

THE RIGHT TO EDUCATION REVISITED

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Abstract:

Articolul cuprinde în prima sa parte o prezentare analitică a conținutului manualului privind dreptul la educație, publicat de UNESCO în 2019. Un accent aparte este pus pe specificitatea juridică a acestui drept fundamental al omului, reflectat în numeroase instrumente juridice internaționale și incorporat în mod adecvat în Agenda 2030 în care sunt sintetizate obiectivele dezvoltării durabile definite de ONU. Înfăptuirea dreptului la educație figurează la loc de frunte în acest document programatic, iar UNESCO îi revine un rol activ în transpunerea în viață a acestui drept.

Cea de a doua parte a articolului oferă o evocare a inițiativei promovate de România la ONU în anii 1979-1981 prin introducerea în coautorat cu un mare număr de țări în curs de dezvoltare a unei cuprinzătoare rezoluții privind dreptul la educație, temă care a sensibilizat UNESCO, organizație chemată să prezinte la Națiunile Unite rapoarte de specialitate referitoare la implementarea acestui drept și la căile de universalizare a acestuia în practica statelor membre.

Cuvinte cheie: educație, drept, dezvoltare durabilă, UNESCO, ONU, Agenda 2030, promovare, implementare, globalizare, strategie, programe, recomandări, universalitate.

Résumé:

L'article contient dans sa première partie une présentation analytique du contenu du manuel sur le droit à l'éducation, publié par l'UNESCO en 2019. Un accent particulier est mis sur la spécificité juridique de ce droit fondamental, reflété dans de nombreux instruments juridiques internationaux et clairement incorporé dans le „Programme de développement durable à l'horizon 2030” résumant les objectifs du développement durable définis par l'ONU. La mise en œuvre du droit à l'éducation est au premier plan dans ce document – programme et l'UNESCO doit jouer un rôle actif à cet égard.

La deuxième partie de l'article évoque l'initiative promue par la Roumanie aux Nations Unies en 1979-1981 en présentant, avec un grand nombre de pays en développement comme co-auteurs, une résolution complexe sur le droit à l'éducation. Ce thème a sensibilisé l'UNESCO qui a été invitée à soumettre aux Nations Unies des rapports spécialisés sur la mise en œuvre de ce droit et sur la manière dont il est universalisé dans la pratique des États membres.

Mots-clés: éducation, droit, développement durable, UNESCO, ONU, Agenda 2030, promotion, mise en œuvre, mondialisation, stratégie, programme, recommandations, universalité.

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A significant Handbook

“Education is a basic human right and the best investment that we can make to ensure a sustainable future and leave no one behind.”¹

This is the first sentence of a recent publication by UNESCO under the title *The Right to Education Handbook*. In its 277 pages divided in 8 chapters the Handbook represents in the opinion of UNESCO a landmark for overcoming the barriers in the full implementation of this fundamental right and making it a reality. The Handbook is also intended to serve as a useful reference instrument for people seeking to understand and advance the right to education in both developed and developing countries. The Handbook may be used as valuable guidance on how to link legal commitments related to the right to education as a strategic way to achieve sustainable development goal number 4 contained in the United Nations 2030 Agenda.² This goal says: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. (SDG 4)

The conception of the Handbook is based on UNESCO’s Strategy on Standard-setting Instruments (2016 – 2021) which is meant to encourage Member States to use normative action on the right to education in order to achieve SDG 4.

We will summarize in these pages the main content of the 8 chapters of the Handbook without entering into details, but respecting as much as possible the original terminology of this publication which is rich in boxes, figures and tables, thus contributing to its high academic level. The handbook has been designed to be accessible to a large category of readers.

The Foreword to this Handbook is signed by Stefania Giannini Assistant Director-General for Education, UNESCO and David Archer, Chairperson of the Right to Education Initiative, Executive Board.

