

Educație și Drept – Interferențe **Education and Law – Interferences**

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- R e v i e w -

The conferences with international participation hosted annually in last 5 years by the "Dimitrie Cantemir" Christian University – Faculty of Law in Cluj Napoca, after having accustomed us with a high scientific level, are now accompanied by the presentation of a reference work, a fact which marks the place held by this conference in the landscape of annual academic events.

After having witnessed the release of Irina Moroianu Zlătescu' book called *Human rights: a dynamic and evolving process*, on the dynamics of the development of fundamental rights, today we mark the follow-up of that initiative, not only seen as a mere event but also viewed as an essential aspect, as we are talking about a paper that persists in the realm of fundamental rights, targeting the present-time right, painfully contemporary but also very complex – right to education.

Going through this paper called "Education and Law – Interferences", a collection of several interventions presented at the 2015 edition of the Conference "Efficiency of Legal Norms", a generic (and rhetoric) question arises: What would society look like without education or with precarious education? Gazing to the public environment, domestic and abroad, it does not come difficult to carry such an imagination exercise. And we realize just how terrible such a world would be, maybe even more petrifying that a world after nuclear war. That is because any society, no matter how many disasters had struck it, will always rise back up through education.

Education is a multivalent concept. Education stands for knowledge, understanding, innovation but at the same time for behaviour, tolerance, altruism. We say that an educated person stands out not only through his/her baggage of knowledge or by the way he/she can analyze and capitalize this baggage, but also through an adequate behaviour that is in accordance with social standards.

Professor Veny underlines the fact that the "Right to education, although being a socio-cultural right, is one of the most important human rights; above all, having recognised this right increases the number of other human rights such as freedom to praise, the right to information, transparency, hence from this regard

the right to education is not simply a socio-cultural right, but has a special instrumental character and strengthens other liberal (and classic) human rights." It is relevant the fact that in many western countries education law is a relatively new discipline of law and a new area of scientific research in which the law on education represents a section that is transversal to public law and private law.

The paper integrates 6 studies that cover tertiary education within the European Union, case law of the European Court of Human Rights regarding the right to education, a comparative law approach of the transsystemic higher education, several reflections on the right to education of persons with disabilities within higher education, an analysis of the regulations on the right to education in Romania and the issue of access to general compulsory education.

The study "The context of high education and structural shifts of the population with tertiary studies in EU during 2000-2014 " of Elena Mihaela Fodor, Corina Cristina Buzdugan, Emilia Gogu underpins the fact that any national system of education, irrespective of the form of ownership, level or domain, has the obligation to offer quality education to its students, while the state has the obligation to develop the national academic environment and find ways to retain the graduates in the national space in order for them to contribute to the socio-economic development and to increase academic prestige.

The systems of higher education in Europe differ greatly in what concerns duration, structure and content of curricula, thus making it difficult for the decision factors at national level to compare their own system of education with those of the other Member States of the European Union. In this context, the paper should be credited for revealing the particular importance of tertiary education within a very dynamic world in which a number of persons do not undertake a process of linear education but they oscillate between a form of education and an early start of their professional career. This fact leads to an increase of the percentage of population having tertiary education in the European Union. However it is determined that in order to ensure an increasing trend of population with tertiary education, it is necessary that national policies on education focus not only on attracting persons in the system of this stage of education, but also on the completion of this stage by the student who enrolled in it.

There are categories of persons deprived most often on economic criteria, but also on other criteria such as race, nationality, religion, rural origin or gender. Even though for these categories of persons the possibilities to join tertiary education have increased lately, however the difficulties they are confronted with still determine a higher rate of drop-out. The study is based on accurate statistical data according to which the percentage of workforce having tertiary studies in the countries of the European Union between 2005-2014 has suffered major changes. Consequently, if in 2005 the average level in EU was of 19,6%, in 2014 it became 26%. We are led to the worrying conclusion according to which 40% of the

population of Romania is dealing with risk of poverty and social exclusion, and almost 29% of population is affected by severe material deprivation.

