



ASPECTS REGARDING THE RIGHT TO EDUCATION.

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Abstract: *The essay is the result of a comparative research of the international and national provisions regarding the individual right to education, whose main purpose is to offer an answer to the following critical situation: in spite of all legal obligations and political commitments, many individuals are deprived of educational opportunities. Achieving the right to education for all is definitely one of the greatest challenges of 21st century, and the only way to reach this goal is by universalizing primary education. Are the international documents and the national laws efficient instruments for reducing the school abandon? This essay shall examine the laws, policies and practices to discern whether the right to education is recognized or denied and to highlight its impact in society.*

Key words: *right, education, laws, policies*

1. INTRODUCTION

The individual right to education must occupy a central place in the system of human rights, since it represents a precondition for exercising other rights and freedoms, as well as for the effective fulfillment of one's personality (Closca & all, 1995).

In view of the United Nations Organization and its documents, the right to education is not confined to the right to instruction, but it is commonly believed that the latter is only a dimension of the first.

However, the most visible and sought to be met aspect of the right to education is the right to instruction. Still, even if it is enshrined in numerous international documents, beginning with Universal Declaration of Human Rights and International Covenant on Social, Economic and Cultural Rights, this right to instruction is forbidden to a major part of Earth's population, either by prohibiting this right and its exercise or by an undemocratic and discriminatory restriction of it.

Although less visible than other violations of human rights, we can not help but noticing that illiteracy is a real scourge of the contemporary world which, paradoxically, although the world has evolved and information is increasingly accessible to more people, it continues to expand and hits even more human beings.

In this context, considering that the right to literacy and education is one of the fundamental human rights, UN Charter intended to identify the literacy as one of the fundamental purposes for which reason the United Nations Member States pledged to conduct international cooperation for solving the problems of economical, social, cultural and humanitarian nature, promoting and encouraging thus the respect for human rights and fundamental freedoms for all human beings without distinction of race, sex, language or religion.

Articles 55 and 57 of the UN Charter provide, in addition, that in order to create the conditions of stability and well-being that are necessary for peaceful and friendly relations among nations based on the respect for the principle of equality of peoples and their right to dispose of themselves, the United Nations State Members shall promote universal respect for

human rights and fundamental freedoms for all human beings without distinction of race, sex, language or religion, by means of specialized agencies established by intergovernmental agreements that have powers under their own statutes on international economic, social, cultural, educational, health and related fields.

Article 26 of the Universal Declaration of Human Rights settles that everyone has the right to education, education that shall be free, at least in the elementary school, and shall be also compulsory. As for the technical and vocational education, the Declaration also states that it must be generalized, as for higher education it should be open to all on equal footing and according to merit.

Universal Declaration of Human Rights stressed that the purpose of education should be the full development of human personality and of strengthen of the respect for human rights, it must foster the understanding, tolerance and friendship among peoples and among all racial or religious groups.

But even if the Universal Declaration of Human Rights imposes such obligations to the state and to the international community, it also recognizes the right of parents to choose the kind of education that is given to their children.

2. INTERNATIONAL SETTLEMENT

In terms of regulatory framework, the provisions of the Universal Declaration of Human Rights haven't remained single. Thus, on December 14, 1960, the General Conference of UNESCO adopted the Convention against Discrimination in Education which developed and incorporated provisions of the Declaration.

By signing this Convention, the States have undertaken the obligation to ensure the same degree at the same level of education and equivalent conditions in terms of quality of education delivered in all the public schools.

The states also encourage the education of the persons who have attended primary school or who have not gone all the way and enable them to pursue studies according to their skills.

All these provisions were developed by the International Covenant on Economic, Social and Cultural Rights, in Articles 13 and 14, by the Convention on the Rights of Child, adopted by the UN General Assembly on November 20, 1989, in Art .29, or by the Resolution on the Right to Education adopted at the 36th session of UN General Assembly in 1976.

According to Art.13 of the Covenant, the education should be directed to the full development of human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.

Education shall also enable all persons to participate in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups and promote the work of United Nations peacekeeping.

In this international context, Europe, by the Council of Europe and the European Communities, now the European Union, could not but settle the right to education through regional regulations.

3. THE SETTLEMENT OF THE RIGHT TO EDUCATION IN EUROPE

Now, with the entry in force of the Book-of Fundamental Rights in European Union, under Article 14 thereof, any person has the right to education and access to training and continuing education. This right includes also the possibility to receive free compulsory education.

