



## ORIGINAL PAPER

# The Right to Education of Persons with Disabilities - A utopia of Romanian Education System

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### Abstract

Taking into consideration its applicability along time, we can claim that the right to education was the subject of many controversies, thing which it is not justified if we take into account the legal nature of the concept, that of a fundamental right. From the perspective of disabled persons, the right to education has a complex and relatively complete legal settlement, but regarding its applicability on the national level, there are required certain clarifications which will definitely lead to the improvement of some aspects at the institutional level. To express it more clearly, we consider that these problems of applicability arise due to some economic, psycho-social and educational-institutional difficulties. Although the European regulates this fundamental right, yet it places the matter of the right to education of persons with disabilities in the responsibility of national public authorities, granting them the freedom of action and also to manage such delicate situations. Regarding Romania, this freedom of action involves limited material resources, thing which determines the restriction of the right to education for persons with disabilities in the matter of the applicability of the legal provisions on education nationwide. The aim of this article is to elaborate a complex analysis on the right to education of disabled persons on the current Romanian educational system, as well as the way public authorities implement national education law regulation.

**Key words:** *right to education, persons with disabilities, Romanian educational system, national education law, implementation*

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## **The Right to Education of Persons with Disabilities – A utopia ...**

### **Introduction**

Romanian State is confronting different problems in the field of education, yet before the 1990's, and its attempt to eliminate the disruptive elements which are making harder this system is questionable. Often, the disabled persons are considered to be one of the most disadvantaged groups by the government, still representing a minority part of it. It is possible that this aspect may raise a problem at the society capacity level to integrate these persons with disabilities, thus creating barriers of different natures: legal, cultural, economic etc., between what is normal and what it is considered to be "abnormality". One of the most important aspects that should be highlighted in this situation is the reason why the right to education of the persons with disabilities is partially violated, and even more than that, in a discreet manner.

We consider that the problem that occurs regarding the lack of respect on the right to education of the persons with disabilities has its cause in more areas, but the legislation in the domain of education raises a number of problems both at interpretation level but also regarding its applicability. If we make reference to the applicability of the legal framework, the problem prioritizes on the level of educational institutions which respect the law, but to the extent to which the state offers them the resources they need.

Although we speak about the same right for all the persons to education, including for the persons with disabilities, with no form of discrimination, we consider that there still exists a difference at the level of respecting this right, as compared to the individuals with deficiencies and the others, and this difference is in how much the state is willing to provide resources for these persons depending on their level of disability, so that they can counterbalance the lacks that the persons with disabilities have. The moment when the persons with disabilities will have their needs satisfied regarding human, material and architectural resources and there will be established an equality ratio between this disadvantaged group and the majority, we can speak about the right to education, with no form of discrimination.

In relation to the interpretative level, we consider that another aspect on which we have to take in account in respecting the rights of persons with disabilities in education, it takes of the understanding of the significance of certain concepts used in the legal sources, like "handicap", "disability", "education", "learning". To make specific examples on what it refers when is discussed the partial lack of respect of the right to education of the persons with disabilities, in a discreet manner, it is necessary the understanding of the concepts listed before. We agree that "the right to learn" from National Education Law and Romanian Constitution has different connotations as compared to "the right to education", the last being less emphasized in the Romanian legal sources. The concept of education is not clearly defined in any Romanian legal sources, but not in the international sources either, except only one and that is The World Declaration on Education for All adopted in Jomtien, Thailand (1990), declaration that Romania approved, and from this definition comes the fact that the right to education includes the right to learn. Regarding the differences on conceptual level between the terms "handicap" and "disability" there are little Romanian legal resources which take into account the fact that using the term "handicap" has discriminatory connotations for the persons in this situation.

### **Analyzing the concepts of "education" and "learning"**

Over time, Member States of European Union have not elaborated a specific definition of the concept of education because of the wide understanding of the term, and

that is why they focused more on the role of education and on the objectives that the right to education should accomplish. Cultural, religious, political differences and different social circumstances represent the main factors in the acceptance of a universal definition of education, as the term does not have the same meaning for all cultures. Education is considered to be a fundamental right of human and The International Declaration on Education for All, adopted in Jomtien, Thailand (1990), sustains closely this global vision (Centrul Educația 2000+, 2009), more than this, it proposes the access to education of all children, youngsters and adults at international level, with no discrimination. This declaration is also the only legal source which gives a clear definition of education, exemplified by the stipulations of article 1. In the presented regulatory act, the concept of “education” is brought like a learning procedure by which there are obtained certain abilities of learning necessary for personal development.

