

**UNIVERSITY OF CRAIOVA**  
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# **THESIS**

**THE RIGHT TO EDUCATION OF CHILDREN WITH  
DISABILITIES**

**ABSTRACT**

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The theme of doctoral research entitled “The right to education of children with disabilities” has several general objectives, finally giving an overview of the problematic situation regarding the right to education of children with disabilities. Through this paper we aim to highlight the current situation in Romania, related to the international legal framework.

The first objective of the thesis is to answer the question ***“How does the right to education of people with disabilities influence the international and national legal framework?”*** The question raises problematic issues related to the semantics, evolution and social context of the terms. For example, legislation in Romania has constantly undergone changes in the status of people with disabilities over time. With the evolution of society towards a new vision on disability, the Romanian legislation has made the transition from “mentally impaired and abnormally educable”<sup>1</sup> to “disabled pupils”<sup>2</sup> to “pupils with special educational needs”<sup>3</sup>. The status of pupils with special educational needs has also generally become valid at an international level, but there is no universal definition of this term because each state provides a definition for pupils with special educational needs, depending on their own perception and legal framework. In other areas of national law, the concept of disability is used and this term will be used throughout this thesis because the work refers to a strict category of people, namely persons with disabilities.

In the paper we highlighted the difference between persons with special educational needs and those with disabilities. Being a person with special educational needs does not mean just having a disability, it means having a greater need than the average of the population to receive education and to be educated. Consequently, the concept of disability is included in the sphere of special educational requirements. In the Romanian legislation, the Law of National Education 1/2011<sup>4</sup> does not refer to the concept of “disability”, it assures the right to education at a general level, protecting all persons with special needs, i.e. all pupils with special educational needs. Instead, Law 448/2006<sup>5</sup> on the protection and promotion of the rights of persons with disabilities, protects the rights of persons with disabilities, including the right to education. In terms of semantics, the term disability, it should be mentioned that disability is a new concept emerging in international and national legislation, because before it was used the term “handicap”, as mentioned in Law 448/2006, thus reiterating the fact as in Romania the change is still at the beginning. With the adoption of the Convention on the rights of persons with disabilities adopted in New York by the General Assembly of United Nations on 13 December 2006, opened for signature on 30 March 2007 and ratified by Romania by law

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<sup>1</sup> Law on Primary Education of the State and Normal Primary Education, adopted on July 24, 1924, Bucharest

<sup>2</sup> Law on Education, no. 84 of 24 July 1995

<sup>3</sup> Law of National Education 1/2011, published in Official Gazette, Part I no.18 of 10 January 2011

<sup>4</sup> Idem 3

<sup>5</sup> Law 448/2006<sup>5</sup> on the protection and promotion of the rights of persons with disabilities, published in the Official Gazette no. 1 of 3 January 2008

221/2010<sup>6</sup>, there have been legislative changes, leading to the conclusion that there are differences between handicap and disability, the first term being discriminatory for the persons concerned, since it is a definition taken from medical point of view, in other words, the handicap is viewed as an illness, while disability definition is adopted from the point of view of human rights, i.e. society is the one that limits the access of persons with disabilities to a good life.

With regard to the concept of education, it is very important to provide a general universal legislative definition, but each state builds education according to the development of the social context and its own values and philosophy. The only universal definition of education, but not legally applicable, is provided in the Jomtien Conference<sup>7</sup> (1990), Thailand, launching a new direction of educational policies in the world: “Education for All” and taken over in 1994 by the Salamanca Statement<sup>8</sup>, where “education for all” was defined as “access to education and quality for all children”, objective which is to ensure that all children are able to participate in education, no matter how different they are and deviate from their personal model development from what society considers to be normal. We believe that the Romanian legislative sources could define more clearly the term education and its content, and also to explain accurately what education for people with disabilities is, what is its purpose, what assures the right to education and who are the persons enjoying this right. Referring to the need to establish with greater clarity who are the beneficiaries of these rights, we would like to emphasize that it would be preferable that the National Education Law 1/201 includes the categories of disability that are protected by this law. For example, in the legislation of certain states, having a disability means suffering from a disease lasting more than 4 weeks, therefore a person suffering from cancer, HIV, autism, etc. is disabled. In other states, falling into a disability is left to the court’s discretion, as exemplified in the present case in the “Chacon Navas” case<sup>9</sup>. Therefore, the present paper seeks to highlight whether the Romanian legislation protects the right to education of persons with

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<sup>6</sup> Law no. 221/2010 on the ratification of the Convention on the Rights of Persons with Disabilities adopted at New York by the United Nations General Assembly on 13 December 2006, opened for signature on 30 March 2007 and signed by Romania on 26 September 2007, published in the Official Gazette of Romania. Effective as of November 29, 2010

<sup>7</sup> World Declaration on Education for Citizens, adopted by the World Youth Conference on Education for All, Jomtien, Thailand, March 5-9, 1990.

