

THE RIGHT TO EDUCATION – BETWEEN A FUNDAMENTAL RIGHT IN A SUSTAINABLE SOCIETY AND THE DISCRETIONARY POWER OF THE GOVERNMENTS

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Abstract: *In a world that continues to evolve and transform, where fundamental legal documents—true cornerstones that have guided and shaped fundamental rights—are viewed with suspicion, with some even seeking to have them repealed or denounced, preferring an international society without clear, precise rules accepted by the majority of states and international and regional organizations, the right to learning or the right to education struggles to maintain its place among these rights. In the society based on sustainable development that democratic states—and not only them, but also international and regional organizations, and all of human society—seek to shape, the right to education has its place among the goals of such development. However, an educated individual, an educated nation, or an educated society may not be what rulers desire—rulers who often and very quickly forget the very moment they took office, even those who, through their votes, brought them to power. Imposing their political vision—translated into a governing agenda—through the adoption of relevant legislation becomes such a paramount goal for those in power that the manner in which legislation is adopted and its content are often influenced by genuine discretionary power. This attitude is also reflected in the legislation adopted in the field of education; the discretionary power exercised by government officials in enacting such legislation affects the exercise of the right to education—and perhaps even the very substance of that right—as we will demonstrate in this article.*

Key words: *the right to education, sustainable development, discretionary power, legislation, government officials.*

1. Introduction

The right to education is a fundamental right of every human being, as proclaimed in Article 26 of the Universal Declaration of Human Rights, which states that “everyone has

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the right to education,” with paragraph 2 of this article also establishing a primary purpose of this right: “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”. Based on these provisions, Article 13 of the International Covenant of December 16, 1966, on Economic, Social, and Cultural Rights enshrined the right to education at the international level through the United Nations, which is to be recognized for every person who, by exercising this right, “must be enabled to play a useful role in a free society.”.

The right to education is recognized, protected, and guaranteed at the international, regional, and national levels through various legal instruments, of which we will mention just a few here by way of example. Thus, the European Union and its member states reinforce this recognition through the fundamental provisions they have adopted. Article 14 of the Charter of Fundamental Rights of the European Union enshrines, among other freedoms, the right of every person to education, alongside access to vocational training and continuing education.

The Constitution of Romania, as republished, under Article 32, recognizes the right to learning and several fundamental aspects related to it, such as: forms of education, the use of the official language, as well as the possibility of using the language of national minorities or an internationally used language in the conduct of specific educational activities, free public education, within the limits of the law, the possibility of granting scholarships, the organization and conduct of education in state, private, or religious educational institutions, the guarantee of university autonomy, and freedom of religious education, within the limits of the law. The Constitution of Slovenia devotes two articles to the right to education, ensuring freedom of education, establishing that primary education is compulsory and free, requiring the state to create opportunities for citizens to obtain an appropriate education, and enshrining university autonomy, while stipulating that the method of financing higher education shall be determined by law. To a large extent, such provisions are also found in Article 16 of the Finnish Constitution, which, however, guarantees that public authorities shall ensure “equal opportunities for every person to access other educational services, in accordance with each person’s specific abilities and needs, as well as the opportunity for personal development without being hindered by financial difficulties,” within the limits of the law, just as “freedom of scientific research, the arts, and higher education” is also guaranteed.

The importance of the right to education is also underscored by the fact that, by proclaiming the Universal Declaration of Human Rights, the United Nations General Assembly has declared it „a common ideal of achievement for **all peoples and all nations**, so that **every individual and every organ of society**, keeping this Declaration constantly in mind, shall strive by **teaching and education** to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance”. At the national level, we can justify the importance of the right to education not only because it is enshrined in the Constitution, but also because one of the national security interests is guaranteeing the right to education, developing a solid educational policy that will improve the performance of younger generations and offer increased opportunities, and education is

also considered one of the national security objectives, as stated in the Romanian National Defence Strategy for the Period 2025–2030, a strategy drafted and proposed by the President of Romania and adopted by Parliament in a joint session of both Chambers on November 26, 2025.

However, the importance of the right to education must not be reflected solely in international, regional, or national legal documents, such as those mentioned above or those to be discussed below, because for any individual, it is not enough merely to recognize, protect, or guarantee this right, if its content is merely formal, lacking substance, or if its substance is undermined by subsequent legislation.

2. Some Remarks about the Right to Education. Education in a Sustainable Development Society

The right to education is a complex right because it involves at least three important elements, namely: the rights and obligations of the actors involved in its exercise: children, parents, teachers, authorities, and public institutions with responsibilities in regulating the legal framework for the exercise of this right; a coherent, fair, and adapted legal framework to enable the implementation of a high-quality education, research, and continuous training process; tools, procedures, and mechanisms to implement this process to the highest standards, for the benefit of pupils, students, and, ultimately, society as a whole.