The other legal sources, for example the International Covenant on Economic, Social and Cultural Rights, do not give the definition of education, but they focus more on the results produced by education, on a summary of ideals resulted by ensuring the right to education of all persons (Spring, 2000). Like the other international agreements, the stipulations of art. 2, (3) of the National Education Law of Romania is concentrated on the final product of education, namely on the personality development, on creating a system of values, active participation in society and hiring on the labor market. The Convention on Human Rights, The Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, expend the horizons of education, by the fact that it does not give a clear definition precisely for the results of educational process to be more expanded. The stipulations of the Universal Declaration on Human Rights does not place emphasis only on education as a fundamental right, but also on the fact that education must be a growth factor regarding the fundamental rights and freedoms; moreover, this idea is consolidated also by the Convention on the Rights of the Child. The difference that occurs between the Declaration on Human Rights and other conventions is in the fact that the Declaration places emphasis on moral values, while the conventions are the result of the legal commitment of the States which are parts that ratify these moral values (Audrey, 2012: 3).

These moral aspects are results of education and they consist in teaching the people to live in harmony together in different social contexts, thus developing this solidarity between human differences, with the purpose to value dignity, justice and equality of chances for all (Audrey, 2012: 1). Moreover, the stipulations of article 13 of the International Covenant on Economic, Social and Cultural Rights support the above mentioned ideas. Interpreting the stipulations of article 26 of the Universal Declaration of Human Rights and the stipulations of article 13 International Covenant on Economic, Social and Cultural Rights, education does not tend to an act of learning, as we frequently understand by using the term in relation to the teaching system, but more to shape a personality by implementing some basic moral values of the society. Regarding the right to education of persons with disabilities, the Convention elaborated for these persons to fully benefit from their rights, it reclaims more elaborately the concept of education, taking in to account that the beneficiaries of this convention are persons that come from a disadvantaged group. The difference is made by the reference to the “inclusive education system”, but also the reference to a “continuing education” taking into account the fact that the person with disability needs education during the entire life. In the Convention on the Rights of Persons with Disabilities there is a very important given

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aspect and this is the fact that we insist on the idea that all the people have the obligation to respect “human diversity” specifically we are speaking about mutual respect both for the persons with disabilities but also for the persons considered to be minorities or disadvantaged groups. Training the tolerance and friendship is not only for the “normal” persons, but for everybody, the persons with disabilities not being advantaged by physical or psychic problems that they “carry”, they have to actively participate in the evolution of the society, because these persons take benefits too on this right equally with the others (Audrey, 2012: 4).

An aspect that needs to be pointed is the fact that the term “education” does not have the same significance as the concept of “learning”. Romanian Constitution speaks about the right to learn not to education, this might represent one of the problems related to the applicability of the right to education in our country. The right to education, as we exemplified above, promotes moral values and the concept of “learning” refers to the process of accumulating intellectual knowledge. Renucci (2009) emphasized in The European Law and Human Rights Agreement the idea that “education has to be understood as the sum of all procedures through which we try to inspire the youngest values, and learning and instructions especially refer to the transmission of knowledge and intellectual training”. It is to prefer to make a specific delimitation between the two terms because the applicability of the National Education Law from Romania to be more precise. Thus, in article 1 of the National Education Law it is spoken about “the right to learn”. At the same time, the National Education Law is promoting the same educational ideals reminded in the Convention on the Rights of Persons with Disabilities, The Convention on the Rights of the Child, the International Covenant, etc. by the stipulations of article 2, (3). While the concept “education” refers to the accumulation of values for personality development and active participation in society, the meaning of the concept has stronger values when it comes in the statement “the right to education”. The statement “the right to education” is defined by the stipulations of the article 1 of Universal Declaration on Human Rights (1948).

