

EFFICIENCY OF INTERNATIONAL LAW MECHANISMS FOR HUMAN RIGHTS PROTECTION IN EDUCATION

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ABSTRACT

Objectives. The study deals with international law mechanisms for human rights protection in education. The aim of the study is to analyse and evaluate the effectiveness of international law mechanisms for human rights protection in education.

Theoretical Framework: The theoretical basis of the research was made up of the scientific works of scientists, quality and qualitative indicators of research, and the regulatory and legal framework.

Methods: The research employed the method of comparison, visual graphic methods, a set of methods of processing, comprehension and interpretation of information.

Results and Discussion: The study established the most common types of violations in the field of education, in particular: violation of the right of national minorities to education; impossibility of choosing the language of instruction; failure to provide inclusive education; discrimination against people with mental illness. Specific manifestations of the effectiveness of international law mechanisms for the human rights protection in the field of education are singled out, in particular: increasing public awareness and transparency of government activity, etc.

Research Implications: The study gave grounds to draw the conclusions regarding the difficulty of proving the existence of violations in education. Attention is drawn to the subjectivity of the European Court of Human Rights (ECHR) and the ambiguous interpretation of norms enshrined in international legal acts.

Originality/Value: The research is original, based on official data and the author's own conclusions, and has practical significance.

Keywords: human rights, field of education, international law, protection of rights, legal aid, international conventions, reducing inequality, quality education, Sustainable Development Goals (SDGs).

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1 INTRODUCTION

Globalisation changes, rapid scientific and technical development, digitalisation of all spheres of social life cause transformations that are a prerequisite for creating a new, fair and inclusive society. Human rights protection in education is integral to creating such a society. This means ensuring everyone has equal access to quality education that respects their dignity and promotes their development. Such development is, however, accompanied by new challenges and threats, particularly in the field of education, both at the national and international levels. It is important to shape inclusive education policies that support strengthening government response capacity, especially in low-income countries, to address education's sustainability (Lorente *et al.*, 2020). Human rights to education, social security, and other social rights are as important as civil and political protection (Young, 2020). A major area of critical scholarship in the field of human rights education (HRE) is aimed at identifying the revolutionary potential of HRE by questioning its connection to the global human rights regime (Kodelja & Kodelja, 2021). At the same time, the existing mechanism for the legal realisation of human rights results from the constant development of humanity, the understanding of moral values and human dignity in a civilised society.

Violating human rights in education is not a new phenomenon, and protecting these rights has long been an important issue for international institutions. The existing mechanisms of international legal protection are intended for a long term and need urgent updating and transformation. The analysis and evaluation of the effectiveness of international legal mechanisms for human rights protection in education becomes especially important in view of the issue's relevance. The countries that applied to the ECHR were selected for comparative analysis. When choosing countries for analysis, attention was focused on countries with a European type of education. This choice is determined by the close geographical location of the countries and the fact that many Ukrainians study in the educational institutions of these countries. It was established that such countries are Austria, Greece, the Czech Republic, Italy and Germany. Relevant qualitative indicators were obtained,

demonstrating the state of the use of international legal mechanisms for human rights protection in the field of education. The most common violations in education were studied, and individual mechanisms of international law protection were covered.

2 LITERATURE REVIEW

Many researchers have dealt with human rights protection mechanisms, particularly the realisation of rights in education, ensuring the full and equal participation of people with disabilities in society's lives. Broderick (2019) determined that Article 24 of the UN Convention on the Rights of Persons with Disabilities ensures access to inclusive education. Such access must be ensured on equal grounds with others to develop human potential fully.

Beiter (2021) studied the right to education regarding the realisation of individual opportunities. The author notes that education has a huge liberating potential that enables a person to think critically.

Perera (2021) analysed the right to education model that international human rights bodies have extended to demonstrate the excessive nature of the minimalist critique. The author studied how the provisions on the right to education in international human rights treaties are interpreted by various United Nations (UN) human rights mechanisms.

Fokas (2019) considered the issue of the indirect influence of the ECHR on the place of religion in education. The Court's decisions can influence relevant internal debates and raise public awareness. The influence of the Court is considered not from the top-down (the influence of the Court on states and their legislative frameworks), but from the bottom-up perspective. The extent to which court decisions influence the perception of lower-level subjects about their rights in the field of religion and education was explored. Attention is paid to the efforts to ensure new rights in relation to their states.

