

The international dimension of the human right to education and its reflection in the constitutional provisions

Introduction

Nowadays we apply the term of “education” to different learning approaches including but not limited to formal, non-formal and informal education, lifelong or distance learning, human rights education, primary, secondary and vocational education, and the like. There are also various educational tools with the focus on learning outcomes, e.g. smartphone applications to learn languages, and education within the family or a certain social group. At the international level the right to education is claimed as a universal possibility available to everybody regardless their age, gender, religion or language. Various international organisations, such as for example, the United Nations (UN) or the United Nations Educational, Scientific and Cultural Organisation (UNESCO), as well as certain regional organisations such as the Council of Europe, have endeavoured to recognise the content of the right to education. Nevertheless many challenges are faced in the discussions to create a universal definition of education. Depending on the selected criteria, scientists, educators, human rights defenders and policy-makers can describe the content of education from different backgrounds and points of view.

At different times the right to education has been variously attributed to different groups of civil and political rights or economic, social and cultural rights. However, the right to education comprises in fact all of

these. This point of view was stated in General Comments 11¹. It is also, in many ways, a civil right and a political right, since it is central to “the full and effective realisation of those rights as well”. The General Comments or General Recommendations are authoritative interpretations of the human rights treaties. Although they are not legally binding documents, they provide orientation for the practical implementation of the Covenant and set criteria for the evaluation of the State’s development in the implementation of the human rights and freedoms.

With the changes of the international environment and relationships between countries after the Cold War, the legal provisions concerning the education were changing too. Since the Universal Declaration of Human Rights declared the education for all, the approach to the right to education has been clarified and broadened, and the provisions against discrimination in education have been added. The right to education belongs to and co-exists with human beings and inside the society. The diversity of cultures, languages and ethics, the changing conditions on the labour market, the free movement of people and goods affects the policy which the State must adopt and implement in regard to the right to education.

In this article the author is examining the normative content of the right to education under the international treaties adopted after the end of the World War II and endeavours to compare the international dimension of education with the provisions of the constitutional law in different countries. What is analysed in the article is the content of the right within the United Nations agreements signed by the majority of the countries. However, although to a much lesser extent attention is also given to the European system of the rights and obligations of the citizens. The reason for such limitation is grounded in the number of countries who have joined the UN system of human rights, which is greater than that of the European Union Member States. The post-Soviet countries located in the European continent, like Belarus and Kazakhstan are not members or parties to countries that are signatories of the European agreements. Consequently, the European legislation on human rights does not bind them.

¹ UN Committee on Economic, Social and Cultural Rights, *General Comment 11: Plans of action for primary education (Art. 14 of the Covenant)*, U.N. Doc. E/C.12/1999/4 (1999), <http://www1.umn.edu/humanrts/gencomm/escgencom11.htm> (accessed: 26 XII 2015).

1. International dimension of the right to education

One of the fundamental human rights is the right to education being reflected in a few international documents. In 1948 the Universal Declaration of Human Rights² proclaimed an overall, universal character of the right to education calling it the right for all. The Declaration became an essential document which not only brought the idea of human rights forward, but became a foundation of the human rights law, although the Declaration is not legally binding. It took more than two years to complete the Declaration with its 30 articles³. It was a significant act of the international character to prevent racism in the future and to make the first steps in the struggle against illiteracy. The debates on the Declaration were held in a rush and the cultural diversity and different political directions of the country representatives became an obstacle for the emergence of a universal understanding of education⁴. The right to education had originally many versions. In the first draft neither identify the aims and purposes of education, nor any additional democratic values⁵ were mentioned. The final version of Art. 26 of the Declaration states that everyone has the right to education; however the drafter of the Declaration failed to identify the universal concept what education is, but had finally achieved a consensus proclaiming in Art. 26 that “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”.

Nowadays in the system of formal education in Poland⁶ there is no level called fundamental education. It is reasonable to agree with

² Adopted by the General Assembly of the United Nations on 10 XII 1948, <http://www.un.org> (accessed: 3 I 2016).

³ K. Roth, *Article 26: A Principled Statement on Education*, “Journal of Human Rights” 2009, no. 8, p. 139.

⁴ J. Spring, *The Universal Right to Education: Justification, Definition, and Guidelines*, Lawrence Erlbaum Associates 2000, p. ix and 3. In this work the author discovers and analyses the debates between the representatives of communist and capitalist conceptions of the social right in general and the right to education in particular.

⁵ K. Roth, *op. cit.*, pp. 140, 142. The aims and purposes of education were added at the second stage of drafting work in 1947.

⁶ All levels of the system of education in Poland are regulated by two laws – Law on the system of education of 7 IX 1991 (Dz.U. (J.L.) No. 95, item 425 as amended) and Law on higher education of 27 VII 2005 (J.L. No. 164, item 1365 as amended). The English

the assumption of some authors⁷ that the drafters of the Declaration supposed to embrace primary education with the term of fundamental education. This position is justified by the next step done by UNESCO in 1956 towards the search of the definition of education which resulted in the Working Paper on The Definition of Fundamental Education⁸. In the document it was admitted that “it is not the purpose of UNESCO to unify the terminology and discourage a healthy diversity of aims and practices”⁹, at the same time a sample of the definition of fundamental education was offered as a starting point for the further works:

Fundamental education is a kind of education which aims to help children and adults who do not have the advantages of formal schooling, to understand the problems of their environment and their rights and duties as citizens and individuals, to acquire essential knowledge and skills for the progressive improvement of their living conditions and to participate effectively in the economic and social development of their community, making full use of facilities and techniques brought to the community from outside¹⁰.

