

Ramona Duminiță

University of Pitești, Romania

duminica.ramona@gmail.com

ORCID ID: <https://orcid.org/0000-0002-3416-2329>

Puran Andra

University of Pitești, Romania

andradascalu@yahoo.com

ORCID ID: <https://orcid.org/0000-0002-8773-1548>

The Right to Education for the Persons with Disabilities. Special View on the Romanian Legislation

Abstract: The current study starts from the fact that the right to education – a fundamental human right – should be organized in such manner as to ensure equal opportunities for all persons. First of all, it refers to the prohibition of all forms of discrimination. Even though national and international regulations may state this clearly and in both general and specific terms, the right to education and its effective application remains a problem for certain categories of persons. The arbitrary separation of children with disabilities in special schools, the maladjustment of schools generally in meeting the needs of persons with disabilities and even the unavailability of special forms of education, remain realities in some states. In this context, the current study reflects on the way in which the right to education is guaranteed for persons with disabilities, focusing on the Romanian legislation and advocates the inclusive education of these persons.

Keywords: right to education, persons with disabilities, Romanian legislation, ECHR jurisprudence.

1. Introduction

In contemporary times, socio-economic and scientific evolution together with the growth and diversity of human ideals, have generated permanent expansion of human rights and fundamental freedoms. Among all these rights, a special place

is held by the right to education because fundamentally it connects to the “true existence of other rights”¹.

In his paper, “*Didactica magna*”², Johann Amos Comenius synthesizes the role of education in the life of each individual, stating that “*the nature favors the child at birth only with the seeds of science, of morals and religion, these becoming assets of each individual only by education. The man cannot be a man unless he is educated*”. The literature has stated that “without the mentioning of this right it cannot be seen the capacity of man in stating his skills. Its recognition represents a guarantee of the subsequent insurance of a qualification, specialization and professional improvement”³.

Thus, the right to education is first of all recognized in Art 32 of the Romanian Constitution. Also, the importance of the education of children, youth and adults is clearly stated in Art. 4 of Law No. 1/2011⁴, as well as in Art. 29 of the International Convention on Children’s Rights⁵.

According to Law No. 1/2011, the supreme purpose of education is to form the necessary skills for personal development and fulfillment, social integration and active citizenship within society, employment, the formation of a life concept based on humanistic and scientific values, on national and universal culture and on the stimulation of intercultural dialogue, education in the spirit of dignity, tolerance and respect for human rights and fundamental freedoms, cultivation of sensitivity to human issues, to moral and civil values and respect for nature and the natural, social and cultural environment.

Also, according to Law No. 272/2004 on the protection and promotion of the rights of the child⁶, “The child has the right to receive an education which would allow him or her to develop his or her capacities and personality, in non-discriminatory conditions”. In the same meaning, Art. 28 of the International Convention on Children’s Rights recognizes non-discriminatory access to educational services.

1 F. Mahler, “Dreptul la educație – undrept fundamental al tuturor copiilor lumii”, *Journal of Pedagogy*, Bucharest, 1979.

2 J. Amos Comenius, *Didactica magna. Translation, notes, comments and study by Iosif Antohi*, Bucharest 1970, p. 31.

3 A. Drăghici, *Protecția juridică a drepturilor copilului*, Universul Juridic Publ.-house, Bucharest 2013, p. 180.

4 Published in the Official Gazette of Romania, No 18/10 January 2011.

5 Ratified in Romania by Law No 18/1990, published in the Official Gazette of Romania, No 314/13 June 2001.

6 Published in the Official Gazette of Romania, No. 557/23 June 2004 and entered into force on 1 January 2005.

2. The right to education for disabled persons in the Romanian legislation

Beyond the provisions abovementioned, which represent the general legal framework in the area of the right to education, Law No. 448/2006 on the protection and promotion of the rights of disabled persons⁷, dedicates an entire section to the guarantee of access to education for disabled persons. Also, since 2010 Romania has ratified the Convention on the Rights of Persons with Disabilities⁸ adopted in New York by the United Nations General Assembly on 13 December 2006.

Art. 15 of Law No. 448/2006 guarantees for disabled persons free and equal access to education, regardless of age, in accordance with the type and degree of handicap and related educational needs, as well as continuous learning and professional training for life. Choosing the type and form of education required and the educational unit that will provide it shall be the prerogative of the person with disabilities or, where appropriate, his/her family or legal representative.

In Romania, education for disabled persons represents an integrant part of the national educational system and the means by which it is achieved are: a) general education; b) integrated specialized education organized within the general education system; c) special education units; d) home education or education within healthcare units; e) other forms of learning.

Within the educational process, regardless of its level, the persons with disabilities have, according to Art. 18 of Law No. 448/2006, the right to: educational support services; the endowment with technical aids and equipment adapted to the type and degree of handicap and the use thereof; the adaptation of furniture in classrooms; school manuals and courses in accessible format for pupils and students with sight deficiencies; the use of assistive equipment and software for taking exams of all types and at all levels.