Research on the importance of the state education department's observance of the right to education in the current conditions is fundamental. Aparov *et al.* (2020) determined and described six provisions that characterise the right to education and determine the direction and limits of state

management of education. The duty of the state to guarantee access to educational institutions for persons under the jurisdiction of the state was studied. The duty of the state to ensure equal access to education, to develop the school system, and to establish an optimal system of scholarships is determined.

Lorente and Rodríguez (2023) explored educational and gender opportunities, particularly in Costa Rica and Spain. The challenges Costa Rica and Spain faced on the way to full compliance with the human right to education have been identified. Neubauer (2023) analysed the development of the right to education of immigrant children in the European Union (EU) from 1957 to 2023. Chaturvedi (2022) examined whether digital-only/predominantly digital education in India is a potential violation of the fundamental right to education. In continuation of the issue of education in the East, Permanasari (2023) explored home-schooling in India. The author points out that home schooling in Indonesia is unclear, leading to potential violations of children's rights to education, when there is no guarantee of the quality of education for children. Home-schooled children have the potential for radicalisation, child abuse, and exploitation.

Hamad *et al.* (2022) focused on the mechanisms of legal protection of human rights in global regulation. International bodies' role in human rights through international human rights monitoring mechanisms, as well as supervision and protection systems, is studied. It is established that international law adopted a set of mechanisms, including provisions criminalising every act that can cause harm to a person, regardless of whether that act is committed against the body, honour or religion. Other researchers worked in the same direction. Rakhmonova (2023) noted that despite extensive external control for the observance of human rights at the international and regional levels, the state should play the main role in this matter. In some situations, the work of human rights and humanitarian organisations will be effective. Justifiable situations may also arise when to protect some people's rights, it is appropriate and necessary to limit the rights of others (Lorente & Rodríguez, 2023).

Individual researchers have studied the issues of the causes that later resulted in the violation of human rights in education. Chitsamatanga and Rembe (2020) identify gender-based violence at school as the cause which creates violations of children's right to education and human dignity spread in South African schools. At the same time, violations occur despite strong legal frameworks that derive from international treaties and human rights treaties. Rodríguez-Gómez and Russell (2021) include structural violence for these reasons, a form of indirect violence "embedded in the structure and manifested as unequal power and therefore unequal life chances."

Attention is also paid to specific human rights protection mechanisms in education, particularly the activities of the ECHR. Wiczanowska and Szoszkiewicz (2018) claim that the final recognition of the above-mentioned right primarily depends on the further development of ECHR case law. There is a conflict between the interpretation of the ECHR and the desire of its developers to narrow the rights of countries significantly. They rely on advancing the theory of judicial interpretation, which allows judges to develop and establish new positions. Such a theory determines the key role of judicial opinions regarding adapting law to the developing social conditions. The further development of European law and the formation of a single European legal space requires actual recognition at the level of national public orders that the ECHR is a constitutional instrument of European public order (Grynchak *et al.*, 2022).

Expanding the boundaries of this issue urges the need for additional research. Such research should consist of an analysis of the practical capabilities of each mechanism to protect violated rights in education. The possibility of optimising the specified mechanisms, in particular through the use of specific optimisation directions, such as adaptation, implementation, approximation and harmonisation, also requires further study. After studying the possibilities of optimisation, it will be appropriate to analyse the changes after the implementation of pilot optimisation projects.

2.1 RESEARCH OBJECTIVES

The aim of the study is to analyse and evaluate the effectiveness of international legal mechanisms for human rights protection in education. The aim was achieved through the fulfilment of the following research objectives:

- analyse studies on the existence of human rights violations in educational;
- identify common human rights violations in education;
- determine the main international law mechanisms for the protection of violated human rights in education;
- carry out a comparative analysis of international law mechanisms for the protection of violated human rights in education in terms of direction and institutional capacity;
- determine the effectiveness of international law mechanisms for protecting violated human rights in education and directions for further research on this and related subjects.

