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The European legislation on the education of migrant workers' children: A pedagogical reading

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Abstract

Since the last decades of the twentieth century the gradual stabilization of the immigration phenomenon has created also a significant increase in family reunification and, as a result, a great number of foreign students in European schools. In this context, the European institutions have seen fit to adapt to the situation by setting up a legislative system aimed not only to guarantee the right to education for immigrant children and to receive an equal treatment with the respect to native children, but also to lead the EU member States to promote integration school policies. The aim of this paper is to assess – through the examination of the laws and other official measures issued by the Council of Europe and the European Union – several initiatives undertaken in the last decades by the European political institutions to encourage cooperation among the member countries and to foster a common line of action on integration and education of immigrant children.

Keywords: Immigrant children, EU member States, integration school policies.

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1. Introduction

Starting from the last decades of the 20th century, a progressive strengthening of migration has produced a considerable growth of family reunifications and consequentially a significant number of foreigner children in schools.

In such a context, European Institutions have considered opportune adapting to the situation through a set of laws aimed not only to guarantee to migrant children the right to education and equal treatment with native children, but also to guide Member States toward the promotion of educational policies with the aim of supporting integration.

2. EU initiatives to support migrant children education

It is worth remembering here the *Resolution of the Council and of the Ministers of Education, meeting within the Council, of 9 February 1976 comprising an action programme in the field of education* (Official Journal C 038, 19/02/1976 P. 0001 – 0005). It contemplated “Better facilities for the education and training of nationals and the children of nationals of other Member States of the Communities and of non-member countries”, it established an action programme aimed to develop “suitable measures to improve integration for these children and to enable them to adapt to the host country's school system and way of life”. The resolution also promoted activities aimed to “organize and develop a reception system which would include intensive study of the language or languages of the host country; provide more opportunities as appropriate for teaching these children their mother tongue and culture, if possible in school and in collaboration with the country of origin; provide more information for families on the training and educational opportunities available to them”. At Community level it was expected “the exchange of information and experience concerning the organization of suitable types of teaching, taking the form of a limited number of pilot schemes to enable these types of teaching to be compared and assessed, and cooperation in the training of teachers required to assume responsibility in this field”.

In this regard, it is important to notice how the proposal of cooperation among countries to promote immigrant children education was not an innovation. As stated in the *Resolution*, this question was already dealt with in other EU documents: *Resolution of the Ministers of Education, meeting within the Council, of 6 June 1974 on cooperation in the field of education* (Official Journal C 098, 20/08/1974); *Council Resolution of 21 January 1974 concerning a social action programme* (Official Journal C 13, 12/02/1974, p. 01); *Proposals in favor of migrant workers and their families submitted by the Commission to the Council on 19 December 1974 and on the education of the children of migrant workers of 28 July 1975* (Official Journal C 213, 17/09/1975, p. 02)*. From a legal point of view, the first significant document is the *Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers* (Official Journal L 199, 06/08/1977 P. 0032 – 0033), only concerning children of workers from Member States, it established free education adapted to the specific need of such children including, in particular, the teaching of the language of the receiving country (article 2) and, in coordination with normal education, the teaching of mother tongue and culture of the country of origin of children (article 3).

In the same year, European Council signed the *Convention on the Legal Status of Migrant Workers*, entered into force in 1983. As the *Directive*, the *Convention* only concerned workers from Member States. It contemplated the right to access to the education system for the children of migrant workers with the same facilities of State's nationals. The receiving State had to facilitate the teaching of its language or, if there are several, one of its languages and it was supposed to grant scholarships to the children of migrants' worker as the receiving State's national. In addition, member States were encouraged to arrange special course for the teaching of migrants' mother tongue (Eurydice, 2004, p. 14). As it can be seen, on a juridical level, these last two documents were undoubtedly a good starting

* See: <http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX:41976X0219> (last consultation: 27/10/2015).

point for the right to education for the children of migrant workers, but they had a serious limit: they only concerned the children of migrant workers coming from Member States*.

