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RIGHT TO EDUCATION IN INTERNATIONAL LEGAL DOCUMENTS

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Abstract. *The importance of the right to education reaches far beyond education itself. The right to education is recognized, promoted and protected at all levels— from local to global. The concept of each human right constitutes a dual perception—human rights are personified and there are particular duty-bearers, most often the states, which have certain obligations to preserve and protect those rights. This article summarizes governmental obligations, foreseen in international and regional legal human rights' instruments, corresponding to the right to education in its entirety. The conceptual framework for the content and scope of the right to education is established by different human rights institutions and judicial bodies and implicates the concept of quantitative and qualitative measures, expressed by four guidelines—availability, accessibility, acceptability, adaptability.*

Keywords: *human rights, right to education, legal instruments, availability, accessibility, acceptability, adaptability.*

Introduction

Relevance of the Topic. Education is one of the fundamental social, economic and cultural rights. Its importance has been especially noted in the changing world of the end of the twentieth and the beginning of the twenty-first centuries. Education itself is a human right, with its own content and protected by the states. It is also an inseparable mean of achieving other human rights, as only educated people may acquire legal and economical instruments for the struggle with poverty, social and economic discrimination, and other vital violations of human rights. Education is one of the most important and powerful tools for the spreading democratic values, the promotion of human rights, and the attainment of self-esteem and self-realization. The EFA (World Conference on Education for All) Global Monitoring Report, 2002, entitled “Education for All: Is the World on Track?” states that “Where the right to education is guaranteed, people’s access to and enjoyment of other rights is enhanced”¹.

The right to education is foreseen in many international and regional legal instruments. A large number of standard-setting instruments—conventions, declarations, recommendations, frameworks for action, charters—that are used at the international and regional level, provide a normative framework for the right to education. Different quasi-judicial and judicial international and/or regional institutions have embodied the provisions of international treaties in numerous cases and recommendations. Various international organizations (such as UNESCO, Economic and Social Council of United Nations, United Nations Committee on Economic, Social and Cultural Rights) and forums (for example, World Education Forum in Dakar, Senegal, in 2000; World Conference on Education for All (EFA) in Jomtien, Thailand, in 1990) reaffirmed the human right to education and expressed the framework of obligations and implementation targets for all states. Now the right to education, expanded for every child, youth and adult, is considered to be one of the most challenging projects of social development.

However, while there exists many possible legal mechanisms to safeguard the right to education, and the vast majority of states have adhered to international and/or regional treaties, far fewer have implicated the corresponding provisions into their domestic law or, if so, have provided the legislative and administrative measures to ensure that these rights are realized in practice. In some cases, this is determined by the poverty of the state, in other cases the restrictions to exercise the right to education is applied to specific vulnerable groups (such as national minorities, disabled people, girls, etc.). Therefore there are more than 760 million illiterate adults in the world today, and nearly 72 million primary school-age children (and an even larger number of secondary school-age children) are out of school². Moreover, gender discrimination continues to

1 *EFA Global Monitoring Report 2002 “Education for All: is the World on Track?”* [interactive] UNESCO Publishing, 2002, p. 14 [accessed 13-03-2010]. <<http://www.unesco.org/en/efareport/reports/2002-efa-on-track/>>.

2 *EFA Global Monitoring Report 2010 “Reaching the Marginalized?”* [interactive]. UNESCO Publishing, Oxford, 2010, p. 2 [accessed 13-03-2010]. <<http://www.unesco.org/en/efareport/reports/2010-marginalization/>>.

permeate education systems, and millions of those who are in school do not benefit from an education of sufficient quality to meet their basic learning needs. Marginalization in education matters at many levels. Having the opportunity to have a meaningful education is a basic human right. It is also a condition for advancing social justice. People who are left behind in education face the prospect of diminished life chances in many other areas, including employment, health, and participation in the political processes that affect their lives.

This also means that the right to education in many countries is becoming more and more theoretical than is realized in practice, which paradoxically transforms the essence of the right itself. This also raises questions of the content of the right to education, as it is nominally stated that the right to education is relatively well defined: universal access to free and compulsory primary education, universal availability/accessibility to secondary education, in particular, by the progressive introduction of free education; and equal access to higher education on the basis of capacity. These requirements are more clear than, for example, the human rights standards regarding the right to health, the right to participate in cultural life, and others. However while implementing the right to education in practice, many states encounter a lot of legal and social issues.

The Object of the Research. The content and the scope of the right to education.

The Objective of the Research. Therefore, the aim of this article is to disclose the content and the scope of the right to education foreseen in international and regional legal documents and to reveal possible obstacles for the realization of this right.

In order to achieve the determined aim the following *tasks* will be settled:

- to analyze international and regional legal documents regulating the right to education;
- to define the obligations of the states prescribed in the international and regional legal instruments in respect to the right to education;
- to discover and to analyze the standards and principles of the right to education;
- to present and to discuss case-law practice related to violations of the right to education and to define the most often social, economic and legal causes for such violations.

Bearing in mind all of the above, we may state that the main task of the last decades in the development of human rights was to introduce the worldwide community to the various human rights, and to convince the community to accept them as the guiding principles of a developing society. The task and ambition of the new century should be striving to fully implement those rights in practice. Therefore, the demand to understand the content and scope of each right is of great importance. Consequently, the present article is apropos and relevant, taking into consideration the processes happening currently in Lithuania—for example, the reform of the system of higher education, education quality issues, discussions regarding the right to higher education, etc. All those controversial legal and social issues may not be analyzed without regard to the right to education itself.

Methodology of the Research. In the course of reaching the objective of the research both theoretical and empirical methods of scientific research were employed—the methods of comparative, systemic, analytical-critical, and linguistic analysis. In addition, the methods of documentary analysis and generalization were used.

1. Scope of the Right to Education in Basic International Legal Instruments

Normative international and regional instruments lay down the obligations of the states regarding the right to education. These instruments promote and develop the right of every person to enjoy access to a good quality education without discrimination or exclusion. It is for the governments of the states to fulfil their obligations, both legal and political, in regards to providing a good quality education for all and to implement and monitor more effectively education strategies.