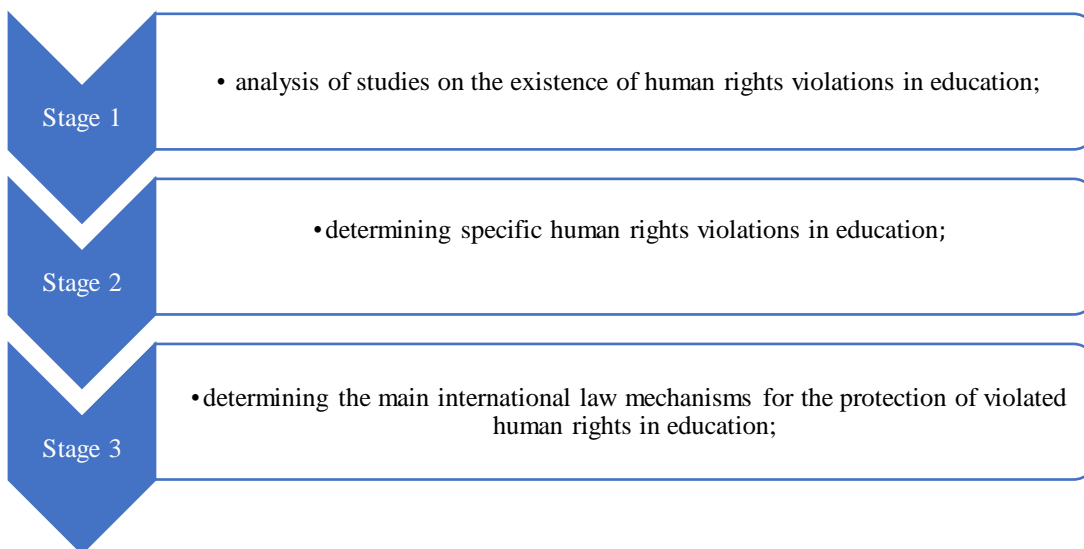
3 METHODOLOGY

3.1 RESEARCH DESIGN

The research design includes several stages, as shown in Figure 1. Each stage involves a distinct set of actions and methods that guide the gradual achievement of the research objectives. This approach ensures a structured analysis and maintains consistency in carrying out the research tasks.

Figure 1

Research design.



3.2 SAMPLING

The analysis of studies distinguished five European countries for comparison with Ukraine. Thus, Austria, Greece, the Czech Republic, Italy, and Germany were chosen as countries with a European type of education. This choice is determined by the close geographical location of the countries, as well as the fact that many Ukrainians study in the educational institutions of these countries. At the same time, many Ukrainians were forced to change their place of residence and study after the introduction of the legal regime of martial law in Ukraine. Appeals to the ECHR for protection were chosen as indicators demonstrating the effectiveness of international law mechanisms for protecting violated human rights in education. Separate appeals to the ECHR from Austria, Greece, the Czech Republic, Italy, and Germany regarding violations of human rights in the educational sphere were analysed in terms of the subject, essence, and outcome of the case. In general, the most resonant 5 appeals, 1 appeal from each studied country, which became precedents in the field of education, were analysed. It should be noted that the number of appeals to the ECHR on issues of rights violation in education is quite small, which may indicate two aspects. First, a small number of violations could not be resolved at the national level, which is positive. Second, it is insufficient

awareness of persons whose rights in education have been violated about the existence of international law mechanisms to protect such rights.

3.3 RESEARCH METHODS

The research employed the following methods:

- 1) a method of comparative analysis of international law mechanisms for the protection of violated human rights in education in terms of direction, institutional capacity of Austria, Greece, the Czech Republic, Italy, and Germany;
- 2) the method of observation made it possible to clearly determine the aim, methodology, and develop a research plan.
- 3) a visual graphic method was used to create graphs of the analysed appeals to the ECHR regarding human rights violations in education in terms of the subject, the result of the case;
- 4) processing, comprehension, and interpretation methods of the obtained data provided the possibility of theoretical definition of concepts on the studied issue. In particular, the concepts of “violations in the field of education” and “international law protection” are defined.

4 RESULTS AND DISCUSSIONS

After conducting analytical research, we obtain relevant qualitative indicators that demonstrate the state of the use of international law mechanisms for human rights protection in education. Individual appeals to the ECHR for the protection of violated rights in education received from citizens of Austria, Greece, Denmark, Italy, and Ireland during the period of operation of the ECHR were taken as indicators. The subject of the appeal, the essence of the case, and the result of its consideration are defined (Table 1).

Table 1

Consideration of appeals of European countries to the ECHR regarding rights violations in education.

