

Right to Education

Alena KRUNKOVÁ

‘Non scholae, sed vitae discimus.’¹
(We learn not for school, but for life.)
Seneca

ABSTRACT

As one of the fundamental rights and freedoms, the right to education belongs to the second generation of human rights. It is crucial not only for the development of personality, but also for societal progress. Even in the twenty-first century, judicial protection remains necessary, as its implementation cannot be taken for granted. The first section of this paper considers the definition of the right to education as it has gradually evolved on the European continent. We highlight its key characteristics and distinctive features and specify its position within major international documents on the protection of human rights. The second section addresses the case law of the European Court of Human Rights in relation to the right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms. Cases of its violation, either freestanding or in interaction with other fundamental human rights, are analysed casuistically.

KEYWORDS

Right to education, Convention for the Protection of Human Rights and Fundamental Freedoms, European Court of Human Rights, case law

1. Introduction

The importance of education has been evident both today and historically. Education has always signified a process of acquiring knowledge, skills, values or abilities, although the methods and means of this process have naturally changed as the society has developed. Simultaneously, the accessibility of education has also undergone transformation. Generally, societal development has been closely linked to the

1 Rebro, 1995, p. 205.

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overall level of education. However, the universalisation of education was neither simple nor swift.² The emergence and development of modern states and philosophical movements of the eighteenth century may be considered as foreshadowing the concept of the right to education, as ideas of freedom, equality, and individual rights began to take shape. The importance of education for society was recognised long before it was considered part of fundamental rights.³ For the right to education to emerge, it first had to be included in the emerging catalogue of fundamental rights and freedoms. From the historical development point of view, it did not form part of the first generation of fundamental rights and freedoms, which comprised only human and political rights.

A genuine interconnection between the issue of education and fundamental rights arose only after the Second World War, with the emergence of the second generation of human rights. The right to education thus falls within economic, social and cultural rights.

To understand the right to education fully, it is helpful to characterise this group of rights. Social, economic, and cultural rights gained prominence after the profound societal and state changes brought about by the World War II. Within the system of fundamental rights and freedoms, they have long constituted the most controversial group regarding legal anchoring, conceptual definition, and practical implementation.

Their initial legal formulation appeared in international pacts and agreements through which these rights found real expression. These include the Universal Declaration of Human Rights (1948), the European Social Charter (1961), the International Covenant on Economic, Social and Cultural Rights (1966), and the Convention on the Rights of the Child (1989). All these documents bind the contracting states as obliged entities to incorporate specific rights into their law (typically at the state constitution), because a right begins effectively only once the conditions for its implementation and protection are established. The European Convention for the Protection

2 Education as an important value has been discussed in the historical context since ancient times, of course adequately to those times. In ancient Greece and Rome, education was not considered a universal right, but rather a privilege for certain strata of the society, especially the aristocracy and the upper classes. In this period, education focused mainly on development of thinking and philosophy, available to only a small portion of the population. In the Middle Ages, most educational institutions were under the patronage of the church, and again, that did not mean universal accessibility. Education was primarily intended for priests, educated men and the nobility.

3 Education was mainly considered by philosophers in their works, e.g., John Locke and Jean-Jacques Rousseau, in their philosophical works from the 17th and 18th centuries, respectively, advocated the ideas of equality and universality of education. In his work 'Emil or on Education' (1762), J. J. Rousseau emphasized the importance of education as a tool for development and formation of civil society. Before them, Martin Luther, the founder of the Protestant Reformation, propagated the idea that every person should be able to read and understand Sacred Scripture. This is how the need for basic education for all began to take shape.

of Human Rights and Fundamental Freedoms (1950) did not originally include this category of rights.⁴

Economic, social, and cultural rights also require direct state involvement for their implementation (e.g., material assistance in the event of illness, loss of employment, or the construction of schools systems necessary for successful implementation of the right to education). They provide the material basis for the implementation of other human rights and freedoms, especially personal and political rights.⁵ While personal and political rights are individualistic in structure and their fulfilment is a matter of status, the implementation of social, economic and cultural rights is a continuous process, heavily dependent on a state's economic capacity. As a result, they are subject to frequent legislative adjustments that alter their practical realisation, such as minimum wage levels, health insurance conditions, child allowance amount, and state assistance in education, without altering their essential character.

2. Right to Education

The right to education is classified as a cultural right within economic, social, and cultural rights. An important characteristic of this group of rights is that their implementation makes them a means of developing the human personality and thus contributes to the progress of society (e.g., the right to education, freedom of artistic and creative expression, freedom to conduct business, etc.).

The right to education is also considered as a key factor in the development of society, as its application affects economic growth, innovation, cultural exchange, and social cohesion. The scope of this right is continually expanding, and its specification relates to many spheres of an individual's life. In terms of content, it includes, at a basic level, the right to access to education and, simultaneously, the right to receive education. More broadly, it encompasses several ancillary rights, such as the right to quality education, innovative education, free primary education, specialised education for persons with specific needs, and access to qualified teaching staff.

