

## NON-DISCRIMINATION AND EQUALITY OF STUDENTS IN EDUCATION

© This module is published by the EduLaw project (573540-EPP-1-2016-1-BE-EPPKA2-CBHE-JP) funded by the European Commission. It is a module in a series examining the role of education law in the modernisation of education systems in Europe. Information for the modules are gathered from the education systems of the Flemish Community of Belgium, Lithuania, Poland, Russia, Belarus, Albania.

Please cite this publication as: BSPU EduLaw team, Module on Non-discrimination and equality of students in education, EduLaw project output, Republic of Belarus.



Veranika Radyhina



Iryna Turchanka



Inna Karakulka



Siarhei Zenchanka

### TABLE OF CONTENTS

#### GLOSSARY

#### INTRODUCTION

CHAPTER 1 Legal point of view on definition and difference between non-discrimination and education

#### SOURCES

CHAPTER 2 Cases of judicial review and prevention of discrimination of students in educational sphere

#### SOURCES

CHAPTER 3 Grounds that can be defined as discrimination in European educational practice through the prism of law

#### SOURCES

<b>Glossary</b>	
<b>Equality before the law, equality</b>	the most important principle of democracy, according to which all citizens are equal before the law regardless of their race, nationality, sex, sexual orientation, place of residence, position in society, religious and political convictions.
<b>Discrimination</b>	on the basis of race, color, ethnicity, origin, sex, pregnancy, maternity, civil, family status or status of carer; language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition to diseases, or combination of any of these bases, or based on characteristics associated with any of these bases.
<b>Principle of non-discrimination</b>	universally recognized norm of international law, which means prohibiting the difference in the legal status of people (their possession of an unequal amount of human rights and freedoms) if this difference: a) is based on natural or social characteristics of people - gender, race, religion, etc., which do not affect using of a particular right, b) is aimed to contravene legal equality, which is understood as equal opportunity to implement the same amount of human rights and freedoms and being guaranteed by the state.
<b>Equal opportunities</b>	the principle of non-discrimination, which emphasizes that opportunities for education, employment, promotion, benefits, allocation of resources and other areas should be freely available to all citizens regardless of their age, race, gender, religion, political association, ethnicity origin or any other individual or group characteristics that are not influencing on his abilities, productivity and qualifications.
<b>Case law</b>	a legal system in which the judicial precedent is recognized as the main source of law; the decision made in any case is mandatory for all courts of equal and lower instance while considering similar cases.

## **Introduction**

The written manual "Non-discrimination and equality of students in education" examines the legislation in the field of non-discrimination in education.

Discrimination has a negative impact on the socio-psychological climate of the school. Due to discrimination, teachers are not always able to preserve their workplace and children are deprived of the opportunity to fully implement their right to education. Labor, gender, religious and other stereotypes about teachers and children are often being recognized as a cause of their discrimination in school. Real or perceived sexual orientation features in mental and/or physical development are used to be a foundation of many cases of discrimination. School management, teachers, parents do not always know how to prevent discrimination and to react to its cases.

The manual provides an overview of international and national legislation on non-discrimination in education and the current precedents for responding to its cases in European countries.

The manual is intended for managers and employees (teachers, psychologists, social worker, etc.) of basic education schools, students of psychological and pedagogical majors.

## **Chapter 1 Legal point of view on definition and difference between non-discrimination and education**

The priority direction of the state is to ensure the most important human rights including the right to education.

The Universal Declaration of Human Rights of December 10, 1948, in Article 26, proclaims the principle of non-discrimination and the right of every person to education: "education must be directed towards the full development of the human person and towards increasing respect for human rights and fundamental freedoms".

The United Nations Convention against Discrimination in Education (adopted on 14.12.1960), in article 1 defined discrimination: "discrimination" is "any distinction, exclusion, restriction or preference based on race, color, sex, language, religion, political or other opinion, national or social origin, economic situation or birth which has the purpose or effect of destroying or disrupting the equality of relations in the field of education, and in particular: closing for any person or group of persons up to the formation of any stage or type; restriction of education for a person or a group of people with a lower level of education; the creation or preservation of separate educational systems or educational institutions for any person or group of persons ... or a position incompatible with the dignity of the person to which any person or group of persons is put. "

The principle of non-discrimination is one of the main principles that underlies the state right to grant to its citizens and other subjects of national law from another state general conditions equal to those granted by that other state in relation to all other states. This right does not apply to the provision of eligible, special, preferential, more favorable conditions this is the difference between the content of the principle of non-discrimination and the principle of the most favored nation. The principle of non-discrimination means the obligation not to worsen for other countries its conditions for all countries, and the most-favored-nation treatment obliges the partner country to grant preferential terms that are or can be introduced for third countries. According to the principle of non-discrimination, the state is obliged not to allow any differences that would create conditions for some other states, as well as for their persons and organizations that are worse than those common to all other states.