Since the end of World War II, quite a few universal and regional treaties, determining and regulating the right to education, have been adopted. Some of them determine the right to education in the short term without further specification, others dedicate more than one article to this right and explain the scope of the right explicitly. Due to the limitations of the volume of this article we will not analyze all of the universal and regional legal documents, but will focus our attention on the most important ones: international treaties—the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the UNESCO Convention against Discrimination in Education (1960). As the aim of this article is not to deeply analyze, nor to compare the provisions of legal documents but to disclose the essence of the right itself, we will research the legal requirements only as much as they are important for a better understanding of the content of the right to education.

1.1. General International Human Rights Documents Indicating the Right to Education

The right to education originally came to be expressed in the now familiar terms for the very first time in Article 26 of the *Universal Declaration of Human Rights*³. Article 26 Part 1 foresees:

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.

We must not forget that at the time the Universal Declaration was signed only a minority of the world's young people had access to any kind of formal education and

3 Universal Declaration of Human Rights (adopted 10 December, 1948). GA res. 217A (III), UN Doc A/810 at 71 (1948).

almost half of the world's adult habitants could not read⁴. Therefore, it was vital to ensure at least elementary education and to commit the states to take all possible legal measures and administrative tools for implementing compulsory elementary education, and thus making it free. The Universal Declaration uses the term “elementary” which later in other legal documents became “primary” and in the African Charter “basic”. This provision of the Declaration captures both the social and the freedom dimensions of the right to education because it sets out a positive obligation on the State to provide free, compulsory elementary education and stipulates that parents have the liberty to choose the education they wish their children to receive.

It is important to note that the right to education was conceived from the beginning as having a qualitative as well as a quantitative aspect. Part 2 of Article 26 indicates disputable requirements to the quality of education (“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”), as it is not clear and unambiguous who decides whether, and according to what standards, education “develops the human personality” or “promotes understanding, tolerance and friendship”. The Universal Declaration implicated that there can be different approaches to the purposes and contents of education.

The provisions of the Universal Declaration of Human Rights have been specified and complemented by two later documents—the special document dedicated to education, the UNESCO Convention against Discrimination in Education (1960)⁵, and the International Covenant on Economic, Social and Cultural Rights (1966)⁶.

The *International Covenant on Economic, Social and Cultural Rights* (1966) devotes two articles to the right to education—Articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. Article 13 foresees:

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.

Further, Article 13 amplifies the general right to education with references to primary education (“which shall be compulsory and available free to all”), secondary education (“in its different forms”, “generally available and accessible to all by every ap-

4 World Education Report 2000 “The Right to Education. Towards Education for All Throughout Life”. *World Conference on Education for All Meeting Basic Learning Needs. Jomtien, Thailand, 5-9 March, 1990*. Paris: UNESCO Publishing. 1994, p. 17.

5 UNESCO Convention against Discrimination in Education (adopted 14 December 1960, entered into force 22 May 1962). 429 UNTS 93.

6 International Covenant on Economic, Social and Cultural Rights (adopted 16 December, 1966, entered into force 3 January, 1976). 993 UNTS 3.

propriate means, and in particular by the progressive introduction of free education”), higher education (to be made “equally accessible to all, on the basis of capacity”), and “fundamental education” (for those who have not received or completed primary education). Secondary education includes the elements of availability, accessibility, acceptability, and adaptability, which are common to education in all its forms and at all levels and will be discussed later in this article. The most significant difference between the right to achieve secondary and higher education is that while secondary education “shall be made generally available and accessible to all”, higher education “shall be made equally accessible to all, on the basis of capacity”.

Part 3 of Article 13 requires states to respect the liberty of parents to choose schools for their children. One element of this paragraph is that states undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. The second element of this part of Article 13 is the liberty of parents and guardians to choose options other than public schools for their children, provided the schools conform to “such minimum educational standards as may be laid down or approved by the State”. This has to be read with the complementary provision, of Part 4 Article 13, which affirms “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in Part 1 Article 13 and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in Part 1 Article 13⁷.

It must be stated that while in general the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States Parties various obligations which are of immediate effect. In relation to the right to education, such immediate efforts are the “guarantee” that the right “will be exercised without discrimination of any kind” and the obligation “to take steps” towards the full realization of Article 13⁸.

In the Covenant, for the first time, the most important guidelines for the content of the right to education was established, forming the qualitative measures and specifying the obligations of the states in respect of this right. Education in all forms and at all levels must exhibit the following features: *availability*, meaning that there must be functioning educational institutions and that programmes must be available in sufficient quantity within the jurisdiction of the State Party; *accessibility*, which has three overlapping dimensions: non-discrimination, physical accessibility, and economic accessibility; and *acceptability* and *adaptability*, whereby education must be flexible so that it may adapt

7 Right to Education. Scope and Implementation. E/C.12/1999/10 (General Comments). On the Right to Education (Art. 13 of the International Covenant on Economic, Social and Cultural Rights). In *Implementation of the International Covenant on Economic, Social and Cultural Rights, Document E/C.12/1999/10*. Geneva: Economic and Social Council, Office of the United Nations High Commissioner for Human Rights, 1999, p. 10.

8 *Ibid.*, p. 13.

to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings⁹.

The right to education is quite often classified as an economic, social and cultural right; these are often deemed to be lacking remedies and are accordingly treated as quasi-rights or not-quite rights. As a consequence, denials and violations of the right to education are not addressed. Nevertheless, different human rights institutions and judicial bodies (such as the UN Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination against Women; the Committee on the Rights of the Child, and the European Court on Human Rights) have quite explicitly examined and discussed the scope of the right to education and formed a specific framework to state obligations regarding the right to education. These obligations have often been judicially tested in many domestic and international cases.

1.2. The Content of the Right to Education—the Conception of the four “A’s”

Expressed for the first time in The International Covenant on Economic, Social and Cultural Rights (1966), and then reaffirmed almost in all treaties or other documents related to human rights, the quantitative and qualitative scope of the right to education consists of four “A’s”—**availability, accessibility, acceptability and adaptability**. This conceptual framework is the minimum standard and, at the same time, the goal implementing the right to education throughout the world¹⁰. The achievement of these provisions defines a process as well as an end, and they challenge inequalities and abuse.