The basic features of the right to education may be summarised as follows:

Generality – the bearer of the right to education is every person. Accordingly, any discrimination in this respect is prohibited, as the right to education is intended for all. Discrimination involves any differentiation, exclusion, limitation, or preference which, on grounds of race, colour, sex, language, religion, political, or other beliefs, national or social origin, economic conditions or birth, has the purpose or effect of nullifying or impairing equality of treatment in education. No person or group may

4 See also: Fenton-Glynn, 2021, p. 47; Schiedermaier, Schwarz and Steiger, 2022; Thelma, 2024.

5 These rights help to ensure the material and spiritual development of the individual, some of which may also be necessary for the physical existence of a person (e.g., the right to health protection, the right to adequate material security, the right to assistance in material need, etc.).

be deprived of access to any type or level of education, nor limited to lower-level education.⁶

Universality – universality ensures that all individuals have the right to access education on equal terms and with equal opportunities. This understanding also reflects a global dimension (e.g., recognition of educational documents), manifested both in equal opportunities and in equal chances at education worldwide, including for those living in remote or marginalised areas.

Personalisation – this aspect reflects that the right to education is an individual human right that providing access to education and educational opportunities. Its bearers are natural persons, differentiated by specific characteristics (age, children, adults, secondary education, etc.). This right can be exercised individually or collectively.

Mutuality – the right to education is crucial for personal development and societal progress and is inextricably linked to other human rights and freedoms. In many cases, its implementation requires the simultaneous exercise of other rights (e.g., the right to university education in another state requires the right to enter and reside in that state).

Standard of education – sets the obligation of the state to create conditions for compulsory primary education that ensure a minimum level of education for all.

Accessibility – stipulates the state's duty to create conditions for free primary education at a certain age, enabling its effective implementation (e.g., distribution of the network of state schools with regard to geographical and demographic factors, adequate numbers of school classes corresponding to population needs).

Specificity in universality - the right to education is also realised through special conditions for people with specific needs, physical disabilities, or those belonging to marginalised groups. This includes adapting the education system to ensure accessibility for all.

State guarantee – the state must secure sufficient funds to implement the right to education (e.g., establishing systems of primary, secondary, and higher education, ensuring qualified teaching staff, and providing support mechanisms such as student dormitories, leisure centres, and sports clubs).

Respect for individual freedom – this manifests in two ways: the freedom of individual to choose whether to pursue further education (after completing compulsory minimum education), and the freedom to choose an educational institution.

Cooperation with parents in children's education – this guarantees the free will of parents as guardians of minors. Parents have a priority right to choose the type of education for their children. When exercising functions in upbringing and teaching, the state must respect the right of parents to ensure education consistent with their religious and philosophical convictions. This characteristic demonstrates the overlap between the right to education and freedoms of thought, conscience and religion.

6 See also: Duffy, 2024, pp. 653–675; Gaviria, 2022, pp. 382–406.

In practice, this overlap has caused considerable friction, reflected in proceedings before the ECHR, discussed in the next section.⁷

Stability – the implementation of the right to education should be consistent in nature, the educational process ought to constitute an established system providing continuity. Its quality must be sufficiently high to prepare individuals for life in society, participation in the labour market and personal development. Education must comply with basic norms and quality standards.

Dynamism – educational systems must remain flexible and responsive to changing individuals and societal needs. This includes innovation, adaptation to new technologies and the adoption of new teaching methods.

3. Right to Education in International Documents

The international dimension of the right to education increases its credibility and allows for a higher degree of protection. Although the European Convention for the Protection of Human Rights and Freedoms did not originally contain this right, it was gradually recognised, strengthened, and protected throughout the twentieth century.

The Universal Declaration of Human Rights, adopted on 10 December 1948 within the United Nations (UN), was the first international document to enshrine the right to education. Its legal regulation found in Article 26 is as follows:

‘Everyone shall have the right to education. Education must be free, at least at the primary and basic levels. Primary education must be compulsory. Technical and vocational education must be universally accessible, and higher education must be equally accessible to all on the basis of ability.

Education shall be directed towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, as well as the activities of the United Nations for the preservation of peace.

Parents have a prior right to choose the type of education for their children.’

Within the framework of the Council of Europe and its Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the “Convention”), the right to education was incorporated through Additional Protocol No. 1, adopted on 20 March 1952, in Article 2, placing it among the fundamental rights protected by the ECHR:

⁷ See also: Fancourt, 2024, p. 40.; Duffy, 2024, pp. 653–675.; Preet, 2021.

4. Right to Education

‘No one shall be denied the right to education. In exercising any functions in the field of upbringing and teaching, the State shall respect the right of parents to ensure education in conformity with their own religious and philosophical convictions.’