By “education” we usually mean a formal way of learning when learners gain basic knowledge and skills in schools or officially established institutions. However, the Working Paper made a strong attempt to broaden the meaning of fundamental education beyond the system of formal education through including in it any means of learning which result in achieving widespread literacy. Clubs and recreational projects can be a feature of fundamental education in the areas where there are no primary schools or it is difficult to accommodate all children of school age in them¹¹.

The next step to unifying the understanding of education can be found in the Convention against Discrimination in Education¹². Its Art. 1 reads:

equivalent of all levels of education is described in *The System of Education in Poland*, Polish Eurydice Unit, Warsaw 2014, p. 9.

⁷ See more L. McMillan, *What's in a Right? Two Variations for Interpreting the Right to Education*, “International Review of Education” 2010, vol. 56, iss. 5/6, December, p. 536.

⁸ The Working Paper on The Definition of Fundamental Education, UNESCO, 15 VI 1956, <http://unesdoc.unesco.org/images/0017/001797/179727eb.pdf> (accessed: 12 XII 2015).

⁹ *Ibidem*, p. 1.

¹⁰ *Ibidem*.

¹¹ *Ibidem*, p. 3.

¹² The Convention against Discrimination in Education was adopted by UNESCO's Member States on 14 December 1960 in Paris, <http://portal.unesco.org/en/>

For the purposes of this Convention, the term education refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Undoubtedly, we can agree with Beiter¹³ that the definition provided in the Convention against Discrimination refers to formal institutional teaching, i.e. formal education. Although legal provision does not offer a clear and accurate definition of education that can be suitable to the existing cultural and religious diversity worldwide, it possesses an additional value. The Convention identifies and evaluates the concept of education as an important tool that will serve inside and for the society, that is why it shall meet the special requirements such as accessibility, quality and the principles according to which education is to be provided to all.

Moreover, to my mind, this definition reflects a broader position of the international community on education. In Art. 26 of the Universal Declaration we can observe how its drafters stress the aims of education in order to avoid new conflicts and wars caused by the cultural, languages and religious differences of people:

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

Likewise, the Convention against Discrimination assumes the aim-oriented approach of education. Art. 5 repeats the goals of education¹⁴ required for the peaceful international cooperation of different communities. On the other hand, unlike the Universal Declaration, UNESCO goes forward and formulates the principles and standards of education which will help to “respect the diversity of national educational systems, not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education”¹⁵. They are:

ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed: 12 XII 2015).

¹³ K. Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights*, Leiden 2006, p. 19.

¹⁴ Article 5 of the Convention uses the same expressions as the one used in Art. 26 of the Universal Declaration of Human Rights.

¹⁵ Preamble to the Convention against Discrimination in Education.

- a) availability (Art. 4a),
- b) accessibility (Art. 4a),
- c) equivalent quality of education (Art. 4b) or, in other words, acceptability,
- d) adaptability of teaching methods to learner's needs (Art. 4c).

In this work, first international treaties ratified and implemented by the majority of the countries worldwide have been researched. Thus not surprisingly, in the international conventions of United Nations the term "universal" is often applicable to the human right to education. This chronological order in which relevant documents have been issued presented here must be completed with another powerful document which is the European Convention on Human Rights. Together with its protocols it has an imperative power for 47 States of the Council of Europe¹⁶. In comparison with the UN treaties binding upon the majority of the countries in the world, the European acts can be called the regional tool of regulation. Nevertheless, the Convention directs towards the recognition of the high significance of the right to education. The right to education was not included in the main part of the European Convention and later its content was enriched by eight protocols, the first one was dedicated to the right to education:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions¹⁷.

The scant provision does not answer the question of how education shall be recognised and how to apply the four principals mentioned above to the real situation in the country. However, the wording of the European Convention provoked a scholarly debate on the classification of the human rights. Traditionally, in the international treaties the right to education is mentioned among the social rights, i.e. the rights of the

¹⁶ Formally the Convention for the Protection of Human Rights and Fundamental Freedoms was drafted in 1950 and entered into force on 3 IX 1953, <http://www.echr.coe.int> (accessed: 10 XII 2015). According to the Resolution 1031 (1994) by the Parliamentary Assembly all current and newly joining member states of the Council of Europe are required to respect their obligations under the European Convention on Human Rights, <http://www.assembly.coe.int> (accessed: 10 XII 2015).

¹⁷ Article 2 of Protocol No. 1 to the European Convention on Human Rights drafted on 20 III 1952, <http://www.echr.coe.int> (accessed: 10 XII 2015).

second generation. This point, however, has been widely argued¹⁸. The roots of the debate on the nature of right to education come far to the history when religious missionaries played the important role in the education of mankind. In line with the church family was the main source of knowledge, skills and traditions. Education was and still is a tool of human empowerment. People can enjoy their rights, including political and civil, and it is owing to education that they become aware of these rights. Later on the State's role in the provision of education increased and the full enjoyment of the right to education was not possible without the State actions. There are a few classifications of how to distinguish political and civil rights from economic, social and cultural rights. One of them is based on the negative and positive duties of the State which correspond accordingly to the first and second generation of the human rights; another theory is based on the financial expenditures to realise the right. The right to education is elaborated in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Parents or guardians have the privileged right to decide where children shall gain the knowledge – in public or private schools – and the State also respects the parents' choice in terms of religious and moral education. However, the realisation of the right to education requires the State expenditures; only State actions, like the school construction and training of the qualified teachers, guarantee the realisation of the right to education under Art. 13 the International Covenant on Economic, Social and Cultural Rights. Thus, within the UN approach the right to education is recognised among the right of the second generation.

