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## THE RIGHT TO EDUCATION IN THE 21ST CENTURY: PERSPECTIVES AND CHALLENGES<sup>1</sup>

**Mirjana Ristovska,**

PhD, Associate Professor

Partizanska b.b., University St. Kliment Ohridski – Bitola,

Faculty of Law – Kicevo

[mirjana.ristovska@uklo.edu.mk](mailto:mirjana.ristovska@uklo.edu.mk)

### ABSTRACT

The right to education is a human right that belongs to the so-called second generation of human rights. Today, the right to education is protected by a number of international and national legal acts. In principle, the right to education implies a positive obligation of the state. This means that the state has an obligation to respect, promote and fulfill the right to education, depending on its resources and capabilities. In this regard, the right to education is also qualified as a public service or a public good in the states.

According to the International Human Right Law, the primary goal of education is to ensure human dignity and the holistic development of the human person. Education also transforms society, promotes economic growth, and fosters sustainable development in modern democracies.

Education can be defined in a wider and narrower sense. Consequently, the European Court of Human Rights states as follows: *“the education (of children) is the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.”*

The subject of this paper is a normative analysis of the right to education, with particular focus on higher education, in correlation to the democratic society development. In terms of methods, the authors will apply the normative method, the comparative method, as well as case law method.

**KEY WORDS:** right, education, ECtHR.

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<sup>1</sup> review scientific paper

## INTRODUCTION

*“Together we must promote and protect every person’s right to education, and ensure that quality education reaches all, and instills values of peace, justice, human rights and gender equality.”*

*Babatunde Osotimehin, UNFPA Executive Director*

Education is one of the most important Sustainable Development Goals (SDGs), as a plan of action for people, planet and prosperity, adopted by the United Nations in 2015.<sup>2</sup> The Education 2030 Incheon Declaration and Framework for Action (also known as the Education 2030 Agenda) recognizes higher education as a key driver for the attainment of Sustainable Development Goal (SDG) 4 and emphasizes the role of higher education in providing access to and supporting lifelong learning opportunities for all individuals, a precondition for the development of inclusive societies, responsible citizenship, and a qualified workforce.<sup>3</sup> More generally, education was increasingly seen as a defense mechanism against the rise of violence, racism, extremism, xenophobia, discrimination and intolerance. It was also broadly acknowledged that education makes a major contribution to social cohesion and social justice.<sup>4</sup>

According to Education 2030 Agenda, education is a fundamental right and an enabling right, as well as a public good, of which the state is the duty bearer.<sup>5</sup>

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<sup>2</sup> <https://sdgs.un.org/goals>

<sup>3</sup> Michaela Martin, Ana Godonoga, SDG 4 - Policies for Flexible Learning Pathways in Higher Education Taking Stock of Good Practices Internationally, IIEP UNESCO Working Paper, 2020, p.7

<sup>4</sup> Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, Recommendation CM/Rec(2010)7 and explanatory memorandum, 2010, p. 15

<sup>5</sup> Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, p.28

So, it can be concluded that education contributes to the development of the human dignity, human personality and society well-being in general.

The main aim of this paper is to analyze the legal definitions of the right to education contained in the international universal and regional legal acts, as well as to explain its legal nature.

### **THE LEGAL FRAMEWORK OF THE RIGHT TO EDUCATION**

The right to education is a fundamental human right that is protected by international and national law. The Universal Declaration of Human Rights recognizes the right to education. Article 26 reads as follows<sup>6</sup>:

*“1. 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.*

*2. 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.*

*3. Parents have a prior right to choose the kind of education that shall be given to their children.”*

Article 13 of the International Covenant on Economic, Social and Cultural Rights<sup>7</sup> states that:

*“1. The States Parties to the present Covenant recognize the right of everyone to education. They 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. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

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<sup>6</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>7</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

*(a) Primary education shall be compulsory and available free to all;*

*(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*

*(c) 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;*

*(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*

*(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."*

The right to education is the heart of the Convention against Discrimination in Education 1960. According to Article 1(2)<sup>8</sup>

*"for the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given."*

The Convention for the Protection of Human Rights and Fundamental Freedoms, as an international regional legally binding act, also recognizes the right to education. Article 2 from its Protocol 1<sup>9</sup> states that:

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<sup>8</sup><https://en.unesco.org/themes/right-to-education/convention-against-discrimination>

*“No person shall be denied a right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.”*

Additionally, there are many others international instruments and agreements that regulate the right to education, such as: the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees, the UN General Assembly Resolution on the Right to Education in Emergency Situations, African Charter on Human and Peoples’ Rights, etc.