The Council of Europe subsequently incorporated it into the European Social Charter, among economic, social, and cultural rights. Under this regulation, the right to education has two aspects. First is the social aspect, where the emphasis is on state activity to ensure accessibility and attainability (i.e., the availability of the right). Second is its protective aspect, comprising the entitlement to exercise this right. Since it is subject to the amendment of Article 2 of Additional Protocol No. 1 to the Convention, it also includes the prohibition for the state to interfere in the exercise of this right that would effectively deny its exercise.

Subsequently, the International Covenant on Economic, Social and Cultural Rights (1966) further elaborates the right to education in Article 13.⁸

‘1. The States, which are Parties to the present Covenant, recognise the right of everyone to education. They agree that education shall be directed towards the full development of the human personality, the sense of its dignity, and the strengthening of respect for human rights and fundamental freedoms. They agree that education shall enable all persons to participate effectively in a free society, to promote mutual understanding, tolerance and friendship among all peoples and racial, ethnic and religious groups, contribute to the activities of the United Nations in the preservation of peace.

2. The States, which are Parties to the present Covenant, recognise that, with a view to achieving full execution of this right:

- a) primary education shall be compulsory and freely accessible to all;
- b) secondary education in its various forms, including technical and vocational secondary education, shall be generally made possible and accessible to all by all every appropriate means, and in particular by the progressive introduction of free education;
- c) higher education shall be equally accessible to everyone, according to their abilities, by all appropriate means, and in particular by the gradual introduction of free education;
- d) the primary education of persons who have not obtained or completed primary education shall, as far as possible, be encouraged or intensified;

8 Fenton-Glynn, 2021; Theory and Practice of the European Convention on Human Rights, 2024.

e) development of the school system shall be actively pursued at all levels; an adequate scholarship system shall be introduced, and the material conditions of teachers shall be constantly improved.

3. The States, which are Parties to the present Covenant, undertake to respect the freedom of parents or guardians to choose schools other than those established by public authorities, which correspond to the minimum level of education established or approved by the State, and to ensure the religious and moral education of their children in accordance with their own convictions.

4. Nothing in this Article shall be construed as interfering with the freedom of individuals and organisations to establish and direct educational institutions, subject to the observance of the principles set forth in paragraph 1 of this Article, and the requirement that the education provided in such institutions shall conform to a minimum level established by the State.’

At the European Union level, the right to education is regulated by the Charter of Fundamental Rights of the European Union in Article 14 as follows:

‘1. Everyone has the right to education and to have access to vocational and continuous training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational institutions is subject to respect for democratic principles, and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical, and pedagogical convictions shall be respected in accordance with the national laws governing the exercise of such freedoms and rights.’

These documents may be considered elementary in the field of international protection of human rights. In addition to them, other international conventions address specific aspects of the right to education, such as the UNESCO Convention against Discrimination in Education (1960). At the same time, the protection of the right to education is also partially ensured by conventions adopted by the UN General Assembly that primarily protect other rights—for instance, the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention on the Rights of the Child (1989); and the Convention on the Rights of Persons with Disabilities (2006). These documents form the framework of international law relating to education and constitute essential standards for its protection and development.

Compared with the above-mentioned universal and regional human rights instruments, the International Covenant on Economic, Social and Cultural Rights of 1966 devotes the greatest attention to the right of education.⁹

9 See also: Fenton-Glynn, 2021; Schiedermaier, Schwarz and Steiger, 2022; Isenström, 2024.

Children's education has a special status within the right to education, particularly in relation to the Convention on the Rights of the Child (1989), which enshrines the civil, political, economic and cultural rights of children. Under this convention, education is intended to develop the child's personality, talent, mental, and physical abilities, prepare the child for an active life in society, promote respect for parents, cultural identity, language, ethical, moral values, and, shape their personality in terms of respect for human rights, fundamental freedoms, and principles enshrined in the UN Charter. The Convention guarantees free and compulsory primary education for all children and encourages the development of diverse forms of secondary education. It also proposes preventive measures to support regular school attendance and counselling activities that make educational information available in the field of education and training. In relation to higher education, it declares its implementation for all according to their abilities.¹⁰ Human rights education should be 'child-centred; child-friendly, and empowering the child'. The Convention implies that the education will be available to children where States provide adequate infrastructure, including capacity, regional representation, qualified staff, facilities, and educational materials.¹¹

5. Analysis of ECHR Case Law in Relation to the Right to Education

At the beginning, it is necessary to note that the jurisprudence of the European Court of Human Rights (ECHR) demonstrates the close connection and interaction between the right to education with other rights protected by the Convention. Therefore, further interpretation shall be proceeded with in this spirit.

'Art. 2 – Right to education

No one shall be denied the right to education. In exercising any functions in the field of upbringing and teaching, the State shall respect the right of parents to ensure such upbringing and education as reflection of their religious and philosophical convictions.'

