

# **THE RELATIONSHIP BETWEEN SOCIAL RIGHTS AND THE RIGHT TO EDUCATION IN THE MIRROR OF HUMAN RIGHTS**

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## ***1. Millennial Development Goals, Action Program***

The UNESCO<sup>1</sup> held a conference in Bonn, Germany between 31<sup>st</sup> March and 2<sup>nd</sup> April, 2009 entitled “Education for Sustainable Development”, the participants of which issued a joint statement by the name of the “Bonn Declaration – 2009”. This declaration establishes that in spite of the unparalleled economic growth seen by the 20<sup>th</sup> century too many people are affected by persistent poverty and inequality. The financial and economic world crisis has shown the risks of the unsustainable models of economic development and that of practices based on short-term gains. A decade into the 21<sup>st</sup> century, the world now has to face substantial, complex and interlinked challenges and problems concerning development and ways of living.<sup>2</sup>

Back in 2004, it was also the city of Bonn that housed the meeting entitled “Learning for Work, Citizenship and Sustainability”, the participants of which declared their consensus that education is the key to effective development strategies, technical and vocational education and training must be the master key that can alleviate poverty, promote peace, conserve the environment, improve the quality of life for all and help achieve sustainable development.<sup>3</sup>

The call for the decade on “Education for Sustainable Development” correlate with those four global scale initiations all of which consider culture and within it education the key element to development, to the enhancement of life quality and to the diminishment of poverty.

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<sup>1</sup> UNESCO: United Nations Educational, Scientific and Cultural Organization

<sup>2</sup> See Bonn Declaration – 2009 No. 1 and 2.

(Source: [http://www.unesco.hu/index.php?id=452&type=node&print\\_view=true](http://www.unesco.hu/index.php?id=452&type=node&print_view=true))

<sup>3</sup> See the Preamble to the Bonn Declaration 2009. ([http://www.unesco.hu/index.php?type=node&id=127&print\\_view=true](http://www.unesco.hu/index.php?type=node&id=127&print_view=true))

The UNESCO organized the Bonn Conference in 2004 entitled “Education for Sustainable Development” at the very beginning of the UNO decade in order to take stock of the development achieved during the period that had passed since the 2<sup>nd</sup> International Congress on Technical and Vocational Education held in April, 1999 (See preamble to the “Bonn Declaration”).

The four global scale initiations that have been approved since 2000 are the following:

1. The Millennium Development Goals<sup>4</sup>
2. Education for All<sup>5</sup>
3. United Nations Literacy Decade<sup>6</sup>
4. United Nations Decade for Sustainable Development<sup>7</sup>

Beyond having common aims, these four initiations differ from each other considering the following points of view: The “Millennium Development Goals” is a collection of such measurable elements in which education is not only a condition but also an indicator. The Education for All program focuses on making high standard primary education accessible to everyone. The central goal of the Literacy Decade is the development of writing and reading skills since these constitute the base for all kinds of learning. The initiative concerning the decade of learning for sustainability concentrates on the development of such basic values and attitudes that are essential for learning processes.<sup>8</sup>

Approaching the second millennium, globalization became a concept mentioned on an everyday basis; many people tried in various ways to approach its essence and its characteristic features. By all accounts, we can say that not a single country can avoid the globalization processes that started at the end of the 20<sup>th</sup> century.

The basis of these globalization processes is not only constituted by the concentration of capital extending beyond country borders but also by the high-level vocational knowledge and the capacity of renovation feeding on this knowledge, which is necessary for the effective participation in international economic processes as well as for the constant adaptation to the ever-changing economic challenges.

According to the information given by the World Bank in 1998, one person in every five is poor, i.e. their income does not even amount to the poverty line.<sup>9</sup> Between the years 1970 and 1990, unemployment quadrupled.<sup>10</sup> What is especially worrying, however, is the increase in the number of working children.<sup>11</sup>

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<sup>4</sup> The Millennium Development Goals (MDGs), deadline for fulfillment: 2015.

<sup>5</sup> Education for All (EFA), deadline for fulfillment: 2015.

<sup>6</sup> United Nations Literacy Decade (UNLD), time limit for fulfillment: 2003–2012.

<sup>7</sup> United Nations Decade for Sustainable Development (DESD), time limit for fulfillment: 2005–2014.