Availability means that states must ensure a free and compulsory, good quality education available for all children up to a defined age minimum, with safe schools and appropriate infrastructure and facilities, especially with trained teachers. Accessibility obliges the state to eliminate any discrimination on the basis of internationally prohibited grounds: legal and administrative barriers, ethnicity, economic status, disability, gender obstacles. In addition, education must be free and physically accessible. Acceptability requires that states ensure that education is acceptable to children, parents and teachers, with relevant content and methods, respecting everyone’s rights. It includes parental choice of education for their children and the enforcement of minimal standards (quality, safety, environmental health). Adaptability imposes the obligation to ensure that education is adaptable to the child’s specific situation and ability (especially for minority, indigenous, working children, children with disabilities, child migrants).

The possible barriers for the implementation of the availability clause may be, for example, lack of qualified teaching personnel, not enough schools in rural areas, a pro-

9 *Litigating Economic, Social and Cultural Rights: Legal Practitioners Dossier* [interactive]. Geneva: COHRE, 2006, p. 110 [accessed 06-06-2010]. <<http://www.cohre.org/store/attachments/COHRE%20Legal%20Practitioners%20Dossier.pdf>>.

10 The concept of these four “As” was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomaševski, and it is one of the best ways to assess and act upon the situation.

hibition to establish private schools (thus operation of the accreditation and/or licensing systems for private educational institutions in the states does not constitute violation), or discrimination of achieved education in these kinds of teaching institutions. The availability requirements usually apply to primary education and secondary education. However, the other dimension of the availability clause is meant to ensure that schooling is available and that there are safeguards against abuses of power by the government—this facet is spread over all forms and levels of education. For example, The African Commission on Human and Peoples' Rights found in 1996 that a two year long closure of universities and secondary schools in Zaire (as it was at the time) constituted a violation of Article 17 of the African Charter on Human and Peoples' Rights (1981), which guarantees the right to education, and specifically the availability requirement¹¹. Through this decision the Commission reinforced the universality and indivisibility of all human rights by treating economic, social and cultural rights, such as the right to education, in the same way as civil and political rights.

The accessibility indicator requires that education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any grounds, including race, colour, sex, language, religion, opinion, origin, economic status, birth, social status, minority or indigenous status, and disability. Possible violation: failure of a government to prohibit the segregation of indigenous children in separate schools or girls being denied access to education because they are working in the home or were married early. Education also has to be within safe physical reach—transport facilities should be provided or residential facilities should be provided to children who do not have access to schools within their neighbourhoods. Education must be affordable to all. This includes not only the elimination of school fees but also of indirect costs such as textbooks and uniforms. Whereas primary education should be available “free to all”, states are required to progressively introduce free secondary and higher education. Because financial aspects are indicators of the content of the right to education, there are no strict provisions imposing clear and unambiguous requirements upon states—this could be understood as a goal.

Acceptability requires that the content of education should be pluralistic, relevant, non-discriminatory, culturally appropriate, and of corresponding quality. Education should be pluralistic and guarantee the rights of parents to ensure the religious and moral education of their children in conformity with their own convictions. There must be minimum standards in law for the quality of education—it must be relevant, culturally appropriate, non discriminatory and the contents of curricula, textbooks and methods of instruction must be of good quality to students and, in appropriate cases, parents. Additionally, these guarantees have to be set, monitored and enforced by the government throughout the education system, whether the institutions are public or private. Schools must be safe (including the exclusion of violence in schools, especially the prohibition

11 *Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Inter africaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire*, Communication. No. 25/89, 47/90, 56/91, 100/93; 1 October 2005 [interactive]. [accessed 08-06-2010]. <<http://www.right-to-education.org/node/674>>.

of corporal punishment) and environmental health standards must be adhered to¹². Not all issues regarding acceptability are clear and unambiguous. For example, in a European Court of Human Rights case a complaint concerning a girl who was suspended from school because of her refusal to participate in a parade was examined. She regarded it as a commemoration of war, and her religious convictions prevented her from participating in an event that would glorify warfare. The Court took note of the parents' pacifist convictions but found no human rights violation¹³. The Supreme Court of the Philippines has taken the opposite approach and affirmed that children who are Jehovah's Witnesses have the right to be exempt from the flag ceremony (consisting of the singing of the national anthem, saluting the flag and reciting a patriotic pledge) because their freedom to exercise their religious beliefs could only be limited on the grounds of a danger to public safety. From the rights of the child perspective, the obligation to make primary school acceptable goes far beyond parental freedom of choice or the language of instruction and poses a great deal of challenge for all states. Restrictions upon school discipline are a good example because they have considerably increased in the past decade to protect the child's dignity against humiliation or degradation. They were, and are likely to remain, subject to litigation¹⁴.

Adaptability of the right to education means that education can evolve with the changing needs of society and contribute to the challenging of inequalities, such as gender discrimination, and that it can be adapted locally to suit specific contexts. It imposes an obligation to adapt education to the best interests of each child, especially regarding children with disabilities, or minority and indigenous children. This facet of the right to education could be violated when, for example, schools fail to accommodate special religious or cultural holidays, so that students are penalized for missing school, or states do not provide educationally adequate means for members of linguistic and/or cultural minorities to learn the national language. A very important indicator of the implementation of adaptability issue is whether state's legal provisions consider a link between the school leaving age and the minimum age for employment, marriage, military recruitment, and criminal responsibility. But in this case the relativity of human rights must always be taken into consideration, as the western approach to human rights has to be adapted to local reality. And "it may be that realizing certain of the values of individualism is incompatible with realizing certain values of community"¹⁵. For example, the adaptability of the right to education for working children does not mean that children must not work until they attend school. Creating opportunities for working children to "learn and earn" have been grounded in the necessity for poor people, including children, to work so as to be able to survive. The Supreme Court of India has accepted this

12 Right to Education Project. Promoting Mobilisation and Legal Accountability [interactive]. [accessed 08-06-2010]. <<http://www.right-to-education.org/node/229>>.