Ensuring non-discrimination is the basis for building inclusive societies that have overcome differences based on gender, race, ethnicity, religion, language, citizenship.

The contractual obligations in the sphere of education of the Republic of Belarus are diverse. These obligations include universal, regional and local obligations. Obligations in this area also have different characteristics depending

on the level of education, which can be preschool, school, secondary special, technical, higher, etc.

*Universal contractual obligations.* In Art. 13-14 of the International Covenant on Economic, Social and Cultural Rights of 1966 set out general provisions on the right of everyone to education, access to education. In this document the concepts of "accessibility for all" and "equal accessibility" are used, but not fully described. In General Recommendation No. 13, the Committee says that States parties are obliged to ensure that education is consistent with the goals and objectives defined in Cl. 13 and are interpreted in the light of the World Declaration on Education for All (Jolioten, Thailand, 1990), the Convention on the Rights of the Child, the Vienna Declaration and Program of Action and the Plan of Action for the United Nations Decade for Human Rights Education. It also outlines the main criteria that characterizes the right to education: its identity, accessibility, acceptability, adaptability. Accessibility in this case is formed in the presence of factors of non-discrimination, physical and economic accessibility. The Committee interprets the content of paragraph 2 of art. 2 and art. 3 in the light of the UNESCO Convention against Discrimination in Education and Related Provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the 1989 ILO Convention on Indigenous and Tribal Peoples, leading tribal life in independent countries (Convention No. 169). The said pact does not specify which category of rights are rights, meanwhile they are different in terms of the legal content of the group. In modern doctrine, the right to education is interpreted not only as social law, but also cultural law, and a different set of rights: socio-cultural law, socio-economic law [5], socio-cultural and economic law.

The Convention against Discrimination in Education, 1960 (hereinafter - Convention 1960), entered into force for the Republic of Belarus (BSSR) on March 12, 1963. According to clause "e" of art. 3 of the said Convention, the participating States undertake to "provide 248 foreign citizens living on their territory the same access to education as to their citizens". The Convention of 1960 does not describe the concept of "living" in the territory from the point of view of the presence / absence of legal grounds for residence and period of residence (permanent or temporary).

In this Convention, the word "education" refers to all types and levels of education and includes access to education, the level and quality of education, as well as the conditions in which it is provided.

The scope of "access to education" concept is determined on the basis of a systemic interpretation of the 1960 Convention as a whole. So, in the first part of Art. 3 the goal that should be achieved by fulfilling the obligation of equal access is formulated: the elimination and prevention of discrimination in education. Paragraph 1 of Art. 1 of the 1960 Convention extends the concept of

discrimination in the widest possible way and "covers every distinction, exclusion, restriction or preference on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, economic situation or birth, which has the purpose or effect of destroying or disrupting the equality of relations in the field of education". It is also interesting to see the content of paragraph 2 of Art. 1 of this Convention: "the word "education" refers to all types and levels of education and includes access to education, the level and quality of education, as well as the conditions in which it is conducted." In addition, item b of Art. 3 provides for the obligation of States to take measures, including legislative measures, aimed at eliminating all discrimination when enrolling in educational institutions.

It should be noted that, for example, the 1989 Convention on the Rights of the Child (entered into force for the Republic of Belarus (for example, the Convention on the Rights of the Child) BSSR) on October 31, 1990), in accordance with paragraph 1 of Art. 28 of which the participating States recognize the rights of the child to education, operates with the wording designating the obligation to take measures for the progressive realization of obligations: "... with a view to gradually achieving the realization of this right on the basis of equal opportunities, they, in particular:

- a) implement free and compulsory primary education;
- b) encourage the development of various forms of secondary education, both basic and professional, ensure its accessibility for all children and take such necessary measures as implementation of free education and the provision of financial assistance if necessary;
- c) ensure the accessibility of higher education for all on the basis of the abilities of each through all the necessary means;

The provisions of the 1998 Agreement do not apply to admission to educational institutions of state bodies of defense, internal affairs, security, border and customs services (Article 2) .249

- d) ensure the availability of information and materials in the field of education and vocational training for all children;
- e) take actions to facilitate visiting schools and to reduce the number of students who left school. "

Such an indication is not accidental, on the contrary, it is quite traditional for the international legal system for the human rights protection. The two International Covenants - on civil and political rights and economic, social and cultural rights - contain two different types of requirements for the implementation of their provisions: "the obligation to ensure results" and "the duty to take action". Despite the indivisibility and interconnectedness of rights, the difference in the wording and, correspondingly, the content of obligations was indicated in the covenants adopted in 1966, and it is still preserved.

