



Research Article

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Guaranteeing the Right to Attend Higher Education of Vulnerable Groups and Minorities

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Abstract

The right to education is a fundamental right of the person, which is recognized and guaranteed in Albania by international acts and domestic legislation. The right to education is a positive right, which not only must be recognized but it obligates the State to take all measures to enable its realization. However, this right is not an absolute right, which means that the State has the obligation to guarantee the right to education up to the 9-year system, while it is at the discretion of the individual to attend or not the secondary and higher education. The right to access education in the university system can be conditioned by a series of criteria set in laws and bylaws. This paper will analyze the innovations and conditions in the criteria provided by the law "On higher education" and its bylaws regarding university admission of students belonging to vulnerable groups such as minorities by combining the theoretical analysis with the practical implementation of these criteria.

Keywords: higher education, minorities, vulnerable groups, positive discrimination, higher education institutions

1. Introduction

In 2015, the university system underwent a reform, which changed not only of the structure of the organization and functioning of universities, but also brought about a change in the criteria for admission in the university. The rights of students belonging to vulnerable groups and minorities have been kept in focus by these changes in order to create all opportunities for students of these groups to be treated equally with all other students.

2. The Right to Education, as One of the Fundamental Rights

The right to education is one of the most important rights that must be guaranteed to every individual, as an educated and cultured society is the foundation for continuous development. To this end, basic education is compulsory for every individual and States also develop programs and policies to provide full free access to secondary and higher education for which they have set up infrastructure (kindergartens, public schools, universities) to enable every individual free education

and equal access (Alterum, 2021).

As one of the fundamental human rights, the right to education enjoys protection by international and national acts. The right to education is a positive right, which means that it puts the State before the obligation not only not to intervene by denying its enjoyment, but also before the obligation to undertake policies, strategies, and measures to guarantee it.

Inclusive education means different and unique students learning together in the same classroom or auditorium. Inclusive systems provide a better education for all and are instrumental in changing discriminatory patterns. The inclusive education approach is based on the basic principle: Everyone should learn together, regardless of their differences and challenges (Institute of Public Opinion in Albania, 2016).

The Albanian education system and its complexity are the property of a series of historical, political, and social developments and activities. The right to education for all, even though it is included in the legislation, seems to create a conflict with the ingrained practices and structures of the Albanian society. Nowadays, educational structures and attitudes that have been developed for more than five decades coexist with new models of inclusion of individuals with disabilities and vulnerabilities in harmonized schools or universities. In the first part of this paper, we will focus on the analysis of the most important international and national acts that provide and guarantee the right to education. Law n. 80/2015 "On higher education and scientific research" aimed to fill the voids of the previous regulation of 2007 and provides its provisions are implemented by all higher institutions, or only by public/ non-public or by independent public institutions (Katro, 2015). The right to education is an internationally recognized right, enshrined in the most important international acts.

2.1 *The right to education under the Universal Declaration of Human Rights (Declaration)*

The Declaration was proclaimed by the United Nations General Assembly on December 10, 1948. The right to education is one of the rights provided in this Declaration, specifically in Article 26 which recites:

"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. 2. 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. 3. Parents have a prior right to choose the kind of education that shall be given to their children"

This Declaration provides that the right to education is universal. On the other hand, in addition to being a right, education is also seen as an obligation and a challenge for the implementing states which in turn should provide education for all students equally and free of charge, and for all those who want to continue higher education, access should be guaranteed according to the circumstances making it possible, so that everyone can be educated regardless of economic conditions or physical, social and demographic opportunity (Alterum, 2021).

2.2 *The right to education under the European Convention on Human Rights (1950).*

The European Convention on Human Rights (ECHR) provides in Article 2 of its 1st Protocol for the right to education:

"No person shall be denied a right to an 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 is in conformity with their own religious and philosophical convictions.”

The provision of the right to education in the Convention provides not only the right of every individual to education and the right of every parent to educate their children but also the obligation of every Member State which has ratified this Convention to take measures to make this right effective to enable everyone the opportunity to be educated. The aim is for this access to continue to expand to the highest levels of education, not limited to basic education alone.

2.3 *The right to education under the Convention on the Rights of Persons with Disabilities (UNCRPD)*

The UNCRPD provides not only the right to education for persons with disabilities, but also the obligation of states to take specific measures to enable the realization of this right. Article 24 provides, *inter alia*:

“States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to: (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; (c) Enabling persons with disabilities to participate effectively in a free society...”

Students with disabilities require special treatment by the State in terms of protection and guarantee of their rights. The right to education for this category also requires the state to take some additional measures so that this category can be educated just like the rest of society. The right to education is comprehensive. States should ensure that every individual fulfills the right to education, even in cases where they have a disability and specific measures are required to provide education. In the case of *“Rubén v. Spain”*, the Committee in the Rights of Persons with Disabilities (CRPD) found a violation of the right to education by commenting that:

“(…) Spain failed to assess the specific requirements of the child and to take reasonable steps that might have allowed him to remain in mainstream education system. Thus, the State party failed to fulfill its obligations under the Convention on the Rights of Persons with Disabilities.”