13 *Efstathiou v. Greece*, 18 December 1996, *Reports* 1996-VI. Also see *Valsamis v. Greece*, 18 December 1996, § 28, *Reports* 1996-VI.

14 Tomaševski, K. *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable. Right to Education Primers No. 3* [interactive]. 2001. p. 31 [accessed 08-06-2010]. <<http://www.right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf>>.

15 Griffin, J. *On Human Rights*. Oxford University Press, 2008, p. 133.

“learn and earn” approach for the non-hazardous employment of children below 14 years of age, mandating a reduction of daily working hours to six, coupled with at least two hours of education at the expense of the employer¹⁶.

However, it should be noted from the outset that these four “A’s” are not definitive, nor peremptory. Though they are a very convenient and transparent method for explaining the right to education in terms of tangible factors, they are not necessarily the standard used in every international treaty and as such should not be treated as a generic, comprehensive and sole possible guide to what the right to education means under every law. This framework of the four “A’s” can become an instrument to empower duty-bearers and others to think through what the right to education means, how it is implemented in some specific areas, and to compare their current reality to this conceptual aspiration.

1.3. Special International Legal Instruments, Analyzing the Right to Education

The UNESCO Convention against Discrimination in Education (1960)¹⁷ was the first international treaty to be adopted concerning education as such. The Convention is the first legally binding instrument which provides for standards and a quality of education. Article 4 of the UNESCO Convention foresees:

The States Parties to this Convention undertake ...:

(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 educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education [...];

The Convention also separately determines that rights of national minorities should be given insistent attention as those groups are one of the most vulnerable¹⁸.

It has to be noted that Convention against Discrimination in Education refers to the general principle of “equal opportunity” in education as the basis of action to be taken by States Parties with a view to achieving the right of the child to education. In fact, the

16 Tomaševski, K., *supra* note 14, p. 35.

17 UNESCO Convention against Discrimination in Education (adopted 14 December 1960, entered into force 22 May 1962). 429 UNTS 93.

18 Article 5: “[...] 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 [...] 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...”.

“Convention was designed in part to promote this principle”¹⁹. The Convention expresses another fundamental principle—that of non-discrimination. This principle is inextricably linked with the principle of equality of educational opportunities. The Convention prohibits any “discrimination” or any distinction, exclusion, limitation or preference, “based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth” (Article 3 of the Convention and Preamble to the Convention). These provisions provide a normative basis for continuing education and learning, and the right to basic education for youth and adults. The Convention provides for the parental choice of education and freedom in education. It enjoins upon States Parties the obligation to respect the liberty of parents and, where applicable, of legal guardians—firstly, to choose institutions other than those maintained by the public authorities for their children. Such education should, however, conform to minimum educational standards as may be laid down or approved by the competent authorities

But the provisions of the Convention further foresee situations which would not be deemed to constitute discrimination. It is allowed to establish or maintain separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study. Additionally, the same possibility is provided for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities (Article 2).

“The particular significance of the Convention is demonstrated by the frequency with which it is mentioned in other instruments concerning the right to education adopted by the United Nations and by its recognition under modern international law”²⁰. The Convention has been cited in numerous decisions by law courts. Rich jurisprudence exists as regards the principle of equality of educational opportunities in several countries—notably in the USA, India, South Africa, Canada, and several other European countries. For example, the *Supreme Court of Mauritius* has brought into prominence the importance of abiding by the Convention. The Court considered the issues in the light of the provisions of the Convention and held that “it is a well-recognized canon of construction that domestic legislation, including the Constitution, should if possible, be construed so as to conform to such international instrument as the Convention”²¹. This

19 United Nations Educational, Scientific and Cultural Organization [interactive]. [accessed 15-03-2010]. <<http://www.unesco.org/en/right-to-education/normative-action/fundamental-principles/equality-of-opportunity-and-treatment/>>.

20 *Significance of the Convention against Discrimination in Education* (1960) [interactive]. UNESCO Publication, 2005, p. 10 [accessed 04-06-2010]. <<http://unesdoc.unesco.org/images/0015/001537/153765E.pdf>>.

21 *Ten Reasons Why The Convention against Discrimination in Education is Highly Significant in Today’s World* [interactive]. UNESCO Publication, 2007, p. 6 [accessed 04-06-2010]. <<http://unesdoc.unesco.org/images/0015/001537/153765E.pdf>>.

judgment stated that the overall purpose behind the Convention is to combat all forms of discrimination in education.

In another case from the Supreme Court of India *M.C. Mehta v. State of Tamil Nadu and Others* (1996)²², it was declared that “the right to education is part and parcel of the right to life, and is therefore one of the fundamental rights”. The Supreme Court ruled that Article 24 of the Indian Constitution requires the State to try to provide free and compulsory education for children. This decision has given the State’s duty to provide free and compulsory education to children the status of a fundamental right and, in fact, a new article has been added to the Constitution recognizing the right of children aged 6–14 to free and compulsory education.

Although it must be stated that the main purpose and subject of the Convention—to implement non-discrimination and the principles of equality to education—the provisions of the Convention do not interfere with education systems existing in individual countries and takes into account the standards of the national education system.

The latest specific international legal document foreseeing the right to education is the *Convention on the Rights of the Child* (1989)²³, which dedicates 3 articles (articles 28-30) to education. Article 28 of the Convention repeats all of the most important provisions of other international documents and imposes on the states the obligations to respect, protect, and fulfil each child’s right to education, focusing upon the obligations of State Parties in relation to the establishment of educational systems and in ensuring access thereto. The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligations of States Parties in relation to primary, secondary, and fundamental education are not identical. States obliged to “make primary education compulsory and available free to all”, to “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”, and to “make higher education accessible to all on the basis of capacity by every appropriate means”. Also it is established to take into greater consideration the particular needs of the developing countries “contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods”.

Article 29 of this Convention at the same time promotes, supports, and protects the core value of the Convention—human dignity is innate in every child and is his or her equal and inalienable right. Article 29 adds a qualitative dimension which reflects the rights and inherent dignity of the child to the right to education recognized in Article 28. It also insists upon the need for education to be child-centred, child-friendly, and empowering. In addition, it highlights the need for educational processes to be based upon the very principles it enunciates²⁴. The child’s right to education, according to Article 29

22 *Significance of the Convention against Discrimination in Education* (1960), p. 14.

