

SOCIAL AND EDUCATIONAL INCLUSION OF CHILDREN WITH DISABILITIES AS A HUMAN RIGHT

Tatiana CERNOMORIT¹

Abstract

The article analyses education and inclusive education from a human rights and human rights-based approach perspective. The analysis of the international legal framework in the field of human rights highlights the interrelatedness of international treaties, and that education was recognized as a human right attributed without discrimination for all, including for children with disabilities, 75 years ago when the „Universal Declaration for Human Rights” was adopted. The Declaration highlights the equality in rights for all persons, including persons with disabilities. Education is a right and not a privilege, thus the state must respect, protect and fulfilment of the right to education in a mainstream and inclusive environment. The article is developed by the author based on the analysis of international legal frameworks in the field.

Keywords: children with disabilities, right to education, human rights, social inclusion, inclusive education, international legal framework.

Résumé

L'article analyse l'éducation et l'éducation inclusive du point de vue des droits de l'homme et de l'approche fondée sur les droits de l'homme. L'analyse du cadre international des droits de l'homme met en évidence l'interdépendance des traités internationaux et le fait que l'éducation a été reconnue comme un droit de l'homme attribué sans discrimination à tous, y compris aux enfants handicapés, il y a 75 ans, lors de l'adoption de la „Déclaration universelle des droits de l'homme”. La Déclaration souligne l'égalité des droits pour toutes les personnes, y compris les personnes handicapées. L'éducation est un droit et non un privilège, et l'État a donc l'obligation de respecter, de protéger et de mettre en œuvre le droit à l'éducation dans un environnement ordinaire et inclusif. L'article est basé sur l'analyse de l'auteur du cadre juridique international dans ce domaine.

Mots-clés : enfants handicapés, droit à l'éducation, droits de l'homme, inclusion sociale, éducation inclusive, cadre juridique international.

¹ Master in Social Work, PhD student, Moldova State University, Social Work and Sociology Department, National Human Rights Officer – UN Human Rights Office in Moldova; correspondence address: 13 Alexei Belski Street, Chisinau municipality, Republic of Moldova; e-mail: tatiana.cernomorit@un.org.

Rezumat

Articolul analizează educația și educația incluzivă din perspectiva drepturilor omului și a abordării bazate pe drepturile omului. Analiza cadrului internațional al drepturilor omului evidențiază interdependența dintre tratatele internaționale și faptul că educația a fost recunoscută ca un drept al omului atribuit fără discriminare pentru toți, inclusiv pentru copiii cu dizabilități, în urmă cu 75 de ani, când a fost adoptată „Declarația Universală a Drepturilor Omului”. Declarația subliniază egalitatea în drepturi pentru toate persoanele, inclusiv pentru persoanele cu dizabilități. Educația, este un drept și nu un privilegiu, astfel că statul are obligația de a respecta, proteja și asigura dreptul la educație într-un mediu general și incluziv. Articolul este elaborat de autoare pe baza analizei cadrului juridic internațional în domeniul vizat.

Cuvinte cheie: copii cu dizabilități, dreptul la educație, drepturile omului, incluziune socială, educație incluzivă, cadrul legal internațional.

1. Introduction

Education is not a privilege, it is a human right, that was first recognized 75 years ago when the „Universal Declaration for Human Rights” (UDHR) „was adopted by the UN General Assembly on 10 December 1948” (United Nations, „History of Declaration”). Article 26 of the UDHR (1946) mentions, that „everyone has the right to education” and that „education should be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms”. The UDHR served as the basis for the series of international human rights treaties. The first binding document that prescribed the right to education as a legal obligation of the state was the „International Covenant on Economic, Social and Cultural Rights” (ICESCR, 1966), which recognized that: „everyone has the right to education directed towards the full development of the human personality and the sense of dignity and shall strengthen the respect for human rights” (ICESCR, 1966, article 13).