The substantive difference in the wording is this: in the first case, it is not only about recognizing and respecting rights, but also the specific immediate duty to organize and ensure their implementation / compliance, and if they are violated, effective remedies. The second concept implies gradual implementation: there arises the duty of certain preparatory work (the adoption of measures at the legislative level, for example) aimed at further securing recognized rights.

This feature regarding economic and social rights is explained by the need to invest in their implementation. The concept of progressive realization of rights within the framework of the International Covenant on Economic, Social and Cultural Rights recognizes that the resources of states are limited the task of states is to use them effectively and effectively. It should be noted, however, that, as stated in the Vienna Declaration of 1993, "although development promotes the enjoyment of all human rights, the lack of development cannot be invoked to justify the infringement of internationally recognized human rights" (paragraph 10). In this context, it should be emphasized that individual guarantees, especially protection against discrimination, including with respect to the right to education, operate in the mode of immediate result.

*Multilateral regional treaties within the CIS, EurAsEC.* In the regional context, the emphasis in access to education is on ensuring uniform approaches to all persons residing in the territory of the participating States. The Agreement on Cooperation in the Field of Education of May 15, 1992 (hereinafter referred to as the 1992 Agreement) came into force in accordance with Art. 13 from the moment of signing for the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan, Turkmenistan, the Republic of Uzbekistan, Ukraine.

In the first part of Art. 1 of the 1992 Agreement, it should be noted that the first sentence in the regulation of the norm contains the so-called norms-principles and indicates the obligation of observance and guarantees by the states of the principles of equality ("equal rights to education") and non-discrimination ("its availability regardless of national belonging or other differences").

The Agreement on Cooperation to Form a Common (Common) Educational Space of the Commonwealth of Independent States of January 17, 1997 (hereinafter referred to as the 1997 Agreement) entered into force for the Republic of Armenia (20.12.1999 with a reservation), the Republic of Belarus (21.04.2000), the Republic of Kazakhstan (December 20, 1999), the Kyrgyz Republic (06.12.2001), the Republic of Moldova (on July 24, 2002 with a reservation), the Russian Federation (19.06.2001), Republic of Tajikistan (20.12.1999). Azerbaijan signed the 1997 Agreement, but failed to comply with domestic procedures.

The basic normative legal acts regulating the right to education in the Republic of Belarus are the Constitution of the Republic of Belarus (Article 49),

which guarantees "accessibility and free – of general secondary and vocational education" and the accessibility of special and higher education, Abilities and competitive basic income. The Constitution of the Republic of Belarus defines the right to education as a universal human value. The legal mechanism for the realization of the right to secure education is developed in the Code of the Republic of Belarus on Education. The Code provides for the existence and functioning of various levels of basic education in the Republic of Belarus (from pre-school to post-graduate), as well as additional education for children and youth, additional education for adults, special education, for which persons of various ages, knowledge, health status. Article 3 of the Education Code provides for state guarantees, among which not only the proclamation of such a right, but also measures to ensure it (organizational, financial, socio-economic) [10].

In Belarus, the same non-discriminatory regime in matters of the right to education is extended to citizens of the Republic of Belarus, all foreign citizens and stateless persons permanently residing in the Republic of Belarus (Part 5, Article 3 of the Code of the Republic of Belarus on Education of January 13, 2011 No. 243 -3, part 1, article 14 of the Law of the Republic of Belarus "On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" of January 4, 2010 No. 105-3). The Education Code extends the national regime also to foreign citizens and stateless persons of Belarusian nationality permanently residing in the territory of foreign states, as well as foreigners having refugee status in the Republic of Belarus [10]. In addition, citizens of the Russian Federation, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan have equal rights with citizens of the Republic of Belarus regardless of their place of permanent residence in accordance with clause 3 of the Rules for admission to higher education institutions approved by the Decree of the President of the Republic of Belarus of February 7, 2006 No. 80. The 1997 Agreement establishes equal rights to receive education for the citizens of the participating States, for which they will create the necessary legal basis and undertake appropriate organizational measures.

Subsequently, the CIS member states concluded a number of agreements in the field of education aimed at establishing equal rights for citizens on special issues and containing similar regimes as mentioned above. Thus, in the Agreement on providing citizens of the Commonwealth of Independent States with access to basic education institutions on terms provided to citizens of these states, as well as on the social protection of students and pedagogical workers of basic education institutions, on April 16, 2004, reference was also made to the 1992 Agreement, and the 1998 Agreement, as well as the above formulations, which point to the provision of a national regime (Article 1).

Education workers recognize the need to develop in each person a tolerant, non-discriminatory attitude and create an educational environment in which the value of diversity is recognized and its advantages are used, rather than ignoring

or isolating it. In this process, those who work with children or young people, as well as children and young people themselves, should realize whether they themselves discriminate against others, or understand when discrimination is carried out by other people. For example, human rights training activities can help participants develop awareness and empathy, on the one hand, and acquire the skills of resistance and perseverance, on the other hand, so that people can avoid, prevent or combat discrimination.

