Trade Union, the organization has done a lot of work to protect the rights and social guarantees of teachers:

- prevented the dismissal of teachers;
- paid summer vacations and other breaks during the academic year;
- guaranteed favorable dynamics of teachers' salaries;
- a separate collective agreement for the education sector;
- provided legal protection for teachers;
- developed school legislation, teacher training and other educational policy issues;
- increasing the competence of representatives on labor protection and labor protection of teachers.

Working life in Finland is based on negotiations and the trade union has the right to negotiate contracts on behalf of its members. In particular, it negotiates collective agreements that set out the terms of labor relations for teachers with local government employers, the Association of Finnish Independent Employers in Education, Aivainta employers and the state. The main purpose of the negotiations is the protection and guarantee of the rights and interests of the members of this Trade Union in accordance with the law and signed agreements.

As we have already noted, in the international PISA surveys of recent years, Finland occupies the first position in terms of achievements in the field of school education. For many countries, the Finnish experience is attractive in terms of the effectiveness of educational reforms and their conditions, which are recognized as the most effective in the world community. The uniqueness of the Finnish phenomenon lies in the synthesis of such terms as the modernization of education, the personal orientation of school education, the concept of a democratic school, and the school's openness to the world educational process.

In conclusion of the study, I would like to draw attention to the peculiarities of domestic regulation of the status of a teacher. It should be noted that in 2020 a new law "On the status of a teacher" came into force [10]. The law defines a single concept of "teacher", i.e. before that, the education system was a grada-

tion of positions of pedagogical workers and persons equated to them. The new law was perceived by the pedagogical community ambiguously. On the one hand, the new law provided and prescribed the most long-awaited norms, such as reducing the workload of teachers, increasing the length of paid annual leave (56 days), the right to material support, incentives and social guarantees. The new law prohibits the involvement of teachers in unusual functions, arrange unreasonable checks, load paperwork and provide material incentives for prizes at the Olympiads. An innovation and legal protection for teachers is a norm that provides for punishment for showing disrespect for a teacher — obscene language, obscene behavior, offensive harassment, and demonstration of indecent gestures. The main disappointment of teachers in the new law was the lack of a rule on the possibility of retiring on a seniority basis.

Conclusion

The main purpose of the adoption of the law was to increase the status of a teacher in society, which means attracting more motivated candidates to the profession of a teacher. This is exactly in line with the findings of the Global Teacher Status Index, an international ranking that notes a direct link between high salaries and the status of teachers to achieve the best academic results for students. Any international rankings serve as a kind of guideline in the implementation of the policy of effective development of national education systems. From this point of view, the Kazakh law on the status of a teacher is aimed at improving the school education system as a whole through the prism of raising the status of a teacher.

It should be noted that the Western system of values in the education system pays special attention to the effective operation of structures such as trade unions. In the context of our study, this is the Kazakhstan Industry Trade Union of Education and Science Workers. An indicator of the independence of trade unions is the independence of trade unions in their activities from executive authorities, local governments, employers, their associations, political parties and other public associations. Unfortunately, Kazakhstan is associated in the international labor community with its anti-trade union policy. The main argument about the inconsistency of the activities of the Federation of Trade Unions of Kazakhstan is the loss of independence from power structures, as a result of which the Kazakh association is headed by former and current civil servants. Things got to the point that in 2018, the International Trade Union Confederation suspended the membership of the FTU.

There were also complaints from the FCI regarding the violation of the principle of voluntary entry into trade unions, which contradicts the principle of democracy. Often, pedagogical workers are not even aware that they are members of the Kazakhstan Industry Trade Union of Education and Science Workers and pay monthly membership fees. Moreover, in the event of labor disputes, the trade union is often inactive and does not act in the interests of the employee; on the contrary, it acts on the side of the employer, no matter how absurd it may sound. All these factors together led to the fact that in the ITUC Global Rights Index 2018 report, Kazakhstan was included in the top ten worst countries in terms of respect for workers' rights, along with countries such as Algeria, Bangladesh, Cambodia, Colombia, Egypt, Guatemala, Philippines, Saudi Arabia and Turkey [11]. All these shortcomings require an immediate solution and should be aimed at supporting the efforts of independent trade unions of the Republic of Kazakhstan to change the legislative basis for the activities of trade unions, develop independent organizations and exercise the right to freedom of association, collective bargaining and strike.