The European Convention formulation focuses strongly on the prohibition of the access to education and it also prioritises the parental rights. Such linguistic interpretation in the scope of the European Convention justifies the identification the right to education as the right of the first generation, i.e. rights secured from the unreasonable State intervention and with the certain autonomy of the right holders¹⁹.

It is worth admitting that European Court of Human Rights decisions were helpful in distinguishing the narrow and broad meanings of education under the European Convention. The court stated that [education in a wider sense refers to] “the whole process whereby, in any society,

¹⁸ See more K. Beiter, *op. cit.*, pp. 37–39.

¹⁹ M. Czuba-Wąsowska, K. Mańko, *Egzekucja obowiązków szkolnego i nauki. Zagadnienia prawne. Teoria i praktyka*, Warszawa 2011, p. 51.

adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction [education in a narrower sense] refers in particular to the transmission of knowledge and to intellectual development"²⁰.

This wide meaning of education means the transmission to the next generation of those skills needed to effectively perform the tasks of daily living, and further to the inculcation of the social, cultural, spiritual and philosophical values of the particular community²¹. Education in a broad sense includes the materialistic approach to education as a preparation to the profession as well as the spiritual education and moral development with the responsibility towards others and humanity as a whole. The narrow understanding of education amounts to instructions within formal education. In fact, it is reasonable to narrow the meaning of education applied in the international covenants solely to formal education because the state is considered to be the main provider and regulator of education. The international mechanism of the protection of the right to education can hardly be applied to the education inside the family or any social group where the right to private life is prevailing.

Thus, education in a broader understanding can be provided by formal institutes established by the state as well by other service providers including but not limited to various educational organisations, youth clubs, social movements and parents associations which strive for the peaceful coexistence in the diversity of cultures, languages and religions.

The European system of human rights would be scant without the consideration of the right to education in consistence with the European Social Charter 1961²² and the revised European Social Charter 1996²³.

²⁰ *Campbell and Cosans v. United Kingdom*, Judgment of 25 II 1982, Publications of the European Court of Human Rights, Series A, vol. 48, para. 33. Beiter in his book *The protection of the right to education...* draws the attention to the fact that generally international treaties are based on the narrow meaning of education and provide the mechanism of its protection on all levels of education.

²¹ K. Beiter, *op. cit.*, p. 19.

²² The European Social Charter adopted in Turin on 18 X 1961 is the counterpart of the European Convention on Human Rights in the sphere of economic and social rights. It is open for signature by the member States of the Council of Europe. Article 7 lists the minimal standards ensuring the enjoyment of the right to education for young people. ETS No. 035, www.coe.int/conventions/full-list/treaty/035 (accessed: 27 XI 2016).

²³ The revised European Social Charter opened for signatures from 3 V 1996 serves as a single tool gradually replacing the Charter 1961, its additional Protocol 1988 and enriches the agreement of the States with new rights and amendments. Article 17 states the State duties to guarantee children and young people education. Moreover, the States

What is more important is the implementation of the human right to education into practice embodied in decisions of the European Commission of Human Rights and the European Court of Human Rights. However, for the purpose of this article the research of the European approach to the right to education is minimised due to the limited geographical dimension of the Council of Europe and its legislation.

The wide meaning of education under the European legislation on human rights was repeated in Art. 1(a) of the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms elaborated in the scope of the UN system. This article states that education implies

the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge²⁴.

To my mind, the legislative initiatives made by UN that are going to be analysed below, were the most informative regarding the content of education and its four principles that had been mentioned in the Convention against Discrimination in Education. The International Covenant on Economic, Social and Cultural Rights²⁵ and The General Comment 13²⁶ describe the right to education in line with the Universal Declaration, giving, at the same time, a broader perception of the principles. Article 13 is considered to be the most comprehensive provision on education in international human rights law. In the first paragraph

shall provide a free primary and secondary education. ETS No. 163, www.coe.int/conventions/full-list/treaty/163 (accessed: 27 XI 2016).

²⁴ The Recommendation was adopted by UNESCO on 19 XI 1974, http://portal.unesco.org/en/ev.php-URL_ID=13088&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed: 26 XII 2015).

²⁵ The Covenant was adopted in New York in 1966, <http://www.ohchr.org> (accessed: 10 XII 2015). For monitoring of implementation of the Covenant the Committee on Economic, Social and Cultural Rights was established in 1985. The Committee may clarify the provisions of the Covenant in the form of General Comments. The States are obliged to submit regular reports to the Committee on how the rights are implemented, the Committee has the right to consider individual and inter-state complains in case of the rights violations. In 2012–2014 Prof. Zdzisław Kędzia was the head of the Committee, <http://ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx> (accessed: 10 XII 2016).

²⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment 13: The Right to Education (Art. 13 of the Covenant)*, 8 XII 1999, E/C.12/1999/10, <http://www.refworld.org/docid/4538838c22.html> (accessed: 10 XII 2015).

of Art. 13 the Covenant emphasises the goals which education shall serve in the following dimensions: personal (*full development of the human personality and its dignity*), national (*participation in a free society*) and international (*promotion of understanding, tolerance and friendship among all nations*). Education is something more than just a possibility to obtain practical skills and knowledge to lift someone out of poverty. “The right to education is a human right in itself and an indispensable means of realising other human rights”²⁷. This perception of education goes beyond the debates of capitalists and communists on the role of education in the society, and it creates prerequisites for a new human rights-based approach²⁸ to education.

