

RIGHT TO EDUCATION IN UKRAINE

2015–2019 reforms and following steps

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Abstract

This article primarily focuses on a constitutional review of the current Ukrainian Education system. It has a strong historical approach starting from the collapse of the Soviet Union. The authors analyse the reform attempts occurred in the most recent decade in a critical way and show how and why has the attitude of the governments changed in the mid 2010s and how the Ukrainian education entered the war in 2022.

Keywords: Ukraine, right to education, fundamental rights, legislation, reforms.

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1. Constitutional challenges¹

The Constitution of Ukraine as an independent state was adopted in 1996². Article 3 declares that “to affirm and ensure human rights and freedoms is the main duty of the state.” This provision concerns the right to education, of course.

The content of the right to education is disclosed in Article 53. The right to education, in general, is guaranteed. The article separates different education levels: preschool, complete general secondary, vocational, and higher (tertiary) education. The article additionally anticipates extra-curricula, post-diploma education and different forms of instruction.

Different levels have different extents of guarantees and public support. The state guarantees accessibility and free of charge for all listed above levels of education in public establishments (educational institutions) and their development. The state will only ensure the development of additional forms of education.

However, completing general secondary education is compulsory. It should be mentioned that primary education is not considered a separate level according to post-soviet traditions, so right now general secondary education has three stages: primary, lower-secondary and higher-secondary education.

This provision was interpreted up to 2017 as a state obligation to issue a document to everyone who attended school during 11 years (four years of primary school, four years of lower-secondary and three years of higher-secondary). Such interpretation demotivated students to achieve higher levels of learning outcomes except those who were going to enter university. Finally, this led to a decline in the quality of secondary education.

According to the Constitutional Court decision³

- *“availability of education as a constitutional guarantee of implementation the right to education based on the principles of equality defined in article 24 of the constitution of Ukraine, means that no one can be denied the right to education, and the state must create opportunities to exercise this right”*;
- *“free of charge education as a constitutional guarantee of implementation the right to education means the possibility of obtaining an education in public and Communal educational institutions without paying a fee in any form for educational services of the level and content defined by legislation, volume and within the limits of those types of education, which are provided free of charge, part three of article 53 of the constitution of Ukraine”*.

¹ This paper was a keynote presentation on the hybrid Scientific Expert Seminar titled the Education Law for the Future organised by European Association for Education Law and Policy and Ereky Public Law Research Center, PPKE JÁK, Budapest on 11th October 2022.

² Verkhovna RADA (1996): *Constitution of Ukraine*.1996.
<https://rm.coe.int/constitution-of-ukraine/168071f58b>

³ Constitutional Court of Ukraine (2004). Case no. 1-4/2004, March 4, 2004, N 5-pn/2004.

Therefore, pre-school education, general secondary education and vocational education should be ensured in public institutions without any additional payments.

Higher education in public institutions should also be free of charge, but only for those who won this right on a competitive basis.

Finally, this article anticipates special rights to education for persons who belong to national minorities. Concerning their native languages, there are two options: (1) the right to receive instructions in their native language and (2) to study their native language in state and communal educational establishments and through national cultural societies.

Talking about the right to education systematically, one must remember other constitutional provisions.

The first concerns the scope of human rights (Art. 24). These provisions anticipate that:

- *“human and citizen rights and freedoms affirmed by this constitution shall not be exhaustive”*;
- *“the content and scope of the existing rights and freedoms shall not be diminished by the adoption of new laws or by introducing amendments to the effective laws”*.

The second provision anticipates equality of different forms of ownership (Art. 31, para 4). As it follows from the cited constitutional court decision, the court did not consider this issue. Nevertheless, many in Ukraine tried to interpret this decision as a ban on paying for education in private institutions from any public (national or local) budget.

The third important constitutional provision obligates that education fundamentals should be regulated exclusively by the law (Art.92, para 1).

The constitutional provisions caused discussions regarding some principle provisions:

- 1) Compulsory of the general secondary education;
- 2) Freedom of school choice;
- 3) Free of charge education, especially concerning textbooks, equipment, etc.;
- 4) Scope of rights of private educational institutions and paid education in public universities.

The problems mentioned above should be regulated by law.

