



IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE LEARNING TECHNOLOGIES

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ABSTRACT

Objective: The article considers the mass introduction of distance learning technologies and their impact on the constitutional right to education. Currently, new technologies are being introduced into the educational environment, which transfers many educational processes into a remote format. Besides advantages, such innovations also carry certain risks for the guaranteed constitutional right to education. The study aims at analyzing the mutual influence of distance learning technologies and the constitutional right of a citizen to education. **Methods:** The authors of the article cover the main scientific approaches to the existing issues of distance learning technologies. **Results:** Organizational and legal support for the introduction of distance learning technologies were analyzed during the course of the study. Special attention was paid to the possible impact of remote technologies on the implementation of constitutional rights and the advantages of these technologies. **Conclusion:** The authors concluded that these technologies should be used along with traditional education, and citizens should be given a choice, which will be one of the guarantees of the right to education. As a result, possible directions for the development of the institution for implementing the constitutional right to education in the conditions of digitalization of state and society were highlighted.

Keywords: Distance learning technologies; Legal regulation; Limitations on constitutional rights; Implementing the right to education; Selecting an educational format.



IMPLEMENTAÇÃO DO DIREITO DE RECEBER EDUCAÇÃO NO
CONTEXTO DAS TECNOLOGIAS DE ENSINO A DISTÂNCIA

RESUMO

Objetivo: O artigo considera a introdução em massa de tecnologias de ensino a distância e seu impacto no direito constitucional à educação. Atualmente, novas tecnologias estão sendo introduzidas no ambiente educacional, o que transfere muitos processos educacionais para um formato remoto. Além das vantagens, tais inovações também trazem certos riscos para a garantia constitucional do direito à educação. O estudo visa analisar a influência mútua das tecnologias de ensino a distância e o direito constitucional do cidadão à educação. **Métodos:** Os autores do artigo abordam as principais abordagens científicas das questões existentes das tecnologias de ensino a distância. **Resultados:** O suporte organizacional e legal para a introdução de tecnologias de ensino a distância foram analisados durante o curso do estudo. Foi dada especial atenção ao possível impacto das tecnologias remotas na implementação dos direitos constitucionais e as vantagens dessas tecnologias. **Conclusão:** Os autores concluíram que essas tecnologias devem ser utilizadas em conjunto com a educação tradicional, devendo ser dada aos cidadãos uma escolha, que será uma das garantias do direito à educação. Como resultado, foram destacadas possíveis direções para o desenvolvimento da instituição para a efetivação do direito constitucional à educação nas condições de digitalização do Estado e da sociedade.

Palavras-chave: Tecnologias de ensino a distância; Regulamentação legal; Limitações aos direitos constitucionais; Implementação do direito à educação; Selecionando um formato educacional.

1 INTRODUCTION

Today information technologies are present in almost all educational processes (including self-learning), which allows one to use educational material from electronic media, upload students' works to special platforms, develop educational software and electronic document management, and ensure interaction between the student and the teacher through remote communication systems.

In the implementation of such a constitutional value as the human right to education, digital technologies generally play a positive role (Mkrtrchian, et al., 2020; Zainullina, et al., 2021). The COVID-19 pandemic has unveiled the unpreparedness of the education system for challenges and the conservatism of the legal regulation of many areas of public life (Zainullina, et al., 2021), including education, which cannot respond to rapidly changing circumstances (Smirnova, et al. 2021). The UNESCO Global Education Coalition, founded to promote the best practices of distance learning and ensure universal access to education, provided data according to which 35.4% of students faced the closure of educational institutions, 620 million students studied independently, and 39 countries closed all educational institutions for the period of the



pandemic in the spring of 2020 (UNESCO, 2020).

