

IRSTI 10.15.01  
UDC 342.41  
JEL K38

<https://doi.org/10.46914/2959-4197-2024-1-3-18-25>

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## **RESPECT FOR CONSTITUTIONAL PERSONAL RIGHTS AND FREEDOMS IN THE FIELD OF EDUCATION IN THE REPUBLIC OF KAZAKHSTAN**

### **Adstract**

Constitutional personal rights and freedoms of a person should determine the legislative wording and content of the personal rights and freedoms of teaching staff, as well as students and pupils in the field of educational activities. The shortcomings of the legislative consolidation of the personal rights and freedoms of teaching staff in the Law of the Republic of Kazakhstan «On Education» dictate the need to develop and adopt an appropriate regulatory legal act regulating their legal status in detail. The article is presented within the framework of the competition for grant funding for scientific and (or) scientific and technical projects for 2024–2026 (EOM RK) «IRN: AP23485634 Modern transformation of Kazakhstan's penitentiary system through the mechanism of public-private partnership».

**Key words:** Constitution, equality of rights and freedoms, human and civil rights, subjective rights, education, the rights of the child.

### **Introduction**

The Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the President of the Republic of Kazakhstan dated August 24, 2009, states that in the process of further approving the principles of the rule of law in the country, it is important, on the one hand, to seek the maximum possible guarantee of the exercise of constitutional human and civil rights and freedoms, and on the other – unconditional and exhaustive fulfillment of constitutional duties by all state bodies, officials, citizens and organizations.

To ensure human and civil rights and freedoms, it is important to create conditions that guarantee equality of rights and freedoms regardless of origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances, as required by our Constitution [1].

### **Materials and methods**

The Constitution of the Republic of Kazakhstan enshrines those rights and freedoms that are vital and most socially significant both for a particular person and for society as a whole, for the

establishment of a democratic, secular, legal and social state in our country, the highest values of which are a person, his life, rights and freedoms. Constitutional human rights and freedoms form a set of guiding ideas that form the foundation of the legal status of an individual, and are the main element of legal relations between a person and the state, giving rise to the duty of the state to protect and protect the rights and freedoms of every individual and citizen.

The concept of «human rights» in the legal dictionary characterizes the legal status of a person in relation to the state [2]. The concept of «human rights» is revealed in the theory of law as formally defined, legally guaranteed opportunities to enjoy social benefits, an official measure of possible human behavior in a state-organized society [3].

## Results and discussion

According to the definition of E.A. Lukasheva, human rights are «subjective rights that express not the potential, but the real capabilities of an individual, enshrined in constitutions and laws» [4, p. 94], which means the real ability of an individual to enjoy a certain benefit, to perform certain actions within the boundaries and in the manner specified in the law. A.S. Mordovets defines human rights as opportunities guaranteed by a democratic society for each individual and his communities to a decent standard of living, an effective social system of protection and protection from state arbitrariness in accordance with established international and national standards and procedures [5, p. 32].

There is, in fact, no fundamental difference between the concepts of “rights” and “freedoms”, although there is an opinion that only some of the rights, namely “those requiring particularly high personal initiative, individual discretion and self-activity in relation to others, are freedoms” [6, p. 22]. Consequently, the concept of “freedom” is associated with the powers of the individual, which outline the sphere of his independence, protect from interference in his inner world. This is freedom of conscience, religion, thought, speech, artistic, scientific, technical and other types of creativity, etc.

The Constitution of the Republic of Kazakhstan establishes the following groups of fundamental human and civil rights and freedoms:

- ♦ political rights related to participation in the management of society and the state (the right to freedom of association, the right to elect and be elected to state and local government bodies, etc.);
- ♦ economic, social and cultural rights (property rights, the right to the right to education, the right to creativity, etc.);
- ♦ personal rights and freedoms (the right to life, personal freedom, inviolability of private life, home, personal and family secrets, dignity, protection of one’s honor and dignity, the right to freedom of speech, freedom of conscience, etc.) [7].

Personal human rights are defined in the explanatory dictionary of the Russian language as rights expressing the individual characteristics of a person, his character and mental makeup [8]. Every person has personal rights from birth, and they are designed to guarantee his individual autonomy and freedom, to protect the individual from arbitrariness on the part of the authorities and other people. Unlike other human rights, where a person can act as an owner (economic rights), a politician (political rights), a participant in social and cultural life (social and cultural rights), personal rights embody the interests of a person as an individual, i.e. a person with unique and peculiar characteristics. These rights individualize a person, promote the best manifestation of spiritual interests and personal abilities. They guarantee the possibility of freely choosing different behaviors in the sphere of individual freedom.