In elaborating par.1 of this article, the Members of the Committee tried to avoid certain aspects such as the part in which the persons who are leading us can stop the parents in choosing the education for their children. Another problem term was the concept “mandatory” in the assertion: “elementary education has to be mandatory”. A possible interpretation of the term “mandatory” refers to the fact that nobody, not even the State or the family, cannot prevent the child from benefiting from the elementary education. The argument to maintain the word “mandatory” was the fact that “free and mandatory education” became a traditional model in all the countries, so that the omission of this term will be just a step back. The idea of using the term “mandatory” was not referring to the fact that the State can use all the monopoly on the education of the child and neither to the fact that the parents will not have the possibility to choose the school that they desire for their children to go (Tooley, 2004: 1).

If we try an ample definition of the right to education based on the stipulations in the articles of the Convention on Human Rights, International Covenant, Universal Declaration of Human Rights and the International Declaration on Education it follows that actually anyone can benefit from free education in elementary school, and by education we understand both the appropriation of some support instruments for learning and the development of some abilities of learning that underlie lifelong personal evolution. Moreover, education has to build persons who have a certain set of moral values, so that they can contribute to the progress of the society and maintaining the peace.

It can be noticed that the term of “learning” is included in the concept of “education”, therefore the right to learn as it is mentioned in Romanian Constitution is part of the right to education. The stipulations of article 1 of the National Education Law, strengthens the idea that in Romania it is placed emphasis more on the right to learn, because it refers to the fact that the State “ensures the fundamental right to lifelong learning”. The stipulations of articles 2 and 3 of the same law are similar with the stipulations of the articles of international legislative sources regarding the right to education, but none of the Romanian legal articles refers specifically to this.

### **The differentiation between “handicap” and “disability” on jural fond**

The existence in the law both of term of disability and handicap can produce wrong interpretations of the laws, if we take in account the different significances of the two concepts as compared to the perceptions of the society. Agreeing within the abolishment of the term handicap, UNO proposes the substitution of this term with that of disability, counting on the positive connotation of the second term. The designation of the Convention elaborated by UNO is using the term of disability, thus avoiding like this the term of handicap, used both in Romanian Constitution and in other law sources in our country. In the report elaborated by the Romanian Institute for Human Rights there are examples regarding the differences between the two concepts, “handicap” and “disability”. Thus, UNO Convention shows that the persons with disabilities “include those persons who have long term physical, mental, intellectual or sensory deficiencies, deficiencies that, in interaction with different barriers, can limit the full and effective participation of the persons in society in equality conditions with the others. According to a given definition in the UNO system, the handicap is influenced by the relation between the deficient person and his/her environment. Handicap occurs in the situation in which these persons are meeting cultural, physical or social impediments that are preventing the access to different social systems that are made available to other citizens (RIHR, 2013: 7).

As its results from the two definitions given above, the term of “disability” removes the personal lacks, trying to give a “normality” to the person considered to have deficiencies, assigning the problems of his/her incapacity to access to a normal life to the State, the State being the one that has to eliminate the barriers which stand between the persons with disabilities and social integration. More specifically, it is necessary to change the environment and cultural, physical or social resources have to match with the needs of persons with disabilities, removing like this the barriers with the consequence of ensuring the fundamental rights of these persons. Further, “at the moment we speak, there are frequently debates in the world referring to the environment and attitude factors and their role specifically to show the fact that the disability is not an attribute of the person but of the relationship between the person who suffers from a certain deficiency and the environment. The unadapted environment is the one that “disable the person, because of the architectural obstacles, but not only, and in this relationship, taking the responsibility becomes mandatory for each of us” (UNICEF, 2013: 8).

The definition of handicap is discriminatory for these persons with deficiencies, because it focuses the problems on the lacks that these persons have in relation to the environment. In fact, persons themselves, with deficiencies, are guilty for their incapacity to access environment, as long as the rest of the population has the possibility to integrate in the same environment. We agree that replacing the term of “handicap” with the one of “disability” from Romanian Constitution, in article 50, the interpretation of the respective

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article would be a different one: “Persons with handicap enjoy special protection. The State ensures the achievement of a national policy of chance equality, to prevent and to treat the handicap for the effective participation of the persons with handicap in the life of the community, respecting the rights and duties of the parents and the trustees”. As compared to the stipulations of article 50 of the Constitution on the concept of “handicap” it can be noticed the fact that the State is taking prevention and treatment measures for handicap, not for removing the environmental barriers, as it should happen if in the Constitution it would be used the term “disability”.

