

## LEGAL PROBLEMS OF ENSURING EQUAL CONDITIONS FOR REALIZATION THE CONSTITUTIONAL RIGHT TO EDUCATION

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### **Article info**

Received – 2018 September 15

Accepted – 2018 December 14

Available online – 2019 January 20

### **Keywords**

Citizens' rights, constitutional right, right to education, school education, General education, educational legislation, law enforcement

The subject of the paper is legal conditions for realization the constitutional right to education.

The purpose of the paper is to confirm or disprove the hypothesis that legal measures of realization of the right to education that are used in developed foreign countries can be used in Russia to improve Russian educational legislation.

The methodology. General scientific methods as analysis, synthesis, induction, deduction, comparison were used. The author also uses the formal legal interpretation of Russian judicial decisions as well as comparative legal method.

The main results and scope of their application. The court decisions supporting the principle of territorial consolidation of schools indicate that this principle does not exclude the possibility of citizens not residing in the fixed territory to enter the school of their choice. However, the implementation of this feature, due to the lack of legislative regulations of the procedure, can cause bias, corruption and other abuses of constitutional right to education. Inequality children's opportunities to enter the school due to their place of residence persists in the individual selection process. Situations where there are no clear and consistent rules for the provision school education inevitably generates numerous violations of citizens' rights and inequality based on the financial situation of parents. In Russia, there is no "waiting list", when children wishing to enroll in a particular school, would be taken to the vacant place. Accordingly, the adoption of such decisions by school administrations also lies in the plane of subjective discretion and causes corruption risks. China's experience is interesting because there are transparent, equal conditions for legal attraction of extra-budgetary funds to the school system, which do not turn access to education in the best schools into a corruption scheme or competition of parents' incomes and do not infringe the rights of those who seek to enter them on the basis of their own achievements and knowledge. Speaking about the British experience, it is interesting to note that the lack of vacancies in the school itself can not be a reason for refusing to enroll a child in school.

Conclusions. The legal experience of developed countries, such as the United Kingdom, Germany, Austria, Japan, China, in regulating the grounds and procedures for the provision of school education can be successfully applied in order to improve the Russian legislation, which establishes the legal mechanisms for the implementation of the constitutional right to education.

### 1. Introduction.

In contrast to the segment of pre-school education, schools in Russia formally fully cover the need for educational services. In those localities where schools are not available or operate in the primary General education regime, local governments are obliged to organize the transportation of students to schools that provide the necessary educational services.

However, the absence of a shortage of places in the Russian school system does not alleviate the problem of equal opportunities within this system. It is obvious that the quality of educational services provided by schools is different. It can differ strikingly even in institutions located across the road from each other. This situation is typical not only for Russia [1].

Of course, the demand for better educational services is high and exceeds the available supply. How does the law regulate citizens' access to school education?

## 2. Regulation of access to school education in Russia.

As in the case of pre-school education, there is a basic principle of territorial advantage. Under part 3 of article 67 of the Federal law of 29 December 2012 № 273-FZ "On education in Russian Federation" (hereinafter - Federal law on education No. 273-FZ) for each school fixed territorial areas of living in which citizens are provided with places at the school as a priority [2, p. 240; 3 p. 66; 4, p. 310].

### 2.1. Territorial consolidation of schools.

Inclusion in the law of this provision was preceded by a very non-uniform court practice, which including the position expressed on the inadmissibility of advantages in the choice of educational institution is, on the basis of the territory of residence.

The courts of general jurisdiction declared inoperative the provisions of the regulatory legal acts of a number of subjects of the Russian Federation and municipal entities that set priorities for the admission of children to the first class. Thus, by the decision of the Moscow City Court of April 13, 2011, at the request of the Moscow city prosecutor, found to be contrary to federal law and inoperative provisions of Article 11 of the Law of the City of Moscow No. 14 "On General Education in the City of Moscow", according to which children living in homes located in the immediate vicinity of the relevant educational institution are admitted to the first classes of state educational institutions; orphans and children left without parental care; children from large families; children with siblings enrolled in this educational institution; children to whom the federal laws and other normative legal acts of the Russian Federation, the laws and other normative legal acts of the city of Moscow were given the priority right for admission to state educational institutions implementing the basic general education program of the appropriate level.