## Sources

1. Implementation of the Convention and Recommendation against Discrimination in the Region: Results of the Eighth Consultation with Member States (2011-2013): UNESCO: Paris, 2013 / [Electronic resource]. URL: <http://unesdoc.unesco.org/images/0022/002221/222100r.pdf> (date of access: July 20, 2017).
2. General Comment No. 13 (Twenty-first session, 1999): The right to education (art. 13) / Human Rights Library [Electronic resource]. URL: <http://hrlibrary.ngo.ru/russian/gencomm/Rescgencom13.html> (date of access: July 13, 2017).
3. Status of the Convention against Discrimination in Education / UNTC [Electronic resource]. URL: <http://treaties.un.org/pages/showDetails.aspx?objid=0800000280134150> (date of access: 20/09/2014).
4. Convention against Discrimination in Education / UN [Electronic resource]. URL: [http://www.un.org/en/documents/decl\\_conv/conventions/educat.shtml](http://www.un.org/en/documents/decl_conv/conventions/educat.shtml) (date of access: June 20, 2017).
5. Vienna Declaration and Program of Action: adopted by the World Conference on Human Rights on 25 June 1993 in Vienna [Electronic resource]. URL: <http://un.by/documents/humrights/viennaprogram> (date of access: June 21, 2017).
6. The Code of the Republic of Belarus on Education: the Code of the Republic of Belarus, January 13 2011, No. 243-3 // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / LLC "YurSpektr". Minsk, 2014.
7. On granting refugee status to foreign citizens and stateless persons, additional and temporary protection in the Republic of Belarus: Law of the Republic of Kazakhstan. Belarus from 23.06.2008 № 354-3 (as of 04/01/2014) // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / LLC "YurSpektr". Minsk, 2014.
8. The Universal Declaration of Human Rights: [http://www.un.org/en/documents/decl\\_conv/declarations/declhr.shtml](http://www.un.org/en/documents/decl_conv/declarations/declhr.shtml) (date of access: 10.08.2017)

## **Chapter 2 Cases of judicial review and prevention of discrimination of students in educational sphere**

The problem of ensuring equality and non-discrimination for students and pedagogical workers has not been adequately reflected in the Belarusian jurisprudence sources which are available to the authors. However, there was an European experience in this direction that was collected. It's proved by cases collected by the European Court of Human Rights in its database.

There is a case among such cases that "refers to certain aspects of the laws on the use of languages in the education system of Belgium". The essence of this case was in a thing that basing just on the place of residence of parents, the provisions of the Belgian law prevented the access of some children to French-language schools located in the six communes around Brussels and having their own status. Thereby the right of these children to education was violated due to its discriminatory nature. Speaking both on behalf of himself and on behalf of his underage children (totaling more than 800 people) from June 1962 to January 1964, the applicants (all the French-speaking) reproached the Belgian government for:

- nothing is done for education in French in the communes of their residence or, if something is done, then it's done in an inadequate manner;
- deprives in their communes of subsidies educational institutions that do not bring their activities in line with the provisions on the language of school legislation;
- refuses to officially give certificates and diplomas issued by these institutions;
- prevents access to classes with teaching in French, which exist in some places;
- obliges parents to choose between placing children in local schools with Dutch language teaching and sending them to those areas of Brussels where teaching can be provided in French.

In forming their claims, the applicants appealed to the European Convention for the Protection of Human Rights. Taking into account the existence of a formal system of basic education in the member states of the Council of Europe at the time of the opening of the Protocol for signature, the established "right to education" obligated them to guarantee to persons within their jurisdiction the right to use the means of education that were available at that time. In the opinion of the Court, the first sentence of Art. 2 of Protocol 1 of the ECHR guarantees the right of access to existing educational institutions, as well as the right to receive, in accordance with the rules in force in each of the states, the official recognition of the completed training course. On the contrary, the European Convention on Human Rights does not impose any definite obligations on the amount of the training facilities provided, organization or subsidization of

these institutions. In particular, nothing is said about the language in which the right to education should be ensured. In addition, the Court rejected the claim about interference in private and family life. Having ascertained that some inequality in rights was aimed at rectifying the actual inequality.

However, the Grand Chamber noted that Article 7.3 of the Belgian Education Act of 2 August 1963 violated the right to education of some children. Based on the place of residence of the parents, it prevented their access to schools where the education was provided in French in six communes in the vicinity of Brussels, and which had their own status.