The Constitution of the Republic of North Macedonia also recognizes the right to education. The provision of Article 44<sup>10</sup> provides that:

*“Everyone has a right to education. Education is accessible to everyone under equal conditions. Primary education is compulsory and free.”*

Considering the above mention provisions, a several conclusions can be drawn:

First, none of the articles contain definition about the term “education”;

Second, the right to education is determined by two aspects: a social and a freedom aspect;<sup>11</sup>

Third, the states have an obligation to respect, to protect, to fulfill and to promote the right to education;

Fourth, the principle of non-discrimination is the core stone of the right to education;

Fifth, the right to education must be read in the light of the right to respect for private and family life, freedom of thought, conscience and religion and freedom of expression;<sup>12</sup>

Sixth, the right to education is not absolute right.<sup>13</sup>

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<sup>9</sup> [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>10</sup> [https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns\\_article-constitution-of-the-republic-of-north-macedonia.nsp](https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nsp)

<sup>11</sup> Klaus Dieter Beiter, *The Protection of the Right to Education by International Law*, Martinus Nijhoff Publishers, 2006, p. 3

<sup>12</sup> Guide on Article 2 of Protocol No 1 to the European Convention on Human Rights, Right to education, European Court on Human Rights, updated on 30 april, 2021, p.5

An attempt to define the term “education” is an intriguing task. Etymologically, the word education has Latin roots. According to Craft, there are two different Latin roots of the English word “education.” They are *educare*, which means to train or to mold, and *educere*, meaning to lead out.<sup>14</sup> In general sense, education is a process of teaching, learning, training, awareness raising, information that equips learners with knowledge, skills, values, morals and habits. Today, it is an undisputable fact that knowledge is presented as a currency in education, especially in higher education.<sup>15</sup>

From theoretical aspect, there are variety of definitions about the education as a process, but from legally sight of view it is not necessary to have one, because the meaning of the term “education” is interpreted by the courts from case to case, depending from the social and economic circumstances.

The right to education has two aspects: a social and a freedom aspect. The former requires states to take active steps aimed at realizing the right to education, the latter requires them to respect free choice of education and the freedom to set up and run private schools.<sup>16</sup> According to Helen Clark, education is an empowerment right, because “*it has intrinsic value – extending far beyond the economic – to empower people to determine their own destiny.*”<sup>17</sup> In the opinion of Meyer-Bisch, the right to education is a mixed right. On the one hand, it serves civil and political rights, on the other, it falls within the logic of economic and social rights.<sup>18</sup>

According to the above cited legal instrument, states have obligations to refrain from interference with the individual’s exercises of the right to education. At the same time, states also have positive obligations to provide inclusive and equitable education at all levels, to promote lifelong learning opportunities for all, to ensure the equal access for all, etc. (SDG4). This is

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<sup>13</sup> Ibid., p.6

<sup>14</sup> In: Randall V. Bass and J. W. Good, *Educare and Educere: Is a Balance Possible in the Educational System?*, The Educational Forum, Volume 68, 2004, p. 162

<sup>15</sup> Tony Chambers, Bryan Gopaul, *Decoding the Public Good of Higher Education*, Journal of Higher Education Outreach and Engagement, Volume 12, Number 4, 2008, p.78

<sup>16</sup> Klaus Dieter Beiter, *The Protection of the Right to Education by International Law*, Martinus Nijhoff Publishers, 2006, p.3

<sup>17</sup> Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, p.13

<sup>18</sup> In: Klaus Dieter Beiter, *The Protection of the Right to Education by International Law*, Martinus Nijhoff Publishers, 2006, p.43

the reflection of the thesis that education is a public good that serves to the community, improves the quality of life and human well-being.

The right to education must be implemented and interpreted in harmony with non-discrimination standards. In general sense, the states must not apply different treatment in the implementation of the obligations that arise from the right to education.

For a difference in treatment not to be regarded as discriminatory, it must pursue a legitimate aim. In the *Belgian linguistic case* the Court had occasion to address the question of the inability for children with French as their mother tongue, living in a Dutch-speaking region, to follow classes in French whereas Dutch-speaking children living in the French-language region could follow classes in Dutch. It found that the measure in question was not imposed in the interest of schools, for administrative or financial reasons, but proceeded solely from considerations relating to language (§ 32 of “the Law” part). There had thus been a violation of Article 2 of Protocol No. 1 taken together with Article 14 of the Convention.<sup>19</sup>

As it was mentioned previously, the right to education is a complex right, that consists elements of all groups of rights. Consequently, the right to education could be read with other civil, political social, economic, cultural and solidarity human rights.

The right to education is not absolute right, as its exercises can be limited by the states. However, the restrictions must be foreseeable for those concerned and pursue a legitimate aim, although there is no exhaustive list of “legitimate aims” under Article 2 of Protocol No. 1 (*Leyla Şahin v. Turkey*, § 154).<sup>20</sup>

## **THE FUTURE PERSPECTIVES OF THE (HIGHER) EDUCATION**

Higher education, as a tertiary education, is seen as a central force in the knowledge economy.<sup>21</sup> Universities are special places in society and very important segment of the national higher education system. Through the principle of academic freedom universities have occupied a protected intellectual space in our culture in which individuals and disciplines are free

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<sup>19</sup> Guide on Article 2 of Protocol No 1 to the European Convention on Human Rights, Right to education, European Court on Human Rights, updated on 30 april, 2021, para.47, p.12