<sup>8</sup> The Salamanca Statement and Framework for Action on Special Needs Education, adopted by the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994

<sup>9</sup> European Disabilities Forum, Edf Analysis of the first decision of the European Court of Justice in the disability provisions of the Employment Framework Directive Case C-13/05 Chacon Navas v Eurst Colectividades Sá, 11 July 2006

disabilities in the same way as protects all other pupils. In this case, it must be taken into account that the education of a child with disabilities differs from that of a normal child in many ways. First of all, the type of disability and education must be taken into account. For example, a child suffering from severe autism is aimed at a personal development-centred education, more specifically an individual pedagogy. Such a child, with severe autism, will not have the purpose of education to acquire academic knowledge, but the purpose of education will be the development of primary skills (eating, dressing, socialization). These previously discussed aspects of education are not reflected in the educational legislation. The right to education of persons with disabilities is protected by the Law on National Education through the chapter “special and specially integrated education” and by Law 448/2006 under the chapter “education”, but none of the chapters provide details specific to the purpose and contents of the education of persons with disabilities. Moreover, as far as the Constitution of Romania is concerned, the stipulations of Article 32 refer to the right to education, without any explanation for the term in the legislative sources. Again, we consider this issue as another legislative issue limiting the right to education for people with disabilities. It should be clarified that “the right to learning” is different from “the right to education” especially since the Law of National Education has the right to education in the foreground. In the legislation of other states, a contextual definition of the right to education is used and given, differentiating the terms “to learn, to educate, to be instructed and to be educated”. For example, Article 32 of the Romanian Constitution is entitled "the right to learn". In the Dictionary of Romanian Language<sup>10</sup>, the term “learning” has the following meaning: ”System of theoretical and practical guidance in a certain field of activity; doctrine; theoretical or practical principle”. It can be noticed that there is no synonym for the term “education”, which has the following meaning: “Fundamental social phenomenon of transmitting the life experience of the adult generations and culture to the generations of children and young people, the enabling for their integration into society”<sup>11</sup>. Although the concepts of education and learning are different, there are again problems of interpretation in the National Education Law 1/2011. For example, the term “inclusive education” is missing from the National Education Law, focusing on “special and specially integrated learning”. Inclusive education is a new concept in Romania, and in legal terms it translates into “the right to education for all without discrimination”. At present, international law discusses opinions about the right of people with disabilities to learn within the same schools with people without educational problems. Inclusive education is supported by the Convention on Disabled Persons, being the only international source that makes concrete reference to the term inclusion. Although other international sources do

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<sup>10</sup> The Explanatory Dictionary of the Romanian Language - 2016 edition, Romanian Academy, ed. Universul Enciclopedic, Bucharest

<sup>11</sup> Idem 10

not talk about the right to inclusive education, they do not deny the right of persons with disabilities to receive education, but not under the same conditions as the stipulations of Article 24 of the Convention.

The first chapter “General Aspects. Terminology and Explanations” attempted to highlight the answer to the first objective, namely “how does the right to education of children with disabilities influence the international and national legal framework?” but also the answer within the penultimate objective of “the importance of a universal definition of disability”. By exemplifying and defining the main concepts of the thesis, the aim was to emphasize that the protection of the right to education is influenced by culture, social contextualism, language and perception of each state, and consequently the lack of universally valid definitions of disability, education, disability, education may limit the benefit of this right. Even if national legislation is in line with General Comment no.13 (21st Session, 1999) on the Right to Education (Art.13 of the CESCR) of the Economic, Social and Cultural Rights Committee, which highlights three types of State obligations: respect, protection and fulfillment of the right to education; in reality, the situation is in the way of children with disabilities. The duty of respect requires the State to avoid the obstacles to the right to education, the obligation to protect requires Member States to take measures to prevent the involvement of third parties in the right to education, and the obligation to fulfill concerns both the obligation to both provide and facilitate and require states to take positive action to enable and assist within communities to have the right to education. Romanian legislation closely supports international legislation, but due to the factors presented in the previous chapters of the thesis, the legal framework does not apply objectively and always. State obligations can be achieved if the educational institutions and facilities offered have to be available in sufficient quantity (buildings, health facilities for both sexes, safe drinking water, trained teachers receiving decent competitive wages, working materials). Educational institutions must be accessible to all without discrimination, according to the law and in reality. The form and substance of education must be acceptable to both students and parents, relevant, appropriate, cultural and of good quality. Education needs to be flexible, adaptable to the changing needs of societies and responsive to the needs of students, taking into account social and cultural differences. The right to education can be progressively implemented in line with the available resources. However, some legal issues need to be implemented immediately because they are the heart of the right to education, its main content. These include: ensuring the right of access to public educational institutions and programs based on non-discrimination, ensuring that education meets the objectives set at international level, ensuring primary education for all, adapting and implementing a national educational strategy including primary, secondary and secondary education, ensuring free choice of education, without State interference or third parties, subject to "Minimum Educational Standards".