A different approach is present in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990*[†], and in the *Resolution on cultural plurality and the problems of school education for children of immigrants in the European Community* adopted by European Union in 1993[‡]. About the education of migrant children, it is stated in the *Convention* that “each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment” (art. 30).

In the introduction of the second document, it is said that “whereas *Directive 77/486/EEC* represents a significant, though by no means adequate, step towards the achievement of the rights of the Community's citizens to freedom of movement” appearing “an extension of the scope of this *Directive* to include the children of citizens of third countries legally resident in the Community, as well as a clearer definition of the rights it guarantees”. Moreover, *Resolution* called on the Member States “to promote and support initiatives aimed at involving immigrant children and their parents in one and the same training programme, supporting initiatives to foster their language and culture”.

3. Various attempts to promote a common policy on migrants' integration

In essence, from the reading of the abovementioned documents and of the last decades legislation, European Institutions appear determined to promote among Member States “a common policy aimed to guarantee a respectful and careful reception of migrants, with an intercultural education approach crossing formative and educational curricula in order to achieve a complete social cohesion with the right to education for migrants of third countries starting from *Amsterdam Treaty* (entered into force on 1st May 1999)” (Orlando, 2012, p. 2)[§].

In this close examination, article 126 of *Maastricht Treaty* appears to be very important. It says that “The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity”^{**}.

Even during *Lisbon European Council March 2000*, it is reaffirmed the essential role of education and it is said that “People are Europe's main asset and should be the focal point of the Union's policies. Investing in people and developing an active and dynamic welfare state will be crucial both to

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- * Principles as such were first designed for migrant workers coming from Member States (D.P.R. 10-9-1982, n.722) and only later they were extended to children coming from third countries with the full right to education (Legge n. 943 del 10/12/1986, artt. 1 e 9), <http://www.funzioniobiettivo.it/glossadid/intercultura.htm> (last consultation: 27/09/2015).
 - † For a complete reading of the document, see: http://unipd-centrodirittiumani.it/it/strumenti_internazionali/Convenzione-internazionale-sulla-protezione-dei-diritti-di-tutti-i-lavoratori-migranti-e-dei-membri-delle-loro-famiglie-1990/34 (last consultation: 27/10/2015).
 - ‡ *Risoluzione sulla molteplicità culturale e sui problemi della formazione scolastica dei figli di lavoratori migranti nella Comunità europea adottata dall'Unione Europea nel 1993*, in Senato della Repubblica, XI legislatura, DOC. XII, n. 60, in <https://www.senato.it/service/PDF/PDFServer/BGT/802267.pdf> (last consultation: 27/09/2015).
 - § For more information about the Amsterdam Treaty, see: G. U. C340/1 del 10/11/97.
 - ** See Title 3 - Istruzione, Formazione professionale e Gioventù, Articolo 126 del Trattato di Maastricht, in <http://www.fidae.it/AreaLibera/politiche%20scolastiche%20ue/Trattato%20di%20Maastricht.pdf>. (last consultation: 28/09/2015).

Europe's place in the knowledge economy and for ensuring that the emergence of this new economy does not compound the existing social problems of unemployment, social exclusion and poverty”^{*}.

To sum up, during the last decades, European Institutions have undertaken various actions to promote cooperation among Member States encouraging a common course of action on the education and integration of migrant children.

With regard to this point, it is worthwhile to take into consideration, for instance, *A Common Agenda for Integration: a framework for the integration of third-country nationals in the European Union*[†] proposed by European Commission in 2005 which proposes measures to put into practice the Common Basic Principles on Integration, together with a series of supportive EU mechanisms like the *National Contact Points on Integration*[‡] or the *European Integration Forum and Annual Reports on Migration and Integration*.

At this point, it is also worth mentioning the *Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning* which “lists attitudes, knowledge and behaviors that educations should give to individuals to facilitate integration, personal fulfillment, active citizenship, social integration and employability in the modern Europe”.