In the absence of statutory rules governing the procedure for the admission of children to schools in conditions where the number of applicants exceeds the number of available places, the abolition of territorial priority has created an extremely tense and conflicting situation, primarily in large Russian cities [5]. Here is how the Rossiyskaya Gazeta journalist describes her:

"Hard fighter under the code name "Who breaks into the first class?" from the beginning of this year, the country watched almost live. In the news releases periodically appeared plots, similar as twins. Torn off adults stormed schools for days, getting up in long queues after dark. They wrote forgotten lists, handed out checks and soothing tablets. Nervous citizens from the queues just wanted to enroll their children in schools. But willing, as usual, there were many. And the places in the first classes suddenly turned out to be small. Therefore, the degree of perturbation in these queues grew day by day. Reached insults, and in particularly nervous cases, to the massacre and the police. In television stories, only the names of schools and cities changed. And the queues were the same everywhere. But the biggest and most scandalous battles for the right to come to "their" school turned out to be in Moscow".

The controversial decision of the Moscow City Court was appealed in cassation by the Moscow City Duma and reversed by the decision of the Supreme Court of the Russian Federation on June 15, 2011. The definition notes that legal regulation, in which everyone is guaranteed the right to enter the first class of that educational institution, which is located in the immediate vicinity of his place of residence, cannot be regarded as discriminatory, restricting the right to public education. Other regulation, in the opinion of the highest court, on the contrary, with a certain degree of probability would allow refusal in admission to the first class because of the lack of free places for children living near the school, diminishing the child's right to access to education (including access to pedestrian).

The point in disputes about the territorial consolidation of schools was put by the federal legislator in the Federal Law of November 8, 2011 No. 310-FZ "On Amendments to

Articles 16 and 31 of the Law of the Russian Federation“ On Education ”in terms of ensuring the territorial accessibility of municipal educational institutions”. According to the amendments, the rules for the admission of citizens to municipal educational institutions for training in basic general education programs of primary general, basic general and secondary (complete) general education should ensure that citizens who live in the territory of the municipal district, urban district, fixed by the relevant authorities, are admitted to the specified educational institutions local government for a specific municipal educational institution, and have the right to receive a general Azovania. A little later, in a slightly modified wording, this provision was included in the new, current Federal Law on Education No. 273-ФЗ.

The rules referred to in the above-mentioned norm are defined by the Order of the Ministry of Education and Science of Russia No. 32 of January 22, 2014 “On Approval of the Procedure for the Admission of Citizens to Education in Educational Programs of Primary General, Basic General and Secondary General Education” (hereinafter referred to as Procedure) . In accordance with paragraph 14 of the Procedure, accepting applications to the first class for citizens residing in a fixed territory begins no later than February 1 and ends no later than June 30 of the current year. For children who do not live in the assigned territory, the admission of applications to the first class starts from July 1 of the current year until the vacant places are filled, but no later than September 5 of the current year.

Thus, children who do not reside in the assigned territory are cut off from the “not their own” school by the date of application, with the onset of which vacancies may be absent or have an extremely limited number. In essence, the territorial principle means a fairly rigid segregation of Russian schoolchildren, based, among other things, on a property basis. As a rule , the best schools with rich traditions are located in prestigious, most attractive residential areas and parts of settlements (historical centers, elite development areas, and so on). Accordingly, children from families with a high level of social and material status have a priority and sometimes exceptional opportunity to enter these schools.