Another case is "The case of D.H. and other applicants against the Czech Republic". Its essence was that 18 Czech citizens of Gypsy origin complained that as a result of their placement in "special schools" they had become victims on the basis of race or national origin in violation of the principles of Article 14 of the Convention and with Article 2 of Protocol No. 1 (the right to education) because they were subjected to less favorable treatment than other children in similar conditions without any reasonable or objective justification. The Court, finding the application admissible, ruled that there were no violations of the requirements of Article 14 of the Convention. However, the Grand Chamber, having taken the case to the proceedings at the request of the applicants and having examined the submission of several international profile organizations, did not agree with this decision by majority of votes, recognizing the violation by the Czech authorities of the specified norms of the Conventions. The Court noted that while the authorities of the Czech Republic, like some other states, face serious objective difficulties in providing gypsy origin children equal opportunities for education and their integration into society, placing children of a certain ethnic origin in special schools providing a lower level of education in comparison with ordinary schools, represents discrimination.

Another case illustrating discrimination in the educational sphere is the case "Timishev vs. Russia". Based on the fact that the applicant was unable to provide a certificate of the forced migrant in Chechnya, his children were prevented from attending lessons in Nalchik, which they had visited the previous two years. As early as January 1999, the applicant was forced to pass a certificate in exchange for receiving cash compensation for real estate, which he lost in Chechnya. The headmaster agreed to allow the children to attend classes, warning Mr. Timishev that as soon as the education department finds out that there is no necessary document, his children will have to suspend schooling. The applicant complained that his children were not allowed to go to school. He was refused in satisfaction,.

The content of the court decision was: the applicant noted that article 14 of the Convention and article 2 of the First Protocol to it had been violated, as a result of which his children were not admitted to school. Concerning the applicant's complaint of a violation of Article 2 of the First Protocol to the

Convention, the Court drew attention to the fact that the applicant's children were not allowed to attend school after two years of being taught there. The government did not deny the fact that the real reason for the situation described was the applicant's inability to provide the certificate of the migrant, which gave him an official status in the territory of Kabardino-Balkaria and which he lost as a result of receiving compensation for the lost property. In addition, the authorities confirmed that children could not be deprived of access to education on the basis of the lost registration of their parents' place of residence. The applicant's children were unlawfully deprived of the right to education. Therefore, the Court decided that there had been a violation of Article 2 of the First Protocol to the Convention [3].

Thus, the analysis of specific cases of discrimination by the European Court of Human Rights in the field of education shows that it is aimed at implementing the principle of expanding the right to education for all at the national level, obliging individual states to make their educational systems more inclusive, in particular by providing access to education in all levels without discrimination, especially with regard to the most vulnerable population. Thus, the implementation of the norms of international law in national legislation ensures the right of all individuals to non-discrimination in the educational process, taking into account their individual characteristics.

## Sources

1. CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" (Applications nos: 1472/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64) / HUDOC – European Court of Human Rights // Mode of access: [http://hudoc.echr.coe.int/eng#{"fulltext":\["1677/62"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-57524"\]}](http://hudoc.echr.coe.int/eng#{). – Date of access: 18.06.2017.
2. CASE OF D.H. AND OTHERS v. THE CZECH REPUBLIC (Application no. 57325/00) / HUDOC – European Court of Human Rights // [http://hudoc.echr.coe.int/eng#{"fulltext":\["57325/00"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng#{). – Date of access: 19.06.2017.
3. CASE OF TIMISHEV v. RUSSIA (Applications nos. 55762/00 and 55974/00) / HUDOC – European Court of Human Rights // Mode of access: [http://hudoc.echr.coe.int/eng#{"fulltext":\["55762/00;55974"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-71627"\]}](http://hudoc.echr.coe.int/eng#{) – Date of access: 20.06.2017.

### **Chapter 3 Grounds that can be defined as discrimination in European educational practice through the prism of law**

General approaches to discrimination and its prevention in the field of education were elaborated by the General Conference of the United Nations in terms of education, science and culture. After, these approaches were reflected in the Convention against Discrimination. Discrimination was declared as a type of violation of the rights of children and, therefore, an object of the struggle of the world community.

In the Convention against Discrimination in Education, the expression "discrimination" covers every distinction, exclusion, preference based on race, color, sex, language, religion, political or other opinion, national or social origin, economic situation or birth that has the purpose or effect of destroying or disrupting the equality of relations in the field of education. In particular, the closure for any person or group of people of access to education of any degree or type; restriction of education for a person or a group of people with a lower level of education; creation or preservation of separate educational systems or educational institutions for any person or group of people; a position incompatible with the dignity of the person in whom the person or group of people is put [1, P. 712-713].