In the second paragraph of Art. 13 the legislators mark out a few levels and forms of education, such as primary, secondary and higher education, strengthening on its availability and accessibility to everybody. In other words, the Convention treats the learning process as a part of the system of formal education, i.e. in a narrow sense. This notwithstanding, the fundamental education (not always a part of formal education) is also referred to in Art. 13 (2d) and, thus, the right to education extends to all types and forms of education regardless of the pattern of ownership or legal status of its provider. All education, whether private or public, formal or non-formal, shall be directed towards the aims and objectives identified in Art. 13 (1).

Secondly, the Covenant puts the focus on all levels of education through the 4-A scheme. Katarina Tomasevski, a former Special Rapporteur of the Commission on Human Rights on the Right to Education, examined four essential features which any type of education shall have satisfy. Education ought to be: available, accessible, acceptable and adaptable²⁹. In her preliminary report to the Commission on Human Rights, the Special Rapporteur on the right to education sets out four essential features that primary schools should exhibit³⁰. Going further,

²⁷ Ibidem, para. 1.

²⁸ Human rights-based approach is a new conception of education at the international level. It is paramount for ensuring that both, poverty reduction and the focus on human rights, go hand in hand. The emergence of this approach is linked to the end of Cold war and unprecedented growth of non-governmental organisations. Human rights-based approach was popularised in the mid-1990s and continues to illustrate the mainstream development policy at present. See more L. McMillan, *op. cit.*, pp. 539–541.

²⁹ Here and further in the article I discover the meaning of 4 features of the right to education under the General Comment 13, *op. cit.*, para. 6.

³⁰ See notes 2 to General Comment 13.

the Commission applied these features to all levels of education just as in relation to the rights of adequate housing and food. These features facilitate the definition of a universal meaning of the right to education and enrich its content.

As we can see this scheme is based on the terminology implemented in Art. 4 of the Convention against Discrimination in Education, but includes the comprehensive clarification of each feature. Availability means a state's obligation to guarantee the sufficient number of schools, teachers and materials for studying. The term also embraces the technical capacity of educational institutions such as sanitation facilities for both sexes, safe drinking water, or in a broader meaning, it extends to the access to a library, computer facilities and information technology.

The criterion "accessibility" means that any obstacles for enrolment shall be eliminated. The term has three overlapping dimensions: non-discrimination, physical accessibility and economic accessibility. Various international treaties, and in particular the Convention against Discrimination in Education prohibit any discrimination based on race, sex, age, religion or other grounds. In many countries gender discrimination is still a fact, for example, due to early marriage or social traditions preventing an economic investment in girl's education³¹. Physical accessibility plays a vital role for learners living in mountain villages or at far distances from the school. In such instances the state must ensure that the transport will be provided to transfer pupils to and from school. Economic accessibility of education does not mean that there are no costs whatsoever required for studying. However, it ensures that the cost of education which includes but is not limited to learning materials, entrance fees, is affordable to all, the parents share this burden with the state and other population which pays taxes³². The Covenant proclaims free primary education and progressively free at the second and higher levels. Consequently, the state budget shall be planned accordingly with 5–7 per cent of the gross national product allocated to education. And yet, many countries contribute to education less³³.

The term "acceptability" refers to the curricula and teaching methods used in educational activities. Article 13 (1) in line with Art. 13 (3) prioritises the "respect for liberty of parents or legal guardians to choose for

³¹ K. Beiter, *op. cit.*, pp. 488, 489.

³² *Ibidem*, p. 490.

³³ *Ibidem*, p. 491. See also Expenditures on education as % of GDP, UNESCO Institute for Statistics, <http://data.uis.unesco.org> (accessed: 27 XII 2015).

their children schools relevant to their religious and moral convictions". It means that the content of textbooks and the methods of instructions must be directed to develop learners' dignity and personality without hiding their social class, religious ideas or nationality. Likewise, for education to be acceptable, the teachers' conduct must promote human rights and tolerance towards others³⁴. Education at any level shall be "culturally appropriate" to students and "of good quality". The State's obligation is to create minimum educational standards which new educational institutions must meet. Acceptability also means that there should be as much as possible of the teaching in mother tongue.

The last feature of the right to education is the adaptability to the need of changing societies and communities. As the Committee states in the General Comment "the education has to be flexible so to respond to the needs of students within their diverse social and cultural settings"³⁵. Globalisation, the free movement of persons, goods and services, or multiculturalism are no more new elements of the modern life. Education must adjust to the changing conditions in the society or the labour market, to the needs and demands of economy and social life. The adaptability of education also concerns the diversification of learners. Disabled children, representatives of ethnic minorities or refugees have the right to education as well, regardless of the country they are living. In this content, such features of education as acceptability and adaptability are interactive. If the State does not adjust education to vulnerable learners, such failure will be assumed a violation of the right to education. As in the case of *DH v. the Czech Republic*³⁶ where the court found a discriminative disproportionate assignment of Roma children to special schools instead of the due development of the learning conditions in secondary schools properly adjusted to the needs of minorities. The resulting decision was grounded in the report of the Commissioner for Human Rights of the Council of Europe stating that "...instead of segregation [of Roma children], significant emphasis had to be placed on measures such as pre-school and in-school educational and linguistic support as well as the provision of school assistants to work alongside teachers..."³⁷.