As I have exemplified in the thesis, some potential violations of the main content of the right to education include the following: the introduction of legislation that discriminates individuals or groups, or the failure to abolish this type of education and the failure to take measures that de facto address educational discrimination; inconsistent use of the curriculum with educational objectives set at international standards; the failure to introduce as a priority issue the primary education that is compulsory and available for free to all and the failure to take free, concrete measures aimed at achieving the progress of primary, secondary and high school education. Prohibition of private educational institutions and failure to provide private educational institutions with "minimum educational standards".

The second objective of the paper is to answer the question *"Is the right to education of people with disabilities in mass schools respected? More specifically, is the right to inclusive education for people with disabilities respected?"* At both national and international level, there are no clearly-defined legal conditions obliging states to guarantee the right to education of people with disabilities in mainstream schools. This depends on each state, more precisely on the resources of each country to achieve inclusive education. Moreover, the Convention on the Rights of Persons with Disabilities refers to the progressive realization of the right to inclusive education. Therefore, the Romanian state is not obliged to guarantee the education of disabled people in each school in Romania, as this would mean the restructuring of the entire education system, which has as a limit the economic and social factors. However, if this right is achieved progressively, depending on certain factors, how can people with disabilities benefit from equal opportunities with others in terms of education, and how can discrimination be eliminated? The answer lies both in the way the Constitutional Court addresses the case and in each situation, because each disabled student has different needs, depending on the type of disability. We consider it necessary to emphasize another point of view, namely that inclusive education is not beneficial to all. For example, in order to integrate a person with severe and associated mental deficiencies into a classroom with normal students, even if it is under the care of a support teacher, the purpose of integration must be directly proportional to the outcome of the action. Therefore, the right to education in the same way as others would have met, but the quality of education for the student with severe and severe mental deficiencies would be very low and an adequate education could be provided by special schools. This is a matter of choice. The problem arises when a student with a physical or sensual disability wants to learn at a school table and the educational system does not allow it because of the lack of educational resources. For example, a blind who opts for a school table can not integrate because the school is not equipped with equipment in the field. In this situation there is discrimination and social exclusion. Inclusive practices in the education of children with disabilities

in our country are the product of developing the special education process, preserving and inheriting the best traits, enhancing the positive experiences of European societies, and the influence and the strong impact of international experience. Inclusive education also has its own history of legislation, organizational management, and content / curriculum development.

Concerning objective number 2 of the thesis, namely the answer to the question "Is the right of children with disabilities in the mainstream education respected?" it should be noted that inclusion has become one of the world's most problematic issues in today's education. Some writers<sup>12</sup> argue that inclusion must be seen as a "right" for all children with disabilities. Others warn that adopting inclusive models on a large scale will lead to a deterioration in education for children with special educational needs, and placing them in normal classes may not necessarily represent the best learning environment for some of them. It is often commented that the whole range of placement options, including special schools and special classes, should be kept in place to allow for responsible choices to be made with regard to establishing the most appropriate education for each disabled individual. Despite ongoing debates, there is an increase in the number of children with disabilities who are enrolled in mass education.

The third objective of this paper is to present the Italian State Legislation because it is considered to be the world leader in inclusive education. Moreover, it adopted a comprehensive legislative framework for inclusive education before the adoption of the concept of "inclusive education" by the Convention on the Rights of the Child Persons with Disabilities. The evolution of Italy's legal framework will reveal gaps in Romania's educational legal framework, highlighting the issues that need to be improved at national level. In Italy, the first step towards full legal inclusion was Law 118/1971<sup>13</sup>, which specifies the right of students with disabilities (aged 6-15) to attend general education courses in public schools, except those with severe mental or physical deficiencies, whereas in Romania the first law on full integration was after the year 1990. Under the influence of a strong deinstitutionalization movement and decentralized social services, Italian laws have paved the way for the radical abolition of traditional special education. The culmination of the deinstitutionalization movement was the Italian Law of Mental Health 180/1978, known as the Basaglia Law, which has instigated the dismantling of psychiatric hospitals, with the exception of judicial ones, and the building of community-

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12 M. Oliver (1996) (In 'Implementing the Social Model of Disability: Theory and Research' edited by Colin Barnes and Geoff Mercer (2004), Leeds: The Disability Press, pp. 18–31.

<sup>13</sup> **Legge 30 marzo 1971, n. 118** "Conversion into the *legi DL 30 gennaio 1971, n. 5* is a new norm in favor of the mutilation of civil invalids." (Pubblicata nella *GU 2 aprile 1971, n. 82*)

based services aimed at mental health for the benefit of the community. This radical review of the psychiatric service was only partially accomplished.<sup>14</sup>

D'Alessio (2011) commented on the dominant influence of the sociopolitical context on the adoption of full, unprecedented inclusion legislation in education history: "The choice to integrate did not arise from research in education but as part of a broad political and social discourse that requires further investigation, "and in Italy" the full inclusion policy was a problem-free initiative and is perfectly conceived. "

