

The right to education as a fundamental human right

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Abstract

The right to education is a fundamental human right proclaimed by Articles 13 and 14 of the United Nations International Covenant on Economic, Social and Cultural Rights (1966). Ratifying this document, state parties fully agree 'that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms'. The right to education is considered as a fundamental human right in a series of other 20th century international documents, which guarantee and protect this right for everyone, irrespective of race, colour, religion, gender, social status, etc. This paper aims to respond to questions on the observance of this right and whether it has been limited. The research is based on international documents that regulate this specific category, as well as on the respective legislation and practice within educational institutions in the Republic of Macedonia.

Keywords: Education, fundamental human rights, covenant, law.

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¹ The strategy for adult education 2010–2015 (Skopje 2010) has acknowledged the concept of life-long learning as the basis of the global educational system.

1. Introduction

Education represents one of the most important priorities within the plan for dynamic development in a society. The right to education is oriented towards the establishment of a civilised, peaceful and discrimination-free cohabitation. When considering the category of education as one of the most perfected social investments, we usually refer to children and the youth in general, who need to be provided with equal opportunities in education, though we should not omit the adults as well, who have to be motivated for lifelong learning. Considering education as a powerful investment in the development of one's personality and in turn the character of a successful and economically powerful state, where everyone has a share in the overall well-being of the country, the primary goal of educational policies in any country is to fulfil the right to education for every citizen of theirs and ensure proper education levels for everyone. These policies should also make sure that the citizens possess the necessary knowledge, skills and attitudes, which correspond to the labour market needs and requirements.

The right to education is not only an autonomous human right but also rather a fundamental instrument and an essential factor for the realisation of other human rights, because human rights are inseparable, and the realisation of one right empowers the other. The right to education is the moving force for empowering human potential, both at an individual and collective level. Education makes people aware of building their own future, be engaged in the realisation of their own rights as well as other people's rights, participate in social life activities, and control the state actions towards them, including the rights and injustices that may emerge in these situations.

2. The Historic Development of the Right to Education

The concept of education is as old as humanity itself. The importance of education in shaping the individual towards creating his/her personality, and as a result, the development and progress of the wider social community in general has been emphasised since ancient Greece [2, p. 246]. However, in history, education was not implemented in the interest of progress and development, but it served elites in power to impose their political goals. In modern scientific society, education represents the decisive criterion of *conditio sine qua non* for the socio-economic status and the development of a responsible individual in the society (Heymann & Stein, 1972).

Even though the concept of education is quite old, it gained the status of a fundamental human right, ages later. This is because education cannot be considered as a fundamental classical political right, such as the freedom of speech or public gathering; it is rather considered an issue that is more often dealt with from the political context and represents subject to politically motivated undertakings. It was not until in the 20th century that education was expanded and transformed into a fundamental social right and a state obligation towards its own citizens. Nowadays, it is expected from civilised societies to provide the right to education to all their citizens. In this respect, there is no doubt that the family is an important part of education; however, the state is the subject, which has taken the main obligation to provide the logistics to education as part of the support for international acts and conventions.

If we were to search for the roots of the right to education in classical civil acts, as we are spontaneously used to referring to, we will see that they do not contain provisions related to education (see Bill of rights, 1689; United States Declaration of Independence, 1776) or the French Declaration on Human Rights). This is because in Europe before the period of Enlightenment, education was mainly carried out within the family and religious institutions; however, in the writings

of renowned philosophers such as Locke (1693) and Rousseau (1762), we can actually find conceptions that precede modern conceptions of the individual right to education.

Education is becoming a public issue and state responsibility only after the emergence of the modern secular state. In this, Article 143 of the German Constitution of Weimar (1919) contained provisions on education 'The education of youth has to be provided by public institutions', which clearly recognised the state's obligation to guarantee education through obligatory and free of charge education (Article 143, Die Verfassung des Deutschen Reichs, 1919) Based on the judicial-historic aspect, it is worth stating that the Weimar Constitution contained a wide spectrum of fundamental social rights, as products of the Enlightenment, which were applicable only as state goals. As a result, the legal status of fundamental social rights in the Constitution was clearly defined.

