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DOI: 10.15290/dhmgz.01.2021.24

Bariery we wdrażaniu praw dziecka do edukacji włączającej na przykładzie Albanii

Barriers to implementation of the child's rights to inclusive education: the case of Albania

STRESZCZENIE: Uważa się, że prawo do edukacji służy jednostce przez całe życie. Daje dziecku siłę i przygotowuje go do życia w najlepszy sposób. Prawo do edukacji jest postrzegane jako przesłanka do korzystania z innych praw człowieka. Można powiedzieć, że jednostka pozbawiona podstawowego wykształcenia nie tylko nie może korzystać z przysługujących jej praw, ale także nie może zabiegać o ich ochronę. Tak więc prawo do edukacji jest podstawą realizacji każdego prawa człowieka, zamieniając je w prawo czysto upodmiotowiające. Jako takie zostało zastosowane w zbiorze aktów międzynarodowych przyjętych na całym świecie. Jednak jego realizacja jest utrudniona z powodu zmieniającej się rzeczywistości, która wymaga dostosowania prawa do edukacji z uwzględnieniem różnych potrzeb dzieci. Wymaga to odpowiedniej polityki i ustawodawstwa, aby zapewnić edukację włączającą, zwłaszcza dla grup społecznych znajdujących się w niekorzystnej sytuacji. Artykuł koncentruje się na analizie prawa dziecka do edukacji włączającej w ramach polityki i ustawodawstwa albańskiego, podkreślając luki prawne, które utrudniają korzystanie i pełną realizację tego prawa.

SŁOWA KLUCZOWE: prawa dziecka, edukacja włączająca, prawo do edukacji, bariery w edukacji, dzieci defaworyzowane

ABSTRACT: The right to education is considered to serve the individual throughout their life. It empowers the child and prepares them to face life in the best way. The right to education is seen as a prerequisite to the exercise of other human rights. It can be said that an individual deprived of basic education, not only cannot exercise the rights attributed to them, but also cannot seek their protection. Thus, the right to education is considered to be an instrument to realize every human right, turning it into a pure empowerment right (Tomasevski, U.N. Doc E/CN 4/2001/52, par. 11-14). As such it is reflected in a set of international acts adopted globally. However, its implementation has been imperfect in the current reality, which, in a rapidly changing world, requires the adaptation of the right to education to different needs of children. This requires appropriate policies and legislation to provide inclusive education especially for the disadvantaged groups. The article focuses on an analysis of the right of the child to inclusive education in the framework of Albanian policies and legislation, highlighting the legal gaps that hinder the enjoyment and full realization of this right.

KEYWORDS: child's rights, inclusive education, the right to education, barriers to education, disadvantaged children

Introduction

The right to education can be described as a right that empowers or otherwise makes the child stronger and more secure, in particular to take control of life and to demand the implementation of human rights.¹ It has an inclusive nature, as it is a right that belongs to every person from childhood, accompanying them throughout life. It is a right that does not end with reaching a certain age. It is a right that belongs to every individual during all of their life, regardless of gender, race, skin colour, ethnicity, language, sexual orientation, political or

¹ K. Beiter, *The Protection of the Right to Education by International Law: Including a 1*, K. Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*, "International Studies in Human Rights" 2006, t. 82, s. 28.

religious beliefs, economic or social status, age, place of residence, disability or other reasons.²

Above all, the right to education is a universal right. The universal nature of the right to education is defined in Article 13 of the International Covenant on Economic, Social and Cultural Rights by attributing to this right the features of universal law, known to every person, regardless of age, language, social or ethnic origin, or any other status.³

The researcher Fons Commans has developed a scheme through which the reasons why the right to education can be considered universal are analyzed.⁴ On the one hand a distinction is made between universal validity and universal acceptance, and on the other between formal universality and the material universality of the right to education.

Universal validity answers the question whether the right to education applies to every individual at the moment it is recognized by the states. Does the nature of the law enable each of the individuals to potentially derive benefits from its recognition? The answer is found in Article 13 of the International Covenant on Economic, Social and Cultural Rights, which states that “States Parties to the present Covenant recognize the right of everyone to education”.

Formal universality answers the question whether the right to education has been officially recognized by states. Indicators of formal universality are the number of states that have ratified the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, other international agreements protecting the right to education, and the number of member states at UNESCO. The International Covenant on Economic, Social and Cultural Rights has been ratified by 171 states out of a total of 198 states (UN, Status of Ratification Interactive Dashboard). While the Convention “On the Rights of the Child”, which protects the right to education in articles

² UNESCO (CR)/ECOSOC (CESCR). (2008). *Inclusive dimensions of the right to education: Normative bases. Concept paper*, France (ED-2008/WS/54 Rev.//cld 3629.9), s. 3.