23 *Convention On the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990). 1577 UNTS 3; 28 ILM 1456 (1989).

24 *The Aims of Education: 17/04/2001. Document CRC/GC/2001/1. (General Comments)*. United Nations, 2001, Par. 1-3.

of the Convention, is not only a matter of access but also of content. An education with its contents according to Article 29 is an indispensable tool for every child's efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies, and related phenomena. The education to which every child has a right is designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. Article 29 states that the States Parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation, or culture. At first sight, some of the diverse values expressed in Article 29 might be thought to be in conflict with one another in certain situations. For example, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph "d" refers, might not always be automatically compatible with policies designed, in accordance with paragraph "c", to develop respect for the child's own cultural identity, language and values. The significance of this article is that it attaches importance to the process by which the right to education is to be promoted. Article 29 insists "upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions. It reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility"²⁵.

Therefore, it may be stated that a child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by the denial of access to education but also by a failure to promote an understanding of the values defended in all international documents regarding the right to education as a phenomena of modern democratic society.

2. Regional Legal Instruments Regulating the Right to Education

In this article we will examine the most important legal documents representing all parts of the world and the most important legal systems and values—The European Convention on Human Rights (1950), The African Charter on the Rights and Welfare of the Child (1999), The American Convention on Human Rights (1978), and The Arab Charter on Human Rights (1994). The Asian continent and Pacific Ocean region do not have separate special provisions dedicated to the right to education—international documents are applied in those states.

25 *The Aims of Education: 17/04/2001, supra note 24, 2001, Par. 12.*

There are quite a lot of regional documents regarding the protection of human rights. Several of them are directly dedicated to the right to education or at least focus specific emphasis on this right. As regional human rights documents pay more attention and respect regarding specific cultural, religious, moral issues, and the protection of human rights in the particular geographic areas, it could be presumed that imposing these documents should not discontent the governments of the states and those to whom the corresponding provisions are dedicated. However, the understanding of the content and application issues of the provisions of the regional documents regarding the right to education is not less complicated than those of the international legal documents. This could be explained by the presence of multicultural and multi-religious environments in the regions of Africa or America. Thus, “what it one culture taught as true and non-negotiable standards of conduct may in other cultures be understood merely as pieces of advice or recommendations”²⁶.

2.1. European Approach on the Right to Education

The first regional document indicating the right to education was The European Convention on Human Rights²⁷, specifically the First Protocol of the Convention. Article 2 of the Protocol, in general terms, briefly foresees that “No person shall be denied the right to education. In the exercise of any functions which assumes in relation to education and to teaching, the States shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. By comparison with other articles in the Convention, the right to education is rather terse and is phrased in very general terms. In fact, it was difficult even to draft it, taking into consideration the “defensiveness of many states over features of their own educational system”²⁸. Many states were reluctant to proclaim that everyone has a right to education, not wishing to impose an open-ended duty on the states to provide education, and they instead adopted a negative formulation²⁹. Therefore, the decisions of the former European Commission on Human Rights and the European Court on Human Rights have had a great impact on analyzing and explaining the scope of the right to education.

According to different decisions of the Court, states have a very broad margin of appreciation of the right to education provided in a particular state. The case—law rarely allows applicants to use the provisions of the Convention in order to obtain certain redress for alleged violations of the right to education. The Court unambiguously declares violations of Article 2 of Protocol No. 1 to the Convention only in cases where the right is violated because of racial, national or other discriminatory issues. For example, in the case *Timishev v. Russia*³⁰ the Court stated that a differential treatment of persons in

26 Almqvist, J. *Human Rights, Culture and the Rule of Law*. Oxford and Portland, 2005, p. 94.

27 European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR).

28 Janis, M.W.; Kay, R. S., et al. (eds.). *European Human Rights Law. Text and Materials*. Oxford University Press, 2008, p. 569.

29 *Ibid*, p. 569.

30 *Timishev v. Russia*, No. 55762/00 and 55974/00, §§ 56-58, ECHR Reports of Judgments and Decisions 2005-XII.

relevantly similar situations without an objective and reasonable justification constitutes discrimination. By binding themselves not to “[deny] the right to education” under Article 2 of Protocol No. 1, the states guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time and the possibility of drawing, by official recognition of the studies which he or she has completed, profit from the education received. In this decision the Court equates the right to education to the right to life (Article 2) and the right not to be tortured (Article 3), which, according to the Court “together enshrine the most fundamental values of democratic societies” (Par. 64). The Court, explaining the scope of the right to education, indicates that “In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision”.

On the other hand, The Court found no violations of the Convention in a very similar case of *DH and Others v. Czech Republic*³¹, in which several Roma families alleged that Roma children of average or above-average intelligence level had been placed in “special schools” intended for children with learning difficulties. So-called “special classes” or even “special schools” (which were sometimes meant for mentally disabled pupils but have often been used disproportionately for Roma children due to an erroneously generalized perception of their inability to follow instruction in the “regular” school system). The Court had established that the system of special schools in the Czech Republic had not been introduced solely to cater for Roma children and that considerable efforts had been made in those schools to help certain categories of pupils to acquire a basic education. Therefore, the rules governing children’s placement in special schools did not refer to the pupils’ ethnic origin, but pursued the legitimate aim of adapting the education system to the needs, aptitudes, and disabilities of the children. This decision of the Court was reversed by the Great Chamber on 13 November, 2007, and it was stated that the applicants were being placed in special schools where they had, without objective and reasonable justification, been treated less favourably than non-Roma children in a comparable situation, and therefore their rights to adequate education had been violated. Consequently, Article 2 (despite its negative formulation) does impose positive obligations upon a state to ensure that primary and secondary education is available for all children.

The applicant’s nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik because the applicant could not produce his migrant’s card, a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had had to turn in his migrant’s card in exchange for compensation for the property he lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered the arrangement.