The European Court of Human Rights also has a thorough practice regarding the right to education. In the case of *“Ponomaryov v. Bulgaria”*, the Court found a violation of Article 2 of Protocol No. 1, where the applicant was obliged to pay tuition fees due to his being an immigrant while education for Belgian citizens was free. Differentiated treatment by Belgium is considered a denial of the right to education (ECtHR, 2011).

Education should be inclusive, and in the context of students with disabilities. States have an obligation to make the necessary and appropriate arrangements according to the education system erected, to correct factual inequalities which are unjustified and therefore constitute discrimination (AIRE Center, 2020).

In the case of *“Çam v. Turkey”* the court notes that: “

The refusal to enroll the applicant in the Academy of Music was based solely on the fact that she was blind and that the local authorities had at no stage considered the possibility that reasonable accommodation had enabled her to be educated at that institution.

As such, the Court considers that the applicant was denied, without any objective and reasonable justification, an opportunity to study at the Academy of Music, simply because of her inability to see. *The Court, therefore, finds that there has been a violation of Article 14 of the*

Convention taken in conjunction with Article 2 of Protocol No. 1 (ECtHR, "Çam v. Turkey", Judgment no. 51500/08, dated 23.02.2016).

The right to education is not an absolute right which means it can be limited in the cases provided by law and in the way that has dictated the need to limit the right. Restriction of the right to education cannot go so far as to violate the very essence of the right.

The Court of Justice of the European Union (EUCJ) has also reviewed several cases, where it has analyzed the criteria and conditions set by member states to pursue higher education.

In the case "*Commission v. Hungary (C-66/18)*", the EUCJ noted that the measures taken by the Hungarian state regarding the increase of criteria for the accreditation of foreign HEI, namely the obligation to sign bilateral agreements between the Hungarian government and the country of origin of the foreign university, for the foreign HEI to operate on Hungarian territory, constitute violations of Articles 13, 14 (3) and 16 of the European Charter of Fundamental Rights which protect the right to education based on democratic principles and respect for academic freedom in higher education and research (ETUCE).

The aforementioned new requirements for foreign institutions of higher education willing to operate in the Hungarian territory brought about the disruption of the functioning of the privately funded Central European University, which mainly had foreign students and foreign academic staff.

The EUCJ stated that:

"...the measures at issue are capable of endangering the academic activity of the foreign higher education institutions concerned within the territory of Hungary and, therefore, of depriving the universities concerned of the autonomous organizational structure that is necessary for conducting their academic research and for carrying out their educational activities. Consequently, those measures are such as to limit the academic freedom protected in Article 13 of the Charter."

Member States must take measures to implement EU law and guarantee the right to education for all citizens, regardless of their nationality. In "*Commission v. Austria*", C-147/03, the EUCJ found that the establishment of unequal conditions for education is contrary to community norms regarding the right to education. Failure to recognize the secondary education diplomas of the Member States on an equal footing with the diplomas issued by the Austrian authorities, and the imposition of additional conditions for admission to the university, constitutes discrimination and violates the right to education of foreign nationals.

The drafting of policies or laws and regulations of the member states should guarantee equal rights for all. The restriction of rights must be proportionate and must be justified by a higher purpose.

In the case "*Bressol and others v. French Government*", (C- 73/08) the EUCJ stated that:

"...a Member State could not restrict the enrollment of students from other member countries for certain university courses in the field of medicine, unless such a restriction is justified on the basis of public health. In this regard, the Member State must prove, with solid and consistent data, that there is a risk of a reduction in the number of graduates prepared to provide health care services in its territory."

In the case "*Kaj Lyyski v. Umeå universitet (C-40/05)*" the EUCJ argued that:

"Community law does not prohibit national legislation, to organize temporarily, and short-term training to meet the need for qualified teachers in a State, provided that the manner in which the legislation is applied does not lead to the exclusion in principle of all applications made by teachers who are not employed in such a school without prior individual assessment of the merits of these applications in light of the skills of the person concerned and the possibility of monitoring the practical part of the training done or excluding the person from it".

3. The Right to Education from the Perspective of the Albanian Legislation

The right to education as well as a number of other rights are considered fundamental human rights. Article 57 of the Constitution of the Republic of Albania provides for the right of each person to access education.

In summary, this article stipulates that:

- Everyone has the right to education
- Mandatory school education is established by law.
- Public general high school education is open for all. Professional high school education and higher education can be conditioned only based on meritocracy;
- Mandatory education and general high school education in public schools are free.

What stands out most in the legal provisions is the guarantee of every individual to be educated and the obligation of the State to provide free education for all, regardless of origin, economic, social status or physical abilities. Such a provision requires continuous measures to be taken by any government in order to provide an education to children, including groups who due to their different physical or psychological abilities, have special needs either in infrastructure and/or teaching.

Albania, as one of the countries that has ratified the Universal Declaration of Human Rights, also has the right to education extensively included and addressed in its domestic legislation.