Although the relevant provision of the Convention is not very extensive, its content reveals numerous contexts previously identified as characteristic of the right to education. This is confirmed by the extensive case law of the ECHR. Article 2 of Additional Protocol No. 1 cannot be interpreted restrictively, as this would be inconsistent with its object and purpose.¹²

10 Art. 28 of the Convention on the Rights of the Child.

11 Horná and Petöcz, 2015, p. 46.

12 Ruling in cases *Leyla Şahin v. Türkiye*, Application no. 44774/98, Judgment 10 November 2005, *Timishev v. Russia*, Application nos. 55762/00 and 55974/00, Judgment 13 December 2005, *Çam v. Türkiye*, Application no. 51500/08, Judgment 23 February 2016, *Velyo Veleve v. Bulgaria*, Application no. 16032/07, Judgment 27 May 2014.

ECHR jurisprudence confirms that the right to education applies to primary schools,¹³ secondary education,¹⁴ as well as to higher and vocational education,¹⁵ including specialised courses. The right in Article 2 is guaranteed not only to children, but also to adults or anyone who wishes to exercise this right.¹⁶ Its scope covers all courses, and therefore extends to religious teaching, ethics, and sex education.¹⁷ The provision applies both to the content and to the method of teaching.

Article 2 guarantees an individual right to education and, simultaneously, the right of parents to have their children educated in accordance with their religious and philosophical beliefs. However, the Article must be interpreted in accordance with other rules of international law forming part of the Convention framework.¹⁸

The right to education also includes the right of parents to have education provided with respect for their religious and philosophical beliefs. In this context, the term “respect” conveys more than merely “taking into account” or “taking into consideration”. As a result, parents cannot refuse a child’s right to education based on their beliefs.¹⁹ The ECHR interprets “parents” broadly, extending beyond fathers and mothers to include, grandparents.²⁰ A child in education cannot claim to be a victim of the exercise of parental rights under the second sentence of Article 2 of Additional Protocol 1 to the Convention.²¹

A third right is derived from the combination of these rights, namely the right to establish non-state schools.²² In the case of *Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v. Sweden* (06 March 1987, no. 11533/85), the ECHR expressly stated that the right to establish schools outside the public framework is protected by Article 2 of Additional Protocol No. 1 to the Convention, stating that ‘Article 2 of Protocol No. 1 guarantees: the right to establish and run a private school’. This implies the

13 Ruling in the case of *Sulak v. Turkiye*, Application no. 24515/94, Judgment 17 January 1996.

14 Ruling in the case of *Cyprus v. Turkiye*, Application no. 25781/94, Judgment 10 May 2001.

15 Ruling in the case of *Leyla Şahin v. Turkiye*, Application no. 44774/98, Judgment 10 November 2005, *Mürsel Eren v. Turkiye*, Application no. 60856/00, Judgment 7 February 2006. Access to higher education institutions that exist at a given time forms an integral part of the right to education as per Article 2 of Additional Protocol No. 1 to the Convention. See also *İrfan Temel and others v. Turkiye*, Application no. 36458/02, Judgment 3 March 2009.

16 Ruling in the case of *Velyo Vele v. Bulgaria*, Application, no. 16032/07, Judgment 27 May 2014.

17 Ruling in the case of *Jimenez Alonso and Jimenez Merino v. Spain*, Application no. 51188/99, Judgment 25 May 2000, *Dojan and Others v. Germany*, Application nos. 319/08, 2455/08, 7908/10, 8152/10 and 8155/10, Judgment 13 September 2011, *Appel-Irrgang and others v. Germany*, Application no. 45216/07, Judgment 6 October 2009.

18 Ruling in the case of *Catan and others v. Moldova and Russia*, Application nos. 43370/04, 8252/05 and 18454/06, Judgment 19 October 2012.

19 Ruling in the case of *Konrad and others v. Germany*, Application no. 35504/03, Judgment 11 September 2006.

20 Ruling in the case of *Lee v. United Kingdom*, Application no. 25289/94, Judgment 18 January 2001.

21 Ruling in the case of *Eriksson v. Sweden*, Application no. 11373/85, Judgment 22 June 1989.

22 Kmec et al., 2012, p. 1302.

right to opt for private instead of public education. However, this right is not absolute and may be subject to state restrictions to ensure a high-quality education system.²³

In this context, reference may be made to the ECHR's decision concerning the state's positive obligations relating to the financing of educational institutions in *Private Primary School Cesta k úspěchu v Praze, s. r. o. and the civic association Škola dětem v. Česká republika* (*School to Children v. the Czech Republic*, 22 November 2011, no. 8314/10). The ECHR emphasised that Article 2 of Additional Protocol No. 1 obliges Contracting States to guarantee to all individuals within their jurisdiction the right to access existing school facilities, as well as enabling individuals to enjoy the privileges of completed studies by officially recognising the education obtained. However, it does not guarantee the right to education requiring the Contracting States to provide or finance the teaching of a certain form or level of instruction. The first sentence of Article 2 gives the States an exclusive right to decide whether to financially support private schools. Accordingly, persons under the jurisdiction of a Contracting State cannot require the State to establish any educational institution.²⁴ However, if the State decides to finance non-state schools, it cannot do so in a discriminatory manner as per Article 14 of the Convention, in conjunction with Article 2 of Additional Protocol No. 1 to the Convention. Similarly, the State cannot disadvantage private universities by setting the same criteria for determining the student numbers as those used for public universities.

