



ORIGINAL PAPER

The Right to Inclusive Education. Equal Opportunities for All

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Abstract

The right to inclusive education of persons with disabilities involves the reorganizing of the educational system which has the purpose to eliminate discrimination and ensure access to education on an equal manner for all students. The Article 24 of the Convention on the right of persons with disabilities refers to the concept of "inclusion", a concept less used in international legal sources. Inclusive education can be progressively achieved due to the fact that it encounters several obstacles, especially if we take into account that this process includes certain "measures of support" which struggle to satisfy the academic and social demands (needs) of these persons. For some students with disabilities there is a problem of choosing between a special school and an inclusive school, especially if we take into account the type of disability. Inclusive education is an ideal educational system, but for many states it represents a real challenge due to economic and social factors. Some countries such as Italy, have implemented the inclusive education system long time ago, and now, the Italian system has become a model for the others states.

Regarding the situation in Romania, the implementation of inclusive education system is ambiguous. Although there are inclusive schools, they do not involve all the aspects of the inclusive education principles, on the contrary, they just integrate people with disabilities in regular schools. It should be noted that there is a difference between the concepts of integration and inclusion. The right to inclusive education involves more than a simple integration.

Keywords: *inclusive education, special education, persons with disabilities, right to education*

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Introduction

Inclusive education, or in the broad sense, the right to education of persons with disabilities in mass schools, is the main modality to answer to all educational needs of individuals who suffer from different deficiencies. UNESCO (1983: 167) defines inclusive education as “a form of education provided for those who are not achieving, or are not likely to achieve through ordinary educational provisions, the level of educational, social and other attainments appropriate to their age, and which has the aim of furthering their progress towards these levels”.

Process of inclusive education is supported by several international legal sources, especially the Declaration of Salamanca (1994). Within the declaration is stated the fundamental principle of inclusive school, which is “all children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education” (Salamanca Statement, 1994:12). This principle reflects the idea that schools are the ones which must answer to the needs of students and they must ensure the quality of education; more than this, it is in antithesis with the old definition of disability, expressed by several legislative sources, including within Romanian legislation. The first definition of handicap is given within law no. 53/1992, which is “persons with handicap are persons who because of some sensorial, physical or mental deficiencies cannot totally or partially integrate, temporarily or permanently, by their own possibilities, in social and professional life, being necessary special protection measures”. “Sensorial, physical or mental deficiencies” are those which limit participation to “social and professional life” of disabled persons. Society is not responsible for the misfit of these persons as considers the social model of disability.

In this case, inclusive education does not have as effect just the transmission of some academic knowledge, but to remove marginalization, teaching the students to accept difference, to learn how to live together and more than this, to understand that they also have an important role in the society. It must be mentioned the fact that people with disabilities were and still are the beneficiaries of the right to education, as well as the persons without problems, but because of the needs hard to satisfy they arrive quite difficultly to fulfil the final academic or social outcome. In this situation occurs a limitation of the performance of the right to education of disabled people in equal measure with the others. This limitation is related to the resources which the schools can offer to students depending on the type of disability. For example a child with mild autism can develop his/her social side and can assimilate the norms of “normality” with less easiness if he/she has the possibility to be integrated into a normal school. Development of social side is a consequence of education, and the implementation of inclusive education in schools is for most students with disabilities an opportunity to fully benefit from the right to education. However, the process of implementation of inclusive education is hard to be carried out, this being mentioned also in the Convention for the Rights of Disabled People (CRPD) within which it is about a progressive carrying out of inclusive education, because of several social, economic and legislative factors. With respect to social factors, it is needed a change in the perception of society about the image of disabled people, especially in the case of teachers, of parents and students of a mass school, as change must start from each individual. Reorganization of mass schools and their transformation into inclusion schools depends mostly also on the financial resources allotted to educational system, especially that each deficiency is “educated” with the help of educational materials,

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moreover, it is needed the creation of an environment adaptable to educational needs.

Financing is an essential element of inclusion. In case a country pleads for inclusion, then legislation and regulations especially financial must be adapted to this objective. In case these regulations are not compliant with specified objectives, the chances to carry out these objectives are probably reduces. In this respect, financing can be a decisive factor in carrying out inclusion, as financing system can inhibit the inclusion processes, and keeping the student with special needs in mass schools is not enough encouraged (UNESCO, 2016).