The criteria for determining the boundaries of the territories assigned to schools are not explicitly defined by legislation. SanPiN 2.4.2.2821-10 "Sanitary and epidemiological requirements for conditions and organization of education in educational institutions" determined the normative walking distance of general educational organizations depending on the type of terrain and the construction-climatic zone (from 300 meters to urban areas, up to 4 km in rural areas). However, these standards are intended for the design and construction of schools and, strictly speaking, are not designed for the decision-making process on the definition of school micro-sites. The ud of the Russian Federation, in the framework of consideration of the case for appealing the aforementioned decision of the Moscow City Court of April 13, 2011, pointed to the wider significance of the provisions of SanPiN, linking them with the need for schools to be territorially secured in the interests of protecting the health of children; collisions arising from the establishment of the boundaries of school micro-sites, in particular , they do not give an answer to the question of what to do in this case and on what basis to choose houses for securing if the school is not able to ensure the admission of all children registered in the territory within the established radius (300 or 500 meters). What is the principle of consolidation if there are several schools within the established radius? Therefore, decisions on specific sites often cause questions and discontent on the part of citizens. For example, in cases of fixing a house not for a nearby, and behind a more distant school. The guarantees that the child will get an opportunity for being enrolled in a school closest to him are not established by law.

Examples in this sense are examples from judicial practice in the Perm and Chelyabinsk regions.

In 2012, the inhabitants of Perm were revolted by the territorial separation of schools established in the city. As a result of the decision, a significant number of children were

deprived of the opportunity to enter the geographically closest schools, their homes were assigned to schools located a kilometer or more away, with the need to cross the roadway. At the same time, there was a significant disproportion in the distribution of assigned places for gymnasiums, lyceums, schools with in-depth study of subjects, on the one hand, and ordinary schools on the other.

The Prosecutor of the city of Perm applied to the court to declare him invalid since the adoption of the List of Territories of the City of Perm, assigned to municipal educational institutions, approved by the Resolution of the Administration of the City of Perm dated 03.30.2012 No. 132.

The prosecutor believed that the "List" violated the rights of citizens to receive basic public education, since a large part of the territory of Perm was assigned to a part of educational institutions, and a small territory of Perm was assigned to another part of educational institutions. In accordance with the order of the Head of the Education Department of the Perm City Administration of April 6, 2012, No. SED-084) 1-26-143, an account was taken of children who are subject to compulsory education in educational institutions implementing general education programs, in connection with which an analysis was made of the number of children living in assigned areas for educational institutions and the number of places in the first classes, from which it follows that the number of places for the admission of children to the first class is not enough in those educational institutions for which and secured a large urban area and the number of children living in the area exceeds the number of seats in the first class, established a municipal task. At the same time, the prosecutor pointed out, a part of educational institutions engaged either in-depth study of individual subjects or providing additional (in-depth) training of students in humanitarian, technical or natural sciences subjects (status educational institutions) is insignificant part of the territory and the number of residents. This area of children, obviously does not cover the need of the school for first graders. In addition, when securing the territory of the city of Perm to educational institutions, the requirements of SanPiN 2.4.2.2821-10 on the territorial accessibility of educational institutions for children, which should be no more than 0.5 km, are not taken into account.

By the decision of the Leninsky district court of Perm dated January 28, 2013, the application of the prosecutor of Perm was denied. The appeals instance (Perm Regional Court) upheld the decision. In their acts, the courts indicated, including that Section 2.4, Section II, SanPiN 2.4.2.2821-10, which stipulates that when designing and building urban educational institutions it is recommended to provide for pedestrian accessibility of institutions located at a distance from 0.3 to 0.5 km., refers to the design and construction of schools, whereas in this case we are talking about functioning schools.

In 2014, the Sovetsky District Court of Chelyabinsk considered the case on the suit of the prosecutor of the city of Chelyabinsk against the administration of the city of Chelyabinsk to declare illegal, invalid and cancel paragraph 1 of the order of the administration of the city of Chelyabinsk No. 1077 of February 27, 2013 on securing the territories of the municipal educational institutions of the city of Chelyabinsk. The lawsuit stated that a number of residential buildings was unreasonable, in violation of the requirements of SanPiN 2.4.2821-10, assigned to educational institutions located at a distance of 0.6 to 1-48 km. The lawsuit also contained arguments about the discriminatory nature of clause 1 of the contested administrative order, as violating the rights of citizens to public education and pointed to the prejudice of the Definition of the Supreme Court of the Russian Federation No. 5-G11-106 of June 15, 2011 when resolving a civil case on the merits. However, the court dismissed the claim, as well as the Perm courts, pointing out the recommendatory nature of the requirements of paragraph 2.4 of SanPiN 2.4.2.2821-10 and their extension to the design and construction of urban educational institutions, the impossibility of applying to previously constructed buildings

of educational institutions. The Chelyabinsk Regional Court upheld the findings of the court of first instance.