The implementation of the education system is the responsibility of States, subject to respecting compulsory primary education, which ensures the initial integration of the individual into the society. In this context, the ECHR also addressed the issue of *home-schooling*, which concerns both the child's basic right to education and the rights of parents to raise and educate their children, in accordance with their convictions. For example, in Germany, home schooling is prohibited. In *Wunderlich v. Germany* (24 June 2019, no.18925/15), the ECHR found no violation of Article 8 (right to respect for private and family life). The case involved a German family where the parents of four children rejected the state school system and its compulsory attendance policy. They decided to educate the children at home, having made the decision as early as with the eldest daughter, by not enrolling her in school. Parents received several fines, subject to criminal proceedings for violating the school attendance obligations of their minor children. Despite this, they continued not to enrol their children, opting instead to pay the fines. Eventually, the state (Germany) removed the children away from home for three weeks, after the parents refused compliance.

In this case, the ECHR mainly examined whether the enforcement of compulsory schooling, aimed at ensuring children's integration into society, constituted a relevant reason justifying the partial denial of parental rights. The ECHR leaned toward a

23 See also: Trellová, 2021, p. 611; Ohlig and Timm, 2024.

24 Judgment of the ECHR in the *Case concerning certain aspects of the Law on the use of languages in education versus Belgium*, Application nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, Judgment 23 July 1968.

conclusion that the authorities could reasonably assume that the children were isolated, lacked external social contact, and that this posed a threat to their physical integrity. It further concluded that the temporary removal of the children did not exceed what was necessary and was carried out in their best interests. The ECHR stated that there were “relevant and sufficient” reasons to justify the limited restriction of parental rights.²⁵ The ECHR therefore approached the matter with a certain degree of reserve, continuing to respect the free discretion of the State to allow or refuse home-schooling, and to determine at which levels of education home schooling may be permitted.

The right to education is not absolute, and may be limited within established national limits. As regard to its limitation, it follows from the ECHR case-law, the fact that a person cannot continue university studies during a period of lawful detention following conviction does not amount to a deprivation of the right to education.²⁶ Similarly, in the case of a complainant who was unable to complete the final year of secondary school owing to the commencement of a prison sentence, the ECHR concluded that ‘there was no violation of his right to education under the circumstances of the case’.²⁷

The ECHR further determined that the rights contained in Article 2 of Additional Protocol No. 1 also includes the State’s obligation to regulate how education is implemented.²⁸ In the event of a difference in treatment in the regulation of education, provisions in the Article 14 of the Convention shall be considered. The right to education guarantees equal access to existing educational institutions for everyone and rather than a right to receive education of one’s choice. Differential treatment is not discriminatory when it pursues a legitimate objective and is proportionate. In this context, the ECHR considered the use of languages in education in Belgium, concerning the impossibility for French-speaking children living in a Dutch-speaking area to attend classes taught in Dutch. However, Dutch-speaking children living in an area with a preferred French language could attend classes with Dutch language of instruction. The measure in question was not imposed in the interest of the schools for administrative or financial reasons but was based only on considerations relating to language. The ECHR thus found a violation of Art. 2 of Additional Protocol No. 1 in conjunction with Art. 14, as the difference in treatment lacked sufficient justification.²⁹

25 *Wunderlich v. Germany*, Application no. 18925/15, Judgment 24 June 2019, see also *Konrad and Others v. Germany*, Application no. 35504/03, Judgment 11 September 2006, *Dojan and Others v. Germany*, Application nos. 319/08, 2455/08, 7908/10, 8152/10 and 8155/10, Judgment 13 September 2011, *Leuffen v. Germany*, Application no. 1844/92, Judgment 9 July 1992.

26 Ruling in the case of *Arslan v. Turkiye*, Application no. 31320/02, Judgment 1 June 2006.

27 Ruling in the case of *Epistatu v. Romania*, Application no. 29343/10, Judgment 24 September 2013.

28 *Campbell and Cosans v. the United Kingdom*, Application nos. 7511/76; 7743/76, Judgment 25 February 1982.

29 ECHR ruling against *Belgium*, Application nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, Judgment 23 July 1968.

In terms of access to education and opportunities for learning, the State's educational policy and implementation are eminently important.³⁰ The ECHR respects the degree of discretion available to each State, even in sensitive cases such as education in minority languages, provided that the State itself also respects the creation of comparable conditions for minorities' education in relation to the majority population. An illustrative example is the case of *Ádám and others versus Romania*, which concerned alleged discrimination against pupils belonging to national minorities in final secondary school-leaving examination. The complainants, ethnic Hungarians, studied in their native language at a secondary school in Romania. They failed the final school-leaving examination, as they did not obtain the passing grades in Romanian language and literature (Mr. Petres, Bakos, Forika, Maxem and Mrs. Ádám) or Hungarian language and literature (Mr. Ambrus). They complained discrimination based on the organisation and timetable of the examination. In addition to the national baccalaureate, they had to pass two (oral and written) examinations on the day after the national baccalaureate. The final school-leaving examination in Romanian language and literature was very difficult for them, they pointed out, and because of this, Hungarian pupils had less time to prepare as compared to Romanian pupils. They had no rest day between examinations, which increased their burden and reduced chances of success at final examinations. The complainants claimed that, as a result, they failed to graduate, referring in particular to Article 2 of Additional Protocol No. 1 to the Convention.