The study of Ludo M. Veny, "Education law. The European Court on Human Rights and the right to education" is remarkable from the perspective of the general theme, the right to education being analyzed from theoretical and case law points of view, in the light of the regulations comprised by the international documents which promote the right to education, and by documents which subsume the right to the law of some countries that are part of the European Union. It highlighted the fact that although the states have the obligation not to interfere in education law, however, each of the states has the right to regulate its own system of education, on condition that the regulations do not deprive the right to education and its effectiveness. If the states institute restrictions, these must be predictable to the interested parties, being highlighted the importance in this field of the principle of proportionality. Ensuring the access at least to elementary education through a legal base for children who pertain to a minority group is an obligation for each state member of the European Council.

From comparative perspective it is observed in the study of prof. Irina Moroianu Zlătescu "Comparative law: tradition and innovation – Judicial Transsystemic Higher Education", that the student of law, irrespective of the whether he/she is an university of a state in which the right pertains to the roman-germanic system or to the common-law system, he/she must focus on mastering the legal norms that pertain to its national system. On the other hand, the evolution of society led to the internationalisation and "europeanisation" of law. The interpretation of national law is made more and more at the level of European standards and tends to become in a certain way, a common case-law creation due to the process of "dialogue between judges" initiated by numerous supreme jurisdictions and constitutional courts in the European states. Thus it is mentioned the *Declaration of Bologna* concerning the European space for higher education, the importance of which is given by the tendency for unification of the systems of diplomas, by the European framework of certification, by the programs for student exchange carried out in the European Union, by the creation of institutions specialized in training in the field of European Law such as the European Institute in Florence or the European College of Bruges. From this point of view, a priority axis of the system preparing the future legal advisors must be represented by the European judicial formation. The knowledge of foreign law is essential for students, as it represents a necessary premise for a better understanding of their own legal system.

The study brings to light the fact that transsystemic education represents "the rupture of denationalisation of legal education", and the professors of law ought to extract from national law the particularities in order to make available to

the students a presentation in the form of "general and abstract issues, cut off from the typical solutions of positive law".

In the contribution brought by Rodica Diana Apan, "Discipulus vulnerabilis; Reflections on the right to education of persons with disabilities within the third level education" it is emphasized the fact that at the level of European Union special attention is granted to persons with disabilities. As well, in Romania Law no.448/2006 acknowledging free and equal access to any form of education, irrespective of their age, according to the handicap type, degree and the educational needs thereof as well as ensuring permanent education and professional training throughout their life. The means through which the rights of students with disabilities are carried out within universities, represents for the author the measure of quality of the third level education.

Sorina Lucreția Drăgan, Corina Cristina Buzdugan in their work "The main considerations and legal regulations on the right of education in Romania" carry out an analysis focused on the legal regulation of the right to education in Romania and therein mention the polyvalence of the program conducted by organisation "Save the children" that launched the Right to Education Manifesto. From the author's point of view this program must represent a priority for the Parliament and for the Romanian Government, and also for all authorities called to take a stand in this field.

Also, the study of prof. Mihnea Radu and Narcisa Radu, called "Preventing access to compulsory education" starts from the finding that the best interest of the child shall be the basic principle to guide those responsible with the education and formation of the child. Nevertheless it comes into discussion the issue of school dropping and absenteeism, the causes of which being identified in the rising percentage of unemployment and social exclusion. On the other hand one of the causes of juvenile crime rate is the absence of education in schools. Consequently, the authors consider appropriate that the new Criminal Code incriminates, in the group of crimes against family, the prevention of access to general compulsory education, providing criminal sanctions for the parent or guardian of the child, who unjustifiably pulls out or prevents the minor from attending the courses of general compulsory education.

Undoubtfully we find ourselves in front of a work of great benefit for the legal practitioners but also for those wishing to penetrate the issues concerning the right to education. As it is rightly claimed in the work, in a world invaded by information, the system of education remains, together with the family, the central pillar of education.

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