Also Article 59 of the Constitution of the Republic of Albania, in Chapter V, " *Social Objectives*", stipulates:

"The State, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with: e) education and qualification according to ability of children and the young, as well as unemployed persons."

As reflected in the Universal Declaration of Human Rights, in Albania currently only primary education is compulsory by law, secondary education is guaranteed free of charge, while for higher education we have a concrete effort in laws and legal, sublegal and normative acts to have equal access to all citizens.

4. The Right to Access Higher Education of the Students Pertaining to Vulnerable Groups and Minorities

The most important law for education and higher education in Albania is Law no. 80/2015, " *On higher education and scientific research in higher education institutions*".

Starting from the first article entitled " *Mission of higher education*", Law n. 80/2015 is based on promoting comprehensive development and integration in society, aiming to comply to contemporary European standards.

The intention of the legislator to have a comprehensiveness of the fields of higher education, starting from the arts to scientific research aims to increase the compliance to the standards of democracy in Albania. To accomplish this important mission, the Law has placed special emphasis and attention on the groups that present socio-economic problems, aiming to create easy access to opportunities for them.

Specifically, Article 4 paragraph 2 of the Law 80/2015, provides that:

"The state also guarantees education for individuals who meet the criteria for admission to a first cycle study program, an integrated study program or a vocational study program, but who do not have the financial means to afford them".

The guarantee of these rights sanctioned by law is realized through scholarships, partial scholarships and financing through soft student loans.

The institution responsible and which technically and logistically implements the distribution of these funds is the National Agency for Financing of Higher Education (AKFAL), under the ministry responsible for the education.

Specifically, Article 11, paragraphs b) and c) of Law 80/2015 states that:

"b) Scholarships for excellent students with a maximum average grade from the upper secondary education system, students in study programs in priority areas and students from the social strata in need;

c) Guaranteeing the student loan scheme".

If we look at these two points by linking it to the mission of this law, the scheme is very clear, the financing of these categories "in need" will mean that they will no longer be considered as such, and in the end they will no longer represent costs for the State and the society, but on the contrary will be contributing.

At this point, paragraph dh) of Article 2 also comes to the fore, " providing that:

"dh) to guarantee equal opportunities, on the basis of merit, for all individuals who wish to attend higher education".

Pursuant to Law n. 80/2015, the Council of Ministers issued Decision no. 269, dated 29.03.2017 and no. 698, dated 21.11.2018. Based on these decisions, the Council of Ministers has decided to exempt from the tuition fee in public institutions of higher education persons falling into special categories such as orphans for up to 25 years of age or those who have lost their parents while on duty, those pertaining to ethnic communities, etc., therefore setting a set of criteria and relevant application procedures.

Pursuant Decision no. 397, dated 3.5.2017 "On the organization and functioning of the National Agency for Financing of Higher Education (AKFAL)", the Ministry of Education, Youth and Sports is in charge for establishing this body regulating it functioning, management, financing etc. However, the National Agency for Financing Higher Education, has not been constituted yet. This fact is also evidenced by the Decision no. 229, dated 20.12.2018" of the State Supreme Audit, which has recommended the establishment of this institution within the first three months of 2019 (ALSAI, Quality and charging of student services at public HEI, 2018).

Regarding the scholarships dedicated to students who meet the criteria, the scheme is the same, but from the verifications performed and the response of the Directorate of Budget and Financial Management, there are no funds dedicated to this category. Up to when the Law n. 80/2015 came into force, the government had administrated every income of the universities centrally and all income earned by any public university were treated as it was part of the consolidated government budget which meant that if any university exceeded its estimated earnings, all additional revenue was returned back to Ministry of Finance (Papadhopuli & Miço, 2016).

Specifically, for the academic year 2020-2021, the quotas approved by the University of Tirana (UT) for these "special" categories are 141 (University of Tirana, 2020). Of the above quotas only three are defined categories, "quotas for candidates with orphan status", "quotas for persons with disabilities", "quotas for Roma and Balkan-Egyptian candidates".

Student loan was another innovation of Law no. 80/2015, "On Higher Education and Scientific Research in Higher Education Institutions in the Republic of Albania", but this mechanism has not been implemented as there is no legal act issued by the Ministry of Education, Youth and Sports, or the Council of Ministers that would regulate it.

Undertaking new admission policies in the university education system have created greater opportunities for Roma students. Students from low-income families can also apply for scholarships to local government authorities.

5. Conclusions

Guaranteeing the right to education in the university system of students belonging to vulnerable groups or the Roma & Egyptian community, who meet the criteria and skills to be admitted to the University, but due to financial inability to be able to pursue these studies is an important element not only for the access to the university of the student himself, but also for the whole society, as a good student is an asset to the whole society.

Elimination of objective obstacles, through mechanisms such as providing scholarships, loans, are favorable policies for vulnerable students or students of the Roma & Egyptian community, as a result, we recommend that the competent institutions conduct ongoing studies and monitoring of the situation, as well as favorable policies should be adapted to the economic, technological, social developments of the country, so that these favorable policies are not fictitious, but real and create effective opportunities for students to pursue higher education.

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