³ F. Coomans, *In Search of the Core Content of the Right to Education*, [w:] A. Chapman, S. Russell (red.), *Core obligations: Building a framework for economic, social and cultural rights*, Antwerpia 2002, s. 220.

⁴ K. Beiter, op. cit., s. 32-36.

28 and 29 has been ratified by 196 states.⁵ Given this reality, there is no doubt that the formal universality of the right to education is already a fact.

The term material universality refers to the question whether the right to education has been implemented in practice by countries on a global scale. Pursuant to Article 13 of the International Covenant on Economic, Social and Cultural Rights, states are obliged to take measures set out in detailed action plans for the progressive implementation of the right to education. However, many countries have failed to meet the obligation to provide education or to implement the right to education.⁶

Despite the progress that has been made for the realization of the right to education by a considerable number of countries, the practical implementation of this right remains an empty phrase. This is also evidenced by point 5 of the Framework for Action, Dakar, approved by the World Education Forum, held in Dakar, Senegal, on 26-28 April 2000⁷, as follows:

The EFA 2000 Assessment demonstrates that there has been significant progress in many countries. But it is unacceptable in the year 2000 that more than 113 million children have no access to primary education, 880 million adults are illiterate, gender discrimination continues to permeate education systems, and the quality of learning and the acquisition of human values and skills fall far short of the aspirations and needs of individuals and societies.

Regarding material universality it can be concluded that not enough has been achieved and there is still much to be done. According to Tomasevski⁸, the right to education is recognized, promoted and protected at all levels – from the local to the global level – and fully reflects the interaction between the dual processes of globalization

⁵ United Nations Human Rights, Ratification of 18 International Human Rights Treaties, <https://indicators.ohchr.org>

⁶ K. Beiter, op. cit., s. 36.

⁷ Dakar Framework for Action, *Education for all. Meeting our collective commitments*, 2000, <http://unesdoc.unesco.org/images/0012/001211/121147e.pdf>

⁸ K. Tomasevski, *Annual Report of the Special Rapporteur on the right to education* (2000/9) (UN Doc. E/CN. 4/2001/52), par. 11-14.

and localization that are taking place. Despite the formal protection of the right to education, experience in many countries demonstrates that persistent social and economic inequalities and exclusion can lead to disaffection, social fragmentation and even conflicts. Furthermore, exclusion from quality educational opportunities is often related to inequalities in society. In this context, there is growing attention to disparities and inequalities in education, and to systematically addressing exclusion in education.⁹

From the implementation point of view, inclusive education is connected to equal access to education, equality between educational paths, an inclusive school environment and inclusive teaching methods.¹⁰ These constituent elements of the children's right to education will be seen in the light of Albanian legislation towards inclusive education, in order to provide education tailored to different children's needs.

The right to inclusive education in the Albanian education system

The future of a nation is essentially related to the quality of the education system, because, education directs not only the life of the individual but also the life of the country. As a result, education is a key area of public policy and the state has a special interest and responsibility to guarantee the right to education for every child and adult. Consequently, inclusion is a characteristic element of the right to education, focusing state policies on providing access to education for every individual, regardless of social or economic conditions or status.

The Law on Pre-University Education has sanctioned the principle of inclusion of students in educational institutions, as well as the right

⁹ UNESCO, *Addressing Exclusion in Education A Guide to Assessing Education Systems Towards More Inclusive and Just Societies*, Paris 2012, s. 1, https://unesdoc.unesco.org/ark:/48223/pf0000217073_eng

¹⁰ Organizing Bureau of European School Student Unions, (2014), *Guidelines on social inclusion in education*, Adopted at the General Assembly 2014 in Vienna, https://www.obessu.org/site/assets/files/1310/2014_-_guidelines_on_social_inclusion_in_education.pdf

to quality education and equal opportunities in education for every student. The law also provides that students from families in need, students with disabilities and those with learning difficulties are provided with special care.¹¹ The law also does not exclude children belonging to national minorities, providing for the right to learn and be taught in their mother tongue.¹² The novelty in the right to inclusive education is the legal sanctioning of the right to education in non-school institutions, for individuals of school age who are in conflict with the law and are put in detention, penitentiary institutions, as well as in social care institutions.¹³