Thus, reality has emphasized the need and revealed possibilities of distance learning, as well as unveiled several legal and organizational issues that require a separate study. Today there are a lot of studies expressing different opinions regarding the development of educational programs using distance technologies. A review of scientific papers on the topic allows us to identify several areas of research that have not formed a single concept yet. A number of scholars recognize the positive qualities of distance and other digital educational technologies for the realization of the right to education and other constitutional rights of a citizen (Nundenko, 2018). Others recognize that distance learning creates completely new and fundamentally different opportunities for the implementation of human rights and freedoms, as well as highlight challenges and threats to these rights and freedoms (Goncharov, 2019). Studies confirm that using digital technologies, including distance learning, changes the educational process and expands the right to receive education through access to external information (Mavlyutova, 2018). Some authors are concerned about the use of digital technologies in the educational process. It is worth mentioning that the growing interaction between the digital world and constitutional law requires additional study (Avakyan, 2019). The science of constitutional law should comprehend and master modern constitutional realities, including the structure of the digital world, involving them in scientific discourse, giving a subject-based assessment and classification, and providing their reliable regulatory support (Dzidzoev, 2019).

The study of various opinions expressed in scientific works in the form of abstracts and conclusions, as well as proposals for improving the current legislation, determines three conceptual areas presented in Table 1.

Table 1. Concepts for improving legislation.

The concept		The authors
1	The constitutional right to education in the context of digital technologies acquires new content	Nundenko (2018), Mukhachev (2020)
2	The constitutional right to education in the context of the introduction of digital technologies will be carried out through new mechanisms	Avakyan (2019), Babrakova (2021)
3	The constitutional right to education in the context of the mass introduction of electronic and digital forms will be replaced by the Internet law	Safuanov, Lekhmus, Kolganov (2019), Mavlyutova (2018), Maslovskaya (2019), Khabrieva (2018)

Thus, it is still unclear how digital technologies affect the constitutional rights of a person and a citizen, in particular, the impact of distance technologies on the



constitutional guarantees of education, which requires new research. The article aims at studying the impact of educational technologies on the implementation of the constitutional right to education. To achieve the objective, it is necessary to study the basics of legal regulation and constitutional principles that ensure the implementation of the right to education and its theoretical justification and determine possible changes. The research hypothesis is as follows: the use of distance learning technologies requires adequate and timely regulation through special legislation and law enforcement, while the main principle of such regulation is the ability of a citizen to choose an educational format.

2 METHODS

The study was based on systemic, qualitative, and quantitative approaches. In addition, we used the following set of theoretical and empirical methods: theoretical (analysis, synthesis, comparison, generalization) to consider literary sources on the research topic; empirical (statistical method, survey); numerical (mathematical processing of respondents' answers, ranking method). The sources for confirming the above-mentioned hypothesis were legal acts, scientific theoretical and practical works, and information on the education sector from reliable Russian resources.

The main research method was expert interviews.

We sampled 33 experts from three universities: the Moscow State University of Technology and Management named after K.G. Razumovsky (the First Cossack University), Moscow Aviation Institute (National Research University), and Russian Peoples' Friendship University. The experts were selected based on their positions (teachers, directors, deans of faculties, heads of departments) and scientific activities. We considered the indicators of their publication activity in journals included in the Scopus or Web of Science databases if there were at least three articles on related topics. All the respondents were informed that the generalized results would be presented in this study.

3 RESULTS AND DISCUSSION

Article 43 of the Constitution of the Russian Federation contains several fundamental rules governing education. These are as follows: everyone shall have the right to education; guarantees shall be provided for general access to and free pre-



IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE LEARNING TECHNOLOGIES

school, secondary, and higher vocational education in state or municipal educational establishments and at enterprises; everyone shall have the right to receive on a competitive basis a free higher education in a state or municipal educational establishment and at an enterprise; the basic general education shall be free of charge. Parents or persons replacing them shall enable their children to receive a basic general education; the Russian Federation shall establish federal state educational standards and support various forms of education and self-education. Since education is a specific public good, it cannot be obtained without the purposeful and systematic actions of the person involved (Matveev, 2018).