The ECHR noted that complaint concerned pupils belonging to national minorities who had obtained secondary education in their mother tongue and were significantly influenced by the content and the timetable of the baccalaureate exam. The ECHR confirmed that planning of school curricula falls, in principle, within the competence of the Contracting States. It further noted an international consensus between the Contracting States recognising the special needs of minorities and the obligation to protect their security, identity, and lifestyle, not only in their own interest but also for the preservation of cultural diversity. The ECHR concluded that the students had voluntarily decided to study in another language, and take advantage of the opportunities offered by Romania. In this context, the ECHR noted that the law recognises the right, but does not impose an obligation on pupils belonging to a national minority to study in their mother tongue. Moreover, it emphasised that the fact that timetable for final secondary school-leaving examination is set annually by the Ministry of Education at the beginning of each school year and does not differ significantly in individual years, the pupils had sufficient time for both academic and mental preparation for the examinations. The ECHR concluded that Hungarian students were not treated

30 In the case of *Altınay v. Türkiye*, Application no. 37222/04, Judgment 9 July 2013, where the ECHR examined changes in the system of access to the university, it found a violation of Article 14 of the Convention, read in conjunction with Article 2 of Additional Protocol No. 1 to the Convention, even though these changes were aimed at radically improving the quality of education. One of the reasons was the unpredictability of the application of the new system or the implementation of the new system, which was not proportionate to the objective pursued.

differently from their Romanian classmates and that there was no breach of Article 2 of Additional Protocol No. 1 to the Convention.³¹

Recently, in the decision-making activities of the ECHR, the link between the right to education and its implementation for children with special needs has frequently been highlighted. This case law underlines the need to ensure inclusive and equitable education for such children. It reinforces States' commitments to children with disabilities and emphasises the need to ensure adequate support and adaptation of the learning environment. In doing so, it strengthens the principles of equality and non-discrimination in education and underscores the importance of an individualised approach to each child's needs.

For example, in *G.L. v. Italy*, the ECHR addressed inability of the Italian authorities to provide special educational support for a child with non-verbal autism during the first two years of elementary school. G.L. was entitled to special assistance under Italian law but did not receive it; her parents were thus forced to secure private assistance at their own expense. This lack of support negatively affected her ability to access education at the same level as her non-disabled peers. The Court found that the lack of funds did not justify the State's failure to provide education equal to that of other children. This practice resulted in discrimination on the basis of disability, in violation of Article 14 of the Convention (prohibition of discrimination) read in conjunction with Article 2 of Protocol No. 1 (right to education). Despite legislation requiring the inclusion of children with disabilities in mainstream schools, G.L.'s school environment had not been adapted to her special needs. No dedicated assistant was made available to support school educational and social inclusion. The ECHR pointed that the Italian authorities had failed to assess the real needs of G.L. and take measures to secure the same educational conditions as those enjoyed by other children. The decision of the Italian courts, which concurred with the procedure of the school authorities without further examining alternative solutions, was considered insufficient.³²

T.H. v. Bulgaria similarly concerned the right to education of a child with behavioural disorders and developmental problems. The complaint, lodged by the child's parents, alleged that the Bulgarian authorities had failed to implement appropriate measures and support for their son's education. The child encountered several challenges within the school system, including a lack of adaptation to the educational process that responded to his special needs, which led to a disruption of his schooling and negatively impacted his personal development. The complainants argued that schools in Bulgaria did not provide the individual adaptations and support necessary for T.H. to achieve education at the level of his peers. Problems included inadequate staffing, reluctance to adapt curricula, and the absence of professionals capable of addressing challenges associated with his condition. According to the complainants,

31 Ruling in the case of *Ádám and others v. Romania*, Application no. 81114/17 and 5 others, Judgment 13 October 2020.

32 Ruling in the case of *G.L. v. Italy*, Application no. 59751/15, Judgment 10 December 2020.

these failures breached their child's right to education under Article 2 of Protocol No. 1 to the Convention, read in conjunction with Article 14. The ECHR found that T.H. 's right to education had been violated. It emphasised that the lack of adequate support and adaptation in the school environment led to the child's exclusion from full-fledged education. The Court held that the right to education includes not only access to school, but also the availability of education tailored to the individual needs. The court therefore stated that the State must create conditions ensuring equal access to quality education for all children, including those with disabilities or other special needs.³³