The third objective, a comparison between Italy and Romania, highlighted the fact that Italy, although it is a world leader in inclusive education, has its own gaps in the legislative framework on education, but also highlighted the fact that Romania is in full of development in the adoption of the new legislative framework, but is moving towards the fulfillment of all the objectives of the Convention on the Rights of Persons with Disabilities. Just as Italy's situation regarding the right to education for children with disabilities has improved over the past two decades as a result of better opportunities for social integration such as support and family support and effective legislation, and Romania is succeeding in starting this road. The most serious problems that Italy faces derive not from the absence of rules but rather from their inconsistent interpretation and implementation. The Government Report shows that the Law on the Protection of Children with Disabilities is Law 104/1992, entitled "The Framework Law on Support, Social Inclusion and Rights of Persons with Disabilities", which gives children with disabilities the same rights of respect for human dignity, maximum independence, and social relationships as those held by adults with disabilities. This law was supplemented by regional and state provisions governing the implementation of relevant services. Concerning Romania in the past, Law 94/1995 on Education (Future Education Law), updated in 1999, provided that citizens of Romania have equal access to all levels and forms of education "regardless of the social and material condition, gender, race, nationality, political and religious convictions. " Disability is not mentioned in this provision. The Education Law includes a chapter on special education that specifies measures for the education of people with disabilities "in accordance with their needs". Special educational programs are differentiated from mass education in line with pupils' needs and disability. Moreover, the Special Protection Act specifies targeted measures to give equal opportunities to children with disabilities to participate in social life, including education. The law guarantees free and equal access to any ordinary educational institution in accordance with the child's abilities and authorizes education at home for those children who can not attend classes. Article 19 of the Education Act further stipulates measures to ensure education for adults with disabilities,

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14 U. Fomari, S. Ferracuti (1995), Special judicial psychiatric hospitals in Italy and the shortcoming of the mental health law, *The Journal of Forensic Psychiatry* 6: 381-392



including the right to home education. Children with intellectual disabilities have more options for education, all of which are state-funded. However, in practice very few options are available and those available are for children with medium intellectual disabilities. The transfer between the special education system and the mass education system is not addressed in the educational legislation, the law does not allow a child to transfer to a gymnasium table from a special primary school. Civil society advocates have called for a reform in the financial education system suggesting that the government should adopt a model that allocates a personal budget to each person with intellectual disabilities. The family would use this budget to buy the right services. In addition to increasing the option for people with disabilities, adapting this form of individual funding could help reduce the number of disabled children attending special schools due to the existing material benefits. Access to education varies considerably from region to region. Although, according to the law, people with intellectual disabilities have the right to individual rehabilitation and social integration programs, people with severe and severe intellectual disabilities in many rural areas do not have access to such programs and may have little or no access to education. In the poorest region of Romania, the basic community services for people with intellectual disabilities are almost non-existent.

The penultimate goal of the work is **to make clear the need for a more concrete definition of disability at national level, which should cover as many deficiencies as possible.** For example, it is important to examine how children with disabilities benefit from education when they are hospitalized or unable to move from home. In particular, the question arises whether those children suffering from long-term illnesses who spend most of their time in the hospital or at home and can not attend schools are protected by the law of national education. Is cancer a Convention-protected disability? In some countries, cancer patients are perceived as persons with disabilities, while in other countries there is no deficiency or illness, but if a person has disregarded his disability rights.

The last objective of the thesis is **to present an ideal educational legislative framework from the point of view of disabled students.** The situation regarding the problematic issues raised by the right to education of disabled people is not topical. These individuals have been confronted with the challenges of social exclusion for a very long time, but what is current and what we are proposing in this paper is to highlight the new perspective of addressing human rights on the attempts of social inclusion of people with disabilities in terms of equal opportunities and access to quality education. Human rights are equal for all, but the extent to which a person with disabilities can benefit from them is not equivalent to others due to limitations imposed by deficiencies. The new approach to disability, from a human rights perspective, considers

individuals with normal deficiencies and focuses “guilt” on society, being the main factor determining the limitation of rights, both at a general level and at the educational level of persons with disabilities. Persons with disabilities become “normal”, it is the system that needs to adapt to the educational, medical, economic needs of these persons. Returning to the right to education of persons with disabilities, international law proposes that the educational system be restructured so that people with disabilities have the same chances of education as “normal” persons. Thus, the Convention on the Rights of Persons with Disabilities supports the idea that every disabled person has the opportunity to learn with others whenever possible.

Although states have no obligation to introduce inclusive education, this right being progressively made according to the resources of each state, it should be emphasized that the right to inclusive education is important because inclusive systems provide better education for all children and contribute to the elimination of discriminatory attitudes. Apart from family, schools are the sources by which the child develops the first relationship with society, allowing his/her development as an outstanding citizen of the state.

A motivation for this doctoral research is the lack of specialized literature in the field of the right to education of persons with disabilities. We note the existence of very few sources that analyze the situation of education of persons with disabilities in Romania.