In other words, there are practically no grounds for judicial protection of the rights of citizens in connection with the assignment of residential areas to schools. First, when making decisions, local governments are not bound by regulatory requirements on the conditions and criteria for securing territories. Secondly, as indicated by the Perm Regional Court in the appeal ruling dated April 17, 2013 in case N 33-3486, conciliation of the resolution of the Perm City Administration of 30.03.2012 No. 132 "On securing the territory of the city of Perm to municipal educational institutions" of this dispute is the fact that the disputed "Decree" does not regulate the procedure and grounds for the admission of children to educational institutions. Accordingly, this "Resolution" does not contain and cannot contain provisions restricting the possibility for citizens to exercise the right to receive public secondary education.

The conclusion is more than controversial, but it is the conclusion of the court.

The Supreme Court of the Russian Federation put the point on this question, which on September 16, 2015 (definition No. 5-APG15-55) considered the appeal complaint of Anna Ryabova, a resident of Moscow, who requested to cancel from the moment of adoption the appendix to the order of the metropolitan department of education of November 22, 2013 No. 804 "On securing educational organizations to the microdistricts (territories) of the city of Moscow". The document, in particular, assigns only two nearby residential buildings to the gymnasium No. 1514 located near Moscow State University. The house in which the applicant's daughter is registered is 30 meters from the educational institution, but, like more than 60 houses in the neighborhood, is assigned to another, more distant and less prestigious school. As a result, the family who specifically bought an apartment in the house opposite the gymnasium of their choice could not enroll the child there. As indicated by the highest court in its determination, "d The applicant's gadfight that the apartment building in which Ryabova AP's daughter lives is located in the territory to which another educational organization is assigned (State Budgetary Educational Institution No 118) does not indicate that this distribution contradicts the requirements of the law. As seen from the materials of the case and established by the court, the pedestrian accessibility of GBOU N 118 and Gymnasium N 1514 is in the same range stipulated by sanitary and epidemiological requirements for the conditions of training in general educational institutions, approved by the decision of the Chief State Doctor of the Russian Federation of December 29, 2010 N 189".

As a rule, in court decisions supporting the principle of territorial consolidation of schools, it is indicated that this principle does not exclude the possibility of citizens who do not live in the assigned territory enter the school of their choice.

## **2.2. Controversial issues of enrollment in schools.**

However, the realization of this possibility, due to the absence in the law of the rules on the distribution of "deficient" school places among children, lies in a plane of relations that is extremely vulnerable to the use of a subjective approach, corruption and other abuses.

Federal regulation in this part is limited to imposing on the educational organization the obligation to inform the population about the availability of places for admission of children who do not live in the assigned territory no later than July 1 (on the information stand, on the official Internet site, in the media).

It was also established that for such children, admission of applications to the first class starts from July 1 of the current year until the time of filling up the vacancies. This rule, in the absence of other specific rules, leaves a number of questions. In what order fixed by the time of application? By akim time is determined by the time of filling the empty seats? What is the order in which citizens are informed about this moment? B is considered filling space: filing of an application or issue administrative act on the child's enrollment in school?

From the text of the Order is also not quite clear the date of the issuance of the administrative act on the enrollment of "unfixed" children to school.

In accordance with paragraph 14 of the Procedure, enrollment shall be executed in a regulatory act within 7 business days after receipt of the documents. However, it is not clear from the text whether this applies to all children, or only those living in the assigned territory. And what does it mean - "after receiving documents": after receiving a separate application taken or after the deadline for submitting applications?

Paragraph 16 of the Procedure, according to which when accepting children to places that are not residing in the assigned territory, the children of citizens who have the right to *priority* place in an educational organization in accordance with the legislation of the Russian Federation and the regulatory acts of constituent entities Federation. The term "first priority" itself implies the existence of a certain "queue", while the "queue" in this case is not being formed.