¹ See UNESCO, Right to Education Initiative, *Right to education handbook*, UNESCO, Paris, 2019, p. 4. See also the portal http://portal.unesco.org/education/en/ev.php-URL_ID=9019&URL_DO=DO_TOPIC&URL_SECTION=201.html

² The official title of 2030 Agenda is *Transforming our world: the 2030 Agenda for Sustainable Development*. In French it is entitled *Transformer notre monde: le Programme de développement durable à l’horizon 2030*. Goal number 4 provides inter alia that: “By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development”

In the first chapter the focus is put on education as a human right guaranteed in international law and grounded in the concept of human dignity. It is reminded that the primary beneficiary of the right to education is the individual and the process of education has social benefits for the state and for society as a whole. At the same time, education has to be considered as a public good and the right to education proves to be comprehensive and holistic by its very nature. In conformity with this interpretation, states are primary duty-bearers when it comes to the implementation of this right.

The second chapter deals with the international legal recognition of the right to education. The main ideas of this chapter are summarized by the Handbook itself as follows: The right to education is guaranteed under international law, specifically in human rights treaties. Soft law is an important form of non-binding law. Human rights treaties are concluded by a variety of different bodies: the United Nations and its agencies and regional bodies such as the African Union. The right to education, in whole or in part, is guaranteed by at least 48 legally binding instruments, 28 of which are regional, while 23 represent soft law instruments.

Chapter three invites the readers to get familiar with the normative content of the right to education which is defined as what all rights-holders are entitled to according to the various sources of international law. It is emphasized that the right to education is comprehensive in its scope and covers just about every aspect of education, from the aims of education to who can access education to the quality of education each person is entitled to. In this context, it is demonstrated that the right to education is not static in its normative content, but constantly evaluated and developed, usually through the treaty-making process or through elaboration by those factors who have authority to interpret relevant legal provisions. In its practice, education must be available, accessible, acceptable and adaptable. An important dimension of the right to education is its universality, no state being excluded from this basic right. In addition, equality and non-discrimination are fundamental principles that must be observed in the whole educational process. More specifically, primary education shall be compulsory and free of charge, while secondary and higher education shall be made progressively free of charge. A significant note is made of the fact that the right to education should not be understood only as the right to access education, but also as the right to receive an education of good quality.

Chapter four is entitled *States' legal obligations* and starts by reminding that states are the primary duty-bearers of the right to education. In simple words, it means states have clear legal obligations to ensure the full enjoyment of the right to education. It is cogently explained that specific legal obligations in this field arise from a variety of sources and first of all from universal treaties which require states to respect their legal commitments to international legal instruments. Under conventional law, such obligations on states include *inter alia* the progressive realization of the right to education, the resorting to maximum available resources to implement this right and to respect the principles of retrogression and non-discrimination. Certain practical aspects of the right to education are subject to obligations of immediate effect which require states to take action without delay. Minimum core obligations prioritize certain content of the right to education without which right-holders are considered to be deprived of the right to education. Legal obligations are quite large and require appropriate measures at both domestic and international levels. In this framework a 'tripartite typology' comes into the picture: to respect, protect, and fulfil legal commitments. This typology offers the most significant and widely used context for understanding and clarifying states' specific legal duties. Legal obligations are not limited to states. Indeed, non-state actors, including intergovernmental organizations, civil society, and business enterprises, have undeniable responsibilities to respect the right to education. This right may be violated and it should be recognized that a violation occurs in cases when a state fails to comply with its human rights obligations. A useful warning is added in this regard: states still have legal obligations to implement the right to education during situations of emergencies which are quite frequent nowadays.

In this respect it is appropriate to quote Irina Bokova, Director -General of UNESCO, who asserted that "Education lies on the frontline of conflict today; it must be at the forefront of building peace. We are not there yet. Governments, aid donors and the international community must all take concrete steps now to protect children and schools, to provide education in emergencies, to reconstruct education swiftly after conflict, and to tap education's power to foster peace. The promise of education must be real for all children, no matter their circumstances. This is essential for open societies, for sustainable development and for lasting peace".³

³ See <http://www.globaleducationmagazine.com/education-frontline/> accessed on March 11, 2019.