³⁴ K. Beiter, *op. cit.*, p. 495.

³⁵ General Comment 13, *op. cit.*, para. 6.

³⁶ *DH and others v. Czech Republic* (Dec.) [GC], no. 57325/00, ECHR 2007.

³⁷ *Ibidem*, para. 79.

In the modern life the situation in education is not stable anymore. The textbooks have been updated more often than 20 years ago, new specialities and professions appear to satisfy the demands of the labour market. With the development of Internet geographical borders stop to be an obstacle. The access to education through distance learning and massive open online courses is no longer an innovative approach of teaching. The Bologna process or, as it is called nowadays, the European Higher Education Area, makes the term of education neutral or, better to say, universal, regardless of nations, races, cultures, languages.

The role of the teaching staff and academics in the education process is being changed and affected by the motivation of students wishing to learn by doing. The teacher is to invent and apply the teaching tools and methods when learners achieve knowledge on broader topics, gain practical skills and train soft skills enabling them to cooperate in the society. The pedagogical debates on the style of learning are something more than a discussion of the innovations in education. These debates constitute a deep understanding of the aim of the human right to education as a mean of development of personality and human dignity. The approach where learners perform as active participants and even founders of their educational activities arises and proves the adaptability as a characteristic of education³⁸. The decision of the Supreme Court of Colombia made in 1998³⁹ could be innovative in those times. Its provisions reflect the current transformation in Europe which is taking place in the higher education methodology where lecturing is replaced by interactive teaching methods when students, through the cooperation and group work, conceive the content of the studies and where the teacher plays the role of a facilitator and assists in students' communication:

³⁸ There are a few examples of the student activity at the higher education level. Currently, students can select the subjects to study, they have the right to establish scientific circles or associations, they run student-governed legal clinics (in Germany and Norway), etc. In comparison with the passive role of learners in the ancient times and events taking place in the latest centuries, current higher education displays a big progress towards the opportunities to learn pro-actively.

³⁹ The decision concerns the case of a boy at school who had been wearing an earring in class. The teacher had commented that this suggested that he was a homosexual. The Court faulted the teacher's behaviour. See K. Beiter, *op. cit.*, p. 506. Although the case describes a situation in a school it is relevant to the current teacher-student relationships at higher education in post-Soviet countries where a teacher is considered an indisputable authority.

The subjects of the educational process are not divided into passive recipients of knowledge and active depositories of wisdom. The constitutional principle which guarantees the free development of personality and the right to participate in the educational community have transformed the learners into active subjects who participate in education through their rights and duties... The relation pupil-teacher is not based upon the authority which the teacher can exercise as the ultimate depository of wisdom or through his hierarchically superior position, but rather upon mutual respect of the subjects of the educational process with the same possibility for free expression⁴⁰.

And last but not least, the significant value of the International Covenant on Economic, Social and Cultural Rights is not limited to the comprehensive understanding of the right to education and its 4-A features. The Covenant has its instrument to consider the individual claims for violation of the right to education – the Optional Protocol ratified by 21 countries⁴¹.

Human rights, including the right to education, belong to all people. However, children are not seen to enjoy equal access to all rights. Talking about the access to education for children, the first picture which comes up to the mind is children working hard to maintain the family instead of attend school. Due to their age and lesser capacity to protect themselves, children are in need of specific additional protections. The international society could be very successful in taking care of the children's right, resorting the legal tool which is the Convention of the rights of the child⁴². The Covenant on economic, social and cultural rights did an attempt to describe the normative content of each right, including the right to education. The Convention of the right of the child has a different approach, focusing on a child and its interests. Regarding the education as well as other spheres of a child's life, the Convention proposes an approach in which the central place is occupied by a child, while the State carries out a comprehensive list of obligations to guarantee its full enjoyment of rights.

⁴⁰ Ibidem, p. 506.

⁴¹ Adopted on 10 XII 2008 during the sixty-third session of the General Assembly by resolution A/RES/63/117. Since 2009 it has been opened for signature and ratification by the States. So far, it has been signed by 47 countries and ratified by 21, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en (accessed: 2 I 2016).

⁴² Adopted on 20 XI 1989 and so far ratified by the majority of the countries in the world. As per the UN data 192 countries have ratified the document, <http://indicators.ohchr.org/> (accessed: 3 XII 2016).

There are two articles – 28 and 29 – devoted to the right to education. Without detracting from the merit of the Convention it is worth admitting that the content of the articles is coincident with the Covenants and the Declaration of Human Rights and it does not contain any new provisions. Nevertheless, in comparison with the Declaration in which human rights aimed to maintain the peace in the world, the right to education under the Convention is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential⁴³. An international agreement of this kind is not capable of having a direct impact on the lives of children. Indeed, the purpose of the principles and obligations set out in the Convention is to provide guidance for the legislation and policies in the countries which have joined it, as well as to give directions to the international, national, governmental and non-governmental organisations in their activities related to children.

At the international level, the community's concerns are whether children enrolled to primary education obtaining the relevant knowledge and skills which may subsequently help them to lift out of the poverty and improve their living conditions. No doubts that nowadays the high rate of illiteracy is an important global problem discussed in many countries. Illiteracy affects to a lesser or greater affects all countries all over the world, including the developed ones⁴⁴, although this fact is not discussed so widely. On the other hand, we forget that the availability, acceptability, accessibility and adaptability features shall be applied to all types and levels of education. Secondary and higher education also faces challenges and policy-makers shall work on the improvement of education in a broad sense at its all levels.