Even more uncertain is the provision of clause 4 of Article 67 of the Federal Law on Education No. 273-FZ:

"In the absence of places in a state or municipal educational organization, parents (legal representatives) of a child, in order to resolve the issue of his device, go to another general educational organization directly to the executive authority of the Russian Federation that exercises state administration in the field of education, or the local government that carries out management in the field of education.

The procedure for consideration by authorized bodies of management of such appeals, the conditions for the distribution of seats by them in general educational organizations are not regulated by regulation.

### 3. Market economy and access to education.

Situations where there are no clear, consistent rules for the provision of places in schools inevitably generates numerous violations of citizens' rights, inequality based on the financial situation of parents [7-12]. The enrolment of children has become widespread, provided that voluntary donations are made to the school Fund. Judging by the facts that are reflected in the media, the so-called "entrance fees" to the school can reach several hundred thousand rubles. So, in Moscow entrance fees (legal and illegal) range from five to three hundred thousand rubles. In the West and South-West of the capital, they reach the maximum figure.

The phenomenon has become so significant that it was forced to respond to the President of the Russian Federation at a meeting with the asset of the party "United Russia" April 28, 2011. In a dialogue with the mother of three children, deprived of the opportunity to arrange a child in a nearby school, D. Medvedev called the situation "without rules", and extortion from parents "civilized form of bribes."

The public Prosecutor's office has been pointing to the widespread use of illegal money collected from parents under the guise of charitable assistance and voluntary donations for many years. In 2005 and 2010, the Prosecutor General's office of the Russian Federation made representations to the Minister of education and science of the Russian Federation on the elimination of these violations twice (in 2005 and 2010). However, over the past eight years, the situation has not changed significantly, as evidenced by the results of numerous Prosecutor's inspections in various regions of Russia: Samara region, Primorsky Krai, Zabaikalskiy territory, the Republic of Kalmykia and others.

The complexity of the way out of this situation, changing it essentially lies in the fact that the law does not prohibit educational organizations to accept charitable financial assistance, and any citizen or organization has the right to provide it, which is guaranteed by the Federal law of August 11, 1995 № 135-FZ "on charitable activities and charitable organizations." Claims to the school administration can arise only if there are formal signs in its actions of forcing

parents to make cash contributions: providing them with contracts or receipts with predetermined amounts, concluding contracts and the like. In the same case if visibility of voluntariness is observed and documents are issued properly at Prosecutor's office and other law enforcement agencies there are no bases for adoption of measures of reaction. In the absence of clearly defined rules, this creates the ground for virtually unpunished purchase and sale of places in educational institutions.

In addition, the object of purchase and sale was mostly "registration" (registration), which gives the right to enroll the child in the desired educational institution. The scale of this "business" is evidenced by statistics: for example, in Yekaterinburg in 2017 from 1 to 10 February for the first ten days of the application period on a territorial basis, more than a third (36 percent) of enrolled first-graders have temporary registration; in some schools, their share reaches 70 percent. Is called and the cost of such registration from 4 thousand rubles to 50 thousand rubles. In Novosibirsk, you can buy a "school registration" for 7 thousand rubles, in Krasnoyarsk - for 5 thousand.

#### 4. Exceptions to the principle of territorial consolidation of schools.

The only mechanism giving to the school student the opportunity of the choice of school, proceeding from its abilities, academic achievements, is provided by point 5 of article 67 of the Federal law on education No. 273-FZ allowing carrying out individual selection at acceptance or transfer to the state and municipal educational organizations for receiving the main General and secondary General education with profound studying of separate subjects or for profile training in cases and in the order which are provided by the legislation of the subject of the Russian Federation.

The given norm, although it does not contain a direct exception to the principle of priority of residence in the admission to school, but still creates a competitive basis for citizens' access to training in specialized classes. Its major drawback is its referential nature, which fully transfers the legal regulation of this important issue, including the very possibility of selection, to the level of regional legislation.

The analysis of normative legal acts of subjects of the Russian Federation shows the fallacy of such approach of the Federal legislator as any harmonious, complete, and especially uniform system of the state guarantees of fair and equal selection of school students at the regional level didn't develop.