Legal doctrine has shown that “the right to education represents the moving force for empowering human potential, both at an individual and collective level” (Zendeli, 2017, p.159). Education is the one that “makes people aware of building their own future....and control the state actions towards them, including the rights and injustices that may emerge in these situations” (Zendeli, 2017, p.159). Therefore, the right to education could be considered a fundamental right that must be guaranteed to every person; through the education provided to them—not only within a family setting but also in an environment organized in accordance with specific national legislation, to which they must have access—they will become more aware of their own needs, the rights recognized to them, and through the exercise of which they can fulfil these needs.

In fact, the United Nations shares this view when it states that „Education is not only a fundamental human right, but also a prerequisite for everyone to realize human rights for themselves, individually and personally, as well as in the community and society to which people belong. At the same time, education is the basis for realizing a global society of all people” (UN, Re-examining..., 2025).

In this context, it goes without saying that a redefinition of education from a human rights perspective is necessary, and to achieve this goal, several factors must be taken into account, including the recognition of the right to education as an essential component of one of the Sustainable Development Goals. In our view, these minimal but essential elements are as follows: education is a must in today's society; building a real society based on sustainable development is definitely linked to education and the right to education; ensuring inclusive and equitable quality education and promote lifelong learning opportunities for all as Goal 4 of Sustainable Development of the 2030

Agenda for Sustainable Development regarding the Quality education, has established.

As stated in the latest United Nations report on the Sustainable Development Goals, „education is vital for sustainable development” (UN, The Sustainable ..., 2025, p. 16). In the same vein, the European Commission justified the adoption of the European Education Area initiative as “obvious and clear”, emphasizing that “Education is the foundation for personal fulfilment, employability and active, responsible citizenship. It is essential to the vitality of European societies and economies. Access to quality and inclusive education, training and lifelong learning is a right for all citizens, as enshrined within the European Pillar of Social Rights” (European Commission, European Education Area Initiative, 2025). Furthermore, at the national level, through its own Sustainable Development Strategy 2030, the Romanian government has emphasized the following regarding Goal 4—Quality Education: “the access to, and participation in, good-quality education is essential for a society to function properly and become sustainable” (SDS 2030, 2018, with the amendments from 2022); “education is: a process to be completed prior to entering the workforce, but not just at that time; a process through which to prepare younger generations for the challenges of the future, and one that continues throughout their lives; a process characterized by innovation, meritocracy, constructive critical thinking, curiosity, good conduct, and emancipation”.

In light of these strategies for sustainable development, which have been outlined at the international, regional, and national levels, and given that the right to schooling is enshrined in our Constitution, we believe it is necessary to propose, as a first step, that the right to education be enshrined in our Constitution during a future revision, in place of the right to learning. Other arguments in support of such a proposal include the following: “the right to learning is considered part of the right to education” (Muraru, I. et al., 2022, p. 269), the right that “encompasses a variety of rights and freedoms of parents and children, to which correspond a series of obligations on the part of the state” (Muraru, I., et al., 2022, p. 269), an opinion we share; international, European, and constitutional regulations of other countries, as I have shown above, enshrine the right to education, not the right to learning, precisely because of the complexity of the former’s content; Today we are discussing concepts such as continuous learning, lifelong learning, and micro-credentials, which go beyond the traditional boundaries of the right to learning.

3. Discretionary Power - A Weapon of Public Authorities and Institutions or a Mirage

At present, “the Rule of Law is a concept of universal validity” (Venice Commission, Rule of Law Checklist, 2016, p. 8), but also “a basic principle at universal level” (Venice Commission, Rule of Law Checklist, 2016, p. 8) and “must be applied at all levels of public power” (Venice Commission, Rule of Law Checklist, 2016, p. 10). In fact, the rule of law is one of the key elements upon which the 2030 Agenda for Sustainable Development was built; in paragraph 8 of the Introduction to this Agenda, it is emphasized that “We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination....” (UN, Resolution, 2015, p. 4).

In a 2011 report, the Venice Commission determined that the necessary elements of the rule of law are: legality, including a transparent, accountable and democratic process for enacting law, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, including judicial review of administrative acts, respect for human rights, and non-discrimination and equality before the law (Venice Commission, Rule of Law Checklist, 2011, p. 10). Subsequently, in another document—the Rule of Law Checklist—the Venice Commission reiterated, with some nuances, these key elements of the rule of law, identifying them as follows: legality, legal certainty, prevention of abuse (misuse) of powers, equality before the law and non-discrimination, and access to justice.

In our view, one of the most comprehensive definitions of the rule of law is the one that states that it “refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (UN, *The rule of law...*, 2004, p. 4). However, the principle of the rule of law does not preclude the possibility for public authorities and institutions to exercise their discretionary power in carrying out their specific duties, provided that they do so within the limits set by that principle. Although this is particularly characteristic of public administration authorities, we believe that this right of appreciation, this discretionary power, is present in the exercise of specific powers by all public authorities and institutions, including legislative bodies.