In order to support the integration of disabled persons within the general education system, the legislator has stated that the educational support for persons registered within the educational system shall be provided using supportive and itinerant teachers, where appropriate.

Also, with the purpose of guaranteeing the right to education for disabled persons a series of material incentives have been stated in which disabled pupils and/or persons with special needs shall benefit from free meals and accommodation in boarding schools, and students with a severe and accentuated handicap shall benefit, upon request, from a 50% discount on the cost of accommodation and meals in student canteens and hostels. Disabled children under school age, pupils and

7 Published in the Official Gazette of Romania, No 1/3 January 2008.

8 Ratified in Romania by Law No 221/2010, published in the Official Gazette of Romania, No 792/26 November 2008.

students, along with their personal carers and/or professional carers as the case may be, shall, free of charge, have the right to attend summer camps once in each year, irrespective of the education form.

To ensure the access of disabled persons to education units and institutions, in accordance with Art. 19 of Law No. 448/2006, public authorities are required to take the following specific measures:

- a) Promotion and guarantee of access to professional education and training programs for disabled persons;
- b) Assurance of domiciled school education for immobilized disabled persons during mandatory school periods, and of school preparation, irrespective of the place of residence of the disabled person, including with the support of itinerant teaching staff;
- c) Assurance of access to permanent forms of education, adapting them to the educational needs of disabled persons;
- d) Support of the cooperation between special or mass education units with the family and community, with the view of ensuring an educational offer answering the individual needs of disabled persons;
- e) Support in the preparation of teaching staff with regard to adapting educational practices for disabled pupils in usual education groups or classes;
- f) Assurance of the possibility of a sportive activity by any disabled person, and the preparation of the didactic staff in view of appropriation by them of certain specific medical and technical notions;
- g) Assurance of support educational services for disabled persons and their families, through experts in the field of special psycho-pedagogy;
- h) Assurance of access to educational units and institutions.

In turn, Art. 24 of the Convention on the Rights of Persons with Disabilities establishes a set of obligations for the state-parties, Romania included, for the achievement of the right to education of persons with disabilities, without discrimination and in compliance with the principle of equal opportunities. The state-parties shall insure an inclusive educational system for all levels, as well as continuous learning, directed to: the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; enabling persons with disabilities to participate effectively in a free society.

For the achievement of this right, the state-parties have the obligation to make sure that: a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the

basis of disability; b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; c) Reasonable accommodation of the individual's requirements is provided; d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education; e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

Also, state-parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. Among the effective measures above listed in this meaning by the Convention, are to be mentioned: (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring; (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community; (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or both blind and deaf, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

Not least, according to Art. 24 Para 5 of the Convention, the state-parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Therefore, Art. 24 of the Convention related to the right of education cannot be analyzed separately, but in correlation with equality and non-discrimination (Art 5), children with disabilities (Art. 7), awareness-raising (Art. 8) and accessibility (Art. 9).

3. The right to education for disabled persons – inclusive education

Although Art. 24 of the Convention on the Rights of Persons with Disabilities states the need for an inclusive education system at all levels for persons with disabilities, in many states, including in developed states which have ratified the Convention, persons with disabilities are frequently excluded from education based on disabilities or receive educational experiences far below those received by persons free of disabilities or, where children with disabilities are included in the normal educational system, without receiving an appropriate level of support⁹.

⁹ L. Manea, *Accesul la educație al tinerilor cu dizabilități în România, cu focalizare pe învățământul secundar superior, vocațional și universitar*, RENINCO Association, Romania 2016, p. 19.

For instance, in Romania, as recently noted by the European Centre for the Rights of Children with Disabilities¹⁰, over 31,000 children with disabilities are arbitrarily segregated in special schools, almost 18,000 are outside any form of education, while schools in general remain inadequately capable of meeting the special needs of these children, and the prevalence of discrimination in education based on disabilities remains high.

Though our state has ratified the Convention before the adoption of the Law of national education, the concept of “inclusive education” is not covered by it. The provisions regarding the education of children with special needs refer to two special forms of education, segregated and integrated. On the other hand, legislation introduced subsequent to the Law of education has provisions regarding centers for inclusive education (former special segregated schools), but as already mentioned¹¹, a strange form of inclusion has been reached, that of incorporating children with different disabilities in the same study formations, which is not very productive.

From analysis of the national regulations in this area, it seems that integration and inclusion are confused with each other, even though the two notions have different meanings in the international documents which specifically refer, to special educational needs and to disabilities. The concept of inclusion represents the base of the Convention and has the nature to stimulate inclusive education for all persons with disabilities, to all educational levels – primary, secondary and tertiary, and the legislation should therefore cover inclusive education not only in terms of primary education, but also for the pre-vocational or vocational training, of programs for adult transition and adult education¹².