The right to education must be guaranteed by the state, otherwise, this right becomes declarative (Mukhachev, 2020). In this regard, we should consider the opinion of Professor I.V. Mukhachev, who emphasized certain structural features of guaranteeing constitutional rights and introduced a special element of their structure "curation" (from Latin "kura – care") replacing the traditional sanction. As exemplified by the right to education (Article 43 of the Constitution of the Russian Federation), the scholar demonstrated how curation consolidated not the possibility of state coercion but the guarantee of legal implementation (the social feasibility of positive law) (Mukhachev, 2020).

The guaranteed implementation of the constitutional right to higher education should be based on clear tools for assessing the problem areas of education in general. Such tools include an objective assessment of a particular educational situation and the need for guaranteeing state intervention; the social feasibility of specific guarantees arising from constitutional provisions; the positive development of state and public institutions that ensure the functioning of the educational sphere (Kashtanova, 2017). As a rule, the constitutions of many states establish a special mission of the state to guarantee and implement the right to education, as well as a special role of the state in exercising control and supervision over how this right is realized (Kozyrin, 2016). However, no matter how detailed the norms enshrining the right to education are prescribed in the constitution, it is necessary to fully implement the constitutional requirements according to the high social standards of the 21st century, ensure the rapid development of technological progress, and develop academic contacts and humanitarian ties, which is impossible without multi-level legislation on education (Kozyrin, 2016).

Guarantees for ensuring the rights of citizens to receive education are detailed in the Federal Law "On Education in the Russian Federation". According to Clause 2 of Article 5, the right to education in the Russian Federation is guaranteed irrespective of



IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE LEARNING TECHNOLOGIES

gender, race, nationality, language, origin, property status, social and official status, place of residence, attitude to religion, and any other circumstances. In conformity with Article 3 of the Federal Law "On Education in the Russian Federation", one of the priority principles of the state policy in the field of education is the creation of conditions for the self-realization of each person, including the provision of the right to choose different forms of education, an organization that carries out educational activities, the direction of education, as well as the freedom of teachers to choose the forms of education and teaching methods (Federalnyi zakon "Ob obrazovanii v Rossiiskoi Federatsii" ot 29.12.2012 № 273-FZ).

According to the federal project "Digital Educational Environment", free access (free for users) to online courses implemented by various educational organizations and platforms should be provided on a one-stop principle for all categories of citizens enrolled in educational programs of higher education and additional professional programs (Ministry Of Education And Science Of Russia, 2019, <https://edu.gov.ru/national-project/projects/cos>). However, not only the right to choose and free access act as factors in ensuring the constitutional right to education. The prospects for the development of education published on the official website of the Ministry of Science and Higher Education of the Russian Federation indicate that 20% of students will have mastered certain courses and disciplines, including in a remote format, using the resources of other institutions and universities that guarantee that the quality of training complies with the world level by the end of 2024 (Ministry Of Education And Science Of Russia, 2019, https://minobrnauki.gov.ru/colleges_councils/kollegialnye-organy/digitalcouncil/digitalobr/).

During the survey, the experts were asked to answer the following question: "To what extent and in what way the introduction of distance learning technologies affects the implementation of the constitutional right to education?". Their answers and the distribution of their opinions on the issue are presented in percentages (Table 2).

Table 2. The impact of distance technologies on the constitutional right to education

No.	Answers	Distribution of respondents' answers
1	Insignificant	5%
2	Expands the concept of the constitutional right to education	34%
3	Causes risks of violating the guarantees of the right to education	28%
4	Changes the mechanism for the implementation of the constitutional right to education	33%



Thus, an important factor in the implementation of the constitutional right to education (due to the spread of its distance format) is quality. The standardization of education, as mentioned above, is one of the main tasks of the state. The adoption of distance learning is exemplified by international experience, in particular, of Canada, which is one of the leaders in the implementation of distance learning (Bukhanova, 2015).