The United States Constitution did not include the right to education; however, it was the American courts of law at both levels, i.e., federal and state, that had developed entire chapters on education, especially with regard to equal opportunities to education. It was not until the 20th century that the views on the right to education were included in state constitutions and the Universal Declaration of Human Rights.

3. The Right to Education as a Fundamental Human Right in National and International Documents (Acts)

Education is both a fundamental human right and a responsibility. Primary education in most parts of the world is mandatory, whereas the responsibility to guarantee this particular right belongs to the state. Secondary education in some countries is mandatory and in some others, it is available and achievable for everyone. Higher education in some countries is considered as a public good and in some others as a private good. However, with regard to higher education there have always been arguments whether it should be considered as a fundamental human right or not. Some scholars relate it to the individual's ability and others to economic conditions to be educated. The Universal Declaration on Human Rights guarantees higher education based on personal merits. In the European Union, higher education is considered state responsibility and a public good (Giesinger, 2011).

If we were to look for convincing arguments that would prove that the right to education is a fundamental human right, we should consider several facts. Moreover, we can list a number of facts that prove that education is necessary for the society:

1. Education is necessary for the society because it provides security. Through education and learning about human rights, we could prevent or regulate the violation of human rights and armed conflicts, and we could also facilitate social reconstruction after the termination of such conflicts.
2. Being educated means being the potential source for economic empowerment. Latest scientific research proves that mass education represents one of the most important factors for a long-term economic growth. Education supplies people with abilities and skills, which make them more productive in performing their daily activities (Hanushek & Wossmann, 2015)
3. The notion of understanding is related to education and this goes beyond the factual information.
4. The ability to read and acquire new knowledge and skills is essential to being able to participate in political decision-making processes.
5. Being educated means being able to extensively and consciously utilize public services.

Let us now see how has education been considered in national and international documents on human rights.

3.1. *The Right to Education in the Constitution of the Republic of Macedonia*

The right to education in the Constitution of the Republic of Macedonia is extensive. Article 44 of the Constitution considers education as a fundamental human right. It states that 'Everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free'. In the first paragraph of Article 44, the Constitution mentions the right to education that can be enjoyed by all citizens in the Republic of Macedonia. The second paragraph guarantees that education is accessible to everyone under equal conditions, whereas the last (third) paragraph says that the primary education is compulsory and free (Article 44, Constitution of the Republic of Macedonia, 1991). In line with the Constitution is the Law on Primary Education, which provides the right of all children to primary education. The law in question prohibits any kind of gender, racial, colour, national, social, political, religious, property and social discrimination in terms of the realisation of the right to primary education provided by the law. (Article 2, Law on Education ('Official Gazette of the Republic of Macedonia' nr., 103/08).)

Even though constitutional provisions only refer to primary education when writing about compulsory free education, the legislation has intervened in this respect through Article 3, Paragraphs 1 and 2 of the Law on Amending and Supplementing the Law on Secondary Education (Ligjit per ndryshime dhe plotesime te Ligjit per shkollim te mesem, 2007) whereupon secondary education has also become compulsory for all citizens, under equal conditions provided by law. Moreover, the legislation guarantees that 'secondary education in public secondary schools is free'.

As regards higher education, the Constitution of the Republic of Macedonia (1991, Article 46), guarantees the autonomy of universities, whereas the terms and conditions on establishing, functioning and terminating the activity of universities, are regulated by law. The Law on Higher Education also determines the role and duties of higher education institutions: 'The roles and responsibilities of higher education facilities shall be those of generating, maintaining and dissemination of knowledge in order to secure social and economic wellbeing and progress in the society; education of students and their preparation for occupations requiring application of scientific discoveries and expert knowledge, cultural and language diversity, promotion of technological development, advancement of arts, technical culture and sports'. (Article 3, Law on Higher Education, 2008).