Not being fused early, the two educational systems raised certain social barriers between them, more than this, discrimination occurred, and because of this at present it is tried this union of the systems by the process of inclusive education, which consists in the reorganization of mass schools so that the system allows the satisfaction of the needs of disabled persons, too. Legislative factors are closely related to the economic factors if it is taken into consideration the first assertion of art.2 of the First Protocol of the Convention on human rights. The negation at the beginning of art.2 emphasises that the contracting parties do not recognize a right to education which requires them to establish on honour or to substitute education or any particular type or level of education, therefore there is no positive obligation of the states to create a public education system or to substitute private schools. These areas are left at their own choices. However, it cannot be interpreted the fact that the state does not have the obligation to ensure the respect for this right. The law certainly contains a right with a “substance” and obligation which therefore cannot deny the right to education in case of educational institutions which chose to be authorised. The right to education is not absolute, more than this, it also includes an acceptance of some limitations. Consequently, domestic authorities enjoy of a certain limited appreciation as the final decision, as the content of Convention implies, is made in compliance with the appreciations of the court.

Under article 2, protocol 1 of European Convention on Human Rights it is stipulated the right to education, but under other form, as “right to instruction”. It must be pointed out the fact that there is a difference between the terms “education” and “instruction” meaning the process of instruction is included in the process of education. By reference to the sense of the concept of “instruction” in the “Explanatory dictionary of Romanian language” it is noticed that the meaning of the term is that of learning, not education. Although the designation of article 2 of the European Convention on Human Rights appears as “right to instruction”, within its content the lawmaker refers to the “field of education and instruction”, from where it results the emphasise of the differences between the terms. Article 2 of European Convention of Human Rights limits to a certain extent the applicability of inclusive education. First of all the stipulations of the article refer rather to the accumulation of academic learning acquisitions, and inclusive education proposes a pedagogy focused on modelling the personality, and secondly assuring the right to inclusive education needs more obligations from the State as compared to article 2, protocol no.1 to the Convention on Human Rights. In respect to persons with disabilities, there were few cases which were brought before the court. The Court expressed the fact that, whenever possible, a child with disability must be in the sale school with a normal child of the same age. This policy cannot apply to all children with disabilities. There is left an area of accessibility of authorities which are in charge with such children, using the specified resources. (ECHR, 2015).

Until 2006, at international level, the stipulations of obligatory legislative instruments did not focused specifically on persons with disabilities as a target group, but

were included in the general scope for the protection of the right to education for all. Persons with disabilities are not included, but neither excluded from the content of international stipulations, they fall under the scope of protection of human rights without assigning a particular framework of emphasis in respect of education. The appearance of the Convention on the Rights of Persons with Disabilities (2006) succeeded in changing the social perception relating to these persons, more than this, there were 147 ratifications of this instrument, fact which determined the States to approach new influences of integration of persons with disabilities in the general educational system (UNICEF, 2011).

One of the most significant articles of the Convention on the Rights of Persons with Disabilities is article 24 called “education”, article which aims at restructuring rights already existing in the instruments of human rights. The attainment of article 24 of the Convention entailed disputes relating to the definition of disability, as well as to the “inclusive” concept within the Convention. In respect of inclusion, the States are not obligated to implement the inclusive system obligatorily in the educational system, as this involves major changes within each general educational system, and it is preferable to ensure this inclusive system only for persons who want to attend an inclusive school.

