

значного розуміння сенсу інтерпретованої норми та в чіткому визначенні способу поведінки її адресата.

Насамкінець, у цій статті необхідно розглянути питання *співвідношення засад обґрунтованості та зрозумілості*. Поза всяким сумнівом, вони мають багато точок перетину й обумовлюють один одного. Наприклад, Європейський суд у справі «Хаджианастасіу проти Греції» (1992 р.) констатував, що судді повинні вказати з достатнім ступенем ясності мотиви, на яких вони засновуються. Проте, хоча ці засади й дуже тісно пов'язані, їх необхідно розрізняти. Так, зрозумілий результат може бути необґрунтованим. Буває і навпа-

ки, коли цілком обґрунтоване рішення не має ясності, прозорості. У такому разі інтерпретатор, наприклад, не враховує різниці між своїми професійними здібностями й інтелектуальними можливостями одержувача результатів тлумачення права.

Отже, якісним показником для **висновків**, що отримує інтерпретатор у результаті своєї діяльності, є обґрунтованість і зрозумілість цих висновків. Саме для того, щоби підсумки тлумачення були найбільш правильними, а інтерпретаційна діяльність була найефективнішою, необхідні дотримання вимог цих обох принципів у їх взаємодії та взаємодоповненні.

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THE RIGHT TO HIGHER EDUCATION IN THE CONTEXT OF NATURAL RIGHTS

ПРАВО НА ВИЩУ ОСВІТУ В КОНТЕКСТІ ПРИРОДНОГО ПРАВОРОЗУМІННЯ

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The article is devoted to the coverage of one of the topical problems of the theory of state and law concerning the question of assigning the right to higher education to natural human rights.

Natural rights, in particular the right to higher education, belong to a person from birth, should be free and publicly accessible to everyone, the mass, is the basis for understanding and implementation of the entire complex of human rights, inalienable and inalienable, does not depend on the will of the state, but only recognized, is guaranteed, is provided by the state.

In the general system of fundamental human rights and freedoms, the right to higher education has one of the leading places in the group of social and economic rights as a peculiar core and one of the most important prerequisites for the implementation of many other rights – from the right to life to the right to health. This right combines the elements of "negative" and "positive" human freedom – each individual has the freedom to choose the forms and methods of obtaining higher education, must be protected from discrimination in the field of education ("negative aspect"), but, moreover, has the right to demand from the state to create the necessary conditions for the realization of the conditions that are right for him ("the positive aspect").

The rights and freedoms of man and citizen pass the successive stages of development: from proclaiming the right as a natural to its positive consolidation, and from the formal, declarative consolidation of law in the law to the real embodiment of life, then the right becomes a fact of social reality.

The right to higher education is one of the most important human and civil rights, which should be seen not only on the basis of declared and fixed rules Ukrainian legislation, but also on the basis of provided guarantees of law and its practical implementation in institutions of higher education in Ukraine.

However, the right to higher education acquires a natural character, provided that the society perceives the needs for knowledge, the formation of skills, skills, personal qualities as values, and then there is the ability to provide this good legal nature.

Key words: right to higher education, natural rights, legal thinking, positive law.

Стаття присвячена висвітленню однієї з актуальних проблем теорії держави і права щодо питання віднесення права на вищу освіту до природних прав людини. Природні права належать людині від народження, тому вища освіта має бути безоплатною та загальнодоступною, масовою. Це право є основою для розуміння і здійснення всього комплексу прав людини, воно невід'ємне та невідчужуване, не залежить від волі держави, а лише визнається, гарантується, забезпечується державою. Проте право на вищу освіту набуває природного характеру за умови сприйняття в суспільстві потреби здобуття знань, формування вмінь, навичок, особистісних властивостей як цінності, саме тоді з'являється спроможність надання цьому благу правового характеру.

Ключові слова: право на вищу освіту, природні права, праворозуміння, позитивне право.

Стаття посвящена освещению одной из актуальных проблем теории государства и права – отнесению права на высшее образование к естественным правам человека. Естественные права принадлежат человеку от рождения, поэтому высшее образование должно быть бесплатным и доступным для каждого, массовым. Это право является основой для понимания и осуществления всего комплекса прав человека, оно неотъемлемое и неотчуждаемое, не зависит от воли государства, а лишь признается, гарантируется, обеспечивается государством. Однако право на высшее образование приобретает естественный характер при условии восприятия в обществе потребности получения знаний, формирования умений, навыков, личностных свойств как ценности, и именно тогда появляется возможность предоставления этому благу правового характера.