Country	Subjects of the appeal	The essence of the case	Result of the consideration
Austria	violation of the rules of admission to a higher education institution (HEI)	Austria has set a maximum duration of study at the medical faculty of seven years and denied the applicant admission to all medical faculties because he could not receive a diploma within the prescribed period.	No violations of international legislation in education were found
Greece	deprivation of the right to education because of deprivation of liberty	The applicant was forbidden to continue studying at the university during the term, which corresponded to the term of imprisonment after announcement of the court's verdict	No violations of international legislation in education were found
Czech Republic	violation of the right to education on ethnic grounds	The applicants claimed discrimination in the exercise of the right for education because of their Roma origin.	No violations of international legislation in education were found
Italy	denial of the right to education, limitation of the number of candidates for admission to the university	The universities set the number of students to enter the respective faculty of each university. The limited number prevented applicants from entering HEIs.	No violations of international legislation in education were found
Germany	denial of the right to education because of the refusal to transfer children to home schooling due to religious beliefs	The applicants belong to a Christian community that strictly adheres to biblical canons and, for religious reasons, prohibits them from attending private or public schools. The school refused to transfer the children to home education because of these circumstances.	No violations of international legislation in education were found

Source: created by the author based on the European Court of Human Rights.

Table 1 shows that the ECHR did not find violations of international legislation in education in all analysed appeals. It should be noted that the number of appeals to the ECHR during the entire existence of this body as a mechanism for the protection of educational rights is quite small. All appeals have a different nature and subject. Furthermore, analysing the archive of ECHR decisions makes it possible to confirm the absence of appeals to Ukraine. The lack of appeals by Ukrainians to the ECHR regarding protecting violated rights in education has certain prerequisites. In particular, such as: inappropriate dissemination of information about the activities of the ECHR

among citizens of Ukraine; inconsistency of certain provisions of Ukrainian legislation with the law of the Convention on the Protection of Human Rights and Fundamental Freedoms; impossibility of executing court decisions; separate problems of law enforcement practice. It is possible to assume that the focus of Ukrainians is currently shifted to the armed conflict and violations in education are not a priority.

At the same time, the results of the ECHR consideration of cases have a great positive impact on the development of the system of international law protection of violated rights. In particular, it makes it possible to identify the most effective mechanisms and analyse the advantages and disadvantages of specific mechanisms. Decisions of the ECHR have a dual nature, however, they are not a source of law in themselves, although they are inextricably linked with the provisions and specify the application of the Convention for the Protection of Human Rights and Fundamental Freedoms. The emergence of new exemplary decisions creates new precedents, which in turn fills the gaps in national legislation regarding possible violations in education.

The types of violations in education and their characteristics are considered below (Table 2).

Table 2

Types and characteristics of common violations in education.

Type of violation	Characteristics
Violation of the right of national minorities to education	It is any limitation or impairment of the ability of persons belonging to national minorities to receive education in their mother tongue or the language they speak, as well as to participate in cultural life on the basis of equality with others.
Impossibility of choosing the language of instruction	Limiting the opportunity to learn and use one's native language can be considered as an infringement on the educational and cultural rights of national minorities.
Failure to provide inclusive education	Lack of appropriate infrastructure, qualified personnel, educational programmes and methodological materials in educational institutions, which is a violation of the right to education of persons with certain physical disabilities.
Discrimination in education because of mental illness	Manifests in: <ul style="list-style-type: none"> - refusal of persons with mental illnesses to be admitted to educational institutions or limiting their access to certain educational programmes; - harassment and bullying by peers and teachers; - lowering of self-esteem and feeling of own inferiority in children with mental disorders.

Source: created by the author based on European Court of Human Rights.

The research findings have identified several mechanisms under international law designed to protect human rights in education when violated. The term “international law mechanism” refers to a network of international bodies and organisations. These entities work to enforce or restore international human rights and freedoms standards in cases of infringement. The international law mechanisms for safeguarding educational rights are detailed below, including the title, subject, year of publication, and protection content (Table 3).

Table 3

International law mechanisms for the protection of violated human rights in education.

Name	Publication subject and year of publication	Protection content
Universal Declaration of Human Rights	United Nations, 1948	Article 26.
Convention Against Discrimination in Education	United Nations, 1960	Articles 1-4
European Convention on the Protection of Human Rights and Fundamental Freedoms	Council of Europe, 1950	Article 2 of the First Protocol 1952
International Covenant on Economic, Social and Cultural Rights	United Nations, 1966	Articles 13, 14
European Social Charter	Council of Europe, 1996	Article 7

Source: created by the author based on data from the Verkhovna Rada of Ukraine [19].

It was established that currently, there are several mechanisms of international law protection against violations of human rights in education. All these mechanisms are long-term, acceptable, and recognised in many countries. The process of applying these mechanisms at both the national and international level seems to be difficult.

The research results prove that international law mechanisms’ effectiveness in human rights protection in education was not sufficiently studied in the academic literature. There is a need for additional research. It is necessary to analyse the actual practical capabilities of each existing mechanism to protect violated rights in education.