<sup>8</sup> See the study entitled „Relationships between global educational initiatives” [in Hungarian Oktatáskutató és Fejlesztő Intézet (Institution for Educational Research and Development)], <http://www.oki.hu/printerFriendly.php?tipus=cikk&kod=fenntart-kapcsolatok>.

<sup>9</sup> Thomas Pogge, 2002, 154.

<sup>10</sup> Genschel, Philipp, 2004, 624.

<sup>11</sup> Arat, Zehra F. Kabasakal, 2005, 142.

How do poverty, unemployment and child labor interrelate with the assertion of the right to education and to learning?

If we wish to answer this question, it is worthwhile, before everything else, to review the character of these rights in the mirror of international legislation.

## **2. The Nature of Human Rights**

The classification of human rights is a widely applied method in legal science.<sup>12</sup> The most general method of classification is based upon the timely order, i.e. upon the historical progress these rights were recognized; this grouping is called classification according to generation.<sup>13</sup>

Civil and political rights (rights to life, to human dignity, to personal liberty, to the freedom of thought, conscience and religion and to the freedom of opinion and expression as well as the right to freedom of peaceful assembly and association) are usually classified as the first generation of human rights. Due to the influence of the industrial revolution, however, at the end of the 18<sup>th</sup> and at the beginning of the 19<sup>th</sup> century economic and social relationships underwent significant changes in the industrialized regions of the world. The cities saw a massive immigration from private village homesteads that had been based upon the division of labor within the family. The self-sustaining and self-catering big family's way of life was replaced by the industrial wage-earner's life subjected to the changes of relations within the labor market. The ever-growing economic insecurity drew the attention to rights ensuring social security. Social rights along with economic and cultural rights constitute the second generation of human rights. (The third generation of human rights is constituted by those rights of collective nature that belong to the community of people. Due to this nature, their materialization may have to involve the joint action of several states. Such rights, stemming from the recognition of the importance of common values of humanity, include the rights to healthy environment and to peace and the political, economical, social and cultural autonomy of peoples can also be listed here as well as the rights to economic and social development and the right to share the common heritage of humanity.)

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<sup>12</sup> Gábor Halmai-Gábor Attila Tóth, 2008, 81-90.

<sup>13</sup> Note: From among the points of view stated in the Hungarian literature on the matter, Gábor Halmai and Gábor Attila Tóth consider the "history of forming" of human rights to be the basis of the method in which classification is done according to generations. [see Gábor Halmai-Gábor Attila Tóth, 2008, 81-90.]. In my view, it is more sensible to talk about the order of the exertion of human rights since the existence of these does not depend on whether the current government recognizes them or not. Nevertheless, the recognition by the state does have an influence on the assertion of these rights. The diverse judgment of the nature of human rights, otherwise, mainly depends on whether we approach the question from the point of view of natural law or from that of a law positivist.

The assertion of civil and political rights, due to their very nature, usually requires a reserved attitude on behalf of the state; thus in the case of these rights, following the principle of “let them do it” i.e. the policy of non-intervention can lead to the desired goal.<sup>14</sup> However, for the assertion of the rights of the second generation, i.e. those referring to economic, social and cultural aspects, a passive attitude is generally not enough; these require an active attitude on behalf of the state.<sup>15</sup> (As far as the third generation of rights is concerned, joint actions at international level are necessary to be taken for their assertion.)

When we talk about the rights to life, to personal liberty or freedom of opinion and expression or the “mother law” of the latter one, i.e. the rights to the freedom of thought and to the freedom of conscience, the majority of people nowadays think that every person is entitled to these without any conditions. However, less people take the fact into consideration that the assertion of our human rights classified as civil and political rights depends on the status of those classified in the other two generations. Thus, for instance, the person who is short of their life’s prime want will also suffer in terms of their human dignity and even their existence i.e. their life can become endangered; notwithstanding that the human right character of right to life and to human dignity is not disputed by anybody – moreover, those who apply the method of classification by generation put these rights with one voice in the class of the first generation of human rights.<sup>16</sup> In point of fact, behind each method of classification there is a utilitarian point of view hidden that aspires to influence the distribution of public funds by the state. In function of this, the judgment of social rights of a positive nature i.e. which require an active attitude from the state also depends on this point of view.<sup>17</sup> Therefore, the real question lies in

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<sup>14</sup> Weston, 1984, 265.