Taking into consideration the above, there are no doubts that in order to create a universal definition of education a legislator has to consider many cultural, economic, and even political differences. Shall we avoid the diversity altogether? In 1956 UNESCO working on the definition of fundamental education admitted "that it is a healthy diversity of aims and practices"⁴⁵. Later in 2007 the European Court of Human Rights

⁴³ Para. 1 (a) Art. 29 of the Convention of the rights of the child.

⁴⁴ M. Motakef, *The Human Right to Education as a Right to Literacy in Germany, "Convergence"* 2007, vol. XL, no. 3–4, p. 145. The author states that about 6.3 percent of the population living in Germany is illiterate. This percentage is vague due to the lack of exact statistic, different ways of investigations and various meanings of illiteracy.

⁴⁵ The Working Paper, op. cit.

considering the claim of DH and others v. Czech Republic accepted in its judgment that “it was not easy to choose an education system that reconciled the various competing interests and that there did not appear to be an ideal solution”⁴⁶. It is hardly to deny it.

Shall we aim at a universal definition of education? Is it possible to create it?

I can hardly agree with the point that “education is a culturally defined idea which, consequently, cannot be universally conceived”⁴⁷. The most fearless and the most recent attempts to define the concept of education which is appropriate to all languages, cultures and religions were done on 5–9 March in 1990 at the World Conference on Education for All organised by UNESCO, the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF) and the World Bank.

Firstly, I must mention here that the Declaration on Education for All⁴⁸ is not a legally binding act. The World Declaration on Education for All is a historic demonstration of the intention of countries to find the common points on basic education in the struggle against the inequality, illiteracy and poverty which entail the obstacles in obtaining basic education. The document focuses on the basic education only, at the same time it enhances its role and it affects further education and personal development:

Basic education is more than the end itself. It is the foundation for lifelong learning and human development on which countries may build further levels and types of education and training⁴⁹.

Basic education is fundamental to the strengthening of higher levels of education and of scientific and technological literacy and capacity⁵⁰.

Secondly, the World Declaration on Education for All strengthens the will and commitment of countries to generate new learning opportunities and broaden the scope of basic education in the area of child,

⁴⁶ DH and others, *op. cit.*, para. 127.

⁴⁷ L. McMillan, *op. cit.*, p. 542.

⁴⁸ For the report and studies purposes the Executive Secretariat of the Inter-Agency Commission prepared a Background Document which includes the World Declaration on Education for All, Framework for Action to Meet Basic Learning Needs, suggestions generated by the experts from five continents. Published in 1990, New York, <http://unesdoc.unesco.org/images/0009/000975/097552e.pdf> (accessed: 3 I 2016).

⁴⁹ Article III of the World Declaration.

⁵⁰ *Ibidem*, preamble.

adult and family education. Emphasis is placed not only on the access to basic education, but also on the quality of education and the actual learning outcomes that were previously missing in the international covenants:

A priority to ensure access to and improve the quality of education for girls and women (Art. III).

Article V states that “learning begins at birth”, people study in the family environment, in the community, in school. Education embraces “formal and non-formal education programmes, apprenticeship and skills training”. Although the World Declaration does not provide a clear understanding of education, it is obvious that the term education is obtained in a broad sense and it includes “family, non-formal education, available instruments and social action which help to education people”⁵¹.

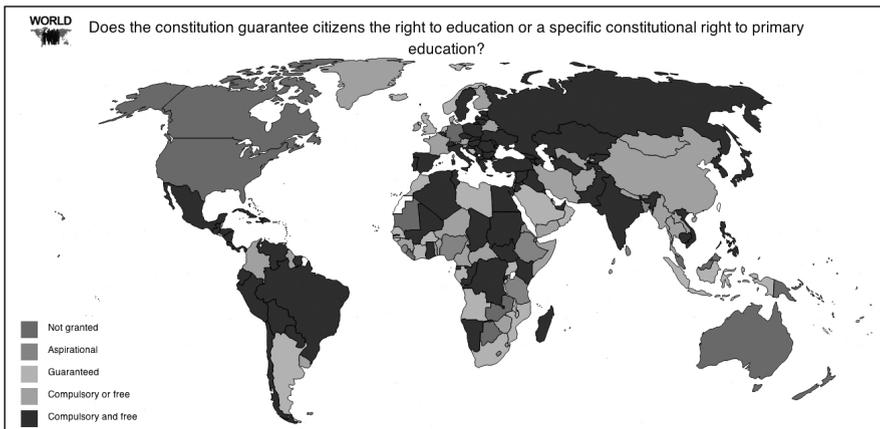
Summing up, and looking at the international treaties examined above, I can reasonably admit there is no universal definition of education. Each document understands education either a narrow or a broad sense, sometimes excluding from the notion non-formal education or, on the contrary, drawing attention to the new means of teaching. And yet, it is important to underline the vital role of the precise and clear definitions in the legislative process, in particular in the binding documents. The concrete definition and the delineated scope of the right to education will prevent accidental attempts to violate the fundamental right to education. At the same time it must be taken into consideration that vague terminology in the international legislation is difficult to avoid. The increase in the clarity of the content of the right to education is attained through the comments, official reports and judicial decisions. The international treaties only create a framework or define the principles which may be acceptable and applicable by countries. Education is a broad concept and a creation of a universal definition will not reconcile the cultural, economic and individual diversities existing in the world. Based on the historical development, cultural particularities, language diversity or social and political streamlines the States develop their sovereign understanding of the right to education with the universal respect for and observance of human rights and fundamental freedoms and having in mind the principles of international law.