### **The problem of the applicability of the law in the special education system**

Nowadays, the educational system has different roles depending on different situational contexts: the transmission of knowledge from one generation to another, the acquisition of different learning abilities, the adhesion to a model of “good citizen” to occupy a positive status in society, and, last but not least, building and developing a future society (Stavenhage, 2015:1). Education has to be of the highest possible quality to help every child reach his or her potential, and to achieve effective transitions both from pre-primary to primary and from primary to secondary school. Governments must ensure that children with disabilities in all schools, are able to receive the same quality of education as all other children (UNICEF, 2012: 70).

Within the special education system from Romania, we consider that there are some problems, both at legal and institutional level, leading to a restriction of the right to learn, implicitly of the right to education. There is a discrepancy between the law and its applicability within the institutional framework. The Romanian law mentions the fact that the persons with disabilities should have access to education by specific various forms depending of the level of disability, and the educational system has to provide them access to education. What we want to emphasize is the fact that, although in the law it is mentioned the fact that “The State guarantees the right to education”, this right is respected according to the possibilities of each teaching institution.

The same thing is argued in terms of “The right to instruction” in the Convention on Human Rights, but the problem occurs when it comes about the way to respect this right, about the imposed conditions, as Article 2 of protocol no. 1 guarantees the access to the school institutions existing at a moment in a contracting State to whom the Convention recognize the right to regulate the appropriate learning system according to the resources that it has and the social needs (Bârsan, 2005).

The right to a quality education in elementary school and kindergarten has as its purpose developing of certain types of abilities for the persons with disabilities, especially to those that affect the learning process, social cohesion and productivity for the best interest of the society. Educational system plays an important role at institutional level. An important problem that the State and the law have to solve through the educational institutions is finding a way to develop the abilities of persons with disabilities so that it can relate to each degree of deficiency specifically, without any form of discrimination. There are schools that are not adapted in accordance with the type and degree of the disability, even though National Education Law guarantees the access to education for all, with no form of discrimination (EFA, 2004). Although the National Education Law speaks about developing some values, the accomplishment of the objectives of education regarding the persons with disabilities comes up against different problems, because the teaching system passed and it is still passing through a negative period caused by demographic, social factors (the high risk of poverty and social exclusion speaking about

some disadvantaged categories of population) and, last but not least, economical factors. Against the background of the negative impact caused by international economic crisis, most of the governmental interventions recorded a decrease of the financing level, regarding the Romanian education system (NEM, 2012: 4).

Because the National Education Law is the general legal framework for the education of persons with disabilities, we consider that it is necessary to make a parallel between certain articles of the law and the way of their applicability by the special institutional education systems. For example, we illustrate the stipulations of article 53 of the Romanian National Law which raise a problematic situation. This article refers to the existence of school text books in special schools, but it does not make specific reference to a special text book, therefore, therefore we consider that it is necessary that the law should be extremely clear and precise in this matter. Thus, the law has to mention the existence of special text books in special education institutions.

At the same time, we consider that it has to be a law which stipulates on purpose the obligation of the existence of some special text books for the children with disabilities for their integration in the Romanian education system. The problem of the lack of special text books occurs also because of the fact that article 53 establishes a condition of their appearance by the fact that they have to be approved first by the Ministry. This approval represents a procedure that delays the process of elaboration of special text books and their introduction in schools with a direct consequence on violating the right to education of persons with disabilities. So, even though there are organizations, foundations for persons with disabilities protection that write and edit this kind of text books, the text books will be examined by some State institutions, which is supposed to be a waste of time and materials, inevitably leading to a postponement of the process of inclusive education both in regular schools and in the special ones.

