

INTERNATIONAL HUMAN RIGHT STANDARDS AND HIGHER EDUCATION ^a

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Abstract

The right to higher education, as a segment of the more general right to education, is relatively neglected in the literature dealing with the international protection of human rights. Various trends in higher education can negatively affect the realization of this segment of education. Above all, the mass commercialization of higher education, the uncritical use of digital technologies, and the generally reduced participation of the state in this type of education, which is a public good, can significantly affect the exercise of this right. Given the current problems, it is necessary to examine whether the right to higher education in the adopted international documents includes only equal access to higher education. More precisely, whether this right includes some basic requirements regarding the quality of higher education, as well as whether the states have any obligations regarding its financing. Formulations used in human rights instruments are vague. The practice on this issue is insufficient, probably due to inadequate promotion of this segment of the right to education because of the fear that obligations that are unattainable for the states could be gradually formed.

Key words: higher education, human rights, International Covenant on Economic, Social and Cultural Rights, free education, capacity.

МЕЂУНАРОДНИ СТАНДАРДИ ЗАШТИТЕ ЉУДСКИХ ПРАВА И ВИСОКО ОБРАЗОВАЊЕ

Апстракт

Право на високо образовање, као сегмент општијег права на образовање, је релативно запостављено у литератури која се бави међународном заштитом људских права. У високом образовању су присутни различити трендови који могу негативно утицати на остваривање овог сегмента образовања. Пре свега

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реч је о масовној комерцијализацији високог образовања, некритичкој употреби дигиталних технологија, и уопште у смањеном учешћу државе у овом виду образовања, које представља јавно добро. Имајући у виду актуелне проблеме, потребно је испитати да ли право на високо образовање у усвојеним међународним документима обухвата само једнакост приступа високом образовању. Тачније, да ли ово право обухвата и неке основне захтеве у погледу квалитета овог вида образовања, као и да ли државе имају било какве обавезе у погледу његовог финансирања. Формулације употребљене у међународним инструментима за заштиту људских права су у недовољној мери одређене. У овој области нема ни довољно праксе на међународном нивоу, што је вероватно последица недовољне промоције овог сегмента права на образовање, а и због страха држава да би се постепено могле оформити обавезе које су неоствариве.

Кључне речи: високо образовање, људска права, Међународни пакт о економским социјалним и културним правима, бесплатно образовање, капацитет.

INTRODUCTION

Economic, social and cultural rights used to be somewhat of a secondary importance in relation to civil and political rights. However, the importance of economic, social and cultural rights is slowly growing.¹ Skepticism about economic, social and cultural rights, inter alia, regarding the ability of poor states to ensure their realization has long been present (Jovanović, Vujadinović & Etinski, 2019: 212). However, it has been pointed out that this group of rights is not primarily related to the available funds, but to the issues of the adopted policy, although solving the problems is certainly more difficult in poor countries (Tomaševski, 2005: 227). The right to education belongs to the group of economic, social and cultural rights and is recognized in many human rights instruments. At the same time, it has also been pointed out that this is a right of a mixed nature, which is part of the Covenant on Economic, Social and Cultural Rights, but also the Covenant on Civil and Political Rights, through the right to freedom of thought, and the prohibition of discrimination (Tomaševski, 2005: 224). As part of the right to education, certain instruments specifically mention the right to equal access to higher education. However, judging by the used formulations, the right to higher edu-

¹ Until recently, there was a difference in terms of available remedies in case of violation of protected rights between the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both instruments were adopted in 1966, but only the International Covenant on Civil and Political Rights provided an individual grievance mechanism. In 2008, the UN General Assembly adopted the Optional Protocol to the Covenant on Economic, Social and Cultural Rights introducing an individual complaint mechanism for the International Covenant on Economic, Social and Cultural Rights (entered into force in 2013).

cation certainly has less strength than other forms of education because states are not obliged to provide this type of education for everyone.