First of all, it should be noted that only in isolated cases the grounds and procedure for selection are regulated by the laws of the constituent entities of the Russian Federation. In the vast majority of regions, the relevant powers are assigned to the Executive authorities, which, in turn, often transfer the solution of the key issue – the criteria for competitive selection – to the level of educational institutions directly. For example, the resolution of the government of the Penza region of September 12, 2014 No. 641-p "on approval of cases and the order of the organization of individual selection at acceptance or transfer to the state and municipal educational organizations of the Penza region for receiving the main General and secondary General education with profound studying of separate subjects or for profile training" has completely referential character in this part. According to point 7 of the Order approved by it criteria of carrying out individual selection of minor citizens are established by the educational organization independently and approved by the administrative act of the educational organization.

Similar reference provisions have normative legal acts of the Arkhangelsk, Amur, Murmansk, Nizhny Novgorod, Tyumen, Sverdlovsk, Tula, Ryazan, Voronezh and other regions.

As a result, the forms and conditions of individual selection may differ not only by region, but also by schools in one locality. At the same time, students are often informed about it 10-30 days before the selection day, which is extremely limited time for preparation.

In practice, not all schools that have classes with in-depth study of individual subjects or specialized classes, conduct individual selection in them. However, the legislation does not provide a clear answer to the question whether the selection of such a case is a right or a duty of the school.

Only in some subjects of the Russian Federation the establishment of the list of educational organizations in which individual selection is carried out is provided by management bodies.

Formally declared competitive principle of selection, however, as a rule, does not exclude territorial qualification. In most cases, the approved procedures contain restrictions for persons studying in other schools and advantages for those children who are already studying in the organization that carries out the selection, or the fact of residence in the fixed territory. For example, in accordance with paragraph 5 of article 4 of the law of the Khabarovsk territory of October 30, 2013 № 316 when deciding on individual selection, in case of exceeding the number of applications submitted over the total number of seats in the classroom (classes) with in-depth study of individual subjects or in the classroom (classes) profile training and the equality of the students shown the results of testing (interview) in the relevant academic subjects or the results of the state final certification in the relevant subjects, taking into account the residence of the student in the territory of the University., assigned to the educational organization. In the Novgorod region, admission of students to educational institutions that implement General education programs of in-depth study of individual subjects and (or) specialized training is carried out regardless of the place of residence of students only if there are free places.

According to point 10 of the Order established by the order of the government of the Republic of Komi of April 4, 2014 No. 137, admission to the educational organization of the student from other educational organization implementing the General education program of the corresponding level is carried out in the presence of free places.

Similar provisions granting the right to pupils of other schools to participate in selection only on the residual principle (in the presence of free places), contain in regulations of Primorsky, Krasnodar Krai, Volgograd, Omsk regions and many other regions.

At the same time, the legislation of the constituent entities of the Russian Federation does not contain requirements for minimum quotas of places that could be claimed by students of other educational organizations.

In Sverdlovsk region it is declared that completing of classes with profound studying of separate subjects, classes of profile training is made irrespective of the place of residence of students. However, educational organizations independently set quotas for the admission of students from other schools.

Thus, the inequality of opportunities of children due to their place of residence is maintained in the individual selection to schools.

There are other restrictions of a discriminatory nature. For example, according to item 6 of the order of individual selection approved by the order of the Government of the Republic of Khakassia of December 31, 2014 No. 732, transfer of the trained from other educational organization to the educational organization for receiving the main General and secondary General education with profound studying of separate subjects is performed in case of implementation of the first General education programs of the corresponding level. That is, the right to transfer is not conditioned by the academic achievements and abilities of the individual, but by the fact of schooling, implementing similar educational programs.

In a somewhat modified form (as an advantage for admission), this condition is defined in the normative legal acts of the majority of the subjects of the Russian Federation. In particular, in the Tyumen region the preferential right of acceptance or transfer to training in educational organizations (classes) use the students accepted in the educational organization as transfer



from other educational organization if they received the basic General or secondary General education in a class with profound studying of the corresponding separate subjects or in a class of the corresponding profile training (PP. 3 p. 27 Order).