Chapter five is dedicated to a relevant analysis of several topical matters under the title *The right to education and SDG4-Education 2030*, already mentioned above. The findings of this chapter can be summarized as follows: The 2030 Agenda is a human rights-based political commitment to education with a 15-year time limit. In this programmatic document the right to education is presented as a legal commitment, clearly enshrined in international law, with no time limit. The right to education as a whole and SDG4 mentioned above mutually reinforce each other in order to ensure the actual implementation of both. While there are no provisions about accountability mechanisms for SDG4, legal obligations owed to the content of this important goal may be considered as generating the possibility for legal accountability through the general enforcement of the right to education.

The sixth chapter is entitled *Domestic implementation of the right to education* and its main ideas can be summarized as follows: The process of domestic implementation of the right to education is defined as the process by which states turn their legal commitment to the right to education into actual enjoyment of the right to education by all. In this regard, states must recognize the right to education within their national legal orders by incorporating it in human rights international legal instruments. In this framework, states should guarantee the right to education as a constitutional right and/or by enacting appropriate legislation. In practice, states can domestically implement the right to education through a variety of complementary measures, including policy, administrative, financial, judicial, and educational actions.

Chapter seven is dedicated to *Monitoring the right to education*. The activity of monitoring is defined as the process of systematically tracking and assessing a state's performance against its human rights obligations. This activity is very useful, as it enables the elucidation of whether states really comply with their legal obligations. The objective of monitoring is to contribute to the implementation of the right to education. The technical way monitoring is accomplished is important. There are some specific human rights indicators to be taken into account, accurate and reliable data can be collected, and accurate analysis of these data is required in order to adequately monitor the right to education and measure its implementation status. Countries are legally obligated to monitor the right to education, first, as part of their duties to domestically implement the right to education, second, as part of their immediate obligations to take appropriate measures for the full

realization of the right to education. At the national level, it is obvious that the most significant governmental body in the process of monitoring the right to education is the ministry of education (MoE). The domestic legislature and all national human rights institutions/mechanisms also play important roles in monitoring the situation at the domestic level. At the global level, a number of UN bodies, including UN treaty bodies, the Human Rights Council, UNESCO and ILO, have specific mandates to monitor the right to education. At the regional level, some intergovernmental bodies in Europe, Africa, the Americas, and the Middle East and North Africa have human rights systems that monitor state compliance with regional human rights legal instruments. Non-state actors, including non-governmental organizations, also have different reasons and motivations to monitor the implementation of right to education at the national level. Civil society itself has a complementary human rights monitoring role, taking action and representing alternative perspectives that states may sometimes neglect or be unaware of their utility.

Finally, chapter eight entitled *Accountability and the right to education* deals with the concept and practice of accountability in the field of human rights. In its essence, accountability is about how to hold states responsible when gaps occur between actual performance and assumed human rights obligations. It is estimated that accountability is beneficial for both rights-holders and duty-bearers. From a rights-holder perspective, accountability has to be recognized as a key process that ensures that all human beings can enjoy their right to education. From a duty-bearer perspective, accountability helps to meet the real content of human rights.

Domestic organs are best placed to apply national laws in general, to grant redress and remedies, and ensure the general enforcement of the right to education. In practical terms, at the national level, the activities of judicial mechanisms and access to justice for all play a crucial role in enforcing the right to education and ensuring legal accountability on the matter. A justiciable right to education can be interpreted that when this right is violated, the right-holder can take her or his claim before an independent and impartial judicial body, and if the claim is upheld, be granted a remedy, which can then be enforced. In a realistic approach to this topic, it should be recognized that in some countries barriers to justiciability exist and must be removed in order to create the necessary conditions for it and for the enforcement of the right to education.