<sup>20</sup> *Ibid.*, para.16, p.8

<sup>21</sup> Tony Chambers, Bryan Gopaul, *Decoding the Public Good of Higher Education*, Journal of Higher Education Outreach and Engagement, Volume 12, Number 4, 2008, p.62

to practice scholarship, inquiry and critique for the purposes of furthering our understanding of the world and ourselves in it, and for the purposes of transforming it. Implicit in this ideal has been an attachment to the ‘grand narratives’ of truth and justice.<sup>22</sup> According to Morley, the university is being incorporated into “knowledge capitalism” and is being enjoined to play an ever fuller part in expanding this new form of capitalism.<sup>23</sup>

But, Barnett has one dilemma: What is it to be a University (higher education, *note by the author*) in the Twenty – First Century? The “University of the Past”<sup>24</sup> was prerogative of the upper social classes and the “University of Today” is diversified, expanded, globalised, borderless/edgeless, marketised, technologised, neo-liberalized and potentially privatized.<sup>25</sup>

“The University of the Future”, in the opinion of Morley, needs to recover critical knowledge and *be* a think-tank and policy driver.<sup>26</sup>

Another very interesting opinion comes from Ortega. He proposes in the future a “Faculty of Culture” to be the nucleus of any university. According to him, this faculty would be responsible for transmitting the vital ideas of its time, under broad thematic such as “the physical scheme of the world”.<sup>27</sup>

Kehm considers that “The University of the Future” will be so called “Multiversity.” According to him, “the regular prefix ‘uni-’ in university indicates that a uni-versity is the one and unified location where all subjects and disciplines, all knowledge if you want, can be found. The prefix ‘multi-’ refers to phenomena like universities without a fixed location or with various locations and to the large variety of activities inside and outside the institution, e.g. student housing, research and development, community outreach, employment counseling, teaching hospitals, alumni services, student recruitment, enrolment and orientation, international student affairs, placement testing, and so on”.<sup>28</sup>

Aoun, on the other side considers that technology must be an integral part of the future of the universities and higher education in general sense. He proposes “*a new model of learning that enables learners to understand the*

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<sup>22</sup> Sarah J. Mann, *Study, Power and the University*, Open University Press, 2008, p. 137

<sup>23</sup> In: Ronald Barnett (ed.), *The Future University, Ideas and Possibilities*, Taylor & Francis 2012, p. 2

<sup>24</sup> *Ibid.*, p.4

<sup>25</sup> *Ibid.*, p.27

<sup>26</sup> *Ibid.*, p. 34

<sup>27</sup> Søren S.E. Bengtson, Ronald Barnett (ed.) *The Thinking University*, Springer International Publishing AG., 2018, p. 24

<sup>28</sup> In: Paul Gibbs, Ronald Barnett (ed.), *Thinking about higher education*, Springer International Publishing Switzerland, 2014, p. 100, 101



highly technological world around them and that simultaneously allows them to transcend it by nurturing the mental and intellectual qualities that are unique to humans—namely, their capacity for creativity and mental flexibility. He suggests the name of this discipline to be **humanics**.<sup>29</sup>

## CONCLUSION

It is undisputable fact that the right to education is a fully recognized right by international and national legal systems. The right to education is perceived as *a sine qua non* for the progress of the humanity. Thus, the Education 2030 Agenda states as follows:

*“Our vision is to transform lives through education, recognizing the important role of education as a main driver of development and in achieving the other proposed SDGs. We commit with a sense of urgency to a single, renewed education agenda that is holistic, ambitious and aspirational, leaving no one behind.*

*This new vision is fully captured by the proposed SDG 4 “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” and its corresponding targets. It is transformative and universal, attends to the ‘unfinished businesses of the EFA agenda and the education-related MDGs, and addresses global and national education challenges. It is inspired by a humanistic vision of education and development based on human rights and dignity; social justice; inclusion; protection; cultural, linguistic and ethnic diversity; and shared responsibility and accountability. We reaffirm that education is a public good, a fundamental human right and a basis for guaranteeing the realization of other rights. It is essential for peace, tolerance, human fulfillment and sustainable development. We recognize education as key to achieving full employment and poverty eradication. We will focus our efforts on access, equity and inclusion, quality and learning outcomes, within a lifelong learning approach.”<sup>30</sup>*

So, the universities must create learning opportunities in the future, a new model for higher education that will be creative, effective, technologically based and inclusive.

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<sup>29</sup>Joseph E. Aoun, *Higher Education in the Age of Artificial Intelligence*, Massachusetts Institute of Technology, 2017 p. 53

<sup>30</sup> Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, p.7

At the end of the paper I will finish with the most popular TED (Technology, Entertainment, Design) Talk of all time is Sir Ken Robinson's "Do Schools Kill Creativity?" recorded in 2006.<sup>11</sup> In it, he famously argues that creativity, which he defines as "the process of having original ideas that have value," is as important to today's children as literacy. However, by stigmatizing failure and wrong answers in school, we train children to stifle it. "We don't grow into creativity," says Robinson. "We grow out of it, or rather we get educated out of it."<sup>31</sup>

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