On the other hand, at the level of any public authority or institution “discretionary power must be exercised in accordance with the purpose underlying its granting, but without the decisions taken in the course of its exercise substantially affecting the subjective rights of citizens” (Pop, A.M., 2022, p. 21), while also adhering to the essential elements outlined above, which are mandatory for upholding the rule of law. In such a framework, any public authority or institution will be able to exercise its discretionary power within the bounds of the law. Therefore, in our opinion violating these defining elements of the rule of law is equivalent to exceeding the limits of discretionary power—the right of public authorities and institutions to exercise judgment, which is equivalent to the discretionary exercise of power or even abuse of power. Discretionary power is therefore both a weapon, but one with two edges, and a mirage which, when exercised outside the limits of legality and appropriateness, affects our fundamental rights and freedoms, including the right to education.

4. Affecting the Right to Education through the Discretionary Exercise of Powers by Public Authorities and Institutions

Although international, European, and national regulations enshrine the right to education and the rule of law, and reports by various organizations on respect for the

rule of law highlight the definition and key elements of this fundamental principle in a democracy, and quality education is one of the 17 Sustainable Development Goals, the exercise of specific powers by public authorities and institutions in a discretionary manner undermines both the right to education and the rule of law.

One such example, in our view, is Law No. 141/2025 on certain fiscal and budgetary measures, which was adopted by the Romanian Parliament last year. One of the purposes of adopting Law No. 141/2025 on certain fiscal and budgetary measures, by our Parliament, was to adopt measures in the field of education in order to eliminate the risk of the Romanian state being unable, under the current legal framework, to financially support the right to education, as guaranteed by the Romanian Constitution, republished. The provisions that were amended provided: the organization of pre-university schools, which led to the reorganization (through consolidation) of schools; the establishment of working groups in pre-university education, which led to an increase in the number of preschoolers and students in these groups; an increase in teachers' teaching hours, which led to a decrease in their income through: a reduction in the number of hours paid per hour, the amount paid for hours worked under this system, and a possible decline in the quality of the education process; rethinking of the type and method of awarding scholarships in pre-university and university education, which led to a significant reduction in the number of scholarships offered in various categories (social scholarships, merit scholarships).

In our opinion, these legislative changes affecting the right to education should have: been based on relevant expert analyses, taken into account actual educational needs, taken into account the numerous recommendations made in its latest report of OECD, focused on four pillars (OECD, 2024, p. 8): restructuring the assessment and support responsibilities of educational institutions, the efficient use of increased budgets in education, transforming the teaching profession into one with a high level of qualification and professional satisfaction, and creating a robust monitoring system for accountability and results. Also, in its latest report regarding education and training, the European Commission, through its Directorate-General for Education, Youth, Sport, and Culture, highlighted regarding education and training system in Romania, among other things: delays in implementing key aspects of education laws are becoming apparent; the need to increase participation in early childhood education and care; significantly improving the basic skills of young people; effectively improving the quality and relevance of education and training policies and higher education for the labour market; the need to increase participation in learning activities among adults in order to keep pace with the rapidly changing demands of the labour market; the need to mitigate the significant impact of socioeconomic disadvantages on educational outcomes; the need to take measures to reduce the gap between rural and urban areas in education; the need to reorganize the school network to improve quality and respond to demographic trends. (European Commission, Education and Training..., 2025, p. 7)

5. Conclusions

In the states governed by the rule of law, "it is well-established that legislation may

only infringe fundamental rights by express words or necessary implication” (Meagher, D., et al., 2024, p. 431) and “it can be taken to be a presumption of which those who draft legislation, regulations and by-laws are aware” (Meagher, D., Emerton, P., Groves, M., 2024, p. 431).

And the principle of legality, an essential element of the rule of law, has been described as: “not merely a common sense guide to what a Parliament in a liberal democracy is likely to have intended; it is a working hypothesis, the existence of which is known [also] to Parliament” (Chen, 2015, p. 21), and this “hypothesis is an aspect of the rule of law” (Chen, 2015, p. 21).

Thus, neither the Government nor the Parliament enjoys, in a state that enshrines the rule of law in its very constitution, unlimited discretionary power that it can wield as a “weapon” to undermine the right to education. It is unanimously recognized that education—a country’s educational system—does not have as its primary goal the generation of financial profit that would contribute to the growth of a country’s national budget. The results of a well-structured educational system—one that is not subject to frequent and constant legislative changes, which are most often driven solely by financial considerations—will only become apparent years down the line, by which time, unfortunately, they will be too late to correct.

For the moment, the Government, with the support of our Parliament which adopted the bill as Law No. 141/2025, has found a solution to reduce budgetary expenditure, through measures applied to the Romanian education system, but the bitter fruits of these measures will be tasted in the near future.

Perhaps more than in any other field, in education any reform, which we consider more than necessary, must be adopted only after thorough analysis and research, not long-term, and aimed at relevant, possible, and achievable results that will constantly improve the work of teachers, namely an increasingly solid education for every child.

Implementing such reforms through the discretionary power of government officials will only have negative consequences, calling into question the achievement of specific sustainable development goals.

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