This final chapter illustrates the fact that accountability mechanisms exist across various state and government organs, including the executive, legislature, administrative bodies, and regional and local government bodies. In addition, numerous accountability mechanisms exist at the international level. While states are the primary duty-bearers for the implementation of the right to education, international accountability mechanisms represent a last resort in terms of holding states accountable. Regional judicial bodies give rights-holders whose rights have been violated the real possibility of bringing their case to a regional mechanism, provided the state in question is party to the relevant regional instrument and that all domestic remedies have been exhausted or deemed insufficient in a given case.

A valuable initiative

The book summarized above is dated 2019. Initiatives to promote the right to education are much older, being inseparable of the whole history of UNESCO born in 1945 and of the United Nations (UN) established the same year. While in the case of UNESCO promoting the right to education is one of the *raison d'être* of this specialized agency, this right entered onto the UN official agenda due to valuable initiative of Romania which will be evoked below.

This was a special case in Romania's relations with a good number of developing countries illustrated by the joint presentation of a resolution on the right to education, – a collective initiative initiated in 1979 and materialized in a first stage by the adoption on 17 December 1979 by the UN General Assembly of Resolution 34/170⁴. The list of co-authors included the following countries: Algeria, Bahamas, Bangladesh, Barbados, Benin, Bolivia, Burundi, Colombia, Congo, Costa Rica, El Salvador, Ethiopia, Guatemala, Guinea, Guinea-Bissau, Indonesia, Ivory Coast, Jordan, Liberia, Madagascar, Maldives, Mauritania, Morocco, Pakistan, Senegal, Somalia, Sri Lanka, Upper Volta, Yemen and Yugoslavia.⁵

The resolution was well received and determined a series of useful consultations with the UNESCO Secretariat for the elaboration of a special report and promised a creative and fertile approach to a fundamental human right. By the first operative paragraph of the resolution the General

⁴ The full text of the resolution is available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/34/170 accessed on 12 March 2019.

⁵ See note 4 *supra*. The co-authors list is taken from the *Yearbook of the United Nations, 1979*, available at <http://unyearbook.un.org/> See Section Two: Economic and Social Questions: XIX. HUMAN RIGHTS QUESTIONS.

Assembly invited “all States to consider the adoption of appropriate legislative, administrative and other measures, including material guarantees, in order to ensure the full implementation of the right to universal education through, *inter alia*, free and compulsory primary education, universal and gradually free-of-charge secondary education, equal access to all educational facilities and the access of the young generation to science and culture”.

By the second paragraph, the General Assembly appealed to “all States, in particular to the developed countries, actively to support through fellowships and other means the efforts of the developing countries in the education and training of national personnel needed in industry, agriculture and other economic and social sectors”.

The UNESCO’s report submitted on the basis of this resolution to the UN General Assembly informed that this specialized agency’s regular program covered all levels, types and forms of education, including the training of qualified personnel and administrative staff. Universal and compulsory primary basic schooling and the elimination of illiteracy were two of its main objectives.⁶

The resolution introduced by Romania in 1980 was sponsored by 44 countries and was adopted by consensus on 15 December 1980 by the plenary of the UN General Assembly following similar approval by the Third Committee on 30 November. The Romanian delegation reiterated, developed and brought up to date the ideas contained in the 1980 Assembly resolution on the same topic. The sponsors, aware of the ever more disquieting phenomenon of the persistence of illiteracy in numerous areas, had included a new preambular paragraph recognizing the eradication of illiteracy as a special priority and urgency.