2. Educational Legislation – a Historical Review

2.1. First period: 1991–2013

The basic law of Ukraine on education acting in independent Ukraine up to 2017 was passed in May 1991, three months before the declaration of independence of Ukraine. The law was based on the constitution of the Ukrainian Soviet Socialist Republic. At that time, this law was rather advanced and innovative for that period,

and it was important to form education in the newly independent state, stimulating the movement toward independence.

Education policy is anticipated to be determined by the Ukrainian parliament (Verkhovna Rada). The right to education was guaranteed for every citizen of Ukraine. Another law should regulate education for foreigners.

The law declared important principles such as (i) the priority of universal spiritual values over political and class interests; (ii) organic connection with national history, culture, and traditions; (iii) Independence of the state education system from political parties, and other public and religious organizations.

The law allowed the formation of private (non-public) educational institutions. But religious organizations were not allowed to found such institutions. Regarding the duration of primary and secondary education, the law demanded that children must study at school at least up to 15 years of age.

The law played an important role in forming the new democratic educational system. Many private schools and universities were founded. There were attempts to find private schools affiliated with religious organizations. This experience was not successful because of the resistance of some churches and their influence on the government.

During 1991–2017 the law was amended more than 40 times. Religious organizations were allowed to found educational institutions only in 2015.

Special laws on pre-school education, general secondary education, vocational education, and higher education were passed near 2000.

In the process of adoption of special laws, the law on education was also amended. For example, the law on general secondary education (1999) introduced three levels of general secondary education: primary (four years), lower or basic secondary (five years) and higher secondary (three years) education. Therefore, the duration of secondary education should be 12 years as a result of the full implementation of the law. In 2010, after the presidential election, when V. Yanukovich was elected, and D. Tabachnyk was appointed to the position of the Ministry of Education and Science of Ukraine, the duration of secondary education was shortened to 11 years again. This decision was in line with the general pro-Russian policy of V. Yanukovich.

Nevertheless, an extremely important reform in education which ensured the right to higher education, was implemented in 2007–2009. External independent assessment (EIA, so-called ZNO) of secondary school graduates was introduced as an essential tool to arrange fair access to higher education. Important decisions were adopted by the cabinet of ministries of Ukraine in 2004–2005. That was an interesting experience when significant reform was conducted without amendment of laws. The reform was in danger of cancellation up to 2014 because of the weak legal

basis⁴. Strong public support and research show that the EIA university entrance exam produces better students than traditional university “entrance” exams⁵.

Nevertheless, the key problems of constitutional provisions implementation mentioned at the end of the previous section were not resolved.

2.2. The reforms of 2014–2019

Revolution of dignity 2013–2014 activated efforts on European integration of Ukraine against the pro-Russian policy of the former government. Human rights and the right to education were also at the heart of this process.

Educational reform started in 2014 when a new law on higher education was adopted. The academic community envisaged the development of this law in 2013 as a move against the Yanukovich government to draft a law on higher education to return the higher education system to soviet principles to comply with Russian higher education policy.

The new ideas of the “Law on Higher Education” were continued in development in the basic “Law on Education”, adopted in 2017. Finally, new special law on general secondary education was passed in 2019. Vocational education is the only level where the new special law harmonized with the basic law on education is not yet adopted.

The right to education was clarified as the right to qualitative education became the key focus of reform.

Let us mention again that the Constitution of Ukraine was adopted based on post-socialist experience. In the Soviet Union, education was considered as a tool for the formation of a “new person”. Charles Glenn begins his report with the following statement: “a fundamental role of all communist regimes (...) has been to create a new type of humanity that would be incapable of less than full devotion to the party and leadership” and continues “schools were expected to give consistent attention to shaping the values and attitudes of their pupils: to teach Marxism-Leninism and to combat any signs of rival beliefs”.⁶

Of course, only state-owned and governed by communist party educational institutions could accomplish these tasks. However, propaganda presented it as a free and fully accessible education. This explains why the idea of free public education funded by the state was so popular among citizens and left-oriented political parties speculated a lot on it and dominated educational policy.

⁴ Viktor YANUKOVYCH election program, <https://www.cvk.gov.ua/pls/vp2010/WP0095eaf.html> (in Ukrainian).