⁵¹ Ibidem, Art. V.

2. National dimension of the right to education

Many but not all States declare the right to education in their constitutions. Some do so in the form of a fundamental right, enforceable at law, others do so in the form of a “directive principle of state policy”, which constitutionally obliges the government but is unenforceable⁵². There are also countries whose constitutional acts do not define the right to education, however, in these States, education is deemed as a vitally important public function.

In this Art. I have so far analysed international law, and in particular the UN and UNESCO documents concerning the right to education. In the current part of the Art. I would like to present a few examples of constitutional provisions dedicated to the right to education, without going deeply into the content of the right. Moreover, the research is based on the data collected by the World Policy Analysis Center⁵³ which carried out a research into educational rights, laws, and policies in all 193 UN member states to produce globally comparative data relevant to making universal access to quality education a reality.



The rights to education in the constitutions in the world and a specific constitutional right to primary education

Source: World Policy Analysis Center, 2016.

⁵² K. Beiter, *op. cit.*, p. 24.

⁵³ Diagram and legend to it are available at <http://worldpolicycenter.org/policies/does-the-constitution-guarantee-citizens-education-rights/does-the-constitution-guarantee-citizens-the-right-to-education-or-a-specific-constitutional-right-to-primary-education> (accessed: 6 I 2016).

The experts of the Center investigated education policies and regulations that are currently in force in all UN member states whether they protect the right to education at all levels or a primary education⁵⁴.

Canada. Canada is marked on the diagram as a country whose constitution does not mention the right to education for all citizens. This does not mean that the constitution denies the right to education, but it does not explicitly include it in the text of the main law. In fact, the Constitutional Act of 1867 in Art. 93 states that education in Canada is the responsibility of the province⁵⁵.

Russia. In the 20th century, the Soviet Union was the first country in Europe which protected the right to education. Article 121 of the Soviet Constitution of 1936 was the first constitutional provision which *expressis verbis* recognised a right to receive education with a corresponding obligation of the state to provide such education. It guaranteed free and compulsory education at all levels, a system of state scholarships and a system of vocational training in state enterprises⁵⁶.

The current Constitution in Russia of 1993 dedicates Art. 43⁵⁷ to the right to education. Unlike international law and constitutional provisions of other countries the state guarantees "general access and free pre-school education and [...] supports various forms of education and self-education".

Japan. The Japanese Constitution of 1946 declares gender equality in the implementation of the right to education and proclaims that

all people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free⁵⁸.

At the time of the drafting of the Constitution of Japan, the Universal Declaration was not adopted. As a result, the provisions of the main law include neither the aims of education nor the 4-A principles.

⁵⁴ On the web-site of the World Policy Analysis Center there are also diagrams and maps which display the right to secondary and higher education and the quality of education.

⁵⁵ The text of the Constitutional Act is available at <http://laws-lois.justice.gc.ca/eng/const/page-1.html> (accessed: 6 I 2016).

⁵⁶ K. Beiter, *op. cit.*, p. 23.

⁵⁷ The Constitution of the Russian Federation was adopted at National Voting on 12 XII 1993, <http://www.constitution.ru/en/10003000-03.htm> (accessed: 6 I 2016).

⁵⁸ Article 26 of the Constitution of Japan. The Constitution was promulgated on 3 XI 1946, http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (accessed: 3 I 2016).

The majority of the European countries appearing on the diagram of the World Policy Analysis Center are displayed as countries which guarantee both the right to free education and the right to compulsory education in authoritative language. Nevertheless, the states like France, Austria, Denmark, Belarus guarantee free or compulsory education, but not both.

France. The French Constitution⁵⁹ consists of the main law and three attachments – Declaration of human and civil rights of 26 VIII 1789, the Preamble to the Constitution of 27 X 1946 and the Charter for the environment of 2004. The particularity of the French regulation is that the right to education is laid down in the Preamble to the Constitution of 1946 and it is the most solemn proclamation:

The Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State.

It is worthwhile to admit that this provision is very progressive, in particular in the current economic conditions. France is one of the few European countries where education remains free at all levels, including higher education. This educational policy lies in line with Art. 13 of the International Covenant on Economic, Social and Cultural Rights which requires the organisation of free and compulsory primary education. In terms of secondary, including technical and vocational, and higher education the States shall strive for the progressive introduction of free education.

Spain. Lithuania. Poland. The Spanish Constitution of 1978⁶⁰, the Constitution of Lithuania of 1992⁶¹ and the Polish Constitution of 1997⁶² were adopted at the time when the international community had already attracted the society attention to the problem of illiteracy, discrimination and access to education. Not surprisingly, the constitutional provisions in these States are explicit and define in details the main principles of the right to education. Thus, section 27 of the Spanish Constitution

⁵⁹ The Constitution was adopted on 4 X 1958, <http://www.conseil-constitutionnel.fr> (accessed: 3 I 2016).

⁶⁰ The Constitution was passed by the Cortes Generales and ratified by referendum of the Spanish people on 7 XII 1978, <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf> (accessed: 6 I 2016).

⁶¹ The Constitution was adopted by the citizens of the Republic of Lithuania in the Referendum of 25 X 1992, <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (accessed: 3 I 2016).

⁶² Constitution of the Republic of Poland of 2 IV 1997, J.L. 1997, No. 78, item 483.

consists of 10 paragraphs defining the aims and principles of education. In the Constitution of Lithuania the right to education is defined in 4 articles (while Art. 40 and 41 are fully devoted to education, Art. 26 and 45 regulate, to some extent, the parents' and ethnic communities rights in the realm of education). Polish law covers the right to education under Art. 70, but also includes the gender equality of access to education (Art. 33) and guarantees access to education to national and ethnic minorities (Art. 35).