Many persons with disabilities do not have equal access to care services within education and often do not benefit from services provided by law. Following the entry into force of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), disability is increasingly understood as a human rights issue. The present paper presents human rights disability and seeks to provide much evidence that people with disabilities are more vulnerable to social and economic difficulties than people without disabilities. Despite the extent of the problem, both awareness-raising and scientific information on disability issues are lacking. There is no agreement on internationally defined definitions and information on the legal framework, incidence, distribution and disability trends. There are few documents that provide a compilation and analysis of how countries have developed policies and strategies to meet the needs of people with disabilities. The situation regarding the rights of persons with disabilities has changed since the 1970s, being largely determined by the self-organization of persons with disabilities and by the growing trend to consider disability as a human rights issue. From a historical point of view, persons with disabilities enjoyed rights and protection provided by solutions that isolate them, such as residential institutions and special schools. Currently, new solutions have changed, promoting social and educational inclusion, and solutions to a medical point of view have given rise to more interactive approaches, recognizing that people are both disadvantaged by environmental factors and by their bodies. National and international initiatives - such as the

United Nations Standard Rules on Equal Opportunities for Persons with Disabilities - incorporated human rights for persons with disabilities, culminating in 2006 by the adoption of the United Nations Convention on the Rights of Persons with Disabilities.

The last objective of the thesis namely highlighting an ideal education for people with disabilities has been exemplified by the second chapter of “the right to inclusive education of persons with disabilities”, and the chapter represented by “positive obligations of the State” by highlighting the ideas underlying inclusive education, as well as by the principles guiding the States (acceptability, adaptability, accessibility and availability) forming together an educational system ideal for children with disabilities, a system that exemplifies the fact that all children, including those with special educational needs have the right to a quality education; individual needs of the child must be considered supreme when decisions are made in terms of disposal of special education for the child; parents of children with special educational needs are entitled and should be able to be active part in decision making process; continuity of services should be ensured for children with special educational needs, up from permanent education in normal classes with additional support as long as it takes, to permanent education in special school; Except where individual circumstances make this impracticable, appropriate education for all children with special educational needs should be ensured in normal schools; only in exceptional circumstances should it be necessary that a child should live away from home in order to receive the necessary education; the State should provide adequate resources to ensure that all children with special educational needs can have an education appropriate to their needs.

The paper “Right to education of children with disabilities” aims at providing information to facilitate the implementation of the CRPD, in accordance with Article 24, to present gaps in national legislation in the field, to formulate solutions that promote their social and educational participation. The present paper provides a general orientation on disability, introducing key concepts - such as addressing the rights of persons with disabilities, the intersection of disability and development and the International Classification of Functioning, Disability and Health (ICF) - and exploring legislative barriers that disadvantage persons with disabilities.<sup>15</sup>

Disability is a human rights issue because people with disabilities face inequality - denying equal access to medical care, employment, education or political participation. They are subject to violations of dignity - violence, abuse, misconception. A series of international documents have highlighted the fact that disability is a human rights issue, including the World Disability Action Program concerning Disabled Persons (1982), the Convention on the Rights of the Child (1989) and the Standard Rules on Equal Opportunities for Disabled

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<sup>15</sup> World Health Organization, (2007), International classification of functioning, disability and health: children & youth version: ICF-CY.

Persons (1993). More than 40 nations adopted legislation on discrimination against persons with disabilities in the 1990s. CRPD - the most recent and most extensive recognition of human rights for persons with disabilities - highlights the civil, cultural, political, social and economic rights of persons with disabilities. Its purpose is “to promote, protect and ensure a full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity”. CRPD applies human rights related to disability, thus making the general human rights specific to persons with disabilities and clarifying the existing international legislation on deficient individuals. Even if a State does not ratify the CRPD, it helps to interpret other human rights conventions to which the State is a part.<sup>16</sup>

The right to education is internationally recognized as a fundamental human right and indispensable for the exercise of other rights. At the international as well as national level, there are a number of instruments that protect the right to education, including those with disabilities. It is known that over time, but at present too, persons with disabilities faced many challenges in exercising their right to education. Problems that arise in exercising the right relate to reduced access to mass education, specific provisions that support the right to education, but with limited national coverage, discrimination, etc.<sup>17</sup>

The right to education has been widely recognized, including other international treaties such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the UNESCO Convention on Discrimination in Education, as well as other treaties that protect in addition to persons with disabilities other specific groups (women and girls, immigrants, refugees, indigenous people, etc.) and contexts (education during armed conflicts). The right to education has been guaranteed since 1948, along with Article 26 of the Universal Declaration of Human Rights, which states that “Everyone has the right to education”. Therefore, the right to education has been incorporated into various regional treaties and has been enshrined as a right in the vast majority of national constitutions. In the case of persons with disabilities, ensuring the right to education is almost indispensable, especially in terms of their social and economic development, and is also a key element for their integration into society and sustainable personal development. It is a powerful tool in developing potential and promoting individual and collective welfare. The right to education is subdivided into rights and freedoms, such as the right to a compulsory and free primary education, the right to available and accessible secondary education (including education and technical and vocational training), progressively free, the right to equal access in the progressively freely graduated higher education, the right to receive education