Ключевые слова: право на высшее образование, естественные права, правопонимание, позитивное право.

Formulation of the problem. The legal nature of the right to higher education is characterized by the assignment of this right to the basic human and civil rights and its specific content. In the general system of fundamental human rights and freedoms, the right to higher education has one of the leading places in the group of social and economic rights as a peculiar core and one of the most important prerequisites for the implementation of many other rights – from the right to life to the right to health. This right combines the elements of “negative” and “positive” human freedom – each individual has the freedom to choose the forms and methods of obtaining higher education, must be protected from discrimination in the field of education (“negative aspect”), but, moreover, has the right to demand from the state to create the necessary conditions for the realization of the conditions that are right for him (“the positive aspect”). The right to higher education as part of the right to education, which is an element of the right to development, must be ensured throughout the life of a person as a basis for the realization of a person as an individual, which has determined the relevance of this topic.

Understanding of natural rights as a legal category was laid by such scholars as S. Alekseev, O. Goffe, O. Frytsky, Y. Shemshuchenko. In turn, the right to higher education from the point of view of the natural-legal concept was studied by such scholars as B. Kistyakovsky, O. Melnychuk, I. Nikitina, M. Korkunov. Unfortunately, in spite of theoretical and practical significance, the understanding of the right to higher education as natural human rights has not yet been investigated by any scientist.

Goal. The purpose of the article is to study the understanding of the human right to higher education as a natural law and to identify the features that determine its naturalness.

Presenting main material. As theoretician of law S. Alekseev pointed out, the central point of the natural-legal idea is the distinction between natural and positive law. It is assumed that the right created by people and expressed in laws, judicial decisions or other sources (positive law), there is a natural law – a set of requirements for its starting point directly without any direct human involvement generated by the natural life of society, “nature” of human existence, objective conditions of life, the natural course of things [2, p. 346]. In our opinion, the right to higher education is noted in these characteristics. To understand the right to higher education, it is necessary to understand the essence of natural rights as a legal category. O. Frytsky defines natural rights and human freedoms as those granted to the person from birth, but not by a state which, depending on the degree of democracy, can consolidate these rights in the Basic Law or not. The Constitution of Ukraine in Article 3 recognizes and guarantees, above all, the very natural human rights [12, p. 181].

In legal science, natural law is defined as a category, which means a set of principles, rights and values arising from the very nature of man and is independent of legislative recognition or non-recognition in a particular state [10, p. 19]. Ac-

ording to O. Goffe, natural human rights are characterized by two main features: impartiality and inalienability. Impartiality means that rights belong to a person as a person, regardless of the institution of the state. Inalienability of natural rights means the inability of a person to transfer (in whole or in part) the powers that it entrusts to other subjects because, in the absence of these rights, a person will be deprived of the opportunity to exist fully [3, p. 33].

We agree with opinion of M. Koziubra that “the level of security of law depends on the degree of perfection of the personality, life and health, honor and dignity, integrity and security”. “Human Dimension”, after all, is a touchstone and reference point of any transformations that are carried out in society” [5, p. 30].

According to R. Stefanchuk, if natural law “will be recognized only at the moral level without its further legal objectification, it will be another declarative right, which, due to lack of guarantees of its realization and protection, can not be fully ensured by the force of state coercion” [11, p. 128]. Y. Shemshuchenko warned that for the modern legal understanding interest is not a natural right, but only its moral and humanistic aspect. By embodying ethical postulates and moral imperatives in the cloth of positive law, one can reach his “opryrodnennya” more, so to speak, “humanity” of the law. But it is a natural right, no matter how humanistic it is, can not replace the positive law as a means of compulsory regulation of social relations [14, p. 41].

The rights and freedoms of man and citizen pass the successive stages of development: from proclaiming the right as a natural to its positive consolidation, and from the formal, declarative consolidation of law in the law to the real embodiment of life, then the right becomes a fact of social reality. The right to higher education is one of the most important human and civil rights, which should be seen not only on the basis of declared and fixed rules Ukrainian legislation, but also on the basis of provided guarantees of law and its practical implementation in institutions of higher education in Ukraine.