Based on these circumstances, L.M. Abdullina suggests characterizing the constitutional personal rights and freedoms of a person “as natural, innate and inalienable capabilities of an individual, constituting an objective condition of his existence, enshrined in the constitution and guaranteed by the state in order to ensure individual freedom and human autonomy” [9, p. 22]. She classifies constitutional personal rights and freedoms into the following groups:

- ♦ rights ensuring the inviolability of the individual (the right to life and personal integrity (physical, mental);
- ♦ rights that ensure the moral value of the individual (the right to honor and dignity);
- ♦ the rights ensuring personal freedom (the right to privacy, freedom of conscience, freedom of movement, the right to use one’s native language).

The content of constitutional personal rights and freedoms is determined by the fact that they are designed to ensure such essential benefits as inviolability of life, honor and dignity, personal security, and inviolability of private and family life. Unlike other human rights (for example, political rights), personal rights are inherent not in a collective, but in an individual way of implementation.

All personal rights and freedoms of a person in a particular sphere of life, in particular, in the field of education, are derived from constitutional rights and freedoms, are established by the norms of other branches of law and are associated with the possession of a person of various statuses. “Constitutional personal rights should be considered as a core around which sectoral personal rights are grouped, specifying the relevant norms of the country’s constitution. Therefore, the system of personal rights has constitutional personal rights as its starting point and ends with them as a result of the formation of the legal status of personal freedom and individual security of a person. This vision of the system of personal rights is conditioned by the fundamental and universal nature of constitutional law” [10, p. 60].

The constitutional principle of respect for human rights and freedoms is enshrined in paragraph 1 of Article 3 of the Law of the Republic of Kazakhstan “On Education” as one of the basic principles of state policy in the field of education [11]. This Law defines the personal rights and freedoms that are the basis of the legal status of a teacher, as well as students and pupils in educational organizations. 47 of the Law includes students, undergraduates, undergraduates, adjuncts, cadets, trainees and doctoral students, while pupils are persons who study and are being educated in preschool and boarding schools. 47 “Rights, duties and responsibilities of students and pupils” lists a set of personal, social, cultural and political rights and freedoms of students and pupils in educational institutions. Cultural rights, for example, include the right to receive quality education in accordance with state mandatory standards of education and additional educational services for a fee, as well as free use of sports, reading rooms, assembly halls, and a library. Political rights include participation in the management of an educational organization. Personal rights and freedoms of students and pupils include:

- ♦ The right to freedom of expression of one’s own opinion and beliefs;
- ♦ the right to respect one’s human dignity.

A teacher, according to Article 51 of the Law “Rights, duties and responsibilities of a teacher”, also has a set of political, social and personal rights. His social rights are: the right to engage in teaching activities with the provision of conditions for professional activity, the right to individual teaching activities, the right to sabbatical leave to engage in scientific activities while maintaining teaching experience, and others. The personal right of a teacher includes the right to protect his professional honor and dignity.

Comparing the wording of the personal rights of a teacher prescribed in the Law with the personal rights of students and pupils, one can note their inconsistency, which is as follows:

- ♦ the law does not grant a teacher the right to respect his honor and dignity, giving him the right only to protect his professional honor and dignity;
- ♦ students and pupils have the right only to respect their human dignity, although a teacher, according to paragraph 3 of Article 51 of the Law, is obliged to respect both the honor and dignity of students, pupils and their parents;
- ♦ clause 2 of Article 49 of the Law “Rights and Duties of parents and other legal representatives” does not specify the corresponding duty of parents to respect the honor and dignity of a teacher;
- ♦ the duties of students and pupils, in accordance with the wording of paragraph 16 of Article 47 of the Law, are to respect the honor and dignity of a teacher, and not only his professional honor and dignity.