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<sup>16</sup> World Health Organization (2011), World report on disability, WHO Library, Malta

<sup>17</sup> UNESCO, (2015), The Right to Education for Persons with Disabilities, Monitoring of the Implementation of the Convention and Recommendation against Discrimination in Education (8th Consultation), Published by the United Nations Educational, Scientific and Cultural Organization, Paris.

even if individuals have not completed primary education, the right to quality education, both in public schools and in private schools. As part of the right to education, parents have freedom to choose schools for their children who are in accordance with their religious and moral beliefs, the freedom of individuals and organizations to establish direct education with other institutions in accordance with minimum standards set by State and not ultimately the academic freedom of students and teachers.<sup>18</sup>

Disability is perceived very differently in different social contexts and cultures. Article 1 of the Convention on the Rights of Persons with Disabilities describes persons with disabilities as “*those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with different barriers, may prevent their full and effective participation in social life on an equal footing with others*”. This approach is in line with the World Health Organization and the International Classification of Functioning, Disability and Health. The second conceptualizes the functioning of the individual as a dynamic interaction between his health conditions, environmental factors, and personal factors. Both approaches, both the Convention and the ICF, allow a broad approach to disability that recognizes the importance of the context and the environment in activating or limiting individuals to participate effectively in society. The Committee on the Rights of the Child has identified four rights that must be understood as general principles underpinning the realization of all other rights: non-discrimination, the best interests of the child, the optimal development of the child and the right of the child to be heard and taken seriously, in compliance with his/her age and maturity. These principles must be consistent with actions to promote the right of children with disabilities to education. In addition, it is necessary to take into account all other relevant rights. For example, many children with disabilities will continue to face barriers to their right to education if action is not taken on accessibility to early education, to prevent misconception, discrimination, but also to protect against aggression and violence, and for the development of an adequate support service for families.<sup>19</sup>

In Romania, the rights and interests of children with disabilities are protected by a framework of legal provisions, especially in the field of social protection, assistance, education and medical care. The legal principles specific to children and persons with disabilities are included in a series of legislative acts, such as the Romanian Constitution, which guarantees the rights of children and young people and establishes the obligation to provide assistance to children with disabilities. The Romanian legislation deals with the issue of children with disabilities, taking into account both the age and the extent to which they are

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<sup>18</sup> <http://www.right-to-education.org/page/understanding-education-right>

<sup>19</sup> UNICEF, (2012), *The Right of Children with Disabilities to Education: A Rights-Based Approach to Inclusive Education*. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS), Geneva

discriminated against. In addition to the general law on the legal status of children, there are a number of legal instruments providing for special protection rules for children with disabilities, such as those governing healthcare, social assistance or education. More recently, through changes to existing legislation, the situation of children with disabilities focused on a new regulatory perspective that focuses on the inclusion process. As regards international obligations, Romania has adopted the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, and has adopted many national legal principles and legal provisions specific to the two conventions on children with disabilities. Therefore, in a general assessment, it can be appreciated that international principles on children with disabilities have been transposed into the national legal framework. The specialized literature dealing with the disability issues in Romania is very limited. However, there are some reports by non-governmental organizations on the legal status of children and their protection. The conclusions of these reports highlight the fact that students with different types of disabilities are mixed in the same class and follow the same programs, disregarding their degree of disability. The number of schools dedicated to children with disabilities is very low and the situation of integration of children with disabilities in mass schools is not covered by an adequate legal framework.<sup>20</sup>

CRPD calls for effective individualized support measures to be made available to enhance academic and social development in line with the objective of inclusion. According to the International Disability Alliance (IDA), individualized support involves providing a learning environment that requires Braille configuration or sign language and employment of teachers who are instructed in sign language for deaf and dumb children. For hearing impaired children, it is very important that individualized support measures focus on provision of support devices, listening devices, and captioning, so that students with disabilities can fully participate in education.<sup>21</sup>

Support measures are general measures that must gradually achieve the principles of education inclusion. They are not intended to provide for some adjustments but are used to adapt the general education system to include all children. Although they are of a general nature, they must be tailored to the child's special needs. General measures include the provision of personal assistance, including medical assistance, as well as necessary equipment and material, including Braille and Sign Language, as referred to in Article 24 (3) of the CRPD. According to the Special Report on the right to education, both internal and external factors need to be addressed to create inclusive education

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<sup>20</sup> D. Deteseanu, (2013), Country report on Romania for the study on Member States Policies for children with disabilities, Directorate general for Internal policies policy department C: Citizens' Rights and Constitutional Affairs Civil Liberties Justice and home affairs, European Union, Brussels.

