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THE SOCIAL DIMENSION OF THE RIGHT TO EDUCATION

The political and constitutional regime change which occurred at the end of 1989, the Republic of Moldova legal system went through a twofold process: on the one hand, the recurrence to the Moldovan people`s democratic traditions by reintroducing certain principles and legal remedies abolished during the communist period; secondly, the resumption of contact with the legal systems of contemporary western states, and as a consequence, the importation of standards developed in these systems in the aftermath of the Second World War, as well as ratifying and enforcing in a short time span the international provisions in the field of human rights. This double process has created a number of discrepancies, caused either by neglecting the resumption of some functional and, at times, cutting edge solutions of the interwar legal system, as well as the adoption of certain international norms without an accurate adjustment to the objective circumstances present in the post-communist Moldovan society.

Human rights are not just a matter of national, but also international law. The legal analysis in this field implies not only searching to determine their nature, but also their extent and limitations.[1]

Therefore, since the second half of the nineteenth century, education has ceased to be a «purely private matter», as it was considered in light of classical liberal theories, as John Stuart Mill stated in his work «*On Liberty*»[2]. Nevertheless, the first constitution which the international doctrine recognizes as being essential for asserting education as a human right is the Soviet Constitution of 1936. Its influence went beyond the constitutions of countries within the „soviet bloc», making so that the adoption of the Universal Declaration of Human Rights under the auspices of the United Nations – shortly after the end of World War II and also in the wake of the Cold War that was to hang over international politics for the next half century –

would become an essential reference for the assertion of economic, social and cultural rights, including the right to education.

In this context, the right to education found an initial recognition with art. 26 of the Universal Declaration, and was subsequently developed into articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. The way in which it was defined by the aforementioned legal instruments represented a mutually agreed compromise between western states, adherents of a mainly liberal philosophy, and communist states, whose socialist philosophy paid great attention to economic and social rights. Until the fall of socialist political regimes in Central and Eastern Europe, rights of this category remained largely negligible compared to civil and political ones, their value as fundamental rights being long disputed, and instead were more considered rather progressively achievable goals and certainly not guarantees. This view is strongly supported by some of the most developed countries, such as the United States, which refuses to implement the right to education into formal correlative obligations for the public authorities, adopting the view that «although access to food, health care and quality education are development objectives on the list of any government, to recognize their status as rights would transform citizens of developing countries into objects of development, rather than considering them as subjects in control of their own destiny».[3]

Whereas in the liberal perspective, education was situated within the sphere of individual freedom with their respective legal systems trying to keep its area beyond the decisive control of the state and leaving to the parents' responsibility the education of their children, - in return, the socialist approach made education not just a state responsibility but a means for achieving the goals that society determined and expressed through the will of the state.

Researching the legal nature of the right to education, we've noticed that, within its complex content, there are specific intertwined aspects in both its liberal (freedom) and social dimensions. International legal instruments try to reconcile these two dimensions, but the implementation of law at the national level has always remained loyal to each country's peculiarities. Thus, socialist states, although considered a model when it comes to respecting economic and social rights during the Cold War, have all but neglected and somehow even «ejected» freedom of education from their internal legal practice. In the mean time, Western states – whose legal systems followed predominantly the liberal philosophy – have conferred upon the right to education prerogatives specific to this line of thought, paying greater importance towards respecting negative obligations and relating to an abstention, in creating legal provisions. In the latter systems of law, positive obligations, involving an active interventionism in education, were considered requirements of due diligence towards the progressive realization of the widespread and free access to education.

Characterized by this dichotomy, the right to education has not been neglected at a declarative level, finding its appropriate place among several international treaties, declarations and covenants, but most of them being devoid of legally binding force. In this context, achieving the goal of the research was not without difficulty, extracting the essence of the right to education from the totality of human rights

sources being a multidisciplinary approach, in which constitutional law had to be blended with strong accents of international law. From such a perspective, we might even say that the proposed work is more of a study of international law, specifically the legal framework of the United Nations; this having to do with the fact that, within the aforementioned organization one can most often find a concern for the right to education. We have tried to overcome the shortcomings owed to the lack of a coherent and effective system for the fulfillment of the rights enshrined in the UN system by applying the principles enshrined in articles 4 and 8 of the Republic of Moldova Constitution. Therefore, even without a coercive system aimed at achieving compliance with the obligations undertaken, we have considered and we will always give preference to higher standards imposed in the protection of human rights by international legal sources, which our state has assumed by way of signature and ratification.