<sup>15</sup> Mónika Weller in her study entitled *Gazdasági és szociális jogok Európában* [Economic and Social Rights in Europe] points out that by now, on the basis of the attitude of international organization of human rights, it has become clear that states do have positive responsibilities in the field of ensuring civil and political rights while at the same time a number of economic, social and cultural right can be asserted without the intervention of the state. Thus in certain cases the assertion of civil and political rights can be rather expensive (like, for instance, running a court organization, the cost of holding elections, etc.), while the practice of economic, social and cultural rights (for example, trade union holidays) that do not require intervention is certainly cheaper (Mónika Weller, 1996).

<sup>16</sup> MacMillan, C. Michael, 1986, 284.

<sup>17</sup> The correlation in question i.e. that human rights are inseparable and that they correlate with each other and, moreover, the practice of rights belonging to a generation is unthinkable without the practice of rights belonging to the other generation can be concluded from the preambles of the International Covenant on Civil and Political Rights (adopted by the United Nations General Assembly on December 16, 1966) and that of the International Covenant on Economic, Social and Cultural Rights. (Hungary promulgated these two covenants by the statutory rules 1976/8 and 1976/9, respectively.)

On the debate concerning the recognition of social rights as a human right, see some Hungarian authors’ works e.g. András Sajó: *Szociális jog és kölcsönös öngyilkossági*

how successful we are in enforcing these rights. From this point of view, stating that the economic load-bearing capacity of a certain state is the basic condition for the assertion of social rights can impede the realization of these rights; nevertheless, this circumstance does not constitute the necessary base for the dispute on the existence and human rights characteristic of these rights.

### **3. System of the Defense of Social Rights**

#### **3.1. Universal Covenants**

The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 consists not only of first but also of second generation human rights. The International Covenant on Economic, Social and Cultural Rights<sup>18</sup> adopted in 1966 meant another step of great importance in the interest of the international defense of social rights. Beyond these, the 187 conventions and 198 recommendations published by the International Labor Organization<sup>19</sup> from 1919 up until today also contain decrees in service of the defense of social rights.

Beyond the rules in service to the special defense of women and children, The Convention on the Elimination of All Forms of Discrimination against Women<sup>20</sup> adopted in New York 18<sup>th</sup> December 1979 and the United Nations Convention on the Rights of the Child<sup>21</sup> adopted also in New York both contain decrees concerning social issues.

#### **3.2. Regional Covenants**

The population of the world lives in diverse regions of the continents, and within these regions many differences can be seen as far as economic opportunities and cultural traditions are concerned. That is also why the United Nations Organization also urged the draw-up of legal documents in service to the defense of human rights at regional levels.<sup>22</sup>

As far as the European region is concerned, the covenant on the defense of human rights and fundamental freedoms adopted by the Council of Europe

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ígéret [Social Right and Mutual Promise to Commit Suicide], *Világosság*, 36. évf. 1995/10., 5-12., András Mink: Erre a hipotézisre nincs szükségem – Sajó András jogászprofesszorral Mink András beszélget [This hypothesis I do not need – András Mink talks with Professor of Law András Sajó], *Fundamentum*, 1998/3. szám, 45-52., György Geréby– András Grád: Az emberi jogi hipotézis szükségessége – válasz Sajó Andrásnak [The Imperativeness of Human Rights Hypothesis – an Answer to András Sajó], *Fundamentum*, 1999/1., 63–68., Gábor Kardos: A nemzetközi emberi jog diszkrét bája [The Discreet Charm of International Human Rights], *Fundamentum*, 1998/4., 5–9., Albert Takács: A szociális jogok [Social Rights] in: *Emberi jogok [Human Rights]* (Eds.: Gábor Halmai és Gábor Attila Tóth), Osiris Kiadó, Budapest, 2008, 791–853.

<sup>18</sup> In Hungary, it was promulgated by the statutory rule 1976/9.

<sup>19</sup> ILO

<sup>20</sup> In Hungary, it was promulgated by the statutory rule 1982/10.

<sup>21</sup> In Hungary, it was promulgated by the law 1991/ LXIV.