The right to higher education, as a segment of the more general right to education, is relatively neglected in the literature dealing with the international protection of human rights. It has also been pointed out that this is a peripheral element of the right to education (Coomans, 2004: 91). It is associated with a number of institutions such as universities, faculties, colleges, etc. However, due to the proliferation of various forms of courses in recent years, it is difficult to give a precise list in this regard, but it is certainly a form of education based on prior knowledge and/or skills, commonly intended for adults, and it usually involves a specialization in a particular area of knowledge (McCowan, 2012: 112). Moreover, it could be defined as all types of study programs or sets of study courses at the post-secondary level which are recognized by the competent authorities, or of a constituent unit thereof, as belonging to its higher-education system (Global Convention on the Recognition of Qualifications concerning Higher Education, 2019).

Education in general can be understood as an instrumental value, as a means of realizing other values or rights, for example, reducing inequality in society, achieving adequate employment, and it is often viewed in this sense. However, the instrumental reasons alone are not sufficient to constitute a right, it is necessary that it also has an intrinsic, inherent value (McCowan, 2012: 118). Education is both a human right in itself and an indispensable means of realizing other human rights, and a well-educated, enlightened mind is one of the joys and rewards of human existence (CESCR General Comment No. 13, The Right to Education (Art. 13), 1999, par. 1). In higher education, if this type of education could be singled out, this intrinsic value would represent a desire to acquire knowledge in certain areas, which cannot be achieved within other forms of education (McCowan, 2012: 118). Enhancement of individual creativity and emancipation are also relevant in higher education (Kromydas T., 2017: 9). It is argued that it is not clear why the right to education should apply only to particular types of education, given the same value base. More precisely, the restriction of the absolute right to education to the elementary education is not justified because this restriction is not grounded in the instrumental or intrinsic value of the right to education, although some forms of education can only take place at particular phases of life (McCowan, 2012: 116).

Nowadays, higher education is also perceived simply as an industry, a form of economic activity that operates on a global scale. Currently, one of the main problems is the large-scale commercialization of higher education. The Special Rapporteur on the right to education expressed concern about the privatization of education and its focus on profit. In his opinion, the commercialization of education opened to operators for lu-

crative objectives is in opposition to the international human rights law principle of non-discrimination, equality of opportunity, social justice and equity (Report of the Special Rapporteur on the right to education, Kishore Singh Protecting the right to education against commercialization, 2015: 6, 9-11). In this process, the disadvantaged are unable to access private higher education institutions, which further marginalizes the poor and aggravates the existing disparities in access to higher education. In many countries where only a few years ago the private higher education sector was insignificant, a remarkable proportion of enrollment is now claimed by private higher education institutions (Kinser et al., 2010: 1). In addition, private higher education now involves new international branch campuses and foreign investment and ownership. This fast-growing industry may also be questionable from the point of the quality of education.

Having in mind the current problems, it is necessary to examine whether the right to higher education in the adopted international documents includes not only the right to equal access, but also the requirements regarding the quality of this type of education, at least in some basic features. Besides, the issue of state participation in financing this type of education is certainly important, given the inequalities among potential students, which arise due to different socioeconomic opportunities. The basic quality requirements of higher education are more neglected, and free higher education as such is considered an unattainable ideal. It should be borne in mind that in the past, there have been systems that provided free higher education (Eastern Europe, USSR), but such systems existed in a strict ideological framework, which did not allow free education in the true sense of the word.

RELEVANT UNIVERSAL HUMAN RIGHTS INSTRUMENTS

The Universal Declaration of Human Rights declares: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit” (Universal Declaration of Human Rights, 1948, Article 26 (1)).

The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 declares the right of everyone to education in Article 13. First, there is a requirement related to the quality of education in general. Education must be directed to the full development of the human personality, sense of its dignity, and respect for human rights and freedoms. Also, “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace” (ICESCR, Article 13. (1)).

This provision is unclear, primarily in terms of the orientation of education to the full development of personality, or a sense of its dignity, because it is not clear how to determine which education exactly has such potential, since these are relative criteria that require further clarification.

Regarding higher education, it is stated that “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education” (ICESCR, Article 13 (2) (c)). In this latter document, therefore, a somewhat more specific term “capacity” was used instead of the term “merit” from the Universal Declaration of Human Rights. A distinction was also made in relation to primary and secondary education. More specifically, “primary education shall be compulsory and available free to all” (ICESCR, Article 13 (2) (a)), and secondary education in its different forms, shall be made “generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education” (ICESCR, Article 13 (2) (b)).