Inevitably, we can speak about a form of discrimination relating to the persons with disabilities, and this becomes more emphatic comparing to normal children, because, as article 69 of the same law for a quality learning system, normal children benefit both from text books, auxiliary materials, etc. from the State and collections and working cards from different publishing houses. Against to these arguments it has been formed another opinion that sustains the fact that National Education Law is sufficient and that it is the duty of the teachers to sustain the teaching process without the support of text books. If we refer to the stipulations of article 46 (2), as compared to article 53 of National Education Law, it occurs again a form of discrimination, because this law considers that it is necessary to exist special text books for national minorities “especially elaborated”, article 46 (2), in order to ensure the access to education. From this point of view it is an obvious violation of the principle of chances equality referred to in article 28 of The Convention on the Rights of the Child.

This article do not distinguish normal children from children with disabilities and, according to the adage “ubi lex non distinguit, nec nos distinguere debemus”, neither we cannot do this, and this is why we consider that these stipulations become incident both in case of normal children and children with disabilities. On these grounds, we consider that in Romanian education system it is mandatory the existence of some norms regarding the access to education of children with disabilities. Of course, there is the probability that these measures can be taken without the law of special text books being applied, if the state would have enough funds for the teaching system, but it seems that “the main challenge for the education system and the professional training from the perspective of the financing in the horizon of 2020 is represented by the insufficient

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allotment of resources and the difficulties of the State to respect the actual legal provisions regarding the level of expenses. This state of affairs equals to an education addiction to other finance sources that can continue both the current programs and the initiation of some new policies for student vulnerable groups” (NEM, 2012: 8).

Anti-discrimination legislation that introduces a prohibition on policies, practices and actions that directly or indirectly discriminate, will not be sufficient to end all forms of exclusions and segregation. For example, separate schooling systems for children with disabilities are often sustained without braking non-discrimination laws. It is, therefore, possible to go further and introduce a positive obligation to promote inclusive educational environments. Legislation can establish a commitment to inclusion, introduce requirements on education authorities to take all necessary measures to ensure that no groups of children are excluded and that the barriers that may impede their access are removed, create incentives to promote socially inclusive school environments, and design and implement affirmative action ir positive discrimination programs (UNICEF, 2007: 54).

Implementing the right to education demands an effective education system able to create educational environments sufficiently flexible to adapt to the diversity of educational needs. This requires a legal framework committing schools to be receptive to diversity and to consider each student's need and outcomes, regardless of his or her circumstances, social origin or ethnic group. It demands the human, financial and technical resources to support students in meeting academic, social and professional requirements and empowering educational institutions to became pedagogically accessible to the diversity of needs (Ebersold *et al.*, 2011: 20).

In conclusion, it has to be mentioned the fact that although in the Romanian Constitution the right to learn has priority and as we related before, the concept of “learning” refers also to the process of acquisition of knowledge, National Education Law does not sustain enough this process, because it does not offer material resources, and by material resources it refers to the special text books, for facilitating and supporting the access to education of persons with disabilities. The restriction of the right to education of persons with disabilities is a problem that relates both to the way of applying the education law at national level, to the interpretation of the law at conceptual level, and to the economic situation of the country in relation to the institutional level. At the same time, this right is discouraged by social preconceptions, which are against one of the essential ideas promoted even by the “concept of education” and that is the companionship between citizens and developing a set of moral values, thus creating a progressive society and this is caused by the misunderstanding of the difference between the two concepts “disability” and “handicap”.

The right to education is not specifically mentioned from the point of view of the law in the legislative sources of our country, because the Romanian law regarding the right to education is based on the right to learn, thus partially excluding certain purposes that have to be carried out at educational level. As we have shown before, the persons with disabilities do not benefit from all necessary resources so that they can have access to a quality teaching system, even if the law partially sustains their needs, but its applicability depends mostly on the economical help granted by the State. We consider that solving this problem comes to the implication of the State so that all the juridical, financial, institutional barriers that stand in the way of exercising the right to education of persons with disabilities be overcome. Education can promote (although does not guarantee) understanding, tolerance, respect and friendship among nations, ethnic or



religious groups and can help create a universal culture of human rights. The Latin origin of the word itself is “to lead somebody out”. A person’s right to education incorporates educational opportunities, e.g. access to primary, secondary, and tertiary education. While acknowledging a broader conception of the right to education, this module focuses on primary and basic education, as vast numbers of people are denied even the foundations of a lifelong learning journey” (Benedek, 2012: 253).

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