Although the goal of equal opportunities in education is supported by the prohibition of discrimination sanctioned in a number of international instruments and domestic laws, the elimination of discrimination is a challenge. Children belonging to marginalized groups, national minority groups, or children with disabilities are the most vulnerable groups, in constant risk of losing access to education. By banning denying education to children on the grounds of gender, affiliation in a minority group or disability, the first step is taken towards recognizing that the right to education and the relevant obligations are universal, comprehensive and belong to all children.¹⁴

Which groups are less likely to benefit from access to education and to secure participation in educational programs? Various studies in Albania, have identified children at risk of exclusion from the right to education. The studies include children isolated due to blood feuds, those who have dropped out of school, children with disabilities, children from low-income families, children living in remote mountainous areas, girls in areas with a backward mentality and other

¹¹ Article 6 of Law no. 69/2012, dated 21.06.2012, "On the pre-university education system in the Republic of Albania", as amended.

¹² Article 10 of Law no. 69/2012, dated 21.06.2012, "On the pre-university education system in the Republic of Albania", as amended.

¹³ Articles 11 and 18 of Law no. 69/2012, dated 21.06.2012, "On the pre-university education system in the Republic of Albania", as amended.

¹⁴ United Nations, Economic and Social Council, Commission on Human Rights, Economic, Social and Cultural Rights, *The right to education*, Report submitted by the Special Rapporteur Katarina Tomasevski, E/CN.4/2004/45, s. 22.

social problems, children out of parental care, children who are victims of domestic violence accompanied or not with the loss / removal of parental responsibility, street children and those who work, children in conflict with the law, children of the Roma community, children with disabilities, etc.¹⁵ These groups of disadvantaged children are also recognized by the law on pre-university education as well as by the Strategy for the development of pre-university education.¹⁶ Given the wide range of groups at risk of lack of access to education, it is necessary to protect the right to education focusing on the best interest of the child, fulfilling in this way the obligations of the state to distribute the right to education equally, comprehensively and qualitatively for all children wherever they are.¹⁷ The article will focus on certain groups of children by analyzing the legal framework providing the right to education, as well as the legal barriers and real impossibilities that hinder access to this right.

Children who have dropped out of school

The “second chance” education opportunity is a policy approved by the Ministry of Education, which is offered to all children of compulsory school age who have either dropped out of school or have not attended and are not returning to full-time or part-time elementary education. The school year for these children is projected to last less than the normal duration of the teaching process and teaching is planned to occur three times a week.¹⁸ Although teaching is provided more concisely than in the normal

¹⁵ UNICEF, (2010), *Social inclusion policies for children and their financing in Albania*, s. 12, https://www.unicef.org/albania/Children_Social_Inclusion_Shqip13.pdf

¹⁶ Decision no. 11, dated 11.01.2016 of the Council of Ministers, “On the approval of the strategy for the development of pre-university education, for the period 2014-2020”, published in the Official Gazette no. 2, dated 19 January 2016.

¹⁷ UNESCO, *Economic and Social Council, Inclusive Dimensions on the Right to Education: Normative Bases, Concept Paper*, Paris 2008., s. 3.

¹⁸ Chapter V „Second Chance”, of Instruction no. 29, dated 02.08.2013, of the Ministry of Education and Science, “On procedures for attending part-time basic education”, published in the Official Gazette no. 141, dated 23 August 2013, s. 6116.

learning process, this educational program has been set up to help children who have dropped out of school by reintegrating them into the learning process.¹⁹ It is important to emphasize that the purpose of this program should be to direct children towards full-time basic education, in the context of providing quality education for every child.²⁰

However, the legal directives, apart from the opportunity they provide for the children to be reintegrated into the teaching process, do not guarantee the transition from this abbreviated curriculum to the normal school system. Moreover, these directives are addressed to children who are enrolled in educational institutions and do not serve to identify all school-age children who must attend 9-year compulsory education.

Unidentifiable children in the system

The legal directives in force oblige the parents to enroll in school children who have reached the compulsory school age. However, the reality shows that not all parents have the proper sense of responsibility to enroll their children in an educational institution, particularly when the families move from one area to another without being registered in the respective municipal units. In this case, these children become unidentifiable for the educational system.²¹ For this purpose, the Inter-Ministerial Regulation on the identification and enrollment in school of all children of compulsory school age has been approved.²²

¹⁹ Commission of the European Communities, (2007), *Commission Staff Working Document, Albania 2007 Progress Report*, Brussels, s. 14.

²⁰ European Commission, (2015), *Commission Staff Working Document, Albania 2015 Report*, Brussels, 10.11.2015, s. 29.