⁵ За редакцією В. В. Ковтунця – С. А. Ракова: Дослідження якості конкурсного відбору студентів вищих навчальних закладів за результатами зовнішнього незалежного оцінювання: аналітичні матеріали. Київ, Нора-Друк, 2015. [V. V. KOVTUNETS and S. A. RAKOV (ed.): Study of the quality of competitive selection of students of higher educational institutions according to the results of independent external assessment: analytical materials.]

⁶ Charles L. GLENN: *Educational freedom in Eastern Europe*. Washington D.C., CATO Institute, 1995. 1–2.

So, introducing private educational institutions was a key item for reforming the post-communist system. Although this step, in general, was done in 1991, private education failed. The reason was that the two types of educational institutions functioned under different economic rules. Private ones were acting according to market legislation without any support from the government side. Moreover, public ones were completely maintained at the expense of public budgets.

Therefore, the main challenge in securing the right to education complained about educational freedom was to secure free of charge (funded by public budgets) education access guaranteed by the constitution instead of guarantees for such education in public institutions.

The most crucial step was done in secondary education. First of all, the law allowed funding secondary education in private schools.

*“The state funds obtained by a person of the general secondary education at the private or corporate institution of education which has a license to perform educational activities in the area of general secondary education, from the state and local budgets, by means of transferring dedicated funds in the amount of the financial standard (with due consideration to correcting coefficients) of the fiscal provision of one pupil obtaining complete general secondary education, and according to the procedure established by the cabinet of ministers of Ukraine”.*⁷

This provision is a little bit clarified by the special law. According to this law

*“financing from the state budget for obtaining a full general secondary education, including in an educational institution of private or corporate ownership, which has a license to carry out educational activities in the field of general secondary education, is carried out on the basis of the financial standard of budget expenditures per student (taking into account the relevant adjusting coefficients) in the order determined by the cabinet of ministers of Ukraine. The monetary standard of budgetary support per student is determined according to the formula approved by the cabinet of ministers of Ukraine”.*⁸

Secondly, schools founded by the religious organization were granted not only rights as other private schools, but they were granted *“the right to determine the religious orientation of their own educational activities”*.⁹

⁷ Law of Ukraine On Education, Art. 78, para 10.
https://mon.gov.ua/ua/npa/law-education#_Toc493603921

⁸ Law of Ukraine On Complete General Secondary Education, Art. 58, paragraph 2.
<https://zakon.rada.gov.ua/laws/show/463-20#Text> (in Ukrainian).

⁹ Law of Ukraine On Education, Art. 31, paragraph 2.

The second important decision concerned the mandatory status of complete general secondary education. As mentioned in the first chapter of this article, the constitution declares complete general secondary education as mandatory. This provision was interpreted for years as an obligation to issue a document on complete general secondary education to everyone who attended high school for two years. In particular, vocational education could start on the basis of lower secondary education. But students were required to graduate concurrently with a high school program before receiving a vocational education diploma. Now the law allows to get vocational education in appropriate study programs without complete secondary education¹⁰.

The third important legal provision concerns the right to access qualitative secondary education.

Schools are different, of course. The independent external assessment (EIA) disclosed in some sense the real quality of education in schools. Leaders among schools were determined as those whose graduates had better scores in EIA. Parents try to ensure that their children study in the best possible school. While leading schools' management organized a competition even for access to a primary school, families living near such schools often had no chance to send their children to the nearest school.

New laws anticipated that territories are attached to schools, and each school is obliged to take to the school those living in an attached territory. If there are free places, they can take students from other territories¹¹. This provision concerns only primary and lower secondary education and corresponding schools. Nevertheless, higher schools and specialized schools are free to select students independently.

In general, commented novelties ensured equal access to school in smart compromise with the freedom to choose a school. Another important conclusion is that the laws correctly interpreted constitutional provisions. The right to education is guaranteed by the state for secondary education in the aggregate without limitation to property type of schools. Just this is important to secure freedom of education.

Unfortunately, similar attempts in higher education failed. Nevertheless, the right to higher education and access to qualitative education was strongly secured by introducing new techniques for student selection. EIA scores are being used to conduct a competition for university entrants. New legislation secured the legal basis for EIA. This allowed to combat corruption in universities. However, also this allowed me to take the next step.

According to the law, the Gale-Shaply algorithm was applied to find the most desirable university for each entrant¹². This changed the allocation of public funds in universities because only applicants determined how many places should be funded

¹⁰ Law of Ukraine On Education, Art. 15, paragraph 2.