The eighth amendment of the Constitution of the Republic of Macedonia, says 'Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of communities have the right to instruction in their language in primary and secondary education, as determined by law'. In this context, the legislation does not mention higher education.²

The provisions of the Law on Family also recognise the following:

- The right to choosing proper education, profession, work and diverse education;
- The right to education refers to the right to enrolment in a primary as well as secondary compulsory school;
- The relationships between parents and children shall be based on the rights and duties of the parents to see to the upbringing, care, and education of their children and to develop their working

² The Southeast European University in Tetovo – Skopje is the first higher education institution in Macedonia, which has recognized the higher education in Albanian since 2001. The main language of instruction at this university is Albanian, though it pursues a policy of flexible language use, meaning that apart from Albanian, Macedonian and English are also used at large.

capabilities and habits. (Article 8, Paragraph 2, Law on Family, 'Official Gazette of the Republic of Macedonia' nr. 153/2014

– Parents shall have the right and duty to sustain their minor children, to take care of their lives and health, to prepare them for independent life and work, to take care of their upbringing, education and professional training. (Article 46, Paragraphs 1 and 2, Law on Family, 'Official Gazette of the Republic of Macedonia' nr. 153/2014)

– In the lawsuit of the parents about the sustenance of the child, the court shall judge as a contribution for sustenance of the parent to whom the child has been entrusted for further care and education, the work and care of that parent which he has been investing in the upbringing and raising of the child. (Article 195, Paragraph 2, Law on Family, 'Official Gazette of the Republic of Macedonia' nr. 153/2014)

– The parents may use the revenues from the property of their child, primarily for his sustenance, upbringing and education as well as for the necessary needs of the family community, provided that they themselves do not have enough means of their own. (Article 221, Paragraph 2, Law on Family, 'Official Gazette of the Republic of Macedonia' nr. 153/2014)

3.2. *The Right to Education as a Fundamental Human Right in International Acts*

In the most recent human history, the right to education was for the first time established in the Universal Declaration of Human Rights (1948). This international document on human rights confirms the right to education as a universal human right accessible to everyone without any kind of discrimination. This liaison between the right to education and the avoidance of discrimination can be found in many other human rights conventions, which have been ratified in accordance with procedures regulated by law by the Assembly of the Republic of Macedonia.

Pursuant to Article 26 of the Universal Declaration on Human Rights, education has been defined as a fundamental human right. The provision from Paragraph 1 of this Article says 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit'. Based on the interpretation of this provision, we can understand that in order to realise the right to education, member states have to create, in the first place, a primary education system, which would be compulsory and free of fees. Secondary education has to be achievable and open to everyone showing interest in it, whereas higher education has to be accessible equally to everyone though in compliance with their abilities, skills and achievements. It would be intolerable if, for example, only the rich could afford university education or if those capable to study withdraw due to high cost and other related expenses. The provision in question obliges countries to consider the provision of sufficient funds in their budgets for educational purposes.

The paragraph 2 provision foresees the aim of education, which is 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace'.

The provision of the third paragraph of Article 26 of the above-mentioned Declaration says that parents have a prior right to choose the kind of education that shall be given to their children. In fact, parents should not hinder, namely disable sufficient education for their children, which would also be in compliance with the children's individual abilities and skills.

Since the adoption of the Universal Declaration on Human Rights, various different international instruments have supported the right to education through their provisions.

The Declaration on Human Rights was adopted at the General Assembly of the United Nations in New York in 1959. It is known as the first international document that focuses on children solely on children. Children's fundamental rights have been emphasized in this document for the first time in

history. Chapter 7 includes the right to compulsory free education, at least at the primary level. However, the more detailed processing of this right followed 30 years later with the Convention on Children's Rights (Ivan, 1994).

The International Covenant on Economic, Social and Cultural Rights was adopted by the UN in 1966 and it came into force in 1976. It was brought with the aim of making the human rights of the Universal Declaration legally binding. As regards the right to education, Article 13 of the Covenant says that countries, as contracting parties of the Covenant, recognize the right of everyone to free education (free for the primary level and 'the progressive introduction of free education' for the secondary and higher levels). Article 14 of the Covenant requires those parties, which have not yet established a system of free compulsory primary education, to rapidly adopt a detailed plan of action for its introduction 'within a reasonable number of years'.

Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights include four elements of the right to education: availability, accessibility, acceptability and adaptability.