By elaboration of article 24, as supporter of inclusive education, there is the possibility to change social perceptions, thus promoting certain moral values by which everybody may understand and capitalize diversity. Ideally, the countries will use art. 24 as a model for their own laws and to ensure the access to inclusive education, having as ideal to raise productivity, economic growth, decrease the illiteracy, all these elements being factors in carrying out educational equality and opportunities for disabled persons (Kanter, Damiani and Ferri, 2014). Under article 24, (1) of the Convention on the rights of persons with disabilities, the States Parties recognise the right of persons with disabilities to education. Before continuing the interpretation it is necessary to define the concept of “right to education”, therefore reference will be made relating to education within World Declaration on Education for All (1990), article 1, where is described that “shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time”. Education refers to both the acquiring of academic skills and the acquiring of certain values and attitudes. In respect to students with severe deficiencies it is very difficult to talk about education or the accumulation of certain values or academic skills. There are cases where the only education which individuals can acquire is the management of primary instincts. Certain serious deficiencies need another type of educational approach, and in this situation special schools and not the mass schools, at least in the situation in Romania, are capable to provide the necessary education in terms of serious deficiencies. The 1st paragraph of article 24 is a restructuring of articles ensuring the right to education at international level, articles such as Article 26 (1) of Universal Declaration of Human Rights, 28 (1) of Convention on the Rights of the Child, focusing the attention strictly on the right to education of persons with disabilities. Moreover, both paragraph 1 of art.24 of CRPD, enhances the support for the right to education of persons with disabilities saying that this right will be performed “without discrimination” and “on the basis of equal

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opportunity". The problem of discrimination in case of persons with disabilities occurred as a reaction of the separation of educational system in mass educational system and special educational system. Although legislation guarantees that, in general, children with disabilities can be enrolled in regular schools, there are still many obstacles in the carrying out of inclusive education. Inclusive education needs a rethinking of education systems, taking into account the special needs of persons with disabilities. Education must not have as purpose the transfer of knowledge, but the consolidation of learning capacities (Beco, 2014).

Researches showed that education of children with disabilities in mass schools is an advantage for everybody. Children with disabilities who are integrated into a mass educational system have more chances to bring advantages in respect of the evolution of the society, especially on the labour market. Inclusive education also helps in building a tolerant society which will determine the future adults to live together in harmony with persons with special educational needs (Kanter et al. 2014).

In those States with strongly separated systems, special schools cannot be closed all of a sudden, because this will lead to a discrimination of children with disabilities in case these children would not receive education anymore. The specialty doctrine proposes a modality of implementing inclusion. The specialists consider that special schools must continue to function being made a gradual passage from segregation to inclusive education systems. Such transition can be made by establishing a mixed form of education. One of the solutions is to bring the two systems in the same campus, so that knowledge and materials from special schools be used in regular schools. Special schools will be then transformed in centres. This learning resource must, of course, remain a temporary solution. It must be taken into account that bringing together the two systems can mean a system separate in reality if the principles of inclusion are not taken into consideration. After a while, the centres of learning resources must be incorporated in regular schools. Resources, also, must be transferred from special schools to mass school (Beco, 2014).

A simple integration is not sufficient. It must be mentioned also the fact that inclusive education is not equal to integrated education, which reflects the idea that the access of children with disabilities to a mass school is not enough if measures necessary to inclusion are not taken, and are taken only the measures necessary to integration. Inclusive education recognises the fact that all the children are different and despite this reason they must be able to participate into general instruction system (Kanter et al. 2014).

Often confusion occurs between the concept of inclusion and that of integration. The term "integration" is used still from 1960 and required a reformation of the system by the participation of persons with disabilities to education within special schools. In the past many States limited the right to education of persons with disabilities, usually sending them to medical institutions. Thus, by integration was requested the recognition of the right to education through the construction of special schools (Vislie, 2003). Specialists in the field, Sebba and Ainscow, (1996) consider that inclusive education is a process by which are addressed all the needs of students and not only of reduces group of persons, recreating a curriculum adapted to each type of deficiency, not only an adapted curriculum as that specific to special schools, more than this it implies the reorientation of the teaching staff and students towards diversity and understanding of it .

An important aspect which is based on the process of inclusion refers to equality of chances. Therefore no child with deficiencies must be treated differently from one without deficiencies. The purpose of education must be one common for each student, exactly as it is described in the Convention of Children Rights, which is that all the rights

apply in case of all children without discrimination. In respect of rule no. 6 of the Standard Rules on equalization of opportunities of persons with disabilities (1993), inclusive education was defined in a clear way as being a way of equalizing the opportunities, by integration of persons with disabilities into the normal education system (Huei, 2009).