31 *DH and Others v. Czech Republic*, No. 57325/00, 7 February 2006, *Selected for publication in Reports of Judgments and Decisions (ECHR)*. The applicants (18 Czech nationals of Roma origin) alleged that, as a result of their Roma origin, they were assigned to special schools. Under the law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests to measure the child’s intellectual capacity carried out in an educational psychology centre.

However, in regard to the second part of Article 2 of Protocol No. 1 (“the States shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”), the Court decisions have a tendency to interpret the rights of the parents quite narrowly in order not to interfere or to disorder the educational systems of the states. For example, in the *Belgian Linguistic case*³², the Court stated that this provision does not require the states to respect parents “linguistic preferences, but only their religious and philosophical convictions”, and the explanation of this condition may not be construed in an expansive way. The Court conceded to the meaning of “philosophical and religious convictions” the cautious approach. Therefore, in the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark*³³ the Court stated that though Article 2 of Protocol No.1 “does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents’ convictions, be they religious or philosophical, throughout the entire State education programme. It is in the discharge of a natural duty towards their children - parents being primarily responsible for the “education and teaching” of their children - that parents may require the State to respect their religious and philosophical convictions”, nevertheless “the Article 2 of does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications” (Par. 53). Similarly the Court interpreted Article 2 of Protocol No. 1 in other cases, for example, *Campbell and Cosans v. United Kingdom*³⁴.

Though there have been few decisions by the European Court of Human Rights on the scope of the right to education, in comparison with a huge amount of cases regarding other rights, the European approach to the right to education is quite definite and explicitly explained by the Court. In this regard other regional legal instruments instituting the right to education are not so unambiguous nor easily implemented or conventional in their understanding, notwithstanding the clearness of the wording of the provisions themselves.

32 *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education In Belgium” v. Belgium*, 23 July 1968, §§ 3-5, Series A no. 6. A group of French-speaking parents claimed that the Belgian educational system did not permit their children to be educated at French-speaking schools unless they went to schools a long way from their homes.

33 *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December, 1976, § 52, Series A no. 23. Three couples, having children of school age, objected to integrated, and hence compulsory, sex education as introduced into state primary schools, challenged the manner in which sex education in state primary schools had been integrated into the curriculum. Mr. and Mrs. Kjeldsen had asked for free education in private school in order to avoid sex education in state school, but this was refused, so they withdrew their daughter from municipal school and taught her at home. Mr. and Mrs. Busk Madsen had been unsuccessful in asking for their children to be exempted from sex instructions. Mr and Mrs Pedersen sent four of their five children to private schools to avoid them having to follow sex education courses.

34 *Campbell and Cosans v. United Kingdom*, 25 February 1982, §§ 27-28, § 33, §§ 36-37, Series A no. 48. Violation of Article 2 Protocol No. 1 was established.

2.2. Legal Provisions of African, American and Arab States in Regard with the Right to Education

The *African Charter on the Rights and Welfare of the Child* (1990, entered into force in 1999)³⁵ set out a much broader and more comprehensive right to education than that provided for in the *African Charter on Human and Peoples' Rights* (1981)³⁶. Article 11 of the African Charter on the Rights and Welfare of the Child provides that every child shall have the right to an education. The provision incorporates aspects of Articles 28 and 29 of the Convention on the Rights of the Child (discussed above in this article) in its outline of the aims of education, and it prescribes measures that states must take as part of their efforts to achieve the full realization of this right. The drafters of the Charter had to take into consideration “that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity he/she needs special safeguards and care” (Preamble of the Charter). Also there are provisions in this documents which are indispensable due to realities in Africa and which existence may be understood only with regard to the historical, social and economic context of that region. For example, Part 5 of Article 11 foresees that “a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child”. Part 6 of the same article indicates that states have the obligation “to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability”. It should be noted that, unlike the International Covenant on Economic, Social and Cultural Rights, the Charter does not oblige States Parties progressively to introduce free higher education, pursue the development of a system of schools at all levels, nor to continuously improve the material conditions of teaching staff.

Recently, more and more cases even in the national courts of Africa’s states are decided in respect with the provisions of the Charter. For example, in the case *Christian Education South Africa v Minister of Education* (18 August, 2000)³⁷ the Constitutional

35 African Charter on the Rights and Welfare of the Child, (adopted 11 July, 1990, entered into force 29 November, 1999). OAU Doc. CAB/LEG/24.9/49 (1990).

36 African Charter on Human and Peoples’ Rights (adopted 27 June, 1981, entered into force 21 October, 1986). 1520 UNTS 217; 21 ILM 58 (1982). The Charter contains a brief right to education provision, together with an over-arching prohibition on discrimination based on race, ethnic group, colour, sex, language, religion, or political or any other opinion, national and social origin, fortune, birth or other status. Article 17: “Every individual shall have the right to education”.

37 *Christian Education South Africa v Minister of Education* (18 August, 2000). In *The International Centre For the Legal Protection of Human Rights* [interactive]. [accessed 05-06-2010]. <<http://www.interights.org/showdoc/index.htm?keywords=ChristianEducationSouthAfricaVMinisterofEducation&dir=databases&refid=2739>>.

Section 10 of the South African Schools Act (the Act) prohibited corporal punishment on those learning within schools and made any person contravening the prohibition liable on conviction to a sentence which could be imposed for assault. The claimant, Independent Christian schools in South Africa, argued that corporal punishment is an integral part of the Christian religion and that the blanket prohibition in the Act invades their individual, parental and community rights to freely practice their religion and their right to a cultural life.

Court of South Africa found that it had not been established that administering corporal punishment at schools formed part of religious belief and concluded that, anyway, the prohibition of corporal punishment did not constitute a substantial burden on religious freedom. Further, it was stated, that inflicting corporal punishment in schools infringed the children's right to dignity and the security of the person, and was not protected by the Constitution of South Africa, nor by the African Charter on the Rights and Welfare of the Child. It could be stated that if a state allows this kind of punishment, it hereby violates the requirement of acceptability which is a component of the right to education.