There are several regulations in Article 2 of the Convention which are not considered as discrimination:

a) the creation or preservation of separate educational systems or educational institutions for students of different sex in those cases when these systems or institutions provide equal access to education when their teaching staff have equal qualifications, when they have premises and equipment of equal quality and when they allow studying by the same programs;

b) the creation and preservation, by religious or linguistic nature, of various educational systems or educational institutions that are appropriate for the choice of parents or legal guardians of students, in cases where the inclusion in these systems or income to these institutions is voluntary and if the education they give corresponds to the norms, prescribed or approved by the competent educational authorities, in particular with respect to the formation of the same level;

c) the creation or retention of private educational institutions in cases where their purpose is not to exclude any group of the population but only to supplement the educational opportunities provided by the state, provided that their activities meet the above goal and that the education they give corresponds to the norms prescribed or approved by competent ornaments of education, in particular with respect to the norms of education of the same level [1, C. 713-714].

This Convention has become the basis for the implementation of the practice of anti-discrimination legislation in the national legislation of many European countries. An example of the implementation of anti-discrimination laws in pre-university education is the case against the director of Vau Deje school and Shkoder regional department of education. The Commissioner for Protection against Discrimination has conducted an administrative investigation process for the director of the Vau Deje School and the Shkoder Regional Education Department with an aim: Implementing anti-discrimination practices for a student with special needs who was expelled from school because the necessary conditions for fulfilling his needs were not created.

The results of the administrative investigation showed that:

1. The principal did not ensure the creation of conditions for the teacher's disability assistant, as provided for by the current legislation.

2. Shkoder Regional Education Department did not take any administrative measures to complete the training with school teachers assistants who were supposed to create conditions for students with special needs.

3. Regional Education Department, despite the knowledge of the case, did not act to avoid discriminatory actions against the student.

4. The Regional Education Department did not set up a multidisciplinary regional commission to address the needs for the education of disabled people and followed their implementation in accordance with the Ministry of Education Decree No. 343 of August 19, 2013.

5. The Vau Deje school's principal did not react to the decision to establish a school commission to study the cases of students with special needs.

6. The Vau Deje school's principal did not create a special curriculum for students with disabilities.

The Commissioner for Protection against Discrimination came to the conclusion that the above findings lead to violation of Law No. 10221 of 04.02.2010 "Protection against Discrimination". The Commissioner came to the conclusion that the found violations are serious, since they are related to the needs for equal opportunities for the education of students with disabilities who should not be discriminated because of his / her health conditions.

As a result, the Commissioner made the following decisions:

1. By accepting an individual complaint and clarifying the case of egregious discrimination in accordance with the law, encourage the Shkoder Regional Education Department to create a multi-disciplinary commission and appoint a teacher's assistant for the applicant.

2. The order for the Vau Deje school to accept the student at the school and offer him a special educational program.

3. To bring the activity of the Shkoder Regional Education Department [2] in line with the anti-discriminatory legislation.

There is another example of discrimination based on the characteristics of psychophysical development in the educational process of the Republic of Belarus, which is described in the following case. One of the schools in Minsk has organized the training of children with special needs. There are normally developed children and children with intellectual insufficiency. A boy Eugene has been in the regular class for 5 years. He has peculiarities in behavior and certain difficulties in learning educational material. He is inattentive, hyperactive, experiencing difficulties in communication. He needs special training conditions - a slower pace, a small number of children in the class, correctional and psychological support. In May he graduated from the 5th grade of primary school and now moves to secondary school. Principal, teacher and psychologist during a conversation with the parents noted that they do not have the conditions for teaching this child and suggested parents to find another school.

Thus, teachers of the school and the principle admitted their incompetence in solving this issue - in organizing an inclusive educational process that takes into account the individual needs of the child.

The case has not reached the point of trial and at the moment parents are transferring the child to a school in which an educational environment allows to take into account the individual capabilities of each child has been created. However, it should be noted that the Constitution of the Republic of Belarus, the Code of the Republic of Belarus on Education defines the equal rights of children to receive education. In accordance with the Concept of the development of inclusive education of children with special needs, an inclusive educational environment can be created for each child in each school.

An example of a lawsuit against a Moscow university accused of discrimination against citizens of the CIS countries was the case of the recognition of local legislative acts as discrimination. Thus, the plaintiff pointed out that when the contract was concluded and the cost of training was established in it, the defendant violated the norms of the law, which proclaim that higher education should be equally accessible to all. The plaintiff asserted that the local normative acts on the basis of which he was enrolled were discriminatory and the tuition fee established by the university rector for foreign students from the CIS countries violated the norms of the law declaring that higher education should be equally accessible to all. At the same time, the court refused to satisfy the claims, since the plaintiff was unable to provide evidence that he was given an access to education on different terms than for Russian citizens. The plaintiff voluntarily concluded a contract for the provision of training services in the basic educational program of higher professional education, agreeing with its terms and conditions of the cost of education. For this reason, the court refused to satisfy claims for recovery of unjust enrichment, interest for using other people's money, compensation for moral harm. The plaintiff lodged an appeal with the Moscow City Court, in which he indicated that the MSAL leadership issued an order "On