<sup>22</sup> Weston, Burns H. – Lukes, Robin Ann – Hnatt, Kelly M., 1987, 589–590.

in 1950<sup>23</sup> and the European Social Charter adopted in 1961 (and revised in 1996 under the title Revised European Social Charter) were drawn up.<sup>24</sup>

Originally, the European covenant on the defense of human rights and of fundamental freedoms did not contain any decrees concerning rights of social or cultural character; however, the amendment minutes (Protocol No.1) brought some changes to this situation. Nevertheless, the principle that human rights classified among civil and political rights are regulated in the covenant on human rights and fundamental freedoms, while social rights are stipulated in the European Social Charter still prevails. By having framed the European Social Charter, the Council of Europe strove to list all social rights as if in a catalogue. By doing so, they have taken a big step in the field of making social rights well-known and this action also greatly helped their recognition.<sup>25</sup>

The original text of the American Convention on Human Rights adopted in 1969 contained human rights of only civil and political nature; however, in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, more commonly known as the Protocol of San Salvador, which was adopted in 1988 and came into effect in 1999, social rights and thus also the right to education were included as well.<sup>26</sup>

The African Charter on Human and People's Rights was adopted in 1981 and came into force in 1986.<sup>27</sup> This charter includes rights from all three generations and even though the catalogue of social rights is far from complete, the right to education is listed among them.

#### **4. Social Rights and the Concept of Right to Education, Points of Connection, the Significance of the Right to Education**

According to what has been shown, the classification of human rights can only have the role to facilitate interpretation and it should never mean an order of significance. Moreover, certain human rights can be put into several groups, which fact at the same time justifies the correlation and indivisible unity of human rights.

If we are interested in the circle of rights that belongs to the concept of social rights we will soon find that the right to education and the right to learning can be put among both social and cultural rights. This is due to the points of connection listed below.

Generally, it is those rights that are listed among social rights through which some negative effects emerging from economic inequality can be diminished. So the individual is entitled to these rights in case they cannot

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<sup>23</sup> The more well-known name of this document is the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>24</sup> In Hungary, the European Social Charter of 1961 was promulgated by the law 1999/C, while the Revised European Social Charter was promulgated by the law 2009/VI.

<sup>25</sup> Katrougalos, George, 1995–1996, 301.

<sup>26</sup> Cavallarol, James L.–Schaffer, Emily J., 2004–2005, 223.

<sup>27</sup> Odinkalu, Chidi Anselm, 1998, 362.

provide conditions of life indispensable to human dignity due to no fault of their own.

The reasons due to no fault of one's own can stem from several different factors like those relating to age (childhood, old age) to conditions of health (illness, decay of health due to accident, disability). It can also occur when the individual loses their job (unemployment). However, it can also be triggered by a situation which is of great significance to the society considering survival; in this case, the individual stands in need for the defense of society (undertaking extra burdens related to founding a family or child-rearing).<sup>28</sup>

When we examine the nature of cultural rights we can find that, in a more extended sense, all rights relating to the freedom of thought can be listed here, i.e. all forms of stating one's opinion while, in a narrower sense, it means only the free practice of science and art, the defense of spiritual values that have been formed throughout history and the right to the possibility of sharing in the results of all these values.

Certainly, cultural rights do not belong only to individuals who have become needy due to no fault of their own but they belong to all people, including those persons who are in a socially agreeable situation; moreover, they also belong to those who live within exceptionally good circumstances. All the same, the right to education<sup>29</sup> containing the right to learning offers the

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<sup>28</sup> Cf. András Sajó „Social Rights: A Wide Agenda”, *European Constitutional Law Review*, I, 2005, 38.

<sup>29</sup> The right to education and to learning is considered to be a part of the right to culture in Hungary. János Szüdi, however, defines the right to culture as follows: this right, in the most general sense, includes the right of the individual to get to know the information they need, to get access to the knowledge necessary for them to succeed in life, to prepare to start a life and, if necessary, to be able to change their career. Moreover, it also includes the responsibility of the state to establish the organizational, legal and economic conditions of the assertion of the right and obligation to learning, independent from the person's conscience, thought and affiliation to religion. It is also the state's responsibility to diminish the differences emerging from disadvantaged conditions via education [see János Szüdi, 2006, 15.]. János Szüdi defines the objective of education as the transmission and acquirement of information. As far as the right to learning is concerned, he underlines the responsibility of the state to establish the organizational, legal and economic conditions to the right to education; at the same time, however, he also draws attention to the responsibility of the individual to take an active part in the learning process (ibid. 14.).

In the Hungarian Constitution, the right to education appears as an element of the right to culture. The decrees referring to these are the following ones:

„70/F. § (1) The Republic of Hungary asserts the right to culture to every Hungarian citizen.

(2) The Republic of Hungary supports the realization this right by extending public affairs and education and making them become general, by offering free and compulsory primary school education, by offering secondary and higher education accessible to all depending on the strength of their abilities as well as offering financial subsidy to those receiving education.