The Book enshrines also the freedom to found educational establishments with respect for democratic principles and the right of parents to ensure the education of their children according to their religious and philosophical convictions.

Starting from the preamble of the European Convention on Human Rights according to which the Contracting States express their commitment to the same values that ensure the maintenance and development of truly democratic regimes, the member states of Europe could not indefinitely ignore the education of the European community members, and its settlement. (Bărsan, 2005).

Article 2 of the Protocol I of the European Convention on Human Rights settles the right to instruction providing thus that no one can be denied the right to education, the State, being obliged to ensure the right of parents to offer such education according to their religious and philosophical beliefs.

Doctrine found that the text contains a negative formulation which could, in a misinterpretation, restrict the application of this law. However, as pointed by the European Court of Human Rights, by means of Decision of July 23, 1968, with all this negative formulation, the Protocol establishes a fundamental right - the right to instruction (Bărsan, 2005).

Although it is commonly believed that the right to education can only deal with children and youth, such a finding is wholly erroneous. In motivating this answer we should point that the provisions of Article 2 of the Protocol settle explicitly that no one, without identifying any such limitation, can be denied the right to instruction. We must also state that the right to education is a social right that can not be enshrined and guaranteed only to certain categories of human beings, but to all members of society.

The exercise of freedom of speech, of conscience and right to information is subject to the education the individuals receive, which is why the wording of Art.2 of Protocol II ensures parents who participate in the education of their children, the right to request the states to respect their philosophical and religious beliefs.

Therefore, the right to education, such as it is enshrined in Art.2 of Protocol I of the European Convention of Human Rights, contains actually two rights, namely: right to instruction and right of parents to respect their religious beliefs and philosophical education of their children.

Both the European Court of Human Rights and the European Commission have established that the right to education, as settled in Article 2, ensures: access to the existing schools in a Contracting State; the right of each state to regulate its educational system according to the sources available and their social needs; the existence of an elementary and higher education (still it is not consider a refusal of the right to education the limitation of the access to higher education even for those candidates who are justified enough to follow such a successful education); the right of each state to declare the compulsory education (still, there is no obligation of a state to organize retraining courses and as well as it is no limitation to a certain type of text-book of study, when more than one works expressing similar views).

From the writing of the thesis of Art.2 of the Protocol I of the European Convention on Human Rights we must deduct the duty of the States to respect the right of parents to ensure education of their children conducting their religious and philosophical convictions, as well as the subjective right of parents to shape their children's education and training in

accordance with their own religious and philosophical beliefs, whatever form of education, private or public, the parents decide for their children to follow.

The former Commission attempted to define the concept of religious and philosophical beliefs, as it appears in Art.9 of the European Convention of Human Rights. Accordingly, the Commission determined that in the application of this text, we should consider that the term "belief", usually means "some ways to achieve a certain level of strength, soundness, coherence and relevance "to a person or a group of people. Considering the contents of the entire Convention, the former Commission settled, by a Decision of February 25, 1982, that the phrase "philosophical belief" refers to those beliefs that deserve the respect of a "democratic society and that are not incompatible with the person dignity and moreover, that they do not appear to be inconsistent with the fundamental right to education".

Former Commission decided also that the respect of the religious and philosophical convictions does not require the State to organize forms of education in accordance with the beliefs of parents, but to use accordingly the existing forms of education and content.

4. CONCLUSION

As formulated in the context above, the right to education is a fundamental human right both from a legal perspective, this right being governed by a number of national, European and international laws, but especially from the social perspective, education being an attribute essential to social coexistence. Regarding the content, the right to education, as we stated above, implies two key issues: access to instruction and the right to vocational training and continue education, both issues being considered by the national legislation.

Still, in researching this field we can conclude that despite the legal guaranties, an increasingly current aspect is the early school abandon. According to data provided by UNICEF Romania, in 2007-2008 the school abandon in this country was 1.9% in primary and secondary cycles, more pronounced in rural areas (2.2%) and this phenomenon is expected to increase in economic crisis. In the purposes of preventing and combating this phenomenon, we consider that a modality to cover the legal void is represented by the obligation of parents to contribute actively to the education process, and together with the authorities to guarantee the right to education of their children and to establish penalties for those parents whose behavior impede the access of children to education.

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