In *Elmazova and others v. North Macedonia*, the ECHR examined allegations of segregation of Roma pupils in two schools – Bitola and Štipe – where Roma pupils were placed in classes attended predominantly by Roma, while Macedonian pupils were assigned to separate classes or transferred elsewhere. The Court found that this practice was discriminatory and infringed the complainants' rights under Article 14 and Article 2 of Protocol No. 1. It ordered North Macedonia to adopt measures to end the segregation, which lacked objective justification and produced unequal treatment. The Court stressed that Roma children require special protection because of their disadvantaged social position. While it found no discriminatory intent on the part of the State, it held that the results of state policies and practices amounted to discrimination. This case pointed out that segregation continues in a "circle of marginalisation" and prevents Roma children from integrating and having equal access to education, having a negative impact on their future education and job opportunities. The Constitutional Court of North Macedonia had found no concrete evidence of segregation and relied on the general ethnic composition of the area, asserting that such composition did not itself constitute discrimination. However, the ECHR emphasised that discrimination may arise from de facto situations, and that the absence of discriminatory intent cannot justify segregation. The Court found that the differences in ethnic composition of the schools were not objectively justified and that the State had failed to ensure adequate protection for Roma pupils. Accordingly, there had been a breach of Article 14 in conjunction with Article 2 of Protocol No. 1. The ruling stresses that the States have a duty to protect vulnerable groups, such as Roma, from discrimination and ensure that they have equal access to the same opportunities.³⁴

In connection with discrimination, the ECHR also ruled in the case of *Moraru v. Romania*, which concerned allegations of discrimination and violation of the right to education under Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1. It involved the refusal of the admission to complainant, Elena Moraru, on the basis of height and weight to study military medicine. The Court held that differential treatment based on physical characteristics was discriminatory, as it had

33 Ruling in the case of *T.H. v. Bulgaria*, Application no. 46519/20, Judgment 11 April 2023.

34 Ruling in the case of *Elmazova and others v. North Macedonia*, Application nos. 11811/20 and 13550/20), Judgment 13 March 2023. see also *Szolcsán v. Hungary*, Application no. 24408/16, Judgment 30 March 2023.

not been adequately justified by the state authorities, which constituted a violation of her rights. It concluded that the criteria regarding body size were neither sufficiently justified in relation to the training nor necessary for future practice in the field of military medicine. The Court also pointed that similar criteria did not apply to civilian medical studies, indicating disproportionate differential treatment. The ECHR acknowledged that the States have a certain degree of discretion in setting the criteria for admission to specific academic programmes, especially when they relate to safety or efficiency concerns. However, in this case, the height and weight criteria were not adequately justified and, therefore, constituted a discriminatory interference with the complainant's right to education. In this case, the ECHR ruling emphasised that the criteria for admission to study must be legal, appropriate, and relevant to the objectives they pursue. The States shall not impose conditions which, without sufficient justification, would lead to discrimination on the basis of physical characteristics, especially when these characteristics are irrelevant to the academic programme or the profession.³⁵

The ECHR has also examined several cases involving the right to education in minority languages. In *Djeri and others v. Latvia*, the Court considered a complaint concerning reforms that increased the use of Latvian language in education and limited the use of minority languages such as Russian. However, the ECHR found no violation of the right to education, holding that the government's measures were appropriate and necessary to ensure the unity of the education system, prepare pupils for primary education, and secure equal access to schooling and participation in society. The Court found that the reforms were legitimate in strengthening the Latvian language after periods of Soviet domination and held that Latvia did not exceed its margin for discretion. At the same time, it allowed the pupils of the Russian minority to learn their language and maintain their cultural identity.³⁶

In *Djibouti and others versus Latvia*, the ECHR addressed a complaint about 2018 changes in the Latvian school system, which increased mandatory language requirements for teaching in Latvian, including private schools. Previously, private schools had autonomy to decide the extent to which other languages, including Russian, were used as the medium of instruction. After the 2018 amendment, private schools were required to teach at least 50 per cent of classes in Latvian in lower grades, 80 per cent in middle grades and 100 per cent in all final grades of secondary schools in Latvian. The complainants argued that these changes violate their right to education and cultural rights, particularly regarding the possibility of education in their native language. The ECHR ruled that these changes were in line with Latvia's constitutional principles and that the State had the right to promote national language to ensure the unity of the education system and facilitate public participation. The Court acknowledged

35 Ruling in the case of *Moraru v. Romania*, Application no. 46519/20, Judgment 08 February 2023.

36 Ruling in the case of *Djeri and others v. Latvia*, Application nos. 50942/20 and 2022/21, Judgment 18 July 2024.

that the measures were proportionate; and the rights of minorities to preserve their cultural identity were sufficiently protected. Accordingly, it held that there had been no violation of the right to education under Article 2 of Protocol No. 1 to the Convention, read in conjunction with Article 14. It recognised that the State has the right to promote its national language and that these measures do not interfere with the rights of minorities to the extent that they constitute discrimination or a violation of the right to education. It leaned toward the argument of the Latvian authorities that the promotion of national language is a legitimate objective that does not endanger the fundamental rights of minorities.³⁷