The way of organizing education should create the necessary conditions and opportunities to empower all people, including the most marginalized, such as persons with disabilities, for „full and effective participation” (CRPD, 2018, p. 1) in decisions that affect their lives, in promoting understanding, acceptance and reducing social distance among different groups. Participation is one of the underpinning „principles of the Human Rights Based Approach (HRBA)” (ENNHRI, Human Rights Based Approach) and it is the means to ensure that the decisions respond to the needs of affected groups. From the perspective of human rights and HRBA, the states are the duty bearers, thus they have three human rights obligations. As presented by the „Office of the United Nations High Commissioner for Human Rights” (OHCHR), „the obligation is of three kinds: to respect, to protect and to fulfil human rights” (OHCHR, 2006, p. 2), these obligations refer to the right to education as well. Education as a human right means that „education is legally guaranteed for all without any discrimination” (The Right to Education Initiative), by ethnicity, disability, sex, socio-economic status, and other criteria, based on equity. Thus, all children, including children with disabilities as rights holders, are entitled to exercise their right to education.

2. Inclusive education of children with disabilities through the perspective of international human rights standards

The main international documents, including a legal framework that testify the right to education to education in a mainstream and inclusive environment for children with disabilities, are the ICESCR, 1966, „UN Convention on the Rights of the Child” (UN CRC, 1989), the „World Declaration on Education for All” (1990), the „Standard Rules on the Equalization of Opportunities for Persons with Disabilities” (United Nations, 1993), the „Salamanca statement and framework for action” (The Right to Education, 1994), and the „UN Convention on the Rights of Persons with Disabilities” (UN CRPD, 2006).

Through the UN CRPD (2006), inclusive education was recognised by the global community as the means for realizing the right to „education on an equal basis with others” (UNESCO, 2015, p. 5). Still, as mentioned by Waddington and Toepke (2014, p. 14): „inclusive education was not always the international baseline goal for education”. The Committee on the Rights of Persons with Disabilities (CRPD) defined inclusive education as: „a fundamental human right of all learners” and „a principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individuals’ requirements and their ability to effectively be included in and contribute to society” (CRPD, 2016, p. 4), by this it also highlighted that human rights are interrelated and by exercising their right to education, children with disabilities can get prepared for exercising their right to participation in the decision-making process and ultimately to contribute to the development of the society.

Taking into consideration that „all human rights are indivisible and interrelated” (OHCHR, 2006, p. 2), the right to education is presented by the „Committee on Economic, Social and Cultural” (CESCR) as a „means of realizing other human rights” (CESCR, 1999, p. 1). For example, by exercising their right to education, including professional education, persons with disabilities can get professional skills and knowledge, thus they can exercise their right to work, as well as their right to adequate standard of living. At the same time, the CRPD defined inclusive education as „the primary means of achieving inclusive societies” (CRPD, 2016, p. 3). For the right to inclusive education to be achieved, „a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students” (CRPD, 2016, p. 3) is required. This would mean that the barriers (structural, infrastructural, attitudinal) that impede the right to education should be identified and further addressed. As the HRBA requires the participation of rights holders in the decision-making process, children with disabilities, their caregivers, as well as their representative organizations should be involved in the identification of those barriers, as well as in the establishment of potential solutions for overcoming those. Thus, the ICESCR (art. 13), the UN CRC (art. 23 and 28) and the UN CRPD (art. 24), as well as the recommendations from the monitoring bodies of these treaties establish the obligations of the states to take measures to implement inclusive education.

The UN CRC, which was ratified by 196 countries (OHCHR, Interactive dashboard), including by the Republic of Moldova in 1990, protects the rights of children, including children with disabilities, with a separate article on them. Article 28 regulates the right to education of all learners, while article 29a foresees that: education should be oriented on „developing the child’s potential, talents and abilities to their fullest potential”, „developing the respect for human rights”, and „preparing the child for life in a society based on understanding and tolerance” (CRC, 1999, art. 29). All the articles and rights foreseen in the Convention should be read in the conjunction with the article 2 that foresees that every right has to be „ensured without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status” (UN CRC, 1999, art. 2). Moreover, the article 23, obliges the State Parties, including Republic of Moldova, to enable children with disabilities to access their human rights. Thus, with regards to the education of children with disabilities, the Convention highlights two aspects – on the one hand, the right of all children, including children with disabilities to education, that contributes to their development and, on the other hand, the role of education in building understanding and tolerance. The educational institutions are seen as a proper environment for exercising the right to education, but also to contribute to building tolerance and mutual acceptance.