In the report submitted in 1981 by UNESCO, the document contained a paragraph which is remarkably topical today. It says: “Making a reality of the right to education as one of the fundamental human rights and hence democratizing education, should be a central concern of the future program, democratization being seen as much in quantitative terms – guaranteeing the free access of all to education and equality of educational opportunity – as in terms of education policies, content, methods and structures. In the democratization process very clear emphasis should be placed on the needs of disadvantaged groups, requiring Member States as well as UNESCO to engage

⁶ The full text of UNESCO report on the right to education is available at <https://undocs.org/en/A/36/524> accessed on 12 March 2019.

in specific and highly urgent work on behalf of refugees, migrant workers, physically and mentally disabled persons, various minority groups and so on. The need for equality in respect of the right to education can be regarded as particularly acute where women are concerned.”⁷

The resolution introduced by Romania on the UN agenda anticipated some academic studies by Romanian authors on the right to education and some relevant elements of this right.⁸ One of the most recent examples is offered by the article entitled *Moral-civic education – a component of human rights education* by Adrian Bulgaru, Ph.D. In its conclusions this article says “The role of the school is to cultivate students’ sensitivity to human issues and civic moral values by contributing, through formal and informal teaching, to the development of their attachment and respect for democratic values and principles and enabling the experience of citizenship through modern training strategies and education techniques, supported by education sciences and school practice.”⁹

Although the Romanian initiative on the right to education was successfully promoted in the years 1980-1981, it was unilaterally stopped by a decision of a member of the leadership of the Romanian delegation at the UN General Assembly’s session. The interruption of the initiative without any public explanation affected the credibility of the Romanian delegation in its efforts to negotiate other initiatives with small and medium-sized countries.

This element of abrupt discontinuity in the process of developing a promising initiative deserves to be retained in the chronology of the Romanian initiatives at the UN, in order to remind future generations of Romanian diplomats that the efforts to promote original initiatives did not take place on a smooth ground, sometimes encountering redundant obstacles caused by some members of the Romanian delegation itself, despite their professional

⁷ See note 6 supra.

⁸ For a relevant analysis of the right to education see Ion Diaconu, “Dreptul la educatie-drept fundamental al omului, la inceputul secolului XXI” (The Right to Education – Fundamental Human Right at the Beginning of the 21st Century), in *Journal of European Studies and International Relations*, New series, Vol.1/2017, pp.36-56. See also Irina Moroianu Zlătescu, Anca Mot, Adrian Bulgaru, *Educatie, Dreptul la Educație și Educația pentru drepturile omului*, (Education, the Right to Education and Education for Human Rights), IRDO, Bucharest, 2016. From international literature see Sandra Fredman (Editor), Meghan Campbell (Editor), Helen Taylor (Editor), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups*, 1st Edition by Policy Press, New York, 2018, p. 224.

⁹ See Adrian Bulgaru, “Moral-civic education – a component of human rights education”, *Drepturile Omului*, No. 1/2018, IRDO, p.13.

duties and expected solidarity in supporting Romanian initiatives in the field of multilateral diplomacy.

However, the history of multilateral diplomacy is able to balance things in favor of the truth, even if it will take many years to wait for the opening of the archives of foreign ministries that will reveal other surprising aspects of the diplomatic front involving Romania during the last decades of the 20th century.

Meanwhile, the right to education is again on an honorable agenda.

We will refer only to the most recent elements of the matter. In 2018, the Human Rights Council continued to examine the report of a special rapporteur on the right to education. In the resolutions and the mandate for drafting this report, there is no mention of the fact that the resolutions of the UN General Assembly (the last one adopted on December 17 1981) devoted to the right to education brought this topic to the attention of the United Nations for the first time as a result of an initiative of Romania co-sponsored in its last submission by 55 countries, most of them small and medium-sized states.¹⁰

A special resolution adopted in 2017 by the UN Human Rights Council reaffirms *inter alia* that “the obligations and commitments to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the right to education by all appropriate means, including in particular the adoption of legislative measures.”¹¹

The most recent report under consideration in the UN Human Rights Council dated June 18, 2018 contains many ideas similar to those advanced for the first time by Romania. One example is quite eloquent: “The legal obligations of human rights treaties should form the basis of national legislation and legal systems. The universal consensus around the norms and practices in the Sustainable Development Goals provide specific guidance on how national education systems should be guided”¹²

¹⁰ In this sense, it is recommendable to consult the available report at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/464/86/PDF/N1246486.pdf?OpenElement>.

