

FREEDOM OF TEACHING: FROM INSTITUTIONALIZATION TO ASSURANCE

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ABSTRACT

The article presents the constitutional approaches of federal, unitary and CIS countries to the formulation of guarantees for the freedom of teaching. Based on the analysis of declared country constitution texts it was concluded that the majority of the constituent acts of modern states recorded the freedom of teaching and its guarantee in various forms. The features of foreign constitutional and legal norm records are shown concerning the securing of teaching freedom.

Key Words: freedom of teaching, academic freedoms, guarantees, education, constitution.

ÖĞRETİM ÖZGÜRLÜĞÜ: KURUMSALLEŞME'N GÜVENCESİ İÇİN

ÖZ

Makale, federal, üniter ve BDT ülkelerinin öğretim özgürlüğü güvencelerinin formülasyonuna anayasal yaklaşımlarını sunuyor. Bildirilen ülke anayasası metinlerinin analizine dayanarak, modern devletlerin kurucu eylemlerinin çoğunluğunun öğretim özgürlüğü ve onun garantisini çeşitli biçimlerde kaydettiği sonucuna varılmıştır. Öğrenme özgürlüğünün güvence altına alınmasına ilişkin yabancı anayasal ve yasal norm kayıtlarının özellikleri gösterilmiştir.

Anahtar Kelimeler: öğretim özgürlüğü, akademik özgürlükler, teminatlar, eğitim, anayasa.

INTRODUCTION

The modern period was marked by an increased interest to the study of the issues associated with individual freedom priority recognition (Hampshire, 1975; Mill, 1909) and the legal protection of an individual (Robertson and Merrills, 1993). At that the problems associated with the freedom of teaching remain the main ones. (Smirnova, 2000)

The freedom of teaching for an individual is a necessary prerequisite of his honor and dignity provision inherent to a free person; social conditions necessary to meet the urgent spiritual needs. The role of constitutionally enshrined freedom of teaching for a state and society is expressed in the fact that its implementation ensures the implementation of the declared essential characteristics of a state as a democratic and a legal one (Zajcev, 2014). For this reason, the focus of scientific analysis was represented by three groups of state constitutions to determine their rules that perpetuate the guaranteeing of teaching freedom: federal, unitary and CIS countries (Kajgorodceva, 2006).

METHODS

The article used a variety of general scientific methods and techniques of logical knowledge: analysis and synthesis, abstraction, systematic and formal-logical approach. The use of content analysis, formal legal and comparative legal methods promoted the achievement of the stated purpose.

DISCUSSION AND RESULTS

In the first of the separated groups of states the sought constitutional norms were not reflected in Argentina, Belgium, Canada, India, UAE, the USA.

Other analyzed constitutional provisions in the group of federal states were heterogeneous in terms of its content. With this in mind, they can be divided conditionally into the following varieties.

A limited status kind of wording means the absence of a typical constitutional structure pointing to the freedom of teaching. However, constitutions provide the manifestations of teaching freedom in connection with the acquisition of various statuses.

Thus, let's provide the Austrian Constitution as an example (Art. 23b). Its meaning is associated with the fact that during the entry into the European Parliament the teachers of higher educational institutions are able to continue their research, teaching and admission exams.

Let's emphasize that the constitution does not have a common structure of teaching freedom, but there is its kind concerning the acquired status of the European Parliament member.

In the Constitution of the Mexican United States the considered manifestation is associated with the status of a private tutor (art. 24). In this state individuals can spread education of all types and levels. However, in the field of primary, secondary and teacher education (as well as in the educations of all kinds and levels for workers and peasants) a private teacher must obtain a special permission of state power preliminary in each individual case. Such a permission may be refused, and this authorization may be revoked by the decision that is not subject to a court appeal or to any other manner.

The next type of formulations selected by us according to a claimed subject is a complete-ensured one. It indicates the presence of not only the design concerning general guarantee of freedom of teaching, but also its other varieties in constitutions.

Thus, in Art. 168 of the United States Constitution of Brazil the following is recorded: "The law on education is based on the following principles ... YII The freedom of teaching is guaranteed". Thus, in this legal act the freedom of teaching is positioned as a guarantee through the principles. We believe this is an original version of the guaranteed freedom of teaching essence statement, but, in our opinion, this does not reduce the semantic meaning of the constitutional establishment.

The articles 96 and 185 of the same constitution determine the possibility of combining the individual status with the freedom of teaching. In the first case it concerns judges, and in the second case it concerns all public posts.