As the right to education is a social right, the principle of „progressive realization” is applied. The CRPD also refers to the progressive realization of inclusive education, by adopting progressive measures, so that children with disabilities access and complete education. A specific accent is pointed out by the Committee with regards to girls and women with disabilities to access all levels of education (including technical, vocational, university and lifelong learning) that is affordable (CRPD, 2016 p. 7). What does progressive realization mean? According to article 2, para 1 of the ICESCR (1966), ratified by the Republic of Moldova in 1998, social rights, along with cultural and economic ones cannot be always realized immediately. According to the CESCR, the „concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period” (CESCR, 2007, page 3). Due to financial implications for the realization of certain rights, but also from the perspective of economic development and potential financial resource constraints that a country can face, this category of rights can be realized progressively, while the state must prove progress. As it is foreseen in Article 13 of the Covenant, the state has the „obligation to progressively realize certain aspects of the right to education” (CESCR, 1999, p. 3), such as free „secondary and higher education, in particular by the progressive introduction of free education” (ICESCR, 1966, articles 13 c and b). However, there are aspects of immediate realization, such as that discrimination in education must be prohibited and ensure primary free and compulsory education for all (ICESCR, 1966, article 13). Still, as the CESCR stated, the principle of „progressive realization” does not

prejudice those obligations of the state that are of immediate implementation and ensure the minimum essential level of each right (CESCR, 1990, p. 30). In the context of article 13 of the ICESCR one of the minimum essentials that should be achieved is the obligation of the state to ensure the right of access on an equality and non-discriminatory basis to public educational institutions (CESCR, 1999, p. 15).

Thus, while some flexibility is accepted, still the progressive realization does not mean that the States can ignore the implementation of rights, on the contrary, they have the „continuing obligation to move as expeditiously and effectively as possible towards the full realization of the right to education” (CESCR, 1999, p. 12). The progressive realization requires State Parties to undertake steps „to the maximum of available resources, to achieve progressively the full realization of the rights recognized... by all appropriate means, including particularly the adoption of legislative measures” (ICESCR, 1966, art. 2.1).

The CESCR described the aspects that must be taken into consideration in the process of determining whether a State „has taken steps to the maximum available resources” (CESCR, 2007, p. 3). Based on CESCR guidance it can be established what are the aspects that can be used in the evaluation if the state has used its maximum available resources for the right to education/inclusive education to be realized:

- Where are the taken measures oriented towards the fulfilment of the specific right?
- In deciding the allocation of public funds, did the state exercise its discretion in a non-discriminatory manner, and by this to avoid limiting the access to quality inclusive education, but also to the necessary support services?
- Did the state follow the international standards in the file of human rights when deciding the sectors to allocate/not allocate the available resources?
- In taking those steps, did the state consider the vulnerability and the needs of the marginalized groups? Were the needs of the most vulnerable groups prioritized?

3. Interrelated elements of the right to education of children with disabilities

The CESCR defined the interrelated elements of education, based on which education should be available, accessible, acceptable, and adaptable. Following these interrelated elements, but also the provisions of the UN CRPD, the CRPD explained the „four interrelated features of the right to education” (CRPD, 2016, p. 6), from the perspective of inclusive education. Thus, based on the Committee (CRPD, 2016) inclusive education should be:

- **Available** - the state must ensure that the „educational institutions and programs” are: „available in sufficient quantity and quality” (CRPD, 2016, p. 6) and have places for pupils with disabilities „at all levels, including preschool, primary, secondary and tertiary education, vocational training

and lifelong learning” (CRPD, 2016, p. 2). This refers to public and private educational institutions and programs.