Unfortunately, the Romanian legislation regarding special education “reveals an old conception and ignores the non-absolute vision, proposed by the inclusive education, the need to combine the equality and equity between students, of personalizing the educational approach and path”¹³.

Given that the UN Committee for Persons with Disabilities has clearly stated that the right to education for these persons can be achieved in a real and effective manner only through inclusive education, it is necessary to change the legislation as it presently stands to bring it in line with Art. 24 thus bringing an end to the ambiguity that exists in the education of persons with disabilities.

In this regard, according to General Comment No. 4 to Art 24, the National Implementation, adopted by the UN Committee on the Rights of the Persons with

10 <http://www.cedcd.ro/>.

11 L. Manea, *op. cit.*, p. 22.

12 *Ibidem*.

13 E. Vrăsmaș, M. Livius, T. Vrăsmaș, *Studiu privind legislația referitoare la educația copiilor cu dizabilități și alte cerințe educaționale speciale (SEN) din perspectiva educației inclusive*, „REPERE Magazine”, vol. 8 no. 1/2014, University of Bucharest Press, 2014, p.17.

Disabilities on 2 September 2016, “*States parties must ensure a comprehensive and inter-sectoral commitment to inclusive education across Government. It cannot be realized by education ministries in isolation. All relevant ministries and commissions with responsibilities that cover substantive articles of the Convention must commit to and align their understanding of the implications of an inclusive education system in order to achieve an integrated approach to work collaboratively towards a shared agenda. (...) Partnerships should also be forged with service providers, OPDs, media, wider civil society organizations, local authorities, students associations and federations, universities, and teacher education colleges*”.

Therefore, it is emphasized the importance of the signatory states for the Convention to end the scholar segregation and to insure the right to education by integration within the education system as a whole.

4. ECHR jurisprudence. Case file Çam v Turkey

The decision of the European Court for Human Rights of 2016, ruled in the case file *Çam v Turkey*¹⁴ underlines that “*the denial of a person to participate in the educational process, based on a disability, shall be considered as discrimination and a violation of the right to education of that person*”.

This case is based on a request (no. 51500/08) submitted against the Republic of Turkey, by a state national, Ms. Ceyda Evrim Çam (the plaintiff) has notified the Court that on the 22 October 2008, based on Art 34 of the Convention for the protection of human rights and fundamental freedoms (the Convention).

The plaintiff refers to a violation of her right to education (Art 2 of the Protocol 1 of the Convention) and that she has been the victim of discriminatory treatment based on her disability (Art. 14 of the Convention).

In fact, the plaintiff, a blind person, applied to take part in the entrance competition for the Turkish National Music Academy attached to Istanbul Technical University (the Music Academy) for the 2004-2005 academic year. On 21 and 31 August 2004 she had taken the practical selection tests performing on the bağlama, which she passed. On subsequently applying for admission, the Music Academy had rejected the plaintiff’s application on grounds of her disability.

During the internal process initiated by Ms. Çam, in their defense, the Board of the Istanbul Technical University has claimed that the plaintiff had not submitted a medical report certifying her fitness to study at the Music Academy, a requirement necessary for all candidates and that, in the absence of appropriate equipment and teaching staff with the necessary expertise required, the Music Academy was not

14 ECHR, Decision in the case file *Çam v Turkey* (Request No 51500/08, 23 February 2016).

able to provide education for blind students or for other persons with disabilities, regardless of their nature.

On 14 October 2004 the Administrative Court dismissed the request of the plaintiff. On 18 April 2006 the applicant's parents, acting in her name and on her behalf, lodged an appeal on points of law with the Council of State against the decision of the Administrative Court, which has been rejected. This too failed to bring satisfaction and in consequence a request was submitted for the case to be heard before the European Court of Human Rights (ECHR).

The ECHR admitted the case, considered the evidence and in its conclusions decided that “*the refusal to enroll the applicant in the Music Academy was based solely on the fact that she was blind and that the domestic authorities had at no stage considered the possibility that reasonable accommodation might have enabled her to be educated in that establishment. (...) the Court considers that the applicant was denied, without any objective and reasonable justification, an opportunity to study in the Music Academy. It therefore finds that there has been a violation of Article 14 of the Convention, in conjunction with Article 2 of Protocol No. 1*”¹⁵.

5. Conclusions

The analysis of the legal provisions and of the jurisprudence, allows us to conclude that in order to be in accordance with the position of the UN Committee for Persons with Disabilities, Romania should initiate the reform of its educational system. This obligation for reform belongs to decision-makers and concerns the desegregation of pupils and students, and the guarantee of the right to education for persons with disabilities culminating in their full integration into the country's educational system. The General Comment No 4 to Art. 24 of the Convention on the Rights of Persons with Disabilities, adopted by the UN Committee – CRPD in September 2016, expresses the evolution achieved by the practice of other states and by the development of research in this area. Also, it states that for education to be of benefit to persons with disabilities an environment adjusted to their needs must be created, with the isolation of children with disabilities in special schools not being a solution.

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