Principles as such are also reaffirmed in the *Green Paper - Migration & mobility: challenges and opportunities for EU education systems*, July 2008. In this document, Member States are encouraged to consider the education challenge within the broader social cohesion context. With this regard, it is noticeable that any failure to fully integrate migrant pupils within schools is likely to be echoed in a broader failure of social inclusion” indeed “low educational attainment, low rates of school completion and high early school leaving will undermine the chances of young migrant pupils for successful labor market integration later in life. Failure to integrate education systems can also hinder development of the positive social bonds and interaction between different groups necessary for a cohesive society. If children of migrants leave school with an experience of underachievement and segregation, which carries on in their later life, the risk is that such a pattern is perpetuated also in the next generation. Conversely, where schools succeed in serving their migrant pupils well, this will prepare the way for their successful integration in the labor market and society. In this way, good schooling of migrant pupils answers both to equity and efficiency objectives.” (Commission of the European Communities, 2008).

From a more general perspective, it cannot be ignored the commitment to encourage Member States to “invest in people” and to “fight against inequality and poverty”. Hence, it is worth remembering the Presidency Conclusions of the Brussels European Council, May 2008, where Member States are encouraged to “take concrete actions to substantially reduce the number of young people who cannot read properly and the number of early school leavers, and improve the achievement levels of learners with a migrant background or from disadvantaged groups”.

4. A brief review of the Italian school legislation in the field of intercultural education

Educate the new generations to embrace those principles aimed at intercultural encourage respect for people and their cultural, ethnic and religious, as well as to develop a new sensibility and, at the same time, feelings of solidarity and reciprocity towards immigrants, means, therefore, create the basis for the construction of a more human world. In this regard, one cannot detect the great

^{*} *Lisbon European Council* March 2000. Presidency Conclusion in http://www.europarl.europa.eu/summits/lis1_it.htm (last consultation: 03/10/2015).

[†] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union [COM(2005) 389 def. – Not published in Official Journal] in <http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=uriserv:l14502> (last consultation: 03/10/2015).

[‡] Council Document 14615/04 del 19 novembre 2004.

responsibility of the school in promoting these principles, it, in fact, by virtue of its role as the educational agency, is called to be renewed and to give concrete answers to the new needs of a society that in the course of few decades has changed profoundly.

However, the entire school system that he has to really make operational the provisions intercultural which in fact already exist, but that in many schools are still not adequately enforced. On this side, it seems important to pause and reflect on the focus, as shown, for several years, of the Italy to these issues, as well as on the validity of certain legislative acts issued of the Ministry of Education in relation to the reception of foreign students to ' interior of the Italian schools, which, however, in many cases, have offered several suggestions to promote real integration of pupils are not Italian citizens. In this regard, the Ministerial Circular no. 205 of 07.22.1990 on "Compulsory education and foreign students. Intercultural education", introduced for the first time the concept of intercultural education, conceived as a response to the new demands of a multicultural society that promotes a culture of openness and integration of persons belonging other cultures and ethnicities. Are particularly significant within the Circular in question, claims on educational interventions, which should serve, even in classes where there are no foreign students, to promote a culture of confrontation and tolerance*. Of fundamental importance is also revealed the C. M. n. 73 of 2 March 1994 on "Intercultural dialogue and democratic coexistence: the design effort in school" which as well as incorporating the issue of the inclusion of foreign students in schools of all levels, addresses the question of the importance of preventing any forms of racism and anti-Semitism and mentions the possibility of the emergence of "the cultural value of all disciplines"†. This last aspect is, however, taken up and deepened in a study of intercultural education in school curricula, published in 1995 *Annals of Education*. In this text, intercultural education is understood as "a dimension of teaching that accompanies the training and guidance across all disciplines"‡. Of course one can also reveal important provisions in the Law no. 40 of 6 March 1998 on the "Regulation of immigration and the status of foreigners". In it is an emphasis on the educational value of linguistic and cultural differences and, Article 36 emphasizes the need for schools, "in the exercise of teaching and organization" promoting "intercultural projects of expansion of training, aimed at the promotion of linguistic and cultural differences and promoting initiatives of hospitality and exchange"§. Along the same lines, there is the Legislative Decree no. 286 of 25 July 1998 on the "Consolidated text of provisions governing immigration and the status of foreigners"; even in this Decree may find paying special attention to all those activities aimed at promoting the integration foreigners and to give effect to the right to education. To this end, the school is to foster the teaching of Italian as a second language, to respect the language and culture of the countries of origin, as well as to provide teacher training and social integration of immigrants**.