In delineating the content of the right to education, on I have awarded special attention to the universal instruments, mainly The Universal Declaration of Human Rights, The International Covenant on economic, social and cultural rights, The Convention on the rights of the child, and secondly to those instruments devoted to a special and particular aim (among others, the fight against discrimination and the protection of the persons belonging to national minorities). Following the same pattern, in my research I referred constantly to the regional instruments as the European Convention on Human Rights and The Charter of fundamental rights of the European Union.

Legal content of the right to education, revealing its intergenerational features and its interdependence with other human rights. So, the right to education is hard to be included in the classic categorization of human rights used in the doctrine of human rights. Even if it is largely accepted that the right to education is included in the category of social, economic and cultural rights, it also has strong connections with rights belonging to other categories [4]. Those connections have been settled, on one hand, by the fact that the right to education must be a precondition in order to exercise other rights [5], and, on the other hand, by the fact that the right to education in itself and by its content, can be considered as a social, economic, civil or political right [6]. The enjoyment of the right to education is considered to be a premise in order to exert the other human rights. By that we state that not every right recognized to an individual who has not been educated can be properly realized, due to the lack of a minimum level of knowledge, which would be acquired after accessing a primary form of education. It can even be stated that the mere fact of knowing the existence of those rights cannot exist for an individual deprived of a basic education, same reasoning being valid for the possibility to protect those rights. Because of its indivisibility, the right to education is considered to be an instrument for every human right [7], being a genuine *empowerment right* [8].

The right to education is partially considered to fall within the category of civil and political rights, due to its freedom dimension. The freedom of parents or legal guardians of the children to choose for them an education in accordance with their personal convictions and also the right to choose other teaching institutions then

those provided by the state are both recognized. In this regard, we are in the presence of a negative obligation bounding the state to respect those freedoms. Moreover, the freedom of education implies not only the freedom of those who receive education, but also some degree of freedom for the providers of educational services. We here refer on one hand to the right recognized to every person to establish and direct educational institutions, other than those organized by the state, respecting certain standards regarding the quality of education and, on the other hand, the academic freedom of the teachers and institutions, especially of those functioning at the higher education level.

After analyzing the said aspects of the right to education, we can state that we are in the presence of a right that cannot be excluded from the first generation of human rights. The right to education plays out as a free act of the individual, of the holder of the right. The right to education is also a *freedom forming act*, as long as its aim is the full development of the human personality and the fact that *education shall enable all persons to participate effectively in a free society*, as stated by the International Convent on economic, social and cultural rights. What designs the right to education a first generation right, at least partially, is not only the fact that it implies negative obligations for the state, but the fact that we are in the presence of a *liberty*, as a common feature of other rights included in this category.

We have also seen that the right to education has a strong social dimension. Firstly, the right to free and compulsory education for every person creates an essential positive obligation for the state, namely to create a national educational system. This system must consist of public institutions created and financed by the state, whether it is at the national level or at the regional level. The connection between the right to education and the economic rights steams from the role which education has as a promoter of social movement and as a condition for the integration of the individual in the modern economy.

In its social dimension, the right to education implies correlative obligations for the state that can be divided into two principles: availability and accessibility. The availability of the right to education implies the state obligation to assure the access to schools, teachers and teaching materials. Founding more schools, training more teachers and granting more didactic materials and resources improve the availability. The availability means that schools, teachers and materials are available for everyone. The accessibility to education, on the other hand, refers to the state's obligation to maximize the individual's chances to be admitted in a school, once that school has been made available. This is improved by clearing the obstacles that preclude the admission. The general accessibility means that all those admission obstacles must be eliminated so the education must be available to everyone.

The multi- sectoral nature of the right to education was also formally recognized by a an interpretative instrument of the International Covenant on Economic, Social and Cultural Rights: „The right to education has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective

realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights» [9].

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