The noted inconsistencies, in our opinion, are related to the legislator’s attempt to combine the norms of various articles of the Constitution of the Republic of Kazakhstan, which enshrine personal human rights and freedoms, in the formulations of the Law discussed above. In particular, the norms of Article 17, proclaiming that human dignity is inviolable, and Article 18, which states that everyone has the right to protection of one’s honor and dignity. In addition, the wording of the Law did not take into account the provisions of Article 34 of the Constitution of the Republic of Kazakhstan, which indicates the following obligations: “Everyone is obliged to comply with the Constitution and legislation of the Republic of Kazakhstan, to respect the rights, freedoms, honor and dignity of others.”

The identified shortcomings and conflicts of the norms of the Law of the Republic of Kazakhstan “On Education”, which enshrine the personal rights and freedoms of subjects of the educational

process, necessitate the consideration of similar norms of other laws defining the status of students and pupils, in particular, the Law of the Republic of Kazakhstan “On the Rights of the Child in the Republic of Kazakhstan” [12].

Chapter 3 of the said Law establishes the basic rights and obligations of children who have not reached the age of eighteen (majority), ensuring the rights and legitimate interests of which are the goals of State policy. The complex of fundamental rights of the child includes personal, social, cultural and political rights and freedoms, among which are such personal rights and freedoms as the child’s right to life, personal freedom, inviolability of dignity and privacy (art. 10 of the Law); the child’s right to freedom of speech and conscience (art. 11 of the Law). It should be noted that the wording and content of the child’s personal rights and freedoms set out in the Law fully comply with the norms of the Constitution of the Republic of Kazakhstan.

The constitutional right of a child to life is one of the most important and inalienable rights, without which all other rights and freedoms lose their meaning. “In the system of human and civil rights and freedoms, the human right to life, enshrined in national legislation at the constitutional level, is of fundamental importance and determines the orientation of the entire state mechanism” [13]. Thus, the constitutional norms guaranteeing the child’s right to life impose on the State the duty to protect and protect his life, as well as ensure his rights to the necessary standard of living and conditions for full-fledged physical, mental, moral and spiritual development. In accordance with the recommendations given to the Republic of Kazakhstan at the meeting of the 33rd special session of the United Nations Committee on the Rights of the Child, in January 2006, the Committee for the Protection of Children’s Rights of the Ministry of Education and Science of the Republic of Kazakhstan was established, whose main task is to implement State policy to ensure the protection of the rights and legitimate interests of children.

The constitutional right of a child to personal freedom is “nothing more than freedom itself, i.e. the opportunity to perform any lawful actions [14, p. 483]. This right places restrictions on the freedom of other people, and especially officials who have the ability to use coercion. Inextricably linked to this right is (but does not coincide with) personal inviolability, which extends to the life of the child, the inviolability of his dignity and private life, and presupposes physical and mental integrity. As stated in paragraph 2 of Article 10 of the Law: “The State ensures the personal inviolability of the child, protects him from physical and (or) mental violence, cruel, rude or degrading treatment, sexual acts, involvement in criminal activities and anti-social acts and other activities that infringe on the rights enshrined in the Constitution of the Republic of Kazakhstan and the freedoms of man and citizen.”

The norms of the Constitution of the Republic of Kazakhstan, which grant everyone the right to inviolability of dignity (Article 17), to protect their honor and dignity (Article 18) or impose the obligation to respect the rights, freedoms, honor and dignity of others (Article 34), are aimed at protecting the dignity of the individual. The State is obliged to protect the dignity of the individual in all spheres of life, in particular, in the educational and educational process, which, according to paragraph 4 of Article 28 of the Law of the Republic of Kazakhstan “On Education”, should be carried out on the basis of mutual respect for the human dignity of students, pupils, teaching staff. The duty of a child to respect the rights, freedoms, honor and dignity of others is enshrined in Article 20 of the Law of the Republic of Kazakhstan “On the Rights of the Child in the Republic of Kazakhstan”.

At the same time, a specific feature of pedagogical activity is the fact that it is carried out on the basis of a principle generally recognized in didactics - respect for the child’s personality combined with reasonable demands on him. The educational potential of reasonable exactingness, which serves as a kind of respect for the child’s personality, increases significantly if it is aimed at the full development of personality. As B.T. Likhachev notes, “respect and demands for a child foster in him a sense of human dignity, form an idea of the only possible humanistic form of human relations” [15, p. 160]. The dignity of a person largely depends on upbringing and education, the characteristics of a mental state and represents a peculiar set of positive qualities of a person, his moral value. The dignity of the individual is specified in human rights, the protection of which is the purpose of the State. Therefore, it can be said that in the most general form, the purpose of the State is to protect human dignity.