By equal opportunities it is understood, as it is specified in Standard Rules, “the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities”. In case of persons with disabilities, equal opportunities refer to materials specially conceived for each type of disability as well as for the adaptation to environment, and they are supported by paragraph 3, letters a,b,c of article 24, determining the States Parties to take measures than can facilitate learning for persons with disabilities. These “support measures” taken by the States Parties are used in order to adapt the general education system. The general measures include provision of personal assistance, including medical assistance, as well as the necessary equipment and materials, including Braille and sign language, as it is stipulated at article 24 paragraph (3) of CRPD. Support measures must also be taken outside schools. They must facilitate the interaction between students with disabilities and the other classmates. To this purpose, it is necessary that schools promote the respect for diversity in order to fight against stereotypes and preconceptions against children with disabilities (Beco, 2014).

Integration of persons with autism in mass schools

Legal definitions of disability were a debate matter both in Europe and in the entire world. Despite the efforts made by the World Health Organization, there is no legal universal definition of disability. A recent study on the definitions of disabilities in different EU countries showed that the definitions vary from country to country (Degener and Quin, 2004).

Although the second element of article 1 of CRPD “announces” the definition of “disabilities” as part of specialty literature thinks that there is no definition, rather than a guide containing defining elements for persons covered and protected by the Convention. Therefore, article 1 must be read in compliance with par.(e) of the Convention which stipulated that disability is an evolutive concept, meaning there is not possible a clear definition of disability as long as the content of definition can change. The stipulations of art.1 of the Convention borrow elements of the social model. Focusing of the definition reflects over the barriers and obstacles restricting their full participation in the society. There is no doubt that this definition will determine more other States to review the definition about disability and about persons with disability (Quinlivan,2012).

Although it is nothing specified about autism as being a disability, it must be mentioned the fact that in the USA a child diagnosed with a disability must affect the educational performance so that must be required special services. In order to receive special services a student must demonstrate that he/she suffers form a disability falling under the following 13 categories specific to disability, including: autism, handicap in growth, learning disorders, intellectual disorders, emotional or behaviour disorder, communication and language disorder, sight and speech disorders, physical deficiencies, attention disorders, multiple disability and traumatic cerebral lesions (Cordiella and Horowitz, 2014). Falling under the sphere of disabilities, persons with autism are considered as part of a special group of disabilities, as it needs to benefit from continuous learning during the entire life. Referring the educational system to the needs of persons with autism is essential for their development, especially with respect to their social

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integration.

Autism European Organization filed a complaint against the French State because there was not respected the right to education of several children with autism, under article 15 of the European Social Charter. The final decision made by the Council of Europe showed that France did not fulfil its educational obligations in respect of persons with autism within the educational system. Specialty literature considers that an effective modality to satisfy the needs of persons with disabilities is to adapt and define education for each person with autism separately. In order to satisfy the educational needs of pupils with autism it is necessary a mass educational system to adapt to each type of autism separately, so that pupils can benefit from a specific instruction, adapted to each individual. Each school must ensure and put in the first place methods of personal development and vocational training for these children, to be an education based on the child and not necessarily on academic performances (Friedel, 2015).

In the case *Autism Europe vs. France*, the European Committee of Social Rights made some very important decisions, clarifying the content and the field of application of protection which the States must guarantee to persons with autism. Thus, States must use an adequate definition of autism in their legislation and official documents and not an inappropriate restrictive notion. According to the European Committee for social rights, the reference point for national definitions must be that adopted by the World Health Organization and also the States must adopt concrete financing measures and modalities for care and support facilities within a reasonable period using at maximum the available resources. In the case of *Action Europeenne des Handicapes (AEH) v. France*, the European Committee for social rights arrived at the conclusion that France did not comply with the obligations of education and training in children and teenagers with autism, on the ground that France does not guarantee to children and teenagers education on mass schools and defective schooling of autistic teenagers does not allow them the access to professional training (Palmisano, 2015).

A great part of the specialty doctrine considers that there are necessary certain legislative measures so that the right to education of persons with autism is assured. Legally, the needs of persons with autism are satisfied better if the autism is recognised as a specific form of disability with deficiencies during the entire life. Indeed, including autism in the categories of invalidity established by law can be a first step to consolidate the rights of persons with autism, in the internal legal order (Della Fina, 2015).