With regard to teacher training is also important to remember the DPR n. 394 of 31 August 1999 on the "Implementation Rules of the Consolidated provisions governing immigration and immigration of foreigners" in which, in addition to a number of provisions regarding the inclusion of foreign students in our school system and certain indication of the breakdown of the classes, you ensure the Ministry's commitment to support the training of teachers through the implementation of projects to upgrade and training at national and local levels on issues related to intercultural education. This commitment will be stressed, however, even in C. M. n. 155 of 2001 in which additional funds will be provided to all those schools with a presence of foreigners and nomads more than 10% of the members, to be

* Commissione Nazionale per l'Educazione Interculturale, *Educazione interculturale nella scuola dell'autonomia*, Spaggiari, Parma, 2000, p. 24.

† Ibid., pp. 24-25.

‡ *L'educazione interculturale nei programmi scolastici*, pubblicato nella raccolta *L'educazione interculturale e gli alunni stranieri*, in Studi e documenti degli Annali della Pubblica Istruzione, 1975, n. 71.

§ *Gazzetta Ufficiale*, n. 59 del 12 marzo 1998 – Supplemento Ordinario, n. 40.

** Decreto Legislativo n. 286 del 25 luglio 1998, pubblicato sul supplemento ordinario alla *Gazzetta Ufficiale*, n. 215 del 15 settembre 1998.

devoted to teaching^{*}. In the legislative measures mentioned, are only a part of the various regulations issued in recent years, for the integration of foreigners in the context of the Italian school, among these, we would like to note is the Ministerial circular no. 24/2006 on the "Guidelines for the reception and integration of foreign students" which emphasizes the importance of placing a particular attention to the reception of minors and also provides many guidelines and suggestions for the organization teaching and to facilitate their integration and success in education and training[†] and Document the Italian way to intercultural school, drafted in October 2007 by the National Observatory for the integration of foreign students and for Intercultural Education, established in December 2006 by the Ministry of Education.

With regard to this last document, it seems particularly noteworthy as stated in the introduction about the reasons that led the Ministry to want to find a model of intercultural school typically Italian. In this regard it is stated: "The objective is to identify an Italian model derives from the need to: draw attention to specific conditions, choices and actions that characterized the Italian experience, identify the strengths that have become "system", to identify weaknesses to be addressed with new practices and resources; give visibility to new goals and projects"[‡]. The aspiration to create a model of integration Italian is also found in the document prepared by the Committee on Immigration Remarks and Proposals on the second generation and policies for the school, approved by the National Council of Economy and Labor (CNEL January 31, 2008). In this document, it should be noted that in terms of integration, the Italian legal system is geared towards a different model than those of other European countries, which is a model that is not "inclusive or" like the French" or multicultural "as promoted by the United Kingdom. In the view of the drafters of the document, in fact, these countries "are showing, both dramatically their limits in the face of different types of migration, injustice and marginalization of social arrangements, problems, new and serious of the international context". The model proposed by the Committee for Immigration has the ambition to pursue "a process of recognition, dialogue, confrontation" that not only promotes respect for cultural diversity, but that takes into account the differences as a resource and a moment of enrichment both for nationals and for foreigners (CNEL, 2008, pp. 9-10).