We should also dwell on the question of the forms and criteria of individual selection. The legislation of subjects of the Russian Federation provides, basically, two forms of selection:

- 1) on existing achievements documented;
- 2) according to the results of special entrance examinations.

Sometimes there is only one form of selection, sometimes a combination of them. In addition, as already noted, the criteria used are not the identity of the child but the place of residence or study.

The first form of selection potentially has a fairly objective basis. A significant step forward was the introduction in 2017 in Russian schools of intermediate certification of graduates of primary school (graduated from four classes). Certification is carried out in a centralized manner, on the principles similar to the exam, using common control and measuring materials and techniques, which ensures the comparability of its results. However, the current regulatory legal acts of the subjects of the Russian Federation, establishing the rules of selection, with rare exceptions, actually ignore the performance of certification or take them into account in the system with other performance indicators and achievements of the student, which are more subjective. Performance indicators do not always reflect the actual level of training of students. The real "price" of assessments may differ significantly, and students in schools with higher levels of knowledge and objectivity in their assessment may find themselves at a disadvantage in individual selection.

As for the second form of selection - special entrance tests - the regulatory legal acts of the subjects of the Russian Federation their procedures and content are not regulated even in terms of the most General, fundamental points, obsepchivayuschih objectivity and equality of conditions of their conduct. As a rule, there is only an indication of the type of test (for example, an interview or test). Everything else (principles of building the content of the test, topics or questions, criteria for determining the results, etc.) is at best determined by the local acts of the school itself, and often does not receive any documentary consolidation. It not only complicates qualitative and on equal terms preparation for test, but also creates wide opportunities for manifestation of subjective and, it is not excluded, corruption, approach to an assessment of its results.

The possibility of citizens' access to higher quality education is reduced not only by the above factors, but also by the fact that, according to the regulatory requirements, education in schools with in-depth study of individual subjects, in gymnasiums and lyceums is possible only in one shift, which reduces their project occupancy compared to conventional schools twice.

## 5. World experience in realization of the right to education.

Moving from Russian realities to world practice, it should be noted that there are many examples of children's access to school services aimed at overcoming differences in the social and economic status of families, subjective and unfair distribution of places in schools [13].

Thus, in China, public secondary schools, starting from grade 7, are divided into precinct (territorial) and elite. On average, the number of places in elite schools in cities is 20 per cent of the total number of places. Historically, elite schools were created to accept students solely on the basis of the results of entrance examinations. Since the end of 1990, when Chinese schools refused entrance examinations in the framework of compulsory 9-year education, the system of admission to elite schools has been changed, divided into two quotas. The first one is for talented and gifted children, winners of academic, creative and sports competitions. The second (after filling in the first) – for persons who are selected by the results of the lottery, with the subsequent payment of tuition fees, the limit of which is set by the authorities (an average

of about \$ 400 per year). The lottery is held with the use of technologies and observers, which allow to eliminate any violations during the lottery. The competition is an average of 3-4 people per place. At the end of desyatiletnego school education persons who wish to complete General education, are in the process of selection and admission to upper secondary school based on the results of national examination (ganco) of seven subjects. In the most prestigious schools, quotas may be set for those who have received the number of points is not sufficient, but close to the pass (in the range of 2 points) and ready to pay for training. The amount of payment depends on the number of points. For example, a student who did not have two points will be four times more expensive than a student who did not have 0.5 points.

China's experience is interesting because there are transparent, equal conditions for legal attraction of extra-budgetary funds to the school system, which do not turn access to education in the best schools into a corruption scheme or competition of parents' incomes and do not infringe the rights of those who seek to enter them on the basis of their own achievements and knowledge.

In the United Kingdom (England and Northern Ireland), along with the usual schools that accept students on a territorial basis without entrance examinations, there is a system of "selective" schools, set in which the results of the exam "11+" (shall be from 10 years, in the last year of primary school or after its completion; includes a test in arithmetic, writing and test for General knowledge and logic). The prototype of this system was laid down by the act on education adopted by the British Parliament in 1944. It included the so-called grammar schools "grammar schools", technical and modern schools. Enrollment in them was carried out by the results of the exam 11+, which was introduced in the same year.