The provision related to primary education is unconditional and creates an instant obligation for states, while secondary and higher education refers to equal access to this type of education and progressive realization of free education. In higher education, however, this availability is conditioned by the term of capacity, and in secondary education, the wording “made generally available” is used, not just “accessible” (also not generally accessible, due to capacity requirement). General availability means that schools, teachers and teaching materials must be available to all, while accessibility relates to “state’s duty to maximize the individual’s chances of gaining admission to the one or other school” (Beiter, 2006: 96). The right to access higher education is therefore less important than the essential element of the right to education, which is the right of everyone to enjoy free and compulsory primary education. (Coomans, 2004: 91). States have the primary responsibility to ensure the right to equal access to higher education. However, higher education, as a public good, should be the responsibility of all stakeholders (2009 World Conference on Higher Education, 2009: 1). In the sphere of higher education, responsibility is especially significant with regard to higher education institutions.

It is important to mention four elements of the right to education from the General Comment No. 13, on the right to education from the ICESCR, which relates to education in all its forms and levels. These four elements (so-called ‘4 - As scheme’) are: 1) Availability - functioning educational institutions and programmes have to be available in sufficient quantity; 2) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination (this implies non-discrimination, physical accessibility, and economic accessibility which in relation to higher education suggests the progressive introduction of free higher education); 3) Acceptability - the form and substance of edu-

cation, including curricula and teaching methods, have to be acceptable to the students (e.g., relevant, culturally appropriate and of good quality); 4) Adaptability - education has to be flexible, so it can adapt to the needs of changing societies and communities and respond to the needs of students (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, par. 6). The right to higher education, therefore, implies certain requirements regarding the quality of this type of education.

The exact scope of the right to higher education from the ICESCR is not precisely formulated, primarily in terms of the cost of education. The reason for this lies primarily in the realization that the costs of higher education are significant (Gilchrist, 2018: 649). The formulation of the progressive introduction of free education used in the ICESCR, in higher education is far from reality. It seems that since the adoption of the ICESCR, the trend has been quite the opposite. Different institutions anticipate different costs of higher education, and this difference is particularly evident between public and private institutions.² Costs are the most common obstacle to the equal right of access to higher education. And when these costs are asked of each candidate equally, respecting the principle of equality, these funds are certainly not available to all candidates who have the capacity to study. This will result in the discrimination of people who do not have required funds. The Provision on the progressive introduction of free education in higher education is introduced having in mind the limited resources which countries can allocate for this type of education. Since the lack of funds has often been used as an argument against the realization of economic, social and cultural rights, the Opinion of the Committee on economic, social and cultural rights on the nature of states parties' obligations can be helpful in this regard.

“In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.” (CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 1990, par. 10)

This could imply an obligation to demonstrate that every effort has been made to use all resources that are at its disposition in order to

² Convention against Discrimination in Education from 1960 mentions private institutions explicitly in Article 2, c): “The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level”.

achieve the progressive introduction of free higher education. However, this "minimum obligation" was later formulated differently by the Committee on economic, social and cultural rights. In the light of higher education, that minimum implies that the State party is required to adopt and implement a national educational strategy which includes the provision of higher education (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, par. 52). At the same time, the failure to take "deliberate, concrete and targeted" measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d)" is considered contrary to Article 13 (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, par. 59). Taking all the presented interpretations into account, there is no clear obligation of a state in terms of the progressive introduction of free higher education, which would be the minimum required of states in this regard. However, the lack of funds can be mitigated through the obligation of states "to ensure that an educational fellowship system is in place to assist disadvantaged groups" (ICESCR, Article 13 (2) (e)).