Raising the status of a teacher and the prestige of the teaching profession through the adoption of a law alone is not enough. First of all, financial injections into the system of school education are necessary: to increase the teacher's salary to the highest level in the country. High salaries and social guarantees from the state will raise the competition for teaching professions in universities. At the same time, high salaries will automatically lead to a competitive selection among teachers and the admission of the most qualified of them. It is necessary to provide for periodic professional development of a teacher at the expense of budget funds, which will increase not only the social responsibility of the teacher himself, but will also affect his salary. We see one of the ways to solve the problem under consideration in the possibility of career growth of a teacher within the school system, providing not only categories, but also certain forms of growth. As a measure in raising the prestige and status of a teacher, one can consider an increase in the UNT threshold score upon admission, when graduates with a good school base do not pass to pedagogical specialties on a residual basis. The higher status of a teacher attracts more capable people to join the profession and, importantly, to stay, achieving better results for students.

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Д.Ә. Әбдәкімова

Педагог мәртебесін құқықтық реттеу халықаралық актілерде және шет елдердің заңнамасында

Мақала әртүрлі құқықтық жүйелер мен халықаралық құқықтағы педагогтің мәртебесін заңнамалық реттеуді талдауға арналған. Атап айтқанда, педагог мәртебесін және оның әлеуметтік кепілдіктерін бекіту саласындағы әмбебап және аймақтық мамандандырылған актілер, сондай-ақ кейбір шетелдік құқықтық жүйелердегі реттеудің ерекшеліктері қарастырылды. Автор өзінің ғылыми зерттеуінде Біріккен Ұлттар Ұйымының, Халықаралық Еңбек Ұйымының, ЮНЕСКО-ның педагог мәртебесін рәсімдеу саласындағы халықаралық актілерін талдаған. Білім беру жүйесі елдер рейтингісінде жетекші орын алатын Финляндия, Қытай сияқты елдерге ерекше назар аударылған. Мектептегі білім деңгейі бойынша Финляндияның білім беру жүйесі жетекші орынға ие, оның тәжірибесін әлемдік білім беру қоғамы «фин феномені» ретінде талдайды. Педагог мәртебесін ғылыми зерттеу Global Teacher Status Index, PISA (Programme For Student Assessment) сияқты халықаралық рейтингтердің деректерін пайдалана отырып жүргізілді. Сонымен қатар шет елдердегі педагогтердің құқықтарын қорғау жөніндегі тәуелсіз кәсіби бірлестіктердің қызметіне және олардың мәртебесін нығайтудағы, әлеуметтік кепілдіктер берудегі, құқықтарды қорғаудағы рөліне назар аударған. Білім және ғылым қызметкерлерінің қазақстандық салалық кәсіптік одағы қызметінің қағидаттарына оның халықаралық кәсіподақтар конфедерациясының жалпы қабылданған стандарттарының сәйкестігіне сыни талдау жүргізілген. Мақалада «Педагог мәртебесі туралы» Қазақстан Республикасының заңы халықаралық құқық стандарттарына ғана емес, қазіргі заман талаптарына да сәйкестік тұрғысынан бағаланған.

Кілт сөздер: педагог, білім беру жүйесі, халықаралық шарт, әлеуметтік кепілдіктер, шетелдік заңнама, Финляндия тәжірибесі, жалақы, педагог құқықтары, кәсіподақ бірлестіктері, халықаралық рейтингтер.

Д.А. Абдақимова

Правовое регулирование статуса педагога в международных актах и законодательстве зарубежных стран

Статья посвящена анализу законодательного регулирования статуса педагога в различных правовых системах и международном праве. В частности, рассмотрены универсальные и региональные специализированные акты в области закрепления статуса педагога и его социальных гарантий, а также осо-

бенности такого регулирования в некоторых зарубежных правовых системах. Автор в своем научном исследовании анализирует международные акты Организации Объединенных Наций, Международной Организации Труда, ЮНЕСКО в сфере оформления статуса педагога. Особое внимание уделено странам, чьи системы образования занимают лидирующие позиции в рейтинге стран: Финляндия, Китай. Система образования Финляндии занимает главенствующее место по уровню школьного образования, опыт которого анализируется мировой образовательной общественностью как «финский феномен». Научное исследование статуса педагога проведено с использованием данных международных рейтингов, таких как Global Teacher Status Index, PISA (Programme For Student Assessment). Автором акцентировано внимание на деятельности независимых профессиональных объединений по охране прав учителей в зарубежных странах и их роли в укреплении статуса, предоставлении социальных гарантий, защиты прав. Проведен критический анализ принципов деятельности Казахстанского отраслевого профессионального союза работников образования и науки на соответствие его общепринятым стандартам Международной конфедерации профсоюзов. В статье дана оценка Закону Республики Казахстан «О статусе педагога» с позиции соответствия не только стандартам международного права, но и требованиям современности.

Ключевые слова: педагог, система образования, международный договор, социальные гарантии, зарубежное законодательство, опыт Финляндии, заработная плата, права педагога, профсоюзные объединения, международные рейтинги.

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