We agree with the opinion of Hamad *et al.* (2022) that international law provides humanity with several mechanisms, the application of which leads to the creation of a virtuous society in which all people enjoy peace and security and enjoy all rights as equals. The content of the right to education is

determined from the perspective of human rights and the duties of the state in this matter (Ruiz, 2020).

As Tapakova *et al.* (2023) rightly note, the condition for observing human rights and freedoms is the obligations of other citizens and the state established by law. At the same time, the researchers' opinion that many legal mechanisms for realising human rights in the modern world are not completely effective is debatable.

Abduvalieva (2023) comes to the same conclusions as us regarding the importance of harmonising national legislation with international standards to promote equal opportunities in the field of education. In the same direction, we consider the conclusions of Hamad *et al.* [20] to be insufficiently substantiated. They state the indiscriminate criminalisation of actions that can harm a person, regardless of whether this action is committed against his body, honour, or religion.

We agree with the conclusions of Rakhmonova (2023) on the effectiveness of the work of human rights and humanitarian organisations as regards protecting violated rights in the field of education both at the national and international levels.

Our findings correlate with the results of the study conducted by Jaman *et al.* (2023) and Lelyk *et al.* (2022). The authors claim some progress has been made in establishing human rights standards and mechanisms. At the same time, there are still problems with ensuring the protection and effective promotion of these rights for all persons, especially vulnerable groups. Human rights protection is the basis of a just and equal society that guarantees all people's dignity, freedom and well-being. However, in developing countries, the realisation of human rights, particularly the right to education, faces unique challenges because of socio-economic constraints, institutional constraints, and historical context.

We consider the conclusions of Wiczanoska and Szoszkiewicz (2018) to be contradictory to our findings. The authors note the conflict between the interpretation of the European Convention on Human Rights, which is connected with its developers' striving to significantly narrow countries' rights.

It should be noted that the case law that we analysed in no way narrows the rights of countries but confirms the competence of national courts.

At the same time, we do not agree with the conclusions of Yen and Hoang (2022), who claim that obstacles to obtaining education or employment usually arise due to gender stereotypes and male chauvinism. It is rightly argued that governments should be responsible for providing everything necessary to support education for all children, which is essential for human development (Bakhov *et al.*, 2021; Rahman *et al.*, 2023).

4.1 LIMITATIONS

There are resource and time constraints, resulting in delays in processing cases. The difficulty of proving violations of educational rights complicates the process, as there is often not enough direct evidence, and international norms can be interpreted differently. International bodies and judges may interpret the same norms differently, creating uncertainty for applicants. An important challenge is that the implementation of decisions of international courts depends on the will of the state, and there are no sufficiently effective mechanisms to control this process.

To overcome these limitations, it is necessary to improve the standards of proof of violations, work on the unification of practice and interpretation of international norms, and strengthen cooperation with national authorities. This will increase the effectiveness of protecting educational rights at the international level.

5 CONCLUSIONS

A comprehensive analysis and assessment of the effectiveness of international law mechanisms for human rights protection in education demonstrated the multifaceted nature of these relations. The most common types of violations in education are determined, in particular: violation of the right of national minorities to education; impossibility of choosing the language

of instruction; failure to provide inclusive education; discrimination because of mental illness.

The research results can be used in the academic field, particularly for further research on the effectiveness of international law mechanisms for protecting rights in education. It can also be used practically when determining a defence position as an analytical material.

The direction of further research may be to study the possibility of optimising international protection mechanisms, in particular through specific optimisation directions, such as adaptation, implementation, approximation, and harmonisation; implementation of pilot projects to optimise international law mechanisms for human rights protection in education.

5.1 RECOMMENDATIONS

- 1) It is important to ensure the inclusion of norms on protecting human rights in education in national legislative acts. This may include drafting new laws or adapting existing regulations to international standards;
- 2) It is necessary to create and improve systems for monitoring and evaluating the state's fulfillment of its obligations regarding protecting human rights in education. This will help ensure an objective analysis and timely response to possible violations;
- 3) It is necessary to increase the level of transparency in the work of state institutions related to education. Regular reporting, data release and cooperation with civil society organisations can increase public awareness;
- 4) It is important to ensure the government's close cooperation with international organisations that specialise in protecting human rights. This will allow the attraction of international experience and resources to solve problems in the field of education;
- 5) It is necessary to take measures to ensure the judicial system's independence, especially in cases related to the violation of rights in the field of education. This will help to avoid a subjective approach and ambiguous interpretation of norms of international law.

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