Establishing the Cost of studying in the Academic Year," which establishes the cost of training for students who are citizens of the CIS member states who enter the first course, and for one who continue education for any course; the defendant concluded with the plaintiff V. Stadnichuk, a citizen of \*\*\*\*, an agreement on the provision of educational services (for foreign citizens) No. \*\*\*\* under the program of higher professional education in the field of training (specialty) \*\*\* "\*\*\*\*\*" , in \*\*\*\* form of training, in which in paragraph 4.1. established the cost of training in the current academic year in the amount of \*\*\*\* euros. In the \*\*\*, \*\*\*\* and \*\*\*\* academic years, the respondent issued orders from \*\*\*\* № \*\*\*, from \*\*\*\* № \*\*\* and from \*\*\*. № \*\*\* on the establishment of the cost of education in the relevant school years \*\*\*, while for the plaintiff the cost of training remained unchanged and amounted to a significantly larger amount compared to the cost of training established for citizens of the Russian Federation. The plaintiff also pointed out that when the contract was concluded and the cost of training was established in it, the defendant violated Art. 26 of the "Universal Declaration of Human Rights" of December 10, 1948, declaring that higher education should be equally accessible to all, paragraph 3 of Art. 43 of the Constitution of the Russian Federation establishing the equality of rights of foreign citizens and citizens of the Russian Federation, as well as Article 3 (e) of the "Convention against Discrimination in Education" of December 14, 1960, obliging foreign citizens residing in their territory to equal access to education compared to citizens of States that have acceded to the Convention.

In the trial court of the first instance, the plaintiff S. appeared, supported the requirements in full.

The representative of the defendant - Ch. Appeared in court, did not recognize the claim, presented and supported written objections.

The court ruled on the above decision, on which the plaintiff S. is asking for the reasons given in the appeal, referring to the fact that the court's findings are illegal and unjustified.

The court board, having studied the case materials, after hearing the materials of the case, after listening to the plaintiff S., the representative of the respondent of the Moscow State Law University named after O. Kutafin (MGUA) - K., discussing the arguments of the appeal and objections to it, believes the decision of the court of first instance on the present case is subject to abandonment on the following grounds.

In accordance with Art. 43 of the Constitution of the Russian Federation stipulates that everyone has the right to education. Everyone has the right, on a competitive basis, to receive a free education at a state or municipal educational institution and at the enterprise.

Art. 99 of the Federal Law of December 29, 2012 "On Education in the Russian Federation" established that the regulatory costs for the provision of

state or municipal services in the field of education are determined for each level of education in accordance with federal state educational standards, for each type and direction (profile ) educational programs, taking into account the forms of training, federal state requirements (if any), the type of educational organization, the network form of the implementation of educational programs, educational technologies, special conditions for the education of students with disabilities, provision of additional vocational education for pedagogical workers, provision of safe conditions for education and upbringing, protection of the health of students, and taking into account other features of the organization and implementation of educational activities stipulated by the Federal Law (for various categories of students), with the exception of educational activities carried out in the In accordance with the educational standards, per one student, unless otherwise specified by this article.

At the same time, the normative expenses for rendering state or municipal services in the sphere of education include the costs for the payment of the work of pedagogical workers, taking into account the provision of the average salary of pedagogical workers for the educational (teaching) work performed by them and other work determined in accordance with decisions The President of the Russian Federation, the Government of the Russian Federation, public authorities of the subjects of the Russian Federation, and local self-government bodies.

By virtue of part 1 of Article 28 of the Federal Law of December 29, 2012, 273-FZ "On Education in the Russian Federation", the educational organization has autonomy, which means independence in the implementation of educational, scientific, administrative, financial and economic activities, development and adoption of local regulatory acts in accordance with this Federal Law, other regulatory legal acts of the Russian Federation and the charter of the educational organization.

By virtue of paragraph 1 of Art. 30 of the said Federal Law, the educational organization accepts local normative acts containing the norms regulating educational relations (hereinafter - local normative acts) within its competence in accordance with the legislation of the Russian Federation in the manner established by its charter.

On the basis of paragraph 2 of Art. 30 of the said Federal Law, the educational organization accepts local normative acts on the basic issues of the organization and implementation of educational activities, including the rules governing the admission of students, the students regimen, the forms, the periodicity and order of the current control of the students' progress and intermediate certification, the procedure and grounds for the transfer, deductions and rehabilitation of students, the procedure for registration of the emergence, suspension and termination of relations between the educational organizing and studying and (or) parents (legal representatives) juvenile students.