In line with the project addresses lodged with the Ministry, we proceed launch in 2007, National Action train managers in multicultural schools, devoted in particular to those schools with a strong presence of foreign students - and conducted through national training workshops and discussion among school leaders - and, in 2008, the National Plan for teaching Italian as a second language, especially for newly arrived migrant students of secondary schools of first and second degree (Ongini, 2011, p. 3). The following brief discussion, so far conducted, the Italian ministerial guidelines on intercultural education certainly puts in light the desire to create a school ready to welcome and integrate foreign children, however, also reveals the considerable gap between the 'undoubted validity of certain legislative measures designed to promote and support within the classroom, the concept of intercultural education and the difficulties encountered by the school "real" to achieve the model of intercultural school desired by many. In response, in fact, a normative rather than evolved to these issues, one cannot experience the many deficiencies in the schools of many Italian regions, where the inadequacy of available financial resources adversely affects the possibility to implement projects aimed at encouraging the development of language skills, the training of teachers in service, implementation of language laboratories, the presence of cultural mediators and the support from

^{*} *Circolare Ministeriale 26 ottobre 2001, n. 155*, Prot. n. 520, Oggetto: Scuole collocate in zone a forte processo immigratorio (artt. 5 e 29 del C.C.N.I. -Comparto Scuola- 1999) - Anno scolastico 2001/02, in *Educazione e scuola*, http://www.edscuola.it/archivio/norme/circolari/cm155_01.html (last consultation: 12/10/2015).

[†] www.istruzione.it (last consultation: 12/10/2015).

[‡] Ministero della Pubblica Istruzione, *La via italiana per la scuola interculturale e l'integrazione degli alunni stranieri*, realized document of the Osservatorio nazionale per l'integrazione degli alunni stranieri e per l'educazione interculturale, ottobre 2007, p. 5.

local institutions, as well as the increase in initiatives to provide a better understanding of the languages and cultures of origin, aid from the social services in the area of finance and proportionate to the needs of projects often activated and then stopped for lack of funds. In conclusion, one has the impression that, on the issue of integration of foreign students, "our schools are still mainly equipped to handle the first phase of the integration of the pupil with non-Italian citizenship" (CNEL, 2008, 12-13).

These limits require a solution approach that cannot be improvised, but, on the contrary, needs to be carefully planned. In this regard, it is essential to create a system capable of learning to educate permanently and positively to those values and principles to grasp without reservation the dignity of the human person; consider the different - in our case the alien - as a subject of rights and duties and as a potential resource for the host country and emphasize the importance of protecting certain inalienable rights that are proper to the human person; implementing interventions and initiatives clearly of intercultural education. In essence, the goal must be pursued is to give life to a real cultural exchange through which stakeholders learn to use their communication skills to interact with each other and enter into a mutual and balanced, based on 'active listening and respect for differences. In this sense, schools must provide, on the one hand, to promote the social inclusion of immigrant pupils and their families and, second, to educate the natives to consider migration as an enrichment experience education and as a valuable resource to deepen their linguistic and cultural knowledge*. In this regard, it is, therefore, necessary to start classes within a course of cross-cultural training, directed to teach respect classmate's foreign, as a person, regardless of their nationality or religion, and to develop a critical attitude based on real knowledge of 'other, its culture and everything that concerns (Secco, 1993, 456-467).

5. Conclusion

With these certainties, in the *Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training* it is said that the main aim for European cooperation until 2020 is "to support Member States in further developing their educational and training systems" and, with a particular attention for the children of migrant workers, Member States should aim to ensure that all learners – included the migrant ones – complete their education and to promote intercultural competences (Council of European Union, 2009).

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* Commissione delle comunità europee, *Libro verde – Migrazione e mobilità: le sfide e le opportunità per i sistemi d'istruzione europei*, Bruxelles, 3.7.2008 [COM(2008) 423 definitivo].

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