Article 28 of the 1989 Convention on the Rights of the Child states that the States Parties recognizes the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, and especially "make higher education accessible to all on the basis of capacity by every appropriate means." There is no obligation regarding the "progressive introduction of free education", although a stronger formulation "by every appropriate means" is used. However, the significance of this provision in the context of higher education is limited, because in accordance with Article 1 of the Convention on the Rights of the Child, a child is defined as a human being under the age of 18. Article 4 of the 1960 Convention against Discrimination in Education, also obliges member states to "make higher education equally accessible to all on the basis of individual capacity." This document also lacks the requirement of the progressive introduction of free education. However, there is a provision dealing with the quality of education, which provides the obligation of states "to ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent" (Convention against Discrimination in Education, Article 4. (b)). In other universal instruments which mainly deal with the prohibition of discrimination, the right to equal access to education is protected with regard to the area of regulation.³

³ Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979, Article 5 (v) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1969, Article 24 of the Convention on the Rights of Persons with Disabilities of 2006, Article 43 (a) of the International Convention on the

In some universal instruments, the right to equal access to higher education is therefore conditioned by the term capacity. Some advocate a broad interpretation of the term so that it includes those who did not “benefit from a strong primary and secondary education, but nonetheless have the capacity for further study” (Gilchrist, 2018: 649). According to the official explanation, this term “capacity” of individuals should be assessed by reference to all their relevant expertise and experience (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, par. 19). This term implies that not everyone has the necessary abilities, or the capacity to have the benefits from higher education, and that certain prior knowledge and skills are required (Harris, 2007: 39). The right to equal access to higher education, according to the conditions prescribed by domestic law, whatever they may be, and in correlation with the capacity of the candidate, is therefore recognized. Discrimination is thus prohibited, except on the basis of a person's capacity. Ensuring equal access in the case of higher education is problematic because educational institutions usually have a limited number of places. By seeking a certain capacity of candidates, the admission of only those students who have the appropriate abilities to complete their studies, and at the same time the number of enrolled students, is limited. The capacity of candidates is determined through various entrance exams, through the proof of successful completion of previous education, an interview, or a combination of these methods (Beiter, 2006: 524). In addition, it should be borne in mind that the principle of equality should also apply to the reasons for expulsion from a higher education institution.

The examination of the fulfillment of the requirements of equal access is also possible through the analysis of data on different abilities and characteristics of candidates enrolled in an institution, as well as candidates rejected, not only through the adopted regulations. Collected indicators can show the existence or non-existence of the unequal treatment between different groups. As the Special Rapporteur on the right to education points out, governments should ensure that the education system is transparent at all levels, in relation to criteria, processes and procedures used to ensure fair, equitable access to higher education (Report of the Special Rapporteur on the right to education on governance and the right to education, 2018, par 50).

The ICESCR also confirms the liberty of individuals and bodies to establish and direct educational institutions (ICESCR, Article 13 (4)). When it comes to the issue of the large-scale commercialization of higher education, the recommendation for the states is to develop a regulatory framework governing the privatization of education, inspired by the general principles of social justice, equity and education as a public good,

Protection of the Rights of All Migrant Workers and Members of their Families, Article 22 of the Convention relating to the Status of Refugees of 1951.

subjecting private providers to full accountability for their operations (Right to education: Note by the Secretary-General, 2014, par. 104). It should apply to private education providers at all levels (including cross-border higher education and online or correspondence providers), and private higher education institutions must not operate without prior approval and recognition by the competent public authorities (Right to education: Note by the Secretary-General, 2014, par. 104).

Even though the issue is not explicitly mentioned in Article 13, the Committee on Economic, Social and Cultural Rights emphasized that staff and students throughout the education sector are entitled to academic freedom, and higher education institutions are entitled to a certain degree of autonomy. Academic freedom includes the liberty of individuals to freely express opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression, to participate in professional or representative academic bodies (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, paras 39-40). The autonomy of institutions of higher education is also part of the right to education, the “autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities” (CESCR General Comment No. 13: The Right to Education (Art. 13), 1999, par. 40).