Ukraine, as a developing country, is in a crisis situation, there is no other way out of the crisis, how to modernize the education system, in the first place making the right to higher education affordable and high-quality. It is also necessary to reform higher education on the concept of innovation, to prepare not only knowledgeable graduates, but also innovative specialists who can develop throughout their lives.

Based on the analysis of scientific literature in the field of the theory of law, we can distinguish the following characteristics of the naturalness of the right to higher education, in which the statements are also proved by an expert survey of law scholars (candidates and doctors of jurisprudence) and the applicants of higher education, which makes it possible to form an opinion on the doctrinal approach to understanding the naturalness of the right to higher education and the desirable right to higher education by the subjects of its implementation:

- belongs to a person from birth (experts – 40%, students – 56%);
- must be free of charge (experts – 42%, students – 72%);
- should be publicly available to everyone (experts – 30%, students – 61%);
- mass (to be acquired by the majority of the population of the corresponding age; experts – 49%, students – 73%);
- basic for understanding and realization of the entire complex of human rights (experts – 29%, students – 56%);
- the goal – the development and formation of a high-grade personality (experts – 62%, students – 65%);
- inalienable from a person can not be lost (experts – 70%, students – 77%);
- inalienable, it is not possible to refuse or transfer to someone else (experts – 59%, students – 47%);
- does not depend on the will of the state, but only recognized, guaranteed, provided by the state (experts – 65%, students – 65%).

The study shows that most students believe that their right to higher education is natural and should be secured by the state, like all other fundamental human rights.

I. Nikitina points out that like other natural rights, the right to education, including higher education, arises from the very nature of man and inherent in him as a condition of existence in society, as a certain social air. The right to higher education gives an individual the opportunity to free self-development, to realize his potential, and thus allows him to take a place in the social environment [8, p. 20]. What is more, M. Korkunov wrote that by its nature (by virtue of natural law), one can study infinitely [6, p. 120]. Therefore, considering the right to higher education in the context of the right to development, it is necessary to consider it the most natural right at the present stage of development of the state and society of knowledge.

Although proclaimed in the Universal Declaration of Human Rights (1948), the goal of education is to orientate and strive for the full development of the human person, but at present, the development of an information society, the formation of economies and societies based on knowledge, education should be understood as the maximum development of human potential, aimed at achieving personal competitiveness of an individual, in which higher education is fundamental and determinative.

Of course, the written (positive) right of different states may not respond to the natural right to higher education, since, created by the state, not always meets the needs of society and the goals of development and functioning as an individual. However, it should be pointed out that every democratic law-governed state should make every possible effort to co-exist with developed, full-fledged individuals, provided with all opportunities for the full lives of individuals, which, in our opinion, can only exist if the natural law of higher education is recognized as a constituent at the state level of the right to development.

The essence of the right to higher education is manifested in the fact that this is an opportunity for an individual, which is inherent in nature and is inalienable, showing an initiative in its development, gaining skills and knowledge in institutions of higher education, embodying their ideas and skills in life leading to raise the level of development of society and form a society of knowledge.

The right to higher education is considered by us in the relationship of 2 elements – the person needs in the development and acquisition of skills for a successful life on the one hand and the needs of society and the state in the presence of the vast majority of highly skilled professionals to ensure sustainable development of the state on the other side.

The right to higher education is an opportunity for an individual, which lies in his nature and is inalienable, showing an initiative in its development, obtaining skills, skills and knowledge at institutes or universities, embodying their ideas

and skills in life, which leads to an increase in level of development of society and forms a knowledge society.

We point out four foundations for the right to higher education as a fundamental right to life in society:

1. Based on the function of higher education in support of democracy, peace and the saving of civic culture.
2. Necessary condition for individual dignity of the personality – by implanting the necessary skills and abilities for reasoned analysis, providing decent life in society.
3. A prerequisite for individual development – higher education provides opportunities for people to realize their potential.
4. Individual perspective of well-being, given that in the current society, persons without higher education have no opportunities to fight to meet their basic needs.

We consider the right to higher education in terms of its purpose as dual law, the development interpreting of higher education proposed by K. Shufner that adequately reflects the functional nature of areas as higher education really be viewed in two ways: as a public good (the common good) and personal goodness (a means to enhance the personal and social competitiveness of a person) [13].