Since 2007, England has a Code in terms of school enrolment, adopted on the basis of an Act on school standards and rules 1998 and the Act education and inspections 2006. It is a 100-page document that regulates in detail the relationships that arise when children are admitted to English schools. Its main goal, as outlined in the Code itself, is to realize the government's desire to create a school system that would carry the best qualities and justice, developing the talents and potential of each child, regardless of his or her position; a system where all parents feel they have the same opportunity to choose a school for their children.

On the basis of the above-mentioned regulations, in addition to fully selective schools, there are also partially selective schools, about 10 percent of places in which are filled by the results of the 11+.

In addition, a system of criteria and rules for the selection of students in ordinary (non-selective schools) if the number of applications for admission exceeds the number of available seats, which is quite common, especially in prestigious, popular schools. In this case, two main methods are used: 1) division and selection by groups (banding) and 2) random selection, or lottery (random allocation, lottery). They are applied either separately or in combination, taking into account the established priorities. For example, priority is given to children whose siblings are already in school.

Division and selection of groups osushestvlyaetsya the evaluation punishment and abilities of students. Groups are formed as academic performance decreases, and each group has a proportional quota for school enrolment to ensure that children with different levels of preparedness are enrolled in prestigious schools.

The number of British schools using methods of selection of groups and lotteries is relatively small (121 and 42, respectively, according to 2013), but their number is growing annually.

Speaking about the British experience, it is interesting to note that the lack of vacancies in the school itself can not be a reason for refusing to enroll a child in school. This decision was taken by the Supreme court of England, which examined the complaint of the child's mother, who on this basis was denied admission and offered admission to another school. The court

ruled that the school must provide a place for the child, if this does not lead to a violation of the interests of the children already teaching in it.

One of the most selective school systems is in Germany. After the first stage of education, from the age of 10, children are divided into three types of schools (Gymnasium, Realschulen, Hauptschulen) designed to receive in the future, respectively, University and technical and applied education in terms of performance and test tests.

In Japan fully in a competitive, selective basis to study for the final wow of education. A similar system exists in Austria, where the stages of school education are divided into academic and technical areas. Enrollment is based on the results of entrance exams and performance indicators in the previous period of study.

Kazakhstan has established a network of state intellectual schools of physics, mathematics, chemistry and biology, acting on the basis of the Law of the Republic of Kazakhstan dated January 19, 2011 "on the status of "Nazarbayev University", "Nazarbayev Intellectual schools" and "Nazarbayev Fund". Educational grants of the first President of the Republic of Kazakhstan are provided on a competitive basis for education in schools, starting from the 7th grade.

The rules of the competition provide equal rights for applicants, regardless of their socio-economic status, residence and health status.

The competition consists of two stages. At the first stage, a comprehensive testing of applicants for specialized subjects, relevant areas of schools, as well as Kazakh, Russian and English languages. Complex testing is a qualifying for the second stage. It allowed applicants who scored 40% or more correct answers to the total number of questions. At the second stage, written examinations in specialized subjects are held. Grants are awarded to applicants who score higher on the results of the competition. In this case, a reserve list is formed, from which grants are provided to candidates in the event of a vacant place in the school during the school year. The competition is held by the Republican Commission headed by the Minister of education and science of the Republic of Kazakhstan.

## 6. Summary.

The experience of developed countries, such as the United Kingdom, Germany, Austria, Japan, China in regulating the grounds and procedures for the provision of school education can be successfully applied in order to improve the Russian legislation, which establishes the legal mechanisms for the implementation of the constitutional right to education.

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#### **BIBLIOGRAPHIC DESCRIPTION**

Matnenko A.S. Legal problems of ensuring equal conditions for realization the constitutional right to education. *Pravoprimenenie = Law Enforcement Review*, 2018, vol. 2, no. 4, pp. 30–42. DOI: 10.24147/2542-1514.2018.2(4).30-42. (In Russ.).