There is still no relevant practice of the Committee on Economic, Social and Cultural Rights on the right to higher education. Given the vagueness of the provisions and the lack of relevant practice, the work of the Special Rapporteur on the right to education is of particular importance. The first appointed Special Rapporteur on the right to education pointed out that during her mandate (1998-2004) only primary schooling was addressed within the UN. The Special Rapporteur tried to introduce qualitative aspects of other forms of education, but with no wider acceptance because the right to education was not mainstreamed throughout the work of the UN (Tomaševski, 2004: 212). There has been some progress in this regard recently, for example, the recognition of the problem of the large-scale commercialization of higher education. The interplay of digital technologies and the forces of privatization, especially in higher education is seen as problematic: “the use of digital technologies carries the risk of undermining human values in education and the quality of education, especially as regards degrees and diplomas that are fraudulently delivered” (Report of the Special Rapporteur on the right to education, 2016, par 110, 116). For example, the implementation of massive open online courses focuses more on content dissemination and less on learner engagement, students enrolled in massive open online courses are often not assessed properly, and the risk of fraud associated with the awarding of online degrees is present (Report of the Special Rapporteur on the right to education, 2016, par 60, 52, 53). In light of the ongoing pandemic, it

has been pointed out that an adequate response to the crisis must be provided, which guarantees the right to education for all and the “4As” framework. It is also anticipated that the public-private partnership will expand in the post-crisis period, which will increase existing inequalities in the education system. (Report of the Special Rapporteur on the right to education, 2020, par 77, 84). In addition, the digitalization of education must be a temporary solution aimed at addressing a crisis, and the distance learning tools must be accompanied by adequate content quality (Report of the Special Rapporteur on the right to education, 2020, par. 84). Unfortunately, the crisis will likely affect the increased and uncritical use of digital technologies in higher education.

The adoption of the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education in 2019, welcomed by UN officials, is also relevant. The adoption of the Global Convention on the Recognition of Qualifications concerning Higher Education in 2019 by the UNESCO is significant in that it indirectly affects quality issues in higher education. This is the first United Nations treaty on higher education with a global scope that establishes universal principles for recognition of studies and degrees. It confirms the responsibility of states in promoting inclusive and equitable quality education at all levels, lifelong learning opportunities for all, cooperation regarding fair and transparent procedures for recognition of studies and degrees, quality assurance and academic integrity in higher education. These are all positive developments, but there is still no firm position within the UN on higher education as a human right.

The issue of quality is therefore vaguely addressed in Article 13 (1) of the ICESCR, and the above-mentioned acceptability and adaptability criteria in the so-called ‘4As scheme’. In addition, the examination of the effort in achieving the progressive introduction of free higher education in the states is essentially ignored. Beside the efforts of the Special Rapporteur on the right to education, the UN practice is focused on primary education for all in poor countries. Nevertheless, it is worth mentioning that the UN Sustainable Development Goal no. 4 deals with higher education. One of the goals is to ensure equal access for all to affordable and quality technical, vocational and tertiary education, including university by 2030, and to substantially increase the number of scholarships available in higher education by 2020 (Transforming our world: the 2030 Agenda for Sustainable Development, 2015, paras 4.3, 4. b). There are still no available data to support the achievement of the goal of a significant increase in official development assistance flows for scholarships. Results in 2016 do not show a significant difference in this aspect (SDG 4 Data Book: Global Education Indicators, 2019: 59-62).

RELEVANT REGIONAL HUMAN RIGHTS INSTRUMENTS

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 states that no person shall be denied the right to education (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 2 of the Protocol, no.1). This provision is the most imprecise, and the obligation of the state is negatively formulated. Although the system of human rights protection established by this instrument is accompanied by the reputation of the system that it is the most developed, this provision is the most modest when it comes to the right to education in general. The Universal Declaration of Human Rights played a significant role in its drafting, but it was pointed out that the acceptance of positive rights in this area must wait for the moment when there will be uniform laws in Europe. (Preparatory work on Article 2 of the Protocol to the Convention, 1967: 1,4,8). Such provision was probably adopted “in order to underline that States themselves should have the power to decide to which extent resources are to be spent on educational purposes“ (Koch, 2009: 156). However, the case law of the European Court of Human Rights confirms the existence of certain, positive obligations (“Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v Belgium, Section B, para. 3).

The European Social Charter (Revised), under the right to vocational training, declares that states are obliged:

“to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers’ and workers’ organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.” (European Social Charter (Revised), 1996, Article 10 (1))

The Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 is also relevant. It aims to facilitate the recognition of qualifications granted in one Party in another Party. However, the quality issue is just vaguely mentioned.