²¹ UNICEF and Save the Children with the support of the Ministry of Social Welfare and Youth, (April 2014), *National Study on children in street situation in Albania*, p. XI, https://www.unicef.org/albania/NationalStudy-children_in_street_situation-June2014.pdf

²² Joint order of the Minister of Education and Sports, the Minister of Internal Affairs and the Minister of Health no. 2, dated 05.01.2015, "On the approval of the regulation for the implementation of the cooperation agreement" dated 02.08.2013, "On the identification and enrolment in school of all children of compulsory school age", published in the Official Gazette no. 202, dated 25 November 2015, s. 13207.

Despite the innovations brought by these directives in the process of tracking and enrollment in school, especially of “street” children who are unidentifiable in the system, unfortunately they have not yet been implemented by the relevant institutions, due to lack of necessary state engagement. This problem has also been noted by the People’s Advocate, who has drawn attention to the institutions responsible for identifying children who are out of the education system, in order to guarantee them the rights that are denied to them.²³

Children isolated due to blood feuds

Since 2006, attention has been paid to children isolated as a result of the phenomenon of blood feuds. For this purpose, procedures have been approved for the education of isolated children, which determine the form of learning development, the environments where the educational process will take place, the teachers engaged in the teaching process, and the recognition of the value of education.²⁴ The educational process is expected to take place in abbreviated form in one of the most appropriate family environments, where there are isolated children. Despite the positive tendency stipulated into the respective directives to keep isolated children integrated into the learning process, this approach is far from the education given to children in school. It lacks integration of children with classmates and with all the activities that take place during the learning process.

The violation of the right to education for isolated children has been identified by the People’s Advocate institution in its annual reports since 2007, raising as a problem the lack of identification of isolated children who are outside the education system, as well as the lack of coordination of services to guarantee them the rights that

²³ The People’s Advocate, (2013), *Annual report on the activity of the People’s Advocate, 1 January – 31 December 2013*. Tirana, February 2014, s. 18, www.avokatipopullit.gov.al/en

²⁴ Instruction no. 36, dated 13.08.2013, of the Ministry of Education and Science, “On procedures for the education of isolated children”, published in the Official Gazette no. 141, dated 23 August 2013, s. 6122.

belong to them.²⁵ The lack of proper education, due to the danger that threatens them, will jeopardize the future of these children and will serve to deepen the wound of blood feuds inherited from one generation to the next.

The right to education for national minorities

The Constitution of the Republic of Albania considers national minorities an integral part of Albanian society. It guarantees them full equality before the law in the exercise of their freedoms and rights by focusing on the right to education.

The Law “On pre-university education”²⁶ has recognized and protected the right to education of national minorities. It puts an obligation on the state to create opportunities for persons belonging to national minorities to learn and be taught in their mother tongue and to learn the history and culture of their country of origin. This serves to preserve the identity of persons belonging to national minorities and to protect them from discrimination in Albania. On the other hand, the right of persons belonging to national minorities to learn the Albanian language, as well as the history and culture of Albania, is also provided in the legal framework.

However, the manner of organizing the curricula and the use of the mother tongue in relation to the Albanian language is left to the competence of the state, without explicitly defining it in the legal provisions. This provision is within the context of the Framework Convention which considers that instruction in the mother tongue for persons belonging to national minorities should be provided within the possibilities available to the State, recognizing that such instruction will depend on the financial resources available to the State. We can affirm that throughout the post-communist period, positive steps have been taken towards state recognition of national minorities, while the

²⁵ The People's Advocate, (2010), *Annual report on the activity of the People's Advocate, 1 January – 31 December 2010*, Tirana, s. 115, www.avokatipopullit.gov.al/en

²⁶ Article 10 of Law no. 69/2012, dated 21.06.2012, “On the pre-university education system in the Republic of Albania”, as amended.

exercise of the right to education in the minority language is still an unattainable target.

In light of the Framework Convention²⁷, education is offered only to persons of the Greek and North Macedonian national minorities, while for the Aromanian, Roma, Egyptian, Montenegrin, Bosnian, Serbian, and Bulgarian minorities²⁸ the state does not provide the right to education in compliance with international agreements and legal provisions in force. This indicates that the right to education as a means to preserve the identity of minorities is not provided according to the needs of persons belonging to these minorities, due to the lack of curricula, textbooks in the minority mother tongue and the necessary teaching staff. On the other hand, there is no monitoring by the government of the provision and realization of the right to education, as well as for the quality of education provided in schools / classes designated for persons belonging to national minorities, to assess the realization of the right to education for these students.