Currently, Canada has seven universities that offer only distance learning and are united in the Canadian Virtual University (Association). It includes universities whose programs comply with national e-education standards, which allows potential students to be confident in the quality of the academic degree they obtain. In addition, each university has a department of distance and electronic education (Canadian Virtual University, <https://canadianvirtualseervices.com>). Assessing the effectiveness of training by the relevant departments of distance and electronic education generally includes the following stages: mandatory internal audits of all new programs and courses, as well as courses that have undergone major changes; evaluation of the effectiveness of the schedule and sequence of courses in the program; internal revisions of courses by teachers; questioning students; program revisions by external experts. The procedure and results of these audits are publicly available. For instance, there are Quality Standards for distance learning at the University of Alberta, where the Center for Creative Learning Initiatives (CCLI) and the Teaching, Learning, and Technology Council were established in 2006 to coordinate, assess, administer, and modernize e-learning (ECampusAlberta, n.d.). In this regard, the university invests significant resources in the creation of e-libraries and e-databases, as well as the development of research programs related to the improvement of education using modern technologies. Its faculties are encouraged to change curricula and teaching methods to improve the quality of education and involve students in scientific work, use active learning technologies and interactive tasks (problem-based instruction), work in small groups, create educational communities, and provide opportunities for practical training, including international. The effectiveness of distance and mixed courses is evaluated according to the same quality standards as courses without the use of new technologies. This process is included in the general regulatory framework. Continuous improvement in the quality of education is realized not only through external accreditation but also through internal checks of e-courses for compliance with standards. The university published checklists that are used by teachers and



IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE LEARNING TECHNOLOGIES

administration during the development and implementation of e-courses, as well as when teaching online (ECampusAlberta, n.d.). Currently, the Technology Training Center and AICT E-Learning Services are operating, providing high-quality technical support in the development, implementation, and standardization of e-courses (Barker, 2007). Thus, the standardization and regulation of electronic and distance learning in Canada are characterized by an extensive methodological base (standards and user manuals); open results of the revision of curricula; the lack of state regulation with a high role of regional and university structures; the high role of experts and the professional community in regulating the framework for distance learning and evaluating learning results.

If compared to the Canadian experience, the procedures for standardizing distance learning in Russia seem to be strictly hierarchical. Federal laws and orders of the Government of the Russian Federation have greater significance than orders of the Ministry of Science and Higher Education of the Russian Federation, departmental orders (of ministries related to basic educational programs) and, finally, local regulations. The regulatory framework available in the Russian Federation outlines only the main provisions on the use of distance learning in the training of various specialists receiving both higher professional and additional professional education. However, several shortcomings and the slow improvement of regulations undermine the potential of using distance learning. A comparative analysis allows us to highlight different approaches to the standardization of distance learning as one of the mechanisms for implementing the constitutional right to education in both Russia and Canada. These differences are demonstrated in Table 3.

Table 3. Approaches to the standardization of distance learning in Russia and Canada.

Criteria	Russia	Canada
Models for assessing the quality and standard of distance learning	Regulatory legal framework developed at the federal level	Non-state regulation of distance learning (experts, professional community)
Quality standardization system	Hierarchical and implemented by the state; standards are detailed in subordinate regulations	Effectively functions at the level of user manuals, accreditation system of electronic resources
System for accrediting electronic resources	Practically absent or represented at a single level	Developed and implemented at the provincial level and in certain higher education institutions

The underdevelopment of distance education standards had a negative impact on almost all educational institutions during heavy restrictions of the COVID-19 pandemic. Despite experiments on distance learning that have been carried out since the mid-90s, the complete reorientation of some universities to a remote format and even



IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE LEARNING TECHNOLOGIES

Article 16 "Implementation of educational programs using electronic and distance learning technologies" of Federal Law of December 29, 2012 No. 273-FZ "On Education in the Russian Federation" (Federalnyi zakon "Ob obrazovanii v Rossiiskoi Federatsii" ot 29.12.2012 № 273-FZ, 2012), remote education and work in an electronic environment turned out to be an innovation for teachers, administrators, and students. In addition, this innovation was poorly supported materially, methodologically, and organizationally. With regard to the regulation of distance education, serious gaps have been identified that need to be filled and overcome. Consequently, a number of proposals should be made to protect the rights of students in the conditions of distance learning (Barabanova, 2021). It is still unclear who will grant access to information and communication networks; who will provide the equipment necessary for training; how to regulate the participation of parents (legally authorized representatives) of underage students acting as tutors and assisting their children in mastering educational programs, etc.

Scholars indicate various factors that hinder the implementation of the right to education in the conditions of distance learning and negatively affect its quality (Buslaeva, 2021). During the period of forced online learning, many participants complained about technical issues, the low bandwidth of Internet channels, and performance glitches on popular educational platforms (Logachev, et al., 2022). The education system cannot instantly connect a lecturer with hundreds of students over the network. It is necessary to automate the work of technical means and programs but educational institutions have failed to do it so far.

Attention is also drawn to the fact that not every profession can be mastered remotely (Buslaeva, 2021), especially those requiring significant practice (Berezina, et al., 2022). The legislator has not answered these questions yet. Although legal regulation responds to the challenges caused by the pandemic, it does not have time and cannot resolve such specific issues (Livson, et al., 2021). Among other problems of e-learning, the so-called "digital divide" is also mentioned (Dobrinskaya, Martynenko, 2019). Not all localities in Russia have access to the broadband Internet and not every student has technical devices to use all the functions of electronic information and educational environment. The introduction of distance learning technologies will change the qualification requirements for teachers and reconsider their traditional role (Bobrakova, 2021).

In general, we cannot but agree that the increase in the share of online educational services in the field of higher education entails fundamental changes in the traditional



system of higher education (Bobrakova, 2021; Chumaceiro Hernandez, et al. 2022). These forms of education should be regulated at the legislative level, identifying those issues that hinder the implementation of the constitutional right to education (Melnikova, et al. 2019).

At the same time, it is recommended to avoid the excessive or unreasonable use of distance learning in Russia since such forms of education, even in emergencies, cannot replace traditional full-time education (Korotaeva, Chuksina, 2020). On the one hand, students feel more comfortable attending online lessons, especially lectures. On the other hand, education is not just the exchange of information, it is a discussion of various concepts and the use of this knowledge. According to Wei Shu, one should not ignore such circumstances as the loss of personal communication between the teacher and the student (Expert Council Of The Journal Accreditation In Education, 2017). Therefore, the current educational process can be effective only if there is interaction between the teaching and learning parties. In this regard, international experts indicate that the so-called "blended learning" is appropriate in the system of modern education if it combines the features of both distance and traditional learning (Kenzhebaeva, et al., 2021).

4 CONCLUSION

On the one hand, the mass introduction of distance learning technologies expands the possibilities for exercising the constitutional right to education. On the other hand, insufficient legal regulation bears the risk of reducing the quality of education and infringing on this right. The mechanism for implementing the constitutional right to higher education changes, which requires to update the guarantees for the implementation of this right. Under such conditions, legal regulation aims at overcoming the shortcomings of the remote format and ensuring the maximum use of its advantages. Due to the mass use of distance technologies, the implementation of the constitutional right to education can be ensured through new regulatory mechanisms, such as distance education standards and the widespread introduction of blended learning. It is important that students have a choice between distance and traditional education, and can combine both formats in a convenient version of blended learning. Thus, the research hypothesis has been confirmed. Further research should focus on other aspects of educational digitalization.



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**IMPLEMENTING THE RIGHT TO RECEIVE EDUCATION IN THE CONTEXT OF DISTANCE
LEARNING TECHNOLOGIES**

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