70/G. § (1) The Republic of Hungary respects and supports the freedom of academic life and that of the arts, the freedom of learning and the freedom of education.

individual the opportunity to gain the knowledge and to develop those capacities that make it possible for them to undertake a job necessary for self-catering and for caring for others as well as their continuous and successful participation<sup>30</sup> in the labor market.

The practice of the right to learning can be realized in various ways, for example in an organized form of a school system or in a less formal way of learning beyond the borders of the school system or even by autodidaction. It has been shown, however, that the age when education should be started is of great significance. The form of education within a school system is the most appropriate way to achieve that general knowledge is acquired by everyone at about the same age. Within today's economic and social relations, as far as the circle of general knowledge is concerned the forming of basic competences is of key importance since they provide the foundation for the acquirement of special knowledge at different levels. Thus one of the basic conditions of practicing the right to learning is the possibility of founding institutions dealing with education. The parents' right to choose the character of the ideology along which their child should be educated is also connected to this right. The question of ideology, on the other hand, takes us to the field of assertion of civil and political rights as well as that of thought, conscience and freedom of religion.

Due to the indivisible nature of the connection between the rights listed above, the government should make sure of the assertion of the right to education by considering also the correlations of all these rights. Since the right to education and to learning is a human right belonging to all human beings and at the same time it is a human right which gives the foundation of the practice of other human rights it is indispensable to make it accessible also to those who due to their economic situation are not able to afford it on their own.<sup>31</sup> At this point, we have arrived at the fact that the right to education and to learning for the socially needy at the same time provokes a demand that can be listed among social rights.

Consequently, the right to education does not only serve the development of the individual's personality, i.e. it is not only the interest of the individual but also constitutes an instrument of efficient work and along with it, of bearing down poverty.<sup>32</sup> Hence the one who does not acknowledge the right to education and to learning as a human right deprives man from the essence of their human existence.<sup>33</sup> There is no need to give a particular explanation of the fact that within today's social and economic circumstances, the opportunities of the illiterate individual are strongly limited and in their

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(2) It is exclusively the right of the cultivators of academic knowledge to make a decision concerning the questions of scientific truths and to ascertain the academic value of researches."

<sup>30</sup> Hodgson, Douglas, 1996, 237.

<sup>31</sup> Claude, Richard Pierre, 2005, 37.

<sup>32</sup> Basser, Lee Ann-Jones, Melinda, 2002, 10., 378.

<sup>33</sup> Haddad, Sergio, 2006, 132.



case the possibility of partaking fully in social life is also rather doubtful.<sup>34</sup> So the right to education and to learning considering its character is not only a cultural right but also constitutes a basic condition necessary to practice classical civil and political rights; and being an instrument of preventing social neediness and diminishing its negative effects it also bears the possibility of increasing social security. However, the assertion of the so-called third generation human rights of collective nature is also unthinkable without erudite, cultured people since the conscious preservation of the environment or the demand of striving to solve the conflicts arising between nations peacefully presupposes the acquirement of ideas representing value to humanity. Hence the significance of the right to education and to learning cannot be overemphasized. Thus education as part of the educational process does not only serve the success of the individual but also forms part of social commonwealth.

### **5. International Provisions Concerning the Defense of Social Rights and the Right to Education**

The tight correlation between social rights and the right to education is reflected in those conventions at international level which declare these rights within a single document. I am going to quote some important provisions from international documents at both multinational and regional levels.

#### **5.1. Universal Covenants**

**5.1.1.** Article 22 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 concerning social rights and the right to education and to learning states that “everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”. Article 26 interprets the concept of “education” and states that it should be free, at least in the elementary and fundamental stages. Elementary education is compulsory. Technical and professional education should be made generally available and higher education should be equally accessible to all on the basis of merit. Education should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It should 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. Parents have a prior right to choose the kind of education that shall be given to their children. According to Article 27, everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits and everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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<sup>34</sup> Bekink, Bernard–Bekink, Mildret, 2005, 125.

From the provisions quoted above it is clear that as early as in 1948, The Universal Declaration of Human Rights formulated the compulsory nature of elementary education extended to all countries of the world and due to this compulsory nature the requirement that it should be given to everyone without charging any fee for it was also stipulated.

The International Covenant on Economic, Social and Cultural Rights<sup>35</sup> worked out within the framework of the United Nations Organization and adopted 16<sup>th</sup> December, 1966 stipulates that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law (Article 10 Paragraph 3).