In connection with the language issue, we refer to the ongoing proceedings in *Ukraine v. Russia* concerning allegedly undesirable “administrative practice,” including the suppression of the Ukrainian language in schools, and the persecution of Ukrainian-speaking children in schools in the occupied territories of Crimea. Ukraine objected to restrictions on the use of Ukrainian in the educational process, including school closures and reductions in Ukrainian-taught subjects. In this case, the ECHR has not yet produced a final ruling.³⁸

A recent case also illustrates the interaction between the right to education and teachers’ right to strike. In *Humpert and Others v. Germany*, the ECHR addressed the justification of disciplinary measures imposed on teachers who participated in a strike during working hours. The contested disciplinary measures served to ensure a proper functioning of the school system, thereby safeguarding the right to education. The ECHR ruled that these measures had a legal basis, as German law prohibits strikes by public employees. The Court found that these measures were in accordance with the law and did not constitute a disproportionate restriction. At the same time, the Court examined whether the German ban on strikes by civil servants, including teachers, violates their rights under Article 11 of the Convention (freedom of assembly and association). In Germany, a constitutional ban on strikes for civil servants applies under Article 33 § 5 of the Basic Law, aimed at maintaining a stable administration and ensuring the proper functioning of state institutions. The ECHR acknowledged that the prohibition constitutes a serious restriction of Article 11 rights, but held that this restriction does not directly amount to violation. The Court emphasised that strike is an important element of trade union activity, but not the only means by which unions should pursue their interests.³⁹ At the same time, the ruling implicitly accords heightened protection to the implementation of the right to education, especially in relation to those responsible for delivering it.

37 Ruling in the case of *Djibouti and others v. Latvia*, Application no. 225/20, Judgment 19 February 2024.

38 Ruling in the case of *Ukraine v. Russia*, Application nos. 20958/14 and 38334/18, Judgment 25 June 2024.

39 Ruling in the case of *Humpert and others v. Germany*, Application nos. 59433/18, 59477/18, 59481/18 and 59494/18, Judgment 14 December 2023.

6. Final Summary

The right to education is recognised as a second-generation human right, as its universal and general acceptance emerged only after the Second World War, alongside the development of economic, social, and cultural rights. This historical evolution reflected a growing awareness that education is not merely a privilege, but a fundamental prerequisite for human dignity, equality, and the realisation of other rights. Ensuring access to education became an essential step towards building democratic, just, and prosperous societies.

The significance of implementing and protecting the right to education is therefore considerable. Education plays a crucial role not only in shaping the personality, intellect, and moral values of individuals, but also in promoting economic growth, technological innovation, cultural exchange, and social cohesion of communities. A society that guarantees education for all fosters inclusion, tolerance, and active citizenship, thereby strengthening its stability and development.

The right to education possesses several key characteristics that define its nature and scope. Among these are its generality and universality, meaning that the right belongs to every person without distinction. It is also personalised and mutual, reflecting both the individual's entitlement to education and the state's corresponding obligation to provide it. Accessibility ensures that education is available and attainable for all, while respect for individual freedom guarantees that education remains a space for free thought and personal development. The right also includes the requirement of a certain standard of quality and is backed by the state's responsibility to secure and maintain that standard.

In substance, the right to education covers all forms and levels of education – from early childhood and primary education to higher and lifelong learning – emphasising the continuous and developmental nature of learning in the modern world.

International protection of this right is enshrined in key global and regional legal instruments, including the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union. The original text of the Convention did not include the right to education; it was incorporated later through the First Additional Protocol in Article 2. This addition placed the right to education under the jurisdiction of the European Court of Human Rights (ECHR), significantly strengthening its enforceability in Europe.

Through its jurisprudence, the ECHR has consistently recognised the right to education as a fundamental individual right applicable to both children and adults. In cases concerning children, the Court also upholds parents' rights to ensure that their children's education and upbringing are in accordance with their religious and philosophical beliefs. This balance between the child's right to education and parental freedoms reflects the Court's nuanced understanding of the role of education in shaping values and identities in pluralistic societies.

The ECHR frequently examines the right to education in connection with other human rights and fundamental freedoms. Many of its rulings have addressed the education of national minorities – particularly the right to receive education in one’s native language – or the prevention of discrimination and segregation, especially in cases concerning Roma children. In recent years, the Court has increasingly dealt with cases involving children with specific educational needs, emphasising the importance of inclusive education and the obligation of states to adapt their educational systems to the diverse needs of all learners.

Through its evolving jurisprudence, the European Court of Human Rights continually refines the interpretation of the right to education and balances it with other rights and freedoms. In doing so, it helps define the practical boundaries of this right while reinforcing its fundamental importance for individuals and societies alike. Ultimately, the right to education stands as a key pillar of modern democratic order—an instrument of empowerment that enables every person to participate fully in cultural, social, and economic life.

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