¹¹ The full text of the resolution is available at <https://www.right-to-education.org/resource/2017-human-rights-council-resolution-ahrc3512-right-education> accessed on 12 March 2019.

¹² The most recent document on this issue is available at <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspxol.1/2017>.

A relevant recommendation from the same report deserves to be particularly mentioned. It says: “Every Member State of the United Nations but one has ratified one or more of the international treaties which provide for the right to education. The global consensus to the Sustainable Development Goals and the related Agenda have reaffirmed the global commitment to promoting a human rights-based approach to education. All States should review their education-related governance systems, including all laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial bodies.”

It can be asserted that the paternity of the Romanian initiative on the right to education should be restored, mentioned, recognized and defended at least in academic studies dedicated to multilateral diplomacy. In the Human Rights Council the consideration of the right to education will continue in 2019 and beyond.

Conclusion

As emphasized in the Handbook summarized in the first part of this article millions are deprived of educational opportunities every day, many as a result of social, cultural and economic factors. Therefore, the Right to Education Initiative (RTE) became a global human rights organization concentrated exclusively on the promotion of the right to education.¹³ The RTE was established by the first United Nations Special Rapporteur on the Right to Education. Since 2000, the RTE made efforts to promote education as a fundamental human right, by conducting specialized research and developing adequate instruments to assist people in understanding and effectively using institutional mechanisms to claim and enforce the right to education.¹⁴

UNESCO’s Strategy on Standard-setting Instruments (2016 – 2021) will have an important role to play in order to persuade its 195 Member States to use normative action on the right to education to achieve SDG 4, as formulated in the 2030 Agenda. The period between now and 2030 is considered to be really crucial for giving tangibility to the right to education, as it is largely recognized that without major progress in the field of education, the world will not be able to achieve all 17 SDGs contained in the document officially called *Transforming our world: the 2030 Agenda for Sustainable Development*.¹⁵

¹³ For details see <https://www.right-to-education.org/>

¹⁴ For details see <https://www.right-to-education.org/>

¹⁵ See note 2 supra.

During the current turbulent times, it is rewarding to hear again and again in the context of debates about education the prophetic words from the UNESCO Constitution – since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed. Peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind.¹⁶

A practical conclusion can be formulated. The universal obligation of all states is to demonstrate that, in aggregate, the measures being taken by them are sufficient to realize the right to education for every individual in the shortest possible time using the maximum available resources. Education must be recognized as one of the best financial investments states can make. The importance of education is illustrated by the vital necessity of a well-enlightened and active mind, able to freely create and to be a real reward of the whole human existence.

Bibliography:

- Bulgaru A. (2018), „Moral-civic education – a component of human rights education”, *Drepturile Omului*, No. 1;
- Diaconu I., “Dreptul la educație – drept fundamental al omului la începutul secolului XXI”, *Journal of European Studies and International Relations*, New series, Vol. 1/2017;
- Fredman S. (Editor), Campbell M. (Editor), Taylor H. (Editor) (2018), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups*, 1st Edition, Policy Press, New York;
- UNESCO (1945), *Constitution of UNESCO*;
- UNESCO, *Report on the right to education*, UNESCO, Paris;
- UNESCO, Right to Education Initiative (2019), *Right to education handbook*, UNESCO, Paris;
- Zlătescu M. I., Moț A., Bulgaru A. (2016), *Educație, Dreptul la Educație și Educația pentru drepturile omului, (Education, the Right to Education and Education for Human Rights)*, IRDO, Bucharest;

¹⁶ Constitution of UNESCO is available at http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html accessed on 15 March 2019.