¹¹ Law of Ukraine On Complete General Secondary Education, Art. 8, paragraph 2.

¹² Law of Ukraine on Higher Education, Art. 44, para 9,
<https://zakon.rada.gov.ua/laws/show/1556-18#Text> (in Ukrainian)

by the state budget. In fact, the system “money follows students” was introduced as the first step in reforming the system of public funding of universities.¹³

There was significant progress in securing the right to education for persons with disabilities. Inclusive education was introduced as the principal approach to secure the right to education for persons with disabilities and to stipulate their socialization and employment as well.

These novelties were caused, first of all, by the strategic movement of the Ukrainian state into the international legal space in the area of inclusive policy in the interests of sustainable development. In particular, this movement is carried out in accordance with the priorities established by the provisions of such cornerstone UN documents as the Global Sustainable Development Goals 2016–2030 (approved in 2015 at the UN summit on Sustainable Development) and the medium-term strategy for 2014–2021 (37 C/4, Strategic Goals no. 4, 6).

Secondly, the implementation into Ukrainian legislation of the provisions of the cornerstone international un document “Convention on the Rights of Persons with Disabilities”, ratified by law of Ukraine no. 1767-VI dated 16.12.2009 is an important factor in this process of reforming legislation in a direction favourable to the creation of an inclusive educational environment.

Law of Ukraine on Education¹⁴ defines inclusive education as “*a system of educational services guaranteed by the state which is based on the principle of non-discrimination, human diversities, effective involvement and engagement of all participants of the educational process into this process*”, introduces inclusive educational environment as “*a totality of conditions, ways and means of their realization for co-education, upbringing and development of education seekers based on their needs and capabilities*”.

Article 6 of this Law, among the principles of state policy in the field of education and the principles of educational activity, introduces the following principles: (1) Ensuring equal access to education without discrimination on any grounds, including on the grounds of disability; (2) Development of an inclusive educational environment, including in institutions of education that are the most accessible and closest to the place of residence of persons with special educational needs; (3) Ensuring the universal design and reasonable adjustment.

Articles 19 (“Education of Persons with Special Educational Needs”) and 20 (“Inclusive Education”) are devoted to the special issues of education of persons with disabilities and the creation of an inclusive educational environment.

In addition to this, Article 25 includes the following obligation among the responsibilities of the founder of an educational institution: to ensure, in accordance with the law, the creation of a barrier-free environment in the educational institution for participants in the educational process in particular for persons with special educational needs.

¹³ Order for admission to higher education in 2022. It was approved by order of the Ministry of Education and Science of Ukraine, <https://zakon.rada.gov.ua/laws/show/z0487-22#Text> (in Ukrainian).

¹⁴ Law of Ukraine on Education, Art. 1, paragraph 1.

The law of Ukraine on Higher Education¹⁵ also, provisions to ensure the rights of persons with special educational needs to quality higher education. For example, it is determined that the formation and implementation of state policy in the field of higher education are ensured in particular by creating and ensuring equal conditions of access to higher education, including providing additional support in the educational process for persons with special educational needs, in particular psychological and pedagogical support, creating for their free access to the infrastructure of the institution of higher education.

In order for persons with special educational needs to exercise their right to higher education, institutions of higher education must create the necessary conditions for them to obtain high-quality higher education¹⁶. Positive discrimination of persons with disabilities is also recognized.

Article 33 of the Law on Higher Education also provides for the creation of a special educational and rehabilitation unit in a higher education institution, which is formed to organize an inclusive educational process and special education and rehabilitation support for applicants of higher education with special educational needs, providing them with access to high-quality higher education, taking into account limitations in life activities.

Article 62, among the rights of persons studying in institutions of higher education, also anticipated special education and rehabilitation support and free access to the institution of higher education infrastructure in accordance with medical and social indications in the presence of life restrictions caused by the state of health.

In 2015, the resolution of the Cabinet of Ministers of Ukraine dated 30 December 2015 no. 1187 “on the approval of the licensing conditions for conducting educational activities” was adopted. In this regulatory document in the field of education, for the first time, the rights of persons with disabilities are ensured by licensing issues and corresponding reporting to the licensing authorities – the Ministry of Education and Science of Ukraine and local self-government bodies, which creates additional control over the provision of the rights mentioned above to education in the laws of Ukraine, in particular, participants with reduced mobility educational process.