The Charter of Fundamental Rights of the European Union, recognizes the right of everyone to “education and to have access to vocational and continuing training” (Charter of Fundamental Rights of the European Union, Article 14 (1)). This right “includes the possibility to receive free compulsory education” (Article 14 (2)). It is not even clear to which type of education this mere possibility refers to. Judging by the Explanations Relating to the Charter of Fundamental Rights, this right is based on the law of the ECHR, the case law of the European Court of Human Rights, and vocational and continuing training from the European Social Charter (Explanations Relating to the Charter of Fundamental Rights, 2007, par. 22,33). It is stated in the Explanations that it does not require all estab-

lishments, in particular private ones, to be free of charge, nor does it exclude certain specific forms of education having to be paid for if the State takes measures to grant financial compensation (Explanations Relating to the Charter of Fundamental Rights, 2007, par. 22). It is the right of access, but even the "equality" of access is nowhere directly mentioned in the Explanations, although it is the essence of this right. Freedom to found public or private educational establishments is also guaranteed, but this right is limited by vague requirement of respect for democratic principles (Explanations Relating to the Charter of Fundamental Rights, 2007, par. 22). In the case law of the Court of Justice of the European Union, there have been no cases dealing with the issue of higher education so far.

In the American Declaration of the Rights and Duties of Man, the right to education includes "the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education" (American Declaration of the Rights and Duties of Man, 1948, Article XII). It is clear that free education applies to primary education, as a minimum standard. Also, the right to equality of opportunity is explicitly stated.

The African Charter on Human and Peoples' Rights simply recognizes the right of every individual to the right to education (African Charter on Human and Peoples' Rights, 1981, Article 17). The African Commission on Human and Peoples' Rights recently adopted Resolution no. 346 in which it insists that states fully guarantee the right to education, among other things pre-school, primary, secondary, tertiary, adult education and vocational training, and to ensure equal opportunity and general accessibility, both physical and economic (346 Resolution on the Right to Education in Africa, 2016). The African Commission on Human and Peoples' Rights found the violation of the right to education in one case, due to the closure of universities and secondary schools for two years (*Free Legal Assistance Group and Others v. Zaire*, par 48.).

The Arab Charter on Human Rights of 1994 states that "eradicating illiteracy is a commitment and an obligation. Education is a right for every citizen. Elementary education is compulsory and free. Secondary and university education shall be accessible to all" (Arab Charter on Human Rights, 1994, Article 34). However, this version has not been ratified by any country. In a later version of the Arab Charter on Human Rights of 2004 (entered into force in January 2008), it is stated that "the States parties shall guarantee their citizens free education at least throughout the primary and basic levels. All forms and levels of primary education shall be compulsory and accessible to all without discrimination of any kind" (Arab Charter on Human Rights, 2004, Article 41(2)). Unfortunately, this version does not mention other forms of education than primary education, and above all, the equal access for all forms of education, not just for primary education as a minimum.

CONCLUSION

The formulations of the right to education are primarily declarative, without precisely defined rights and obligations, especially with regard to higher education, and due to insufficient practice, these issues are not further clarified. Insufficient practice is probably the result of inadequate promotion due to the fear of states that within this segment of the right to education, obligations that are unattainable could be gradually formed. Documents adopted at the European level perhaps reflect such fears the most, although only the European Court of Human Rights developed some practice on this issue. It is clear that it includes the right to equal access to higher education institutions. This should also apply in the event of sudden changes in the conditions of admission when transitional provisions must be provided. The principle of equality must also apply in the case of reasons for expulsion from a higher education institution. Students should also have the opportunity to review the decisions of domestic higher education institutions. Information relating to the conditions of admission, exclusion, and available scholarships must also be timely, easily accessible, and transparent.