The right to education for children with disabilities

Another category of children who needs special attention to guarantee their right to education are children with disabilities. Disabilities are a strong factor leading to marginalization in education. Marginalization in education is a product of inherited disadvantages, deep-rooted social processes, unfair economic measures and bad policies.²⁹ According to Article 1 of the Convention on the Rights of Persons with Disabilities, disability includes long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may impede the participation of persons with

²⁷ Council of Europe, 1995, *The Framework Convention for the Protection of National Minorities*, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdac>

²⁸ Article 3 of the Law no. 96/2017, dated 13.10.2017, "On the protection of national minorities in the Republic of Albania"

²⁹ K. Whatkins, *Reaching the marginalized- the key to Education for All*, 3'10 ZEP, „Zeitschrift für internationale Bildungsforschung und Entwicklungspädagogik” 2013, 33(3), s. 8-11.

disabilities in a complete and effective way in society, on equal terms with the rest of society.³⁰

Legal guarantees for the non-discriminatory treatment of persons with disabilities start from the Constitution of the Republic of Albania, which sanctions the equality of all citizens before the law.³¹ However, referring to Article 18 of the Constitution, we find that disability is not mentioned in the group of reasons for which discrimination is prohibited, limiting the direct protection by the Constitution of persons with disabilities.

Legal guarantees continue with international agreements ratified by Albania, where in addition to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention on the Rights of the Child, the European Social Charter, the Convention on the Rights of Persons with disabilities, among other, focus on the right to education of persons with disabilities.

The Law of 2012 deems it necessary to include persons with disabilities in primary schools in order to fully develop their intellectual and physical development and improve their quality of life.³² The specialized educational institutions are envisaged as a temporary measure, leaving the primary place for the inclusion of children in mainstream primary schools. The law on pre-university education grants to students who do not hear or speak, the right to communicate in sign language, and to the students who do not see the right to use Braille.

For the first time, education legislation recognizes the needs of students with disabilities, for assistant teachers, rehabilitation services, and appropriate teaching and learning environments. The rights of students with disabilities to have certified assistant teachers

³⁰ United Nations Convention on the Rights of Persons with Disabilities adopted on 13 December 2006, ratified by Albania on 11 February 2013, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

³¹ Article 18 of the Constitution of the Republic of Albania, approved by law no. 8417, dated 21.10.1998 of the People's Assembly.

³² Article 63 of Law no. 69/2012, dated 21.06.2012, "On the pre-university education system in the Republic of Albania", as amended.

in order to facilitate the learning process as well as rehabilitation, are finally sanctioned by the legal framework.

It is understandable that the preparation of legislation and its implementation in reality requires time and long-term measures, which need financial and human resources. According to de Beco, states should invest in inclusive education, through the provision of reasonable accommodation and the adoption of support measures³³. However, until the legislation is fully drafted and implemented, the state must take appropriate measures that lead to the realization of the right to education, including the maximum resources at its disposal.

Regarding the abovementioned issues, it is necessary to complete the legal framework, accompanied by concrete measurable and continuous implementation measures, as well as to measure the progress made in order to understand the updated need for access to education for children with disabilities.

Conclusions

The right to inclusive education comes as a state obligation sanctioned in a series of international standards consolidated from time to time and supported by both international and domestic legal frameworks. However, the realization of the right to education equally, taking into account the needs of children and / or their families, remains a continuing challenge in the Albanian reality. This is because the variety of cases suffering from lack of access to education is diverse, which requires specific analysis, case by case, cross-cutting strategies and comprehensive legal support for providing the right to education and maintaining relevant standards in the field.

³³ G. De Beco, *The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions*, "Netherlands Quarterly of Human Rights" 2014, 32(3), s. 275. *Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*, "International Studies in Human Rights" 2006, t. 82, s. 28.

Children isolated due to blood feuds or those who have dropped out of school, children with disabilities, children of low-income families, children living in remote mountainous areas, girls in areas with backward mentality and other social problems, children out of parental care, children who are victims of domestic violence, street children and those who work, children in conflict with the law, children of the Roma community need support both in legal terms as well as in social terms and beyond, allowing them to realize their right to education with the help of other actors or the community.

In order to provide the right to inclusive education as close as possible to the needs of individuals and especially marginalized children, it is necessary to complete the legal framework with concrete measurable and continuous implementation measures and to evaluate the progress made toward access to education for marginalized children.