In particular, these conditions stipulate that the licensee must ensure the availability of educational facilities for persons with disabilities and other groups of the population with reduced mobility, in particular, unhindered access to the building, educational classes (groups) and other infrastructure in accordance with state building regulations, rules and standards, which must be documented and confirmed by a specialist in a technical inspection of buildings and structures, who has a qualification certificate, or by a relevant institution authorized to carry out the said inspections.

Inclusive education was implemented in secondary schools rather consistently. Each school is obliged to form so-called “inclusive” class if there is a student(s) with

¹⁵ Law of Ukraine on Higher Education, Art. 3, paragraph 3.

¹⁶ Law of Ukraine on Higher Education, Art. 4, paragraph 1.

disabilities¹⁷. The government expanded this procedure to vocational education¹⁸. Institutions having inclusive classes (groups in vocational schools) get extra funding and may hire additional personnel to assist teachers. Introducing inclusive classes (groups) does not exclude special classes (groups) for students with a high level of disability.

3. Conclusions and current problems

Government to implement new legislation developed important program *New Ukrainian School*¹⁹. This ambitious program forecasts deep reforming of secondary education in 2017–2029. The concept of reform was approved by a government decision in 2016²⁰. The current state of secondary education was reviewed by V. Kovtunets²¹. Society supports reform and the new government after the 2019 presidential and parliamentary elections and applies strong efforts in its implementation despite the obstacles caused by Covid–19 pandemic and the war between Ukraine and Russia since the 24th of February 2022.

Quality is a key problem of education. Last research of labour market needs for educational qualifications discovers some tendencies which may be interpreted as dissatisfaction of employers with the quality of secondary education²². Analysis was performed using data from the big data labour market intelligence²³ system. The system collects data on current job vacancies advertisement and classifies needs for qualification with ESCO²⁴ taxonomy.

As was found during 2020–2021, job vacancies advertisement demanded levels of formal education:

- Primary – about 20%;
- Secondary and vocational non-higher education – about 15%;
- Higher education (bachelor’s degree) – over 50%;
- Higher education (master’s degree) – nearly 9%.

¹⁷ Law of Ukraine On Complete General Secondary Education, Art. 12 , paragraph 9 .

¹⁸ Procedure for the organization of inclusive education in institutions of professional (vocational and technical) education. Resolution of July 10, 2019 No. 636.
<https://zakon.rada.gov.ua/laws/show/636-2019-%D0%BF#Text> (in Ukrainian)

¹⁹ See details on the program on <https://mon.gov.ua/eng/tag/nova-ukrainska-shkola> and <https://mon.gov.ua/storage/app/media/zagalna%20serednya/Book-ENG.pdf>

²⁰ <https://www.kmu.gov.ua/npas/249613934>

²¹ <https://tinyurl.com/9xtb2w76>

²² Ковтунець В. В. – Лондар С. Л. – Мельник С. В. – Кастель-Бранко Е.: Вимоги ринку праці України до освіченості працівників. “Освітня аналітика України”. 2021. № 4 (15). 15–19. [Volodymyr KOVTUNETS – Sergiy LONDAR – Sergii MELNYK – Eduarda CASTEL-BRANCO: Requirements of the Ukrainian labour market to the level of education of employees. Educational Analytics of Ukraine.] <https://doi.org/10.32987/2617-8532-2021-4-5-20>

²³ <https://tinyurl.hu/Ldgm>

²⁴ <https://esco.ec.europa.eu/select-language?destination=/node/1>

A high percentage of primary education corresponds to a share of the low-technological level of the industry. However, the high percentage of higher education looks strange, and the low percentage of secondary education language, digital, science, and soft skills that need to be acquired in high school do not satisfy employers.

Also, there is a disproportion between the need for master's degrees and law on higher education provision, which anticipates public funding of master programs for 50% of graduates of bachelor level.

The invalidity of the rule of law principle in education is another education problem (like other fields of public activity). Unfortunately, it is common practice when law provisions are not implemented by the government or implemented in a way that contradicts law. For example, the law on education obliged the government in 2017 to develop a draft law on the national qualification system in half a year. The law still needs to be drafted. However, such a system must create a bridge between education and the labour market to improve the quality of education.

Nevertheless, the reforms ensured education development in the right direction – to ensure fair access to quality education.