According to Article 13 – the longest one of the Covenant - The States Parties to the Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. The States Parties to the present Covenant recognize that, with a view to achieving the full recognition of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

The States Parties to the Covenant undertook to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or

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<sup>35</sup> In Hungary, it was promulgated by the statutory rule 1976/9.

approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Thus Article 13 of The International Covenant on Economic, Social and Cultural Rights elaborates the principle of “everybody has the right to education and to learning” stated in brief and drawn up in a general way in Article 26 of the Universal Declaration on Human Rights.

The commitment drawn up in Article 14 deserves special attention; according to this article, each State Party to the Covenant which, at the time of becoming a Party, had not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertook, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15 talks in general about the fact that everyone has the right:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**5.1.2.** The Convention on the Rights of the Child<sup>36</sup> adopted in New York 20<sup>th</sup> November, 1989 – the preamble of which recalls that in the Universal Declaration of Human Rights the United Nations has already proclaimed that childhood is entitled to special care and assistance – specifies the rights to education, to learning and to social security from the point of view of the child’s right to special protection.

According to Article 27, the States Parties recognize the right of all children to such a standard of living which promotes their appropriate social, spiritual and moral well-being and physical and mental health. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. States Parties, considering the circumstances and the available instruments should render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and when required, financial aid.

Article 28 states that States Parties recognize the right of the child to education and with a view to recognizing this right progressively and on the basis of equal opportunity, they should in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

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<sup>36</sup> In Hungary, it was promulgated by the law 1991/LXIV.

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

According to Article 29, the education of the child should be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

Article 31 states that States Parties should respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

As far as exploitation of the child is concerned, Article 32 states that States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

To this end, States Parties should take legislative, administrative, social and educational measures to ensure the implementation of these rights, in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**5.1.3.** Furthermore, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) that met in Paris for its eleventh session adopted the Convention Against Discrimination in

Education<sup>37</sup> 14<sup>th</sup> December, 1960. Among other things, this covenant also states that some situations should not be deemed to constitute discrimination like, for instance, the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level. Also, the establishment or maintenance of private educational institutions is also possible, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities (see Article 2).<sup>38</sup>

## **5.2. European Regional Covenants**

**5.2.1.** Article 2 of the first Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Paris 20<sup>th</sup> March, 1952 (attached to the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>39</sup> adopted by the Council of Europe in 1950) contains a provision concerning the right to education, according to which no person should 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 convictions.

**5.2.2.** The preamble to the Revised European Social Charter, which enumerates social rights, recalls the indivisible nature of all human rights,

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<sup>37</sup> In Hungary, it was promulgated by the statutory rule 1964/11.

<sup>38</sup> The full text of the quoted Article 2 of the Covenant is as follows: "The following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this Convention:

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level ;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level."

<sup>39</sup> Better known as European Covenant on Human Rights.

independently from whether they touch on civil, political, economic, social or cultural matters. The Revised Charter took a significant step from the point of view of the right to learning. Having recognized the close relationship between compulsory education and employment of children, the Charter gives detailed provisions to these questions<sup>40</sup>; furthermore, it puts a special emphasis on the facilitation of vocational training,<sup>41</sup> and it also extends education free of charge to the secondary school level.<sup>42</sup>

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<sup>40</sup> Article 7 of the Revised European Social Charter contains the following provisions:

“With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognize the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.”

Note: In Hungary, the Revised European Social Charter was promulgated by the law 2009/VI. According to Paragraph 1 of the law 2009/VI, only Paragraph 1 of Article 7 came into effect in Hungary. [About the characteristics of the European Social Charter, the experiences in connection with the particular election mechanism made possible between certain rights, the committee judgment on country reports (among others, on Hungary's report) and about the antecedents of the ratification of the Revised European Charter in Hungary in 2009, see more details in Andrea Szigeti (Kozmáné): A szociális jogok európai egyezménye és magyarországi végrehajtása (European Covenant on Social Rights and their Implementation in Hungary), Jog Állam Politika, Issue 2009/4., 91-160.]

<sup>41</sup> Article 10 of the Revised European Social Charter contains the following provision:

“With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3. to provide or promote, as necessary:

- a. adequate and readily available training facilities for adult workers;
- b. special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

5. to encourage the full utilization of the facilities provided by appropriate measures such as:

- a. reducing or abolishing any fees or charges;
- b. granting financial assistance in appropriate cases;
- c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
- d. ensuring, through adequate supervision, in consultation with the employers' and workers' organizations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.”

Note: By Paragraph 1 of the law 2009/VI, Article 10 of the Revised European Social Chart came into force in Hungary. See more details in Andrea Szigeti (Kozmáné): A szociális jogok európai egyezménye és magyarországi végrehajtása [European Covenant on Social Rights and their Implementation in Hungary], Jog Állam Politika, Issue 2009/4., 91-160)

<sup>42</sup> The related provisions of Article 17 of the Revised European Social Charter are as follows:

“With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organizations, to take all appropriate and necessary measures designed:

- to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose....;

- to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

Note: By Paragraph 1 of the law 2009/VI, Article 17 of the Revised European Social Chart came into force in Hungary. (See more details in Andrea Szigeti (Kozmáné): A szociális jogok európai egyezménye és magyarországi végrehajtása [European Covenant on Social Rights and their Implementation in Hungary], Jog Állam Politika, Issue 2009/4., 91-160)

### **6. The Responsibilities of the State Concerning Education**

As it has already been mentioned, similarly to social rights, the right to education and to learning cannot be realized without an active and efficient support from the state.

In connection with this, the state is burdened with three types of responsibility:

– The state must respect, protect and fulfill the right to education. Respect applies to the freedom of the right to education and to learning. Within this circle, the state is expected to show an attitude of negative nature like that in the case of civil and political right of freedoms classified in the first generation, i.e. the state must restrain itself from hampering or restricting the enjoyment of this right. Hence the legislative activity embodying the will of the state is appropriate providing that it does not hinder the right of parents, formulated also in international legal documents, by drawing up prohibitive stipulations against getting each child be taught by institutions offering an education which is in keeping with the parents' wishes. Parallel to this, it should not hamper the founding and functioning of educational institutions of an alternative nature as far as ideology is concerned. However, since the assertion of the conditions of education and learning generally exceed the individual's own potentials and self-efforts, it is not enough to respect the right to education and to learning to let somebody practice (or become the subject of) this right. Thus due to its nature of serving the interest of the community, the assertion of the conditions of education and learning constitutes the responsibility of the state, which includes also financial conditions – and not only for state-owned institutions but, on the basis of the principle of equality of citizens before law and the principle of equal share of human rights, also for those that are not run by the state. At this point, the assertion of the right to education also touches upon economic issues. Hence it is of key importance what each state means by the concept of obligatory and free education. This matter was elaborated on by Katarina Tomasevski<sup>43</sup> in her study entitled „The State of the Right to Education Worldwide, Free or Fee: 2006 Global Report”.<sup>44</sup> Tomasevski spent six years compiling the results of this report, from which I quote some characteristic features below.

### **7. The Results of Tomasevski's Examination**

*The State of the Right to Education Worldwide* is the first global report to review the education laws and practice in 170 countries to show how the right to education is realized in each country. The research was done according to two models: one the one hand, it was based on the “Scandinavian” model which considers education to be a public service and thus considers it to be free of charge; on the other hand, it also examined the approach in which the

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<sup>43</sup> Tomasevski, Katarina (1953–2006) was, from 1998 to 2004, the UN Special Rapporteur on the right to education of the UN Commission on Human Rights.

<sup>44</sup> Tomasevski, K., (2006) "The State of the Right to Education Worldwide Free or Fee: 2006 Global Report", Copenhagen ([www.odi.org.uk/rights](http://www.odi.org.uk/rights))



possibility of access to education depends on whether one can undertake the expenses of the same.

The data in Table 1 show the age brackets of compulsory education in those countries where child labor is the most widely spread among children under the age of 14. The first number shows the age when it is compulsory to start school system education; the second number shows the age when education ceases to be compulsory within the given state.

<b>African Countries</b>	<b>African Countries</b>	<b>Latin America and the Caribbean</b>	<b>Asia</b>	<b>Middle East</b>
<ul style="list-style-type: none"> <li>• Angola 6-9</li> <li>• Benin 6-11</li> <li>• Burundi 7-12</li> <li>• Cameroon 6-11</li> <li>• Cape Verde 6-12</li> <li>• Chad 6-11</li> <li>• Congo/Kinshasa 6-13</li> <li>• Equatorial Guinea 7-11</li> <li>• Eritrea 7-13</li> <li>• Ethiopia 7-12</li> <li>• Bissau Guinea 7-12</li> </ul>	<ul style="list-style-type: none"> <li>• Kenya 7-13</li> <li>• Lesotho 6-12</li> <li>• Malawi 6-13</li> <li>• Mozambique 6-12</li> <li>• Niger 7-12</li> <li>• Nigeria 6-11</li> <li>• Rwanda 7-12</li> <li>• Senegal 7-12</li> <li>• Swaziland 6-12</li> <li>• Tanzania 7-13</li> <li>• Zambia 7-13</li> <li>• Zimbabwe 6-12</li> </ul>	<ul style="list-style-type: none"> <li>• Bolivia 6-13</li> <li>• Dominican Rep. 5-13</li> <li>• Haiti 6-11</li> <li>• Honduras 7-12</li> <li>• Jamaica 6-11</li> <li>• Panama 6-11</li> <li>• Suriname 6-11</li> <li>• Trinidad and Tobago 5-11</li> </ul>	<ul style="list-style-type: none"> <li>• Afghanistan 7-12</li> <li>• Burma (Myanmar) 5-9</li> <li>• Bangladesh 6-10</li> <li>• Laos 6-10</li> <li>• Pakistan 5-9</li> <li>• Philippines 6-12</li> </ul>	<ul style="list-style-type: none"> <li>• Egypt 6-13</li> <li>• Iran 6-10</li> <li>• Kuwait 6-13</li> <li>• Saudi-Arabia 6-11</li> <li>• Sudan 6-13</li> </ul> <p style="text-align: center;"><b><u>Eastern Europe and Central Asia:</u></b></p> <ul style="list-style-type: none"> <li>• Albania 6-13</li> </ul>

Table 1<sup>45</sup>

Table 2 shows the state of the proportion of children taking part in education in Scandinavia and in the developed countries of Latin America, compared with the United States.

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<sup>45</sup> Tomasevski, K., 2006, XX.

Denomination	Age brackets 5-14	Age brackets 15-19	Age brackets 20-29
Scandinavian countries:			
• Denmark	99%	82%	31%
• Norway	98%	85%	26%
• Sweden	98%	86%	34%
USA	97%	75%	25%
From among Latin American Countries:			
• Argentina	104%	70%	26%
• Brasilia	91%	71%	23%
• Uruguay	98%	68%	21%

Table 2<sup>46</sup>

It is easy to see that the data of the developed countries differs significantly from that of the underdeveloped ones. According to Tomasevski's study, one of the reasons for this is that in the case of developed countries, compulsory education free of charge was realized about two hundred years ago; another reason is that these countries do not suffer from such economic problems due to which external financial aid was needed, usually coming from multinational organizations – and thus they do not have to submit themselves to austerity measures which affect social conditions in a negative way.

Today, 96% of children living in the OECD countries take part in public education free of charge. In these countries, the difference between competences acquired by children only arises in cases when, in the interest of higher standard education, wealthy parents decide to utilize services offered by institutions of education that charge fees for these services at the expense of the after-tax earnings of the parents or when in the interest of a personal education they make a civil contract with a private tutor or a private institution. The Tomasevski study also sheds light on the fact that higher living standards do not necessarily mean a wider range of educational possibilities. According to the data shown in Table 2, for instance, the proportion of those receiving elementary education free of charge in Argentina exceeds the data compiled in the United States, a country considered to be an economic superpower. This difference indicates well that in countries with a lower national income a good proportion of participation can be achieved providing that the society of the given country considers the issue of education to be of primary significance.

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<sup>46</sup> Tomasevski, K., 2006, 236.

As far as elementary education free of charge is concerned, the author of the study in question experienced the worst situation in the Saharan African countries. From among the 46 countries examined, in the case of 24 states elementary education runs on fees, i.e. parents have to pay for it. These countries, otherwise, are the poorest ones like, for example, Angola, Ethiopia or Guinea.<sup>47</sup>

In the countries of Eastern Europe and in the states which were submitted to the supremacy of the Soviet Union – as a remnant of the socialist heritage – constitutions still guarantee elementary education free of charge. So in the case of these countries, the Tomasevski study examined the degree of expenditure guaranteed from public moneys, i.e. what proportion of the expenses is covered by the subsidies received from the central budget.

According to the data acquired, in these countries the proportion of those participating in elementary education is quite high: in the case of eight countries, it reaches as much as 90 percent. Three countries, however (Kirgizia, Moldavia and Tajikistan) have switched to the fee-