<sup>21</sup> A.G. Mower, (2007), The Convention on the Rights of the Child: International Law Support for Children

systems. Support measures consist of the design of halls and classrooms, offices, entrances, construction ramps, installation of elevators, modification or reconsideration of certain geographical locations, adaptation of admission norms and standards, provision of additional classes, alternative/additional forms of communication, special tutors or support staff, and nutritional foods.<sup>22</sup>

The principle of non-discrimination is reflected in Article 2 of the CRC, which expressly prohibits discrimination on grounds of disability, so States Parties must respect and guarantee to all children the rights established in the presence of the Convention without discrimination of any kind, regardless of child, disability or any other status. This principle is motivated by the recognition that segregation or separate institutions of education, healthcare, recreation and all other aspects of human life related to disability can create and strengthen exclusion. Segregation often influences society's perception of a child with disabilities as a "problem" in this respect, and maintains the mechanisms of discrimination. Certain children require additional forms or different forms of support to enjoy their rights. For example, a visually impaired child has the same right to education as all children, but in order to enjoy this right, it must be ensured by the institution because the child may need material resources that require increased printing, Braille books, or other forms of assistance. In addition to the CRC, a number of other important human rights instruments reinforce the rights of persons with disabilities. Recognition of the principle of non-discrimination as a fundamental part of all international instruments in the field of human rights thus guarantees their relevance to people with disabilities. Disability issues have also been addressed in the context of other human rights institutions of the United Nations, for example in 2006 in a report by the Special Rapporteur on the right to education, addressing the right to inclusive education<sup>23</sup>.

The right to education is equally the most important right for children with disabilities and the most frequently denied right. The degree of violation or neglect of this right is aggravated by a number of factors.

First of all, children with severe disabilities can be considered uneducable and, for this reason, they are denied any form of specialized education.

Secondly, because of poverty, only 2 percent of children with disabilities in developing countries have access to an education system.

Thirdly, a large proportion of children with disabilities involved in the education system do not really enjoy the benefits of education, because it does not meet their needs, so it does not reach the goal for which it was conceived.

Fourthly, tackling the problems of children with disabilities and their way of solving are often such as to favour their segregation and marginalization in

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<sup>22</sup> Lakech Hailemariam, (2006)'A Study on Gender and Disability: The Ethiopian Experience on Ensuring the Rights to Education for Women and Girls with Disabilities'

<sup>23</sup> UNICEF, (2007) Promoting the right of children with disabilities, The United Nations Children's Fund (UNICEF), Innocenti Digest No. 13,

the mass education system, the reason being so-called “special education”. Students in “special schools” do not enjoy the same range of school and leisure activities as students in the mass schools. They do not entirely respond to the individual needs of students and do not have a dedicated goal, as it should and could be. No article in the international treaties, apart from Article 24 of the CRPD, makes explicit reference to the inclusive education of children with disabilities, although Commentary from the General Committee no. 1 on educational objectives helped to identify the relevance and meaning of inclusive education for children with disabilities. In particular, emphasis is placed on the relationship between Article 29 and other provisions of the Convention, in particular Article 23 on the rights of children with disabilities and the general principles set out in Articles 2, 3, 6 and 12, as mentioned above.

It is recognized that discrimination in education can undermine or even destroy the child’s ability to benefit from educational opportunities, and it is clear that discriminatory practices directly contradict the requirement of Article 29 (1) (a) that education is oriented to the development of the child’s personality, mental and physical talents and abilities to their maximum potential. Commentary General No. 1 also makes clear reference to respect for the child’s right to education as a prerequisite for ensuring respect for all children’s rights under the Convention as a whole. Thus, an education system that is discriminatory and restricts access in physical terms or by virtue of the content of the learned curriculum fails to take into account the child’s best interest in disciplinary or other matters or fails to facilitate the child’s participation itself contrary to the Convention, to the extent that it does not reflect the values that education is trying to pass on to the child. The values of non-discrimination and equal treatment, respect for human rights, the development of respect for cultural and national values and the preparation of the child for a responsible life in a free society are equally important for children with disabilities as well as for their disabled colleagues, if not so much<sup>24</sup>.

The legal definitions of disability were a matter of debate both in Europe and around the world. Despite the efforts of the World Health Organization, there is no universal legal definition of disability. A recent study on definitions of disability in different EU countries has shown that definitions vary from country to country. Although the second element of Article 1 of the CRPD “announces” the definition of “disability”, part of the literature is of the opinion that there is no definition, but rather a guide that contains defining elements for the people who are covered and protected by the Convention. Article 1 should therefore be read in accordance with the paragraph of the Convention, which states that disability is an evolving concept, meaning that a clear definition of disability is not possible as long as the content of the definition can change. Provisions of art.1 of the Convention borrows elements of the social model. The

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<sup>24</sup> UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1, available at: <http://www.refworld.org/docid/4538834d2.html> [accessed 8 May 2017]



focus of the definition is reflected on the barriers and obstacles that restrict their full participation in society. There is no doubt that this definition will cause more States to revise their definition of disability and persons with disabilities.<sup>25</sup>

With regard to the right to education of persons with disabilities, the Convention drawn up in order for these persons to benefit fully from their rights, makes better use of the concept of education, taking into account the fact that the beneficiaries of this convention are persons belonging to a disadvantaged group. The difference is referred to as the “inclusive education system” but also to “continuous training”, taking into account the fact that a person with disabilities needs lifelong learning. In the Convention on the Rights of Persons with Disabilities, there is a very important aspect of this, namely that it is insisted on the idea that all people have an obligation to respect “human diversity”, more specifically, it is a mutual respect for both people with disabilities as well as people deemed normal but also other minorities or disadvantaged groups.