● **Accessible** – in defining this element, the Committee followed the article 9 of the UN CRPD on accessibility – thus, the schools and educational programmes must respect accessibility requirements. When referring to accessibility in education, the CRPD referred to the whole system - its infrastructure, the curriculum, the educational and teaching materials, and methods, but also the evaluation process. Another important element is the accessibility of support services that facilitate the process of inclusive education (CRPD, 2016, p. 7). From the infrastructural point of view, the CRPD referred to all spaces of the educational institutions, including: „water and sanitation facilities (including hygiene and toilet facilities), school cafeterias and recreational spaces” (CRPD, 2016, p. 7). Another important element is the school transportation that should follow the accessibility requirements, for example in the case of children with physical disabilities. From the perspective of educational materials, the Committee highlighted the duty of the state to develop resources and materials in different formats, such as Braille, video materials with sign language interpretation, easy to read, and easy to understand. Also, another important aspect is that there should developed „standards and guidelines for the conversion of printed material into accessible formats and languages and making accessibility a central aspect of education-related procurement” (CRPD, 2016, p. 7). Another element of accessibility is that education is affordable and does not imply additional costs for children with disabilities and their families.

● **Acceptable** – the state should consider the needs and opinions of persons with disabilities in the process of designing and implementing services and goods for education so that those are acceptable. The acceptability element refers also to the quality. Thus, the state should implement positive measures so that „education provided is of good quality for all” (CRPD, 2016, p. 7, citing CESCR 1999). An inclusive approach to education contributes to ensuring quality education.

● **Adaptable** – the Committee encourages the adoption of „the universal learning design” (CRPD, 2016, p. 7). As each student has its unique learning manner, the universal design in education responds to this, as it allows teachers and other educational staff to adapt the educational environment and instructions that respond to the individual needs of pupils, including children with disabilities. Application of universal design in education involves „developing flexible ways to learn, creating and engaging classroom environment”; as well as „empowering teachers to think differently about their teaching; and focusing on educational outcomes for all, including persons with disabilities” (CRPD, 2016, p. 8). The Committee also refers to curricula, that should be adapted to the individual

requirements of every student, while the assessment should be also flexible to facilitate the evaluation of the individual progress of the learner.

The UN CRPD (2016) is the main UN Treaty that has explicit legally binding provisions about inclusive education as a human right and it also protects specifically the rights of children with disabilities. The document requires the States parties „to take all necessary measures to ensure that children with disabilities can enjoy all their human rights and fundamental freedoms on an equal basis with other children” (UN CRPD, 2006, article 7 paragraph 1) thus moving from charity or medical approach to HRBA to disability. Children with disabilities are legally empowered and „have the right to express their views freely on all matters affecting them” (UN CRPD, 2006, article 7, paragraph 3) and the state must give due weight to their views „by their age and maturity, on an equal basis with other children” (UN CRPD, article 7, paragraph 3). Also, the accessibility principle should be applied to the participation as well, so that all the necessary adaptations needed to facilitate the expression of view by them are ensured.

As education/inclusive education is a human right, the „states must respect, protect and fulfil” (Right to Education, 2018, p. 2) the right to inclusive education. This is recognized also by the CESCR and the CRPD. To respect the right to education, the state has „to avoid any measures that limit or prevent the exercise of the right” (CESCR, 1999, p. 14), for example, to avoid adopting legislation that through its provision excludes children with disabilities from mainstream education. Through the obligation to protect, it has to undertake the necessary measures that prevent third parties (ex. individuals, and private institutions) from restricting the exercise of the right. For example: „parents refusing to send girls with disabilities to school, or private institutions refusing to enrol persons with disabilities based on their impairment” (CRPD, 2016, p. 11). Through the „obligation to fulfil the state must conduct the necessary positive actions that facilitate the enjoyment of the right” (United Nations, „The Foundation of International Human Rights Law”). This includes the „positive measures” to empower and assist individuals and communities in the exercise and full realization of human rights” (Monitoring Platform), as well as the adoption of „legislative, administrative, budgetary, juridical, promotional and other measures” (Committee on the Rights of the Child, 2013, p. 9) that facilitate the realization of human rights. A specific example provided by the CRPD, with regards to obligation to fulfil, would be: „ensuring that educational institutions are accessible and that education systems are adapted appropriately with resources and services” (CRPD, 2016, p. 11).

4. Conclusion

The three-fold obligations in the field of human rights of the state and the provisions of the international legal framework, are the basis for ensuring quality education in an inclusive environment for children with disabilities and could be further used to monitor the availability, acceptability, adaptability, and accessibility of inclusive education for children with disabilities.

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