From all constitutions of federal states analyzed by us the most progressive ones are the required standards in Germany. Firstly, the part 3 of the art. 5 determined that the teaching is free. Secondly, the same part stipulates that the freedom of teaching requires the compliance with Constitution. Thus, a limit to this freedom is set. It seems that such a "limit" as the constitution itself during the implementation of freedom "makes" the last one clearer and more structured.

Moreover, developing this provision, the Art. 18 of the German Constitution defines the reasons of freedom of teachings restrictions: whoever uses the teaching of freedom to fight against the basics of free democratic order, is deprived of this freedom. Deprivation of such and the amount of this deprivation is defined by the Federal Constitutional Court.

The part 3, art. 7 of the considered constitution seems to be interesting. It fixes the inability of a teacher to teach religion against his will, although religion is a compulsory subject in public schools, with the exception of non-confessional schools.

Let's note that this setting determines the further guarantees of teaching concerning teacher opportunities to teach religion.

Then let's note that the constitutions of unitary states which are more as compared to federal ones, the formulations of sought freedoms of teaching are met more often and more variably. In addition to the stand-alone formulae versions with a limited status and complete ensured, there are also exceptionally ensured here.

Let's start with the latter, and point out that we associate these only with the presence of freedom of teaching formulation or its combination with the term, coupled with assurance in meaning.

For example, the Constitution of Spain strengthened the teaching of freedom in Art. 20 using the verb "recognized" and "protected".

Substantially the statement of the part 1 art. IX of the Constitution of Hungary is similar one. But it uses only one verb "to protect".

The art. 72 of the Polish Constitution provides the freedom of teaching for everyone.

The Constitution of Italy (art. 33) and Lithuania (art. 42) uses a simplified formulation of "free teaching".

Let's pay attention to the limited-status statements. Those are contained in the constitutions of Portugal and Romania.

The following is typical for this species in part 3 art. 216 of the Constitution of Portugal "Guarantees and incompatibility of posts": the judges performing their duties, may not simultaneously perform any other functions in public or private organizations, except for the teaching and research work in the field of jurisprudence without a reward, according to law. So not only the freedom of teaching in relation to the status of a judge is specified here, but at the same time this freedom is limited only by the scope of legal education. Such a determination can not be detected in other constituent acts of states.

The Romanian constitution, namely the part 2, article 124 of it determined that judge functions are incompatible with any other public or private function, except for teaching functions at universities. Similar provisions are contained in Part 2 of the article 131 with respect to a public prosecutor status and in art. 142 in relation to the function of a Constitutional Court judge. (<http://worldconstitutions.ru/>)

A complete-ensured species is represented by the Constitution of Greece. The statement of its art. 16 has a similarity with the part 3 art. 5 of the German Constitution. Thus, the part 1, art. 16 determined that teaching is free. It also indicates the state obligation to promote and spread the freedom of teaching (i.e., we can regard it by as a specific guaranteeing).

This part of the article also sets the limit for an academic freedom of teaching - the Constitution debt of subordination (similar to the German constitution - loyalty to the constitution).

The art. 56 of the considered founding act recorded the possibility of combining the status of Parliament senator candidate or Parliament senator with the freedom of teaching.

Let's note that in many unitary states the wordings associated directly or indirectly with the freedom of teaching (e.g., Albania, Denmark, the Chinese People's Republic, France, Sweden, Estonia, and others) are absent.

We discovered the original establishments, relating to the freedom of teaching in other analyzed constituent acts.

Thus, in Art. 2 of the Constitution of Malta they noted that the religious teaching of the Roman Catholic Apostolic Faith shall be taught in all public schools as the part of compulsory education. We believe it is a kind of freedom manifestation concerning the teaching of religious doctrines in a public school that is the part of common freedom.

In respect of religion the Art. 16 of the Constitution of Norway defines the powers of a King to monitor that the teachers of official religion adhere to the established rules. From this it is evident that teaching has determined rules, and also the control of the head of the state concerning the compliance with these rules.

The article 23 of the Netherlands Constitution also looks as interesting. This article postulates the freedom of education, but only if there is control by the public authorities concerning "... the competence and moral character of teachers". Thus, the freedom of teaching is dependent here on the control activities of a state according to teacher criteria of competence and moral character.

Another focus group of our research are the CIS countries. The comparative legal experience with these states is mediated by chronological frameworks of a unified USSR development, the presence of a common history as well as by comparable time of sovereign development.

The performed analysis showed that there are exclusively ensured and limited-status species of freedom of teaching record. The constituent Acts of Armenia, Tajikistan and Uzbekistan did not reveal the required standards at all.

Kyrgyzstan and Belarus are referred to the exclusive-ensured variation in this group of countries.