In accordance with Art. 46 of the RF Law No. 3266-1 of 10.07.1992 "On Education", which was in effect at the time of legal relations between the parties, a non-state educational institution has the right to collect fees from students for educational services, including for training within the limits of federal state educational standards or federal state requirements. The relationship between the non-state educational institution and the student is regulated by the agreement determining the level of education, the terms of training, the amount of tuition fees, guarantees and responsibilities of the educational institution, and other conditions.

In accordance with GES, educational institutions independently develop and approve the basic educational program of the bachelor's degree, which includes the study of cycles: humanitarian, social and economic cycles; information and legal cycle; professional cycle; and sections: training and production practice; final state attestation.

The envisaged art. 29 of the Federal Law "On Higher and Post-Graduate Professional Education", the provision on the right of a higher educational institution to independently resolve issues on concluding contracts, defining obligations and other conditions that do not contradict the legislation of the Russian Federation, suggests that the terms of the contract concluded between the consumer and the provider of educational services should not contradict the legislation of the Russian Federation, in particular the Law of the Russian Federation "On Protection of Consumer Rights".

When the case was examined by the court, the above provisions of the Law were applied correctly.

During the consideration of the case, the court found that the year between S. and the State Educational Institution of Higher Professional Education "Moscow State Law Academy named after O. Kutafin" was contracted to provide training services for the basic educational program of higher professional education.

In accordance with clause 1.1 of the agreement, the Academy provides training services in the program of higher professional education in the field of training (specialty) \*\*\* \*\* in accordance with the federal state educational standard in \*\*\*\* form of education in the \*\*\*\* Institute .

According to the terms of the agreement, the academy undertakes to enroll S. to the last of students in the Academy after successfully passing the entrance examinations in accordance with the rules for admission to the Academy and the provision of payment documents. Subject to the successful mastering of the basic educational program and the passing of the state certification, with full payment, a diploma on higher professional education of the state sample is given with the assignment of the degree (qualification) of the bachelor in the direction of preparation \*\*\* \*\*, and the customer undertakes to pay for training.

The training period corresponds to the terms established by the curriculum.

According to the materials of the case, the orders of the rector of the Moscow State Aviation Administration have established tuition fees for students - citizens of CIS member states who are enrolled on a fee basis, enrolled for 1 course and are enrolled to continue their studies for any course during the specified periods.

Since there was no basis for the materials of the case to believe that when the parties concluded a contract on the provision of paid educational services and the cost of training, the defendant violated the rights of the plaintiff, and evidence that the plaintiff was granted access to education on different terms than for citizens of the Russian Federation, the court of first instance lawfully came to the conclusion that the claimed requirements for recognizing the above-mentioned orders of the rector of the MSLA were rejected as discriminatory. Since in accordance with Art. Art. 420, 421 of the Civil Code of the Russian Federation S. voluntarily concluded a contract for the provision of training services for the basic educational program of higher professional education, agreeing with its terms and conditions of the cost of training, the court of first instance reasonably refused to satisfy claims for recovery of unjust enrichment, interest for the use of other people's money, compensation for moral harm [3].

Thus, discrimination, any exceptions, restrictions or preferences based on race, color, sex, language, religion, political or other opinion, national or social origin, economic status or birth are the grounds for discrimination. General approaches to discrimination were developed by the UN General Conference on Education, Science, Culture under the Convention against Discrimination. Priorities in education were declared inadmissibility of discrimination and the proclamation of the right of every person to education and equal access to it. It was noted that, based on the diversity of education systems adopted in individual countries, they should not only eliminate all discrimination in education, but also promote universal equality of opportunity in this field. The modern case law of individual states in the field of preventing discrimination in education is based on the above-mentioned Convention.

## **Sources**

1. Shkatulla, V.I. The educational law of Russia: a textbook for high schools / V.I. The casket. - Moscow: Justicinfom, 2015. - 774 p.
2. Decision of the Commissioner for Protection from Discrimination regarding the implementation of the Law No.10221 dated 04.02.2010 "On Protection from Discrimination" against the Director of Vau Deje School and the Regional Directorate of Education in Shkoder // 2015 Commissioner's Decision on Protection from Discrimination / Mode of access: [https://www.parlament.al/wp-content/uploads/2016/03/Raport-Vjetor-2015\\_KMD.pdf](https://www.parlament.al/wp-content/uploads/2016/03/Raport-Vjetor-2015_KMD.pdf). – Date of access: 27.07.2017.

3. 3. Appeal of 26 November 2015 in case No. 33-44446 // Federal Center for Educational Legislation - Access mode: [http://www.lexed.ru/praktika/sudebnayapraktika/baza/detail.php?ELEMENT\\_ID=5862](http://www.lexed.ru/praktika/sudebnayapraktika/baza/detail.php?ELEMENT_ID=5862). - Date of access: 07/27/2017.