The necessity of ensuring the right to higher education for everyone is also demonstrated by the study of the dependence of the level of citizens' wealth, depending on the level of education received. Although in Ukraine many people with higher education do not work in higher educational institutions, but they are still more competitive in the labor market, less likely to lose their jobs, more likely to find new ones quickly. These and other benefits of higher education are described in detail in the Collective Study "Education Pays 2010: The Benefits of Higher Education for Individual and Society" (New York, 2010) [16].

Taking into account that in the course of his life the average person changes his work 5–7 times, which is usually accompanied by professional retraining, and the amount of professional information doubles every 2–3 years, higher education should not only ensure the professional level of the person, but should also establish the ability to self-education and self-development [7, p. 233]. On this basis, the right to higher education in Ukraine should be extended.

The goal of realizing the human right to higher education is the formation of a full-fledged free personality and its preparation for life in society through the systematic transfer of knowledge and professional orientations, moral and ethical and legal standards, experience and the formation of human skills. The stated goal is the only one for all participants in the relationship related to the implementation of human rights in higher education – an individual, state and society represented by commercial and non-profit organizations. Educational relations are realized by their subjects jointly, on the basis of the principle of "complicity", and the interests of subjects of educational relations are united by one direction, complement each other and should not have a hierarchy.

The Voronkov's vision, which indicates that in a globalized world, higher education comply modern social functions, becomes an economic factor for the constant development of Ukrainian society. For the global world, the characteristics are: processes of migration of people, cultures, destruction of cultural patterns, traditional values, loss of identity of the people, growth of ethnic tension between ethnic groups. And the force that can overcome these contradictions and bring people to sympathy, smoothing cultural values, should become education itself as a factor of social cohesion. The task of higher education is to prepare a person for work in new organizational structures and spread of information technology, which will change the organization of work, and the goal is to develop skills in team work; education is seen as a way of solving the problems of unemployment, and education, together with self-education, is a means of self-fulfillment of the individual. One of the most important issue is the provision of equal

opportunities for getting higher education by different social groups. In today's conditions, is growing demand for higher education; a positive trend is the massivization of higher education: the number of students in the world from 13 million in 1960 increased to 82 million in 2000, and in 2025 may exceed 100 million [9, p. 73].

The most important goals of higher education are: effective employment of young people; providing the needs of the economy with the necessary specialists; education of nationally conscious individuals with an orientation towards the construction of civil society in Ukraine; opportunities for realization on the basis of the right to higher education of other socio-economic, cultural and personal rights of a person and a citizen; development of the state's competitiveness and the construction of a constitutional state; the effectiveness of the national economy in the international stage.

Article 3 of the Constitution of Ukraine states that "human rights and freedoms and their guarantees determine the content and direction of the state's activities, and the state is responsible to a person for their activities. The assertion and guarantee of human rights and freedoms are the main duty of the state" [1]. Therefore, the Ukrainian state should ensure the right of a person to higher education and help to realize the needs of the person we have listed, since only then one can ensure a decent life and development. This was based on the views of the great scientist-lawyer B. Kistyakivsky who showed that in the

state of the future, human rights for positive services should be supplemented by new types of subjective public rights, including the right of everyone to work, the development of all their abilities and the use of their work in the field that best suits the talents of the person, as well as the right to participate in all the material and spiritual goods created by modern culture. Let's emphasize that B. Kistyakovsky, reflecting on the right of everyone to full development of his abilities, made the following rectification: "<...> t. b. the right to obtain that education, which corresponds to the level of knowledge that was reached, and the desire and ability of everyone" [4, p. 543].

Conclusion. The right to higher education is the main basic for building a "prosperous" society, because higher education provides the opportunity to develop, improve the personality, expand the range of scientific and spiritual knowledge; to define, justify and investigate their point of view, principles, thoughts; make an idea system of existence and its correctness; gives an opportunity for active communication, taking experience in useful for society people. Therefore, this right to higher education must be understood as fundamental, universal, but this will only be achieved through awareness of the person, society and state of the importance and usefulness of higher education. Only if the society perceives the needs for knowledge, the formation of abilities, habits, personal qualities as values, there is the ability to provide this good legal nature.

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