The European Committee for social rights, in the decisions made in the case *AEH vs France*, found out that autism is a disability and not a temporary disease, with a stable and permanent character. Moreover, States must supply a continuous service of educational assistance during the entire life of the individuals with autism, as if such assistance is not arranged in an adequate manner, this fact can hamper persons with autism to integrate in the professional life (Palmisano, 2015).

Unlike France and other countries, at present in Italy there are laws by which is ensured the access to education of all persons, including persons suffering from autism. No school can refuse access and nor programs adaptable to children with autism or with other disabilities.

Italy has an inclusive system before the adoption of the Convention on the Rights of Persons with Disabilities; moreover, it positively and proactively answered to art. 24 al, also all the recommendations of the European Council. National and regional laws of Italy reflect the commitment of the country to honour international laws including stipulations of the Convention on the Rights of Persons with Disabilities. For example, in

1971 there were adopted laws to assure to students with disabilities compulsory education in common schools except for severe cases. The Italian Parliament adopted a law which guaranteed the right to primary and secondary education for children with disabilities helping them to integrate in a normal class within the State public system. This law includes educational procedures, but also plans for the construction of buildings and adjustment of transportation. Later changes occurred in the general education ensuring the teachers of support for integrated classes. (Kanter et al. 2014).

In Italy, students with disabilities were integrated in regular schools for more than 30 years. Consequently, there is no separate education system for these students, except for some special schools, which continue to function. Integration began in the middle of 70's in "dell'infanzia scuole" and in primary schools and it was extended gradually to secondary education schools and universities. Integration was introduced for the first time at experimental level and then implemented regularly. Law no. 104 of 1992 established that „students with handicap aged 0-3 are granted enrolment in nurseries“ and that the „right to education is guaranteed to children with handicap in all the sections of the pre-primary schools, in regular class of each type of school and in universities. But the consolidated Law no. 577 of 05 February 1928 compulsory education was, in fact, extended in terms of blind and deaf persons, on the condition they have no other handicap, which could impair the carrying out of compulsory education. Students with psychic handicap were to be integrated in special classes or in institutes for minor offenders. The regulation of year 1967 for the implementation of medicine at school established as follows: „children with somatic or mental anomalies which do not allow them to regularly attend regular schools and who need particular treatments or medical and teaching assistance are oriented towards special schools. Children with no severe intellectual handicap, children who are not adapted to environment or with behaviour anomalies can be integrated in regular schools, or sent to special classes“. The Constitution stipulates that the Italian Republic guarantees school for all (article 34) and stipulates that the compulsory solidarity must be fulfilled (article 2). Moreover, it is said that it is the „duty of the Republic to remove any obstacles which limit freedom and equality of citizens, for the purpose to ensure full development of human“ (article 3). Educational system in Italy is organized in compliance with the principles of subsidiarity and school autonomy. The State and the regions share legislative competence. In addition, regions should comply with the provisions of national legislation. Schools are autonomous in respect of teaching, organization and research activities (EACEA, 2009).

Conclusions

Implementation of inclusive education has as results the promotion of diversity, elimination of discrimination, and equal access for all children to a quality education; moreover, it provides opportunities for employment, of persons with disabilities. Inclusive education is essential for attaining the universality of the right to education, including for handicapped persons. Only the systems with inclusive education can provide both the quality of education and a social development for handicapped persons. Inclusive education presupposes more than introducing the students with disabilities in mass schools. With the help of this process the students are respected and appreciated. Inclusive education is built on values which increase the capability of a person to reach the objectives and to embrace diversity as an opportunity to learn. Students with disabilities need an adequate support in order to participate in conditions of equality with the others in the educational system (UNESCO, 2009). The perfect solution to eliminate

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discrimination, according to UNICEF is that “every child should have an equal right to attend school. Making schools accessible and available is an important first step in fulfilling this right but not sufficient to ensure its realization. Equality of opportunity can only be achieved by removing barriers in the community and in schools. Even where schools exist, economic, social and cultural factors – including gender, disability, AIDS, household poverty, ethnicity, minority status, orphanhood and child labour – often interlink to keep children out of school. Governments have obligations to develop legislation, policies and support services to remove barriers in the family and community that impede children’s access to school” (UNICEF, 2007: 31).

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