All the provisions are drafted in accordance with the international law. The Spanish Constitution, unlikely to other national acts, includes the aim of education as a powerful tool to enlightenment and peaceful living. It states that

education shall aim at the full development of human personality with due respect for the democratic principles of coexistence and for basic rights and freedoms.

International treaties underline strongly the importance of the accessibility of education in a broad sense. Following up the international recommendations laid down in the Constitution of Poland, there is a declaration to "establish and support systems for individual financial and organisational assistance to pupils and students"⁶³.

Academic freedom and institutional autonomy were mentioned the first time in the General Comment 13⁶⁴ as guarantors of the effective realisation of the right to education, and the Polish and Lithuanian legislators included the provisions of autonomy of educational institutions in their constitutional acts accordingly – Art. 70 and 40.

Conclusion

International treaties have been adopted as a response to historical events occurring in society. Together with the changes in the social and international relations, the right to education was also being modified. The Universal Declaration of Human Rights was a solution to overcome the consequences of and to prevent the Nazi propaganda in the future. Not surprisingly, the right to education formulated in the Universal Declaration underlines the aims of education. However,

⁶³ Para. 4, Art. 70.

⁶⁴ Para. 38–40.

the works on the Universal Declaration which were conducted in haste made it impossible to include in it the definition of education. Later, various international covenants and legislative acts endeavoured to offer an explanation what education was. Depending on the aim of the international document, the legislators either defined a certain level of education, such as i.e. fundamental education in the Working Papers, or gave a broad meaning of education as it was done in the Convention against Discrimination in Education. Case law of the European Court of Human Rights in its decisions has divided the teaching and instructions as a part of formal education and education in a broad sense which includes family, minority and cultural education of any means.

As we can see, the diversity in the society makes unification of the terminology more difficult. International treaties have not yet attached any universal meaning to education, one that would fit all countries, cultures and nations. On the other hand, the United Nations Organisation has many times underlined that diversity shall exist to enrich mankind and to foster the development of people. The multiplicity of languages, religious and cultures is healthy and the UN makes efforts to maintain the particularity of countries, including the protection of learning in moribund mother tongue, or the transmission of cultural traditions of minorities to younger generation.

Admitting the fact that the right to education is a powerful tool of enlightenment, the majority of States all over the world include in their Constitutions the provision on the right to education. Despite the fact that the wording of the constitutional statements of the right to education varies from a few sentences to a few articles, the acknowledgement of this right by States is important. It is notable that the national provisions are composed in line with the historical development of the right to education under international law, and the influence of the international treaties on the national law is obvious.

MIĘDZYNARODOWY WYMIAR PRAWA CZŁOWIEKA DO NAUKI I JEGO ODZWIERCIEDLENIA KRAJOWE

Streszczenie

Prawo do nauki jest podstawowym prawem człowieka, które wpływa na rozwój osobowości i godności ludzkiej, sprawia, że ludzie są świadomi swoich praw i wolności, wspiera społeczeństwo w celu przezwyciężenia biedy i poprawy warunków życia

ludzi ubogich. Cel edukacji wykracza poza materialistyczne podejście gwarantujące dostęp do zawodu i nabywanie umiejętności praktycznych. Polega on na rozwoju moralnej i duchowej strony człowieka i uświadamianiu natury i godności ludzkiej opierającej się na wartościach. Pod pojęciem edukacji w międzynarodowym prawie w szerokim znaczeniu rozumie się wszelkie rodzaje i formy zdobywania wiedzy, ćwiczenie umiejętności i rozwijanie wartości społecznych. Natomiast rozmaite konwencje i orzecznictwo międzynarodowe przyjmują wąskie rozumienie tego terminu, odnosząc go wyłącznie do edukacji formalnej. Z analiz międzynarodowych aktów prawnych wynika, że uniwersalna definicja edukacji obowiązująca we wszystkich państwach nie została dotychczas opracowana. Różnorodność kulturowa i religijna, odrębność języków i tradycji krajowych, rozmaicie prowadzona polityka przekonują, że wykonanie tego zadania jest prawie niemożliwe, a nawet nieużyteczne.

Mimo że zdefiniowanie uniwersalnego znaczenia edukacji ujednoliciłoby różnorodne podejścia i pogodziło konkurujące kraje na świecie, takie podejście nie wydaje się dobrym rozwiązaniem w zdrowej różnitości celów i praktyk. Niemniej jednak międzynarodowe regulacje poprzez prawo miękkie i orzecznictwo określiło główne cechy prawa do nauki: (a) dostępność, (b) wystarczalność, (c) akceptowalność i (d) adaptacyjność. Edukacja formalna w dowolnym kształcie musi wykazywać te cechy, aby zagwarantować każdemu prawo do nauki dobrej jakości. Biorąc pod uwagę, że prawo do nauki jest potężnym narzędziem świadomości, większość państw dokonała próby uwzględnienia prawa do nauki w swoich konstytucjach. Warto zaznaczyć, że przepisy krajów rozwiniętych regulujące prawo do nauki zostały sformułowane w wyniku rozwoju prawa międzynarodowego, chociaż często ograniczają się do kilku zdań.

Słowa kluczowe: edukacja – prawa człowieka – prawo człowieka do nauki – zasady prawa do nauki