Another example could be the famous *case of Tanzania* (decided by the African Commission on Human and Peoples' Rights, established under the African Charter on Human and Peoples' Rights. The African Committee of Experts on the Rights and the Welfare of the Child, established under the African Charter on the Rights and Welfare of the Child, has not received any communications so far). Thousands of girls worldwide are forced to drop-out from school because of pregnancy, early marriage, domestic labour, and gender discriminatory practices. In countries like Liberia, Mali, Nigeria, Swaziland, Togo, Uganda and Zambia, pregnant girls are reportedly expelled from school on the grounds of premarital sexual relations. Their expulsion from school, on supposedly moral grounds, is a violation of their right to education that grossly discriminates and stigmatizes, and condemns them to a cycle of poverty. The Tanzanian Law of Marriage Act (1971) allows a girl as young as 14 to be married, thereby causing marriages to be one of the main reasons for female drop-out and exclusion from education. The African Charter on the Rights and Welfare of the Child explicitly recognizes the right of pregnant girls to an education. In response to such very clear normative legal standards, countries such as Kenya, Zambia, Botswana, Guinea, and Malawi now permit the re-entry of girls into formal education after child birth³⁸.

*The American Convention on Human Rights*³⁹ entered into force in 1978 (though was drafted in 1969). Its additional protocol of San Salvador to the American Convention on Human Rights (1988) was supplemented by Article 13, foreseeing the right to education. The content of this article is almost similar to the ones in the Covenant International Covenant on Economic, Social and Cultural Rights (1966) and the UNESCO Convention against Discrimination in Education. The American Convention on Human Rights amended the *American Declaration of the Rights and Duties of Man*⁴⁰, under which the Inter-American Commission on Human Rights was established, which, together with the Inter-American Court (established under the American Convention on Human Rights), have formulated case-law practice on the right to education. For exam-

38 *Racism, Racial Discrimination, Xenophobia and Related Intolerance in Education. The Case of Adolescent Girls in Tanzania* [interactive]. [accessed 05-06-2010]. <[http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Case_Study_Tanzania\[1\].pdf](http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Case_Study_Tanzania[1].pdf)>.

39 American Convention on Human Rights (adopted 21 November, 1969, entered into force 18 July, 1978). 1144 UNTS 123; 9 ILM 99 (1969).

40 American Declaration of the Rights and Duties of Man (1948). O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949).

ple, in case *Jehovah's Witnesses v. Argentina* (1978)⁴¹, The Commission held that the President's action amounted to a violation of the right to education (specifically, the right to equality of opportunity in education), but did not analyze or discuss the content of the right in any depth. In fact these infringements violate almost all components of the right to education—availability (as the possibility to exercise the right to education is denied for certain group of children), accessibility (as Jehovah's Witnesses children are discriminated on the ground of their religious beliefs), acceptability (as it does not allow the parents of the children to educate children with respect for the parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions), and adaptability (as it fails to adapt teaching process towards religious minority).

In the case *Yean & Bosico v. Dominican Republic* (2005)⁴², The Court found that the Dominican Republic had violated a wide range of rights enshrined in the American Convention on Human Rights. The court stated that “the State must provide free primary education to all children in an appropriate environment and in the conditions necessary to ensure their full intellectual development”. In the *Guatemala case*, the Court explicitly stressed the requirement to implement all aspects of the right to education (availability, accessibility, acceptability, and adaptability) in national legislature and in the practical actions of the state. The Court stated that “Guatemala is obligated, by domestic, regional and international law, to provide education that is free, non-discriminatory, and administered bilingually. However, Guatemala is actively violating indigenous people's right to non-discriminatory education: by not making it available on a basis of equal opportunity in sufficient quantity and with the necessary facilities; by not making it accessible, when failing to eliminate geographic, economic and ethnic obstacles that prevent indigenous children education attainment; by not making it acceptable, when not taking into account the student's diverse cultural backgrounds; and by not making it adaptable, when failing to respect, protect and fulfil the rights of children and indigenous peoples, such as their linguistic rights”⁴³.

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- 41 *Jehovah's Witnesses v. Argentina* (1978). In *Litigating Economic, Social and Cultural Rights: Legal Practitioners Dossier*. [interactive]. COHRE, Geneva, 2006, p. 117 [accessed 05-06-2010]. <<http://www.cohre.org/store/attachments/COHRE%20Legal%20Practitioners%20Dossier.pdf>>. The complaint related to an order by the President of Argentina that the office and all worship centers of the Jehovah's Witnesses be closed. As part of a campaign of persecution against Jehovah's Witnesses, more than 300 children of school age were denied primary education by being dismissed from the schools they had been attending or simply by being prevented from enrolling on the sole basis of their religious beliefs. When some students continued their studies at home, they were not permitted to sit in their end-of-year examinations.
- 42 *Yean & Bosico v. Dominican Republic* (2005). In *Right to Education Project. Promoting Mobilisation and Legal Accountability* [interactive]. [accessed 05-06-2010]. <<http://www.right-to-education.org/node/183>>. This case concerned two Dominican-born children of Haitian descent who were denied birth certificates by the Dominican authorities. The refusal of the authorities to provide the children with birth certificates had clear implications for the enjoyment of that right because, without a birth certificate, it is not possible to attend school in the Dominican Republic.
- 43 *Racism, Racial Discrimination, Xenophobia and Related Intolerance in Education. The Case of Indigenous People in Guatemala* [interactive]. 2009, p. 1 [accessed 05-06-2010]. <[http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Case_Study_Guatemala\[1\].pdf](http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Case_Study_Guatemala[1].pdf)>.

*The Arab Charter on Human Rights*⁴⁴ entered into force in January 2008, after seven countries ratified the text. However, according to the United Nations Office for the High Commissioner for Human Rights (OHCHR), the Charter contains provisions that do not meet international norms and standards including the application of the death penalty for children, the treatment of women and non-citizens, and the equating of Zionism with racism⁴⁵. Article 34 of the Charter states that “The eradication of illiteracy is a binding obligation and every citizen has a right to education. Primary education, at the very least, shall be compulsory and free and both secondary and university education shall be made easily accessible to all”. It should be noted that rights foreseen in the Charter are guaranteed only for citizens. The Charter also provides for the election of a seven-person Committee of Experts on Human Rights to consider states’ reports—no such committee has yet been formed.