1. Availability has to do with the need of developing a network of schools at all levels, i.e., educational institutions have to be available with sufficient capacities. If the admission capacity of primary schools is smaller than the number of children to be admitted, then legal duties of the state with regard to compulsory education have not been implemented in practice.
2. Accessibility means that educational institutions have to be equally accessible for everyone and in line with the capabilities of all categories of people, regardless of their age and gender. Equal accessibility to educational institutions includes two segments: the physical and the constructive segment. The physical segment has to do with the engagement of institutions in creating suitable conditions for the elderly and the handicapped, whereas the constructive segment implies the avoidance of stereotype concepts, e.g., the role of males and females, etc.
3. Acceptability has to do with the fact that education is acceptable for parents or tutors (caretakers) and the children, meaning that they have the right to choose the education for their children. In this context, they are not obliged to send their children to public schools, but can also choose other schools, which meet the norms of educational policies set by the state, such as religious education or customary education (in accordance with their points of view) (Article 13, Item 3, International Covenant on Economic, Social and Cultural Rights).
4. Adaptability implies that education has to be flexible and adaptable, having in mind the child's best interest, as well as the social development and progress at national and international level. There should be an active school network with a scholarship system in order to improve the economic situation of students and teachers (Article 13, Item 3, The International Covenant on Economic, Social and Cultural Rights).

Another very important document that speaks about education is the Convention against Discrimination in Education (1960) adopted by UNESCO. Article 4 of this document says, 'The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;
- c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
- d) To provide training for the teaching profession without discrimination'.

Article 5 of this Convention states the aims of education.

1. The States Parties to this Convention agree that:

- a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;
- b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, first to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;
- c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:
 - a) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its – activities, or which prejudices national sovereignty;
 - b) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and
 - c) That attendance at such schools is optional. (The UNESCO Convention against Discrimination and Education, 1960.)

Article 10 of the Recommendation concerning the Status of Teachers (1966) says that appropriate measures should be taken in each country to the extent necessary to formulate comprehensive educational policies consistent with the Guiding Principles, drawing on all available resources, human and otherwise. In so doing, the competent authorities should take account of the consequences for teachers of the following principles and objectives.

- a) It is the fundamental right of every child to be provided with the fullest possible educational opportunities; due attention should be paid to children requiring special educational treatment.
- b) All facilities should be made available equally to enable every person to enjoy his right to education without discrimination on grounds of sex, race, color, religion, political opinion, national or social origin, or economic condition.
- c) Since education is a service of fundamental importance in the general public interest, it should be recognised as a responsibility of the State, which should provide an adequate network of schools, free education in these schools and material assistance to needy pupils (Males, 2002).

The Convention on the Elimination of All Forms of Discrimination against Women (Holland-Cunz & Ruppert, 2002; New York, 1979) defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. It especially dwells on the right to education for women. Since in many societies the position of women is inferior and leaves a lot to be desired, whereas education is one of the crucial preconditions for their progress, this convention states the right of women to education. Article 10 of this Convention says:

‘States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely;
- g) The same opportunities to participate actively in sports and physical education;
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning'.

All of these measures aim at changing the social and cultural models of the behaviour of both men and women and eliminate the mentality of male superiority. Moreover, based on Article 5, Paragraphs 1 and 2 of the CEDAW, the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases has to be acknowledged.

Article 28 of the United Nations Convention on Children's Rights (1989) says:

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available free to all;
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d) Make educational and vocational information and guidance available and accessible to all children;
 - e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates'.

Member states of the Convention will undertake all the necessary administrative and legislative measures, in line with their available resources as well as with the international cooperation framework, in order to implement the rights recognized by the Convention in question.

4. Conclusion

Comprehensive education represents the foundations of a society, which is both tolerant and rich. Education is considered as one of the fundamental human rights and has been provided and guaranteed by all documents and constitutions in the democratic world. Quality in education remains a challenge for all generations and societies. Based on the consulted international conventions, starting with Article 26 of the Universal Declaration on Human Rights (Paris, 1948), and a series of other conventions based on the former one, we can conclude that they do consider primary education

as a fundamental human right, but this does not apply to higher education. In this regard, the United Nations Convention on Human Rights considers higher education 'equally achievable for everyone based on merit'. This means that higher education is conditioned by one's abilities. Article 13 (c) of the International Convention on Economic, Social and Cultural Rights of the United Nations (1966), states that, 'Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education'. In addition, Article 28 (c) of the Convention on Children's Rights says, 'Make higher education accessible to all on the basis of capacity by every appropriate means'. In some countries, higher education is related to personal/individual merits, whereas in some others, to financial possibilities to cover education fees. In general, higher education is considered as a public good supported by public funds for those who deserve it.

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