However, in terms of education costs, the situation is less clear. Judging by the chronology of the adopted documents, it seems that the requirement of the progressive introduction of free higher education from the ICESR has been abandoned. The subsequent documents do not mention this requirement, and the ICESR's explanations are not entirely clear on this subject. It is true that the resources-wise, the issue is very complicated. However, the progressive introduction of free higher education must be taken into account when allocating the available funds, although it is clear that the other rights also demand funding, and have the priority (for example primary education). Higher education must not be seen solely as a form of economic activity, without any state effort in terms of providing access to students who do not have the sufficient means. Since free higher education in the true sense of the word has been often far from reality, a certain effect could be achieved by increasing the number of scholarships, or making the costs of higher education more acceptable. If nothing else, an increase in study costs should only be possible in exceptionally justified circumstances. Treaty monitoring bodies should give more attention to this issue. They must question the states' effort to use more actively resources that are at their disposition.

Compromising the quality of higher education is especially relevant today. The requirements from Article 13 (1) of the ICESR must be fulfilled, and acceptability criteria from General comment no. 13 states that form and substance of education have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students. However, these requirements are vague. Lack of any practice and more decisive action in this regard does not provide any clearer picture of state obligations re-

garding the basic quality requirements. It is indisputable that the right to higher education should include the right to official recognition of completed studies. In addition, private higher education institutions are not simply companies, with no special legal obligations. Higher education is a public good, with human rights implications connected to it. States are responsible for the actions of these entities. For example, states must have effective measures aimed at the elimination of fraudulent practices in higher education institutions, public or private. Unreasonably high fees charged by private providers should also be examined. The capacity of the candidates must be a relevant factor, not just the ability to pay fees.

Quality of education must not jeopardize its intrinsic value and represent an exclusive means of exercising other rights. However, some efforts have recently been made within the UN to identify certain problems in higher education (mainly through the work of the UN Special Rapporteur on the right to education) arising from privatization, the widespread use of digital technologies, and the approach which is generally guided by the idea of making a profit. Besides, the Global Convention on the Recognition of Qualifications Concerning Higher Education can have an indirect positive impact on achieving the basic quality of higher education.

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МЕЂУНАРОДНИ СТАНДАРДИ ЗАШТИТЕ ЉУДСКИХ ПРАВА И ВИСОКО ОБРАЗОВАЊЕ

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Резиме

Економска, социјална и културна права су некад имала секундаран значај у односу на грађанска и политичка права, међутим, значај економских, социјалних и културних права полако расте. Право на високо образовање примарно припада споменутој групи права, а уз то, судећи по међународним инструментима за заштиту људских права, има периферан значај у односу на основни сегмент права на образовање. Реч је пре свега о бесплатном основном образовању за све. Право на високо образовање, као сегмент општијег права на образовање, је релативно запостављено у литератури која се бави међународном заштитом људских права. Реч је о праву које представља предуслов за остваривање других права, на пример смањења неједнакости у друштву, остваривање адекватног запослења, али које има и своју унутрашњу вредност, као што је на пример жеља за стицањем знања у одређеној области, које није могуће достићи у склопу других облика образовања, развој креативности и самосталног начина размишљања.

Имајући у виду актуелне проблеме у сфери високог образовања, који углавном настају услед комерцијализације и употребе дигиталних технологија, потребно је испитати да ли право на високо образовање у усвојеним међународним документима обухвата само једнакост приступа високом образовању. Тачније, да ли ово право обухвата и неке основне захтеве у погледу квалитета овог вида образовања, као и да ли државе имају било какве обавезе у погледу његовог финансирања. У погледу трошкова образовања, судећи према хронологији усвојених докумената, чини се да се одустало од суштинског поштовања захтева за прогресивним увођењем бесплатног високог образовања који је присутан у Пакту о економским социјалним и културним правима од 1966. године. Када је реч о питању квалитета високог образовања, иако су присутне одредбе које се баве и овим питањем, оне су неодређеног карактера, и не пружају јасну слику о обавезама држава у овој области. Могло би се рећи и да квалитет образовања не сме угрозити његову унутрашњу вредност и представљати искључиво средство за остваривање других права. Додуше, у скорашњем периоду су учињени извесни напори у оквиру УН у идентификовању одређених проблема у високом образовању, пре свега кроз рад Специјалног известиоца УН о праву на образовање (проблема који настају услед приватизације, широке употребе дигиталних технологија, и уопште приступа који је руковођен искључиво стицањем профита).