Conclusions

1. The right to education is commonly identified as an economic, social and cultural right. This influences the interpretation and implementation of this right because economic, social and cultural rights usually impose on governments quite relative and indefinite obligations—requirements for “consistent”, “progressive”, “according the potentialities” implementation. Those rights are often deemed to be lacking remedies and are accordingly treated as quasi-rights. As a consequence, denials and violations of the right to education are more often discussed in scientific or human rights institutions than in courts. This tendency ruptures the symmetry of law which balances rights and duties, freedoms and responsibilities.

2. The difficulty of implementation of the right to education is influenced by the expression of the provisions in different international and regional legal documents. The prescribed obligations are extensive and quite thorough but weasel-worded and too declarative. This imposes the demand and obligation to explain the content and the scope of the right to education via case-law practice or through corresponding, accountable human rights institutions. The concept of the right to education was defined by the initiatives of the international human rights organizations’ officials.

3. The conceptual framework of the four “A’s” (availability, accessibility, acceptability and adaptability) was drafted as a minimum standard of the right to education, though these guidelines are not expressed in any international or regional legal instrument. Though they are a very convenient and transparent method of explaining the right to education in terms of tangible factors, they are not necessarily the standard used in every international treaty and, as such, should not be treated as a generic, comprehen-

44 The Arab Charter on Human Rights (adopted 15 September 1994, entered into force in 2008) [interactive]. [accessed 05-06-2010]. <<http://www1.umn.edu/humanrts/instree/arabhrcharter.html>>.

45 Right to Education Project. Promoting Mobilisation and Legal Accountability [interactive]. [accessed 05-06-2010]. <<http://www.right-to-education.org/node/201>>.

sive nor the only possible guide to what the right to education means under every legal domestic or international instrument.

4. The requirement to comprise all four elements in the content of the right to education empowers better understanding of the right itself and helps to protect this right by judicial means, at the same time extending boundaries of possible violations. For example, violations of the right to education may be determined not only in “classical” cases of discrimination, on the basis of race or gender, but also may be identified in requirements to act according to the concept of the welfare state (by establishing appropriate conditions for children with disabilities, socially marginalized children, etc.).

5. Many of the violations of the right to education and the targeted marginalization of specific groups of people is not to be found in educational systems nor in the legal regulations of the states, but in the discriminatory environment. This is one of the reasons why certain educational reforms, expected to settle social and economic problems, were not successful in all states or have not yet begun to be implemented in various parts of the world.

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TEISĖS Į MOKSLĄ REGLAMENTAVIMAS TARPTAUTINIUOSE DOKUMENTUOSE

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Santrauka. *Teisė į mokslą yra viena iš fundamentalųjų socialinių, ekonominių ir kultūrinių teisių. Šios teisės svarba ypač akivaizdi besikeičiančiame globalizacijos pasaulyje, nes teisė į išsilavinimą yra ne tik žmogaus teisė per se, bet ir būtina priemonė įgyvendinant kitas žmogaus teises, kuriant teisingas ir ekonomines priemones socialinei atskirčiai, diskriminacijai, skurdui mažinti. Teisė į mokslą yra įtvirtinta daugelyje tarptautinių ir regioninių žmogaus teises ginančių teisinių instrumentų. Įvairios teisminės ir kvaziteisminės tarptautinės organizacijos bei institucijos įgyvendino tarptautinių dokumentų nuostatas, taip pat analizavo pažeidimus byloje bei ataskaitose, rekomendacijose suformulavo teisės į mokslą įpareigojimų valstybėms gaires. Tačiau reikia pripažinti, jog, nors yra teisiniai ir socialiniai mechanizmai saugoti bei ginti šią teisę, didžioji dalis pasaulio valstybių nesiėmė visų galimų administracinių ir įstatymų priemonių praktiškai užtikrinti teisės į mokslą įgyvendinimą. Kai kuriais atvejais tai nulemia valstybių skurdas, kartais tam tikri apribojimai ir pažeidimai yra nukreipti specifinės pažeidžiamos grupės atžvilgiu (pvz., tautinės mažumos, žmonės su negalia ir kt.). Įtakos teisės įgyvendinimui turi ir jos ekonominis, socialinis, kultūrinis pobūdis, nes šios grupės teisių interpretavimas bei realizavimas dažniausiai siejamas su reliatyviais valstybių išpareigojimais atsižvelgiant į jų ekonomines ir socialines galimybes. Todėl teisė į mokslą paradoksaliai tampa vis labiau teorine teisine paradigma nei socialine realybe, neišvengiamai kyla ir diskusijų dėl pačios teisės apimties bei turinio. Tradiciškai teisės į mokslą turinys įvairiuose tarptautiniuose teisės dokumentuose yra apibrėžiamas konkrečiai ir aiškiai: nemokamas ir privalomas pradinis mokymas, visiems prieinamas vidurinis išsilavinimas (progresyviai įdiegiant nemokamą ir šią mokslo grandį), vienoda galimybė pagal kiekvieno gebėjimus visiems įgyti aukštąjį išsimokslinimą. Nors šios nuostatos yra pakankamai aiškios, didžiausias trūkumas yra jų deklaratyvumas ir daugiaprasmiškumas. Todėl tarptautinių organizacijų iniciatyva buvo suformuluota teisės į mokslą turinio ir masto koncepcija, nustatanti įpareigojimą įgyvendinant šią teisę atitikti galimumo, prieinamumo, priimtimumo, pritaikomumo reikalavimus. Šios nuostatos laipsniškai buvo patvirtintos ir tarptautinių bei regioninių teismų praktikoje. Tokia teisės į mokslą turinio percepcija su-*

teikia galimybę valstybėms ir patiems teisės adresatams geriau suprasti ginamas vertybes bei nustatytus įpareigojimus ir įgyvendinti teisinio tikrumo, taip pat teisėtų lūkesčių principus teisinėmis priemonėmis ginant pažeistą teisę į mokslą.

Reikšminiai žodžiai: žmogaus teisės, teisė į mokslą, teisiniai instrumentai, galimumas, prieinamumas, priimtinumai, pritaikomumas.

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