The Art. 51 of the Constitution of Belarus states that the freedom of teaching is guaranteed.

Using the verb "to guarantee" the freedom of teaching is also defined in Art. 49 of the Constitution of Kyrgyzstan.

In this case the group of limited-status species is a numerous one. The most diverse in it are the wordings of the Republic of Kazakhstan Constitution:

- Part 3 of Art. 52 determines the compatibility of the status of a Parliament senator with teaching activity;
- Art. 68 determined the compatibility the Government member status with teaching activity;
- Part 4 of the Art. 71 determined the compatibility of a chairman post and the members of the Constitutional Council with teaching activity;
- Part 4 of the Art. 79 determined compatibility of a judge post with teaching activities.

The statements of the Constitution of Ukraine are the variable ones in this group. The Art. 120 specifies the compatibility of the Cabinet of Ministers of Ukraine member, the head of the central and local executive bodies with teaching activity.

The Art. 127 is similar by sense, but it is applied for professional judges.

The Constitution of Moldova should be noted here. Its formulations repeat the norms of the Constitution of Romania relate to the possibility of a judge (art. 116), a public prosecutor (art. 125), a Constitutional Court judge (Art. 139) post combination with teaching activity.

The most concise in the declared group is the norm of the Art. 103 of the Constitution, and it is addressed only to the status of judges.

As the part of this work and also in the order of a comparative legal study, we believe it is advisable to pay attention to the comparison of Russian and foreign experience concerning the reflection of freedom of teaching in conjunction with other rights and freedoms.

The freedom of teaching in Russia is declared by the same norm with freedom of literary, artistic, scientific, technical and other forms of creativity (Part 1, Art. 44). The Art. 49 of the Constitution of Kyrgyzstan, part 1 article 20 of the Spanish Constitution; the art. 51 of the Constitution of Belarus, part 1 article 16 of the Constitution of Greece (with the exception of literary creation); part 1 article 70/G of the Constitution of Hungary (except for literal and technical creativity) are identical according to the catalogue of freedoms listed in the same norm.

The Art. 33 of the Italian Constitution specifies only art and science.

In addition to art and science Part 3 of the Art. 5 of the Federal Republic of Germany Constitution introduces the term "research". There are the same statements of the Art. 42 of the Republic of Lithuania Constitution.

The freedom of teaching is enshrined together with the freedom of artistic creation and scientific research from the claimed variety in the Art. 73 of the Polish Constitution.

CONCLUSIONS

Let's represent the revealed features of foreign constitutional and legal experience concerning the consolidation of norms guaranteeing freedom of teaching as a summary of the carried out research:

- The states are separated in a federal group.

A limited status kind of formulation (means the absence of a typical construction in a constitution, pointing to the freedom of teaching). However, the constitutions contain the manifestations of freedom of teaching in regard with the acquisition of various statuses (Article 23b of the Constitution of Austria, article 24 of the Constitution of the United Mexican States, the considered manifestation is associated with the status of a private teacher);

Complete-ensured (indicates the presence of not only a general guarantee of freedom of teaching structure in constitutions, but also its additional varieties (Article 96, 168 and 185 of the Constitution of the United States of Brazil, p. 3, Art. 5, p. 3 art. 7, art. 18 of the German Constitution));

- The Constitutions of unitary states, which are more numerous regarding federal ones, have the wordings of sought guarantees concerning the freedom of teaching more often and more variably. In addition to the stand-alone versions of the wordings with a limited status (Part 3, Article 216 of the Portuguese Constitution, Part 2, Article 124, Part 2, Article 131, Article 142 of the Constitution of Romania) and complete-ensured (Part 1, Article 16, Art. 56 of the Constitution of Greece) there are also exceptionally-ensured.

The latter are associated only with the presence of formulation of freedom of teaching or its combination with the term, coupled in meaning to the guaranteeing (Art. 20 of the Spanish Constitution, ch. 1, art. IX of Hungarian Constitution, Art. 72 of the Constitution of Poland, Art. 33 of the Italian Constitution, Article 42 of the Constitution of Lithuania).

The constitutions of the CIS countries revealed exceptionally ensured variations (Art. 51 of the Constitution of Belarus, Art. 49 of the Constitution of Kyrgyzstan) and limited-status variations (ch. 3, art. 52, p. 68, ch. 4, art. 71, ch. 4, Art. 79 of the Republic of Kazakhstan Constitution, Article 120 and 127 of the Constitution of Ukraine, the articles 116, 125 139 of the Constitution of Moldova, the art. 103 of the Constitution of Turkmenistan).

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