Cultivation of tolerance and friendship is not only for “normal” people but for everyone, people with disabilities not benefiting from the physical or psychological problems that they bear, they have to actively participate in the evolution of society because they also benefit from this equally as everyone else<sup>26</sup>.

One aspect to be highlighted is that the term “education” does not have the same meaning as “learning”. The Constitution of Romania speaks about the right to learning, not to education, this can be one of the problems related to the applicability of the right to education in our country. The right to education, as exemplified above, promotes moral values, while the concept of “learning” refers to the process of accumulation of new intellectual knowledge. Renucci (2009) highlights in the “European Law of Human Rights Treaty” the idea that “education must be understood as the sum of the processes that try to inspire the younger persons values, and the education and instruction refers in particular to the transmission of knowledge and intellectual training”<sup>27</sup>. It is preferable to make a concrete delimitation between the two terms, because the applicability of the Romanian National Education Law is more precise. Thus, art.1 of the Law on National Education speaks about the “right to education”. At the same time, the National Education Law promotes the same educational ideals as mentioned in the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, the International Covenant, etc., by the stipulations of Art. 2 (3).

While the concept of “education” refers to the accumulation of values, the development of personality, and the active participation in society, the meaning

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<sup>25</sup> S. Quinlivan, (2012), *The United Nations Convention on the Rights of Persons with Disabilities: an introduction*, ERA Forum

<sup>26</sup> Idem 39, pag 4

<sup>27</sup> J.F. Renucci, (2009). *The European Law and Human Rights Agreement*, Bucharest: Hamangiu

of the concept has much stronger valences when it appears in the phrase “the right to education”.

The term “right to education” is defined by the stipulations of Article 26 of the Universal Declaration of Human Rights (1948). In the elaboration of par.(1) of this article, the members of the Committee have tried to avoid certain aspects such as the exclusion of the situation in which the persons in power can stop parents in choosing education for their own children. Another problematic term was the “mandatory” concept of the statement “elementary education must be mandatory”. A possible interpretation of the term “mandatory” refers to the fact that no one, not even the state or the family, can deprive the child of the elementary education. The argument for keeping the word “mandatory” in context was that “free and compulsory education” has become a traditional model in all countries, and omitting this term will be nothing more than a step back. The idea of the mandatory term does not refer to the fact that the state can exercise the entire monopoly on child education, nor to the fact that parents will no longer be able to choose the school they want their future children to follow<sup>28</sup>.

If we try to define a broader right to education, on the basis of the provisions of articles of the Convention on Human Rights, the Universal Declaration of Human and the World Declaration on Education, it is obvious that in fact anyone can benefit from free education in elementary school, and through education, it means both the acquisition of learning support tools and the development of learning abilities that underpin personal evolution throughout life. Moreover, education has to build people who have a certain set of moral values so as to contribute to the progress of society and to maintain peace. It can be noticed that the term “learning” is included in the concept of “education”, so the right to education, as mentioned in the Romanian Constitution, is a part of the right to education. The provisions of article 1 of the Law on National Education reinforces the idea that in Romania the emphasis is more on the right to education, as it refers to the fact that the state “ensures the fundamental right to life-long learning”. The provisions of art.2 and 3 of the same law are similar to the stipulations of the articles of the international legislative sources on the right to education, but none of the articles of the Romanian legislation makes any specific reference to it.

From the previous discussion, basic learning needs are identified that needs that include both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) as well as basic learning content (such as knowledge, skills, values and attitudes) required by individuals to be able to survive, develop their abilities, live and work in dignity, fully participate in social life, improve the quality of their lives, make informed decisions, and continue learning. The scope of basic learning needs and how they should be

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28 J. Tooley, (2004). Right to Education, institute of economic affairs, economics affairs, volume 24(3) September 1, Oxford

met varies with each country and culture, and inevitably it changes with the passage of time. Meeting these needs empowers people in any society and gives them the responsibility to respect and build their cultural, linguistic and spiritual heritage, to promote the education of others, to promote the cause of social justice, to achieve environmental protection, and tolerance towards social, political and religious systems, ensuring that the agreed humanist values and human rights are respected, and work for international peace and solidarity in an interdependent world. Basic education facilitates the ability to meet other basic needs - adequate nutrition, shelter and clothing, as well as access to clean health and clean water services.<sup>29</sup>

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<sup>29</sup> C. Hill, Roy A. (1988). *The Information Base for the Planning of the Diversified Educational Field*. Paris: International Institute for Educational Planning.