The child’s right to freedom of speech and expression, formulated in Article 11 of the Law, is derived from the freedom of speech guaranteed by Article 20 of the Constitution of the Republic of Kazakhstan. Opinions and beliefs are part of the human spiritual world, so the ability to express them is a matter of everyone’s free will, which no one should forcibly influence [16, p. 145].



A child's right to freedom of speech and expression is conditioned by the relationship between freedom of speech and freedom of thought, since a person has the right to make his thoughts, beliefs and opinions public domain, without adverse consequences for himself. However, the recognition of freedom of speech requires recognition of the possibility of its restriction, not only ethically and morally, but also legally. Therefore, the International Covenant on Civil and Political Rights explicitly establishes the need to restrict freedom of speech on the basis of law in order to protect State security, public order, public health and morals. Based on paragraph 3 of Article 20 of the Constitution of the Republic of Kazakhstan, propaganda or agitation of a violent change in the constitutional order, violation of the integrity of the Republic, undermining the security of the state, war, social, racial, national, religious, class and clan superiority, as well as the cult of cruelty and violence is prohibited.

The Law of the Republic of Kazakhstan "On Education" also establishes certain restrictions on the right of students and pupils to freely express their own opinions and beliefs. They consist in the fact that, according to paragraph 3 of Article 28 of the Law, propaganda of racial, ethnic, religious, social intransigence and exclusivity, the dissemination of militaristic and other ideas contrary to the generally recognized principles of international law and humanism is prohibited in educational organizations.

The right of a child to freedom of conscience is enshrined in Article 11 of the Law of the Republic of Kazakhstan "On the Rights of the Child in the Republic of Kazakhstan", as well as in Article 22 of the Constitution of the Republic of Kazakhstan as the right of individual freedom to profess any religion or not to profess any. The International Covenant on Civil and Political Rights combines freedom of conscience and religion with freedom of thought, meaning "freedom to have or adopt a religion or belief of one's choice and freedom to profess one's religion and beliefs, either alone or in community with others, in public or private, in worship, religious and ritual practices." and exercises. No one should be subjected to coercion that impairs their freedom to have or adopt a religion or beliefs of their choice" [17].

The proclamation of the principle of a secular state in the Constitution of the Republic of Kazakhstan has also defined the basic principle of state policy in the field of education – the secular, humanistic and developmental nature of education (paragraph 1 of Article 3 of the Law of the Republic of Kazakhstan "On Education"). In this regard, A.A. Alimbayeva notes: "In a secular state, religion becomes the prerogative of an individual, while everyone is represented in matters of conscience on their own. Freedom of conscience acts as a constitutional and legal norm of a secular state" [18, p. 114]. This circumstance serves as a basis for prohibiting the establishment and activity of religious organizations (associations) in educational organizations (paragraph 2 of Article 3 of the Law of the Republic of Kazakhstan "On Education"). In addition, in accordance with paragraph 2 of Article 35 of the Law of the Republic of Kazakhstan "On the Rights of the Child in the Republic of Kazakhstan", compulsory measures to attract children to religion are not allowed. However, as a result of the inspections carried out by the Prosecutor's Office of the Republic of Kazakhstan, facts of coercion of minors to perform religious rites were revealed, for example, in the "Orphanage S." the upbringing of children was carried out exclusively in a religious orientation. In 2004, the Prosecutor's Office of the Republic of Kazakhstan identified 2,840 violations of the rule of law, submitted 940 submissions on the elimination of violations of the law, 8 regulations, and initiated 30 criminal cases on the observance of the rights and legitimate interests of minors [19, p. 20].

Summarizing the study of the legislative consolidation of personal rights and freedoms of subjects of educational activity, we can state the following:

- ♦ according to paragraph 3 of Article 47 of the Law of the Republic of Kazakhstan "On Education", students and pupils are endowed with such personal rights and freedoms as the right to respect their human dignity and to freely express their own opinions and beliefs;
- ♦ in accordance with Article 51 of the Law of the Republic of Kazakhstan "On Education", the personal right of a teacher includes the right to protect his professional honor and dignity.

## Conclusion

The formulations of the personal rights and freedoms of a teacher, as well as students and pupils specified in the Law of the Republic of Kazakhstan "On Education" do not correspond to the definitions of personal human rights and freedoms enshrined in the norms of the Constitution of the Republic of Kazakhstan: human dignity is inviolable (art. 17); everyone has the right to protect their

honor and dignity (art. 18); Freedom of speech is guaranteed (art. 20). As stated in Article 12 of the Constitution, human rights and freedoms are recognized and guaranteed in the Republic of Kazakhstan in accordance with the Constitution. Human rights and freedoms belong to everyone from birth, are recognized as absolute and inalienable, and determine the content and application of laws and other regulatory legal acts. "Constitutional rights and freedoms are fundamental not only in form, as they are enshrined in the Basic Law, but, most importantly, in content. The form, i.e. the consolidation of rights and freedoms in the Constitution of the Republic of Kazakhstan, is only a direct consequence of the exceptional importance of their content. The Basic Law enshrines those rights and freedoms that are vital and most socially significant both for an individual and for society and the state as a whole" [20, pp. 269–270].

The shortcomings of the consolidation of constitutional personal rights and freedoms of students and pupils in the Law of the Republic of Kazakhstan "On Education" are to some extent compensated by the Law of the Republic of Kazakhstan "On the Rights of the Child in the Republic of Kazakhstan", which prescribes such personal rights and freedoms of the child as the right to life, personal freedom, inviolability of dignity and privacy, the right of the child to freedom of speech and conscience. In relation to teaching staff, there is no relevant regulatory legal act regulating their legal status and defining their constitutional personal rights and freedoms. The adoption of such a regulatory legal act will undoubtedly contribute to solving the urgent task set out in Article 11 of the Law of the Republic of Kazakhstan "On Education" – ensuring the improvement of the social status of teaching staff.

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## **СОБЛЮДЕНИЕ КОНСТИТУЦИОННЫХ ЛИЧНЫХ ПРАВ И СВОБОД В СФЕРЕ ОБРАЗОВАНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН**

### **Аннотация**

Конституционные личные права и свободы человека должны определять законодательные формулировки и содержание личных прав и свобод педагогических работников, а также обучающихся и воспитанников в

сфере образовательной деятельности. Недостатки законодательного закрепления личных прав и свобод педагогических работников в Законе Республики Казахстан «Об образовании» диктуют необходимость разработки и принятия соответствующего нормативного правового акта, детально регламентирующего их правовой статус. Статья представлена в рамках конкурса на грантовое финансирование по научным и(или) научно-техническим проектам на 2024–2026 гг. (МНВО РК) «ИРН: AP23485634 Современная трансформация казахстанской пенитенциарной системы через механизм государственно-частного партнерства».

**Ключевые слова:** Конституция, равенство прав и свобод, права человека и гражданина, субъективные права, образование, права ребенка.

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## **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА БІЛІМ БЕРУ САЛАСЫНДАҒЫ КОНСТИТУЦИЯЛЫҚ ЖЕКЕ ҚҰҚЫҚТАР МЕН БОСТАНДЫҚТАРДЫ САҚТАУ**

### **Андатпа**

Адамның конституциялық жеке құқықтары мен бостандықтары педагог қызметкерлердің, сондай-ақ білім беру қызметі саласындағы білім алушылар мен тәрбиеленушілердің жеке құқықтары мен бостандықтарының заңнамалық тұжырымдары мен мазмұнын айқындауға тиіс. «Білім туралы» Қазақстан Республикасының Заңында педагог қызметкерлердің жеке құқықтары мен бостандықтарын заңнамалық бекітудің кемшіліктері олардың құқықтық мәртебесін егжей-тегжейлі реттейтін тиісті нормативтік құқықтық актіні әзірлеу және қабылдау қажеттілігін талап етеді. Мақала 2024–2026 жылдарға арналған ғылыми және (немесе) ғылыми-техникалық жобалар бойынша гранттық қаржыландыруға арналған конкурс шеңберінде ұсынылған (ҚР МҒМ) «ИРН: AP23485634 мемлекеттік-жекешелік әріптестік тетігі арқылы қазақстандық пенитенциарлық жүйені заманауи трансформациялау».

**Тірек сөздер:** Конституция, құқықтар мен бостандықтардың теңдігі, адам және азамат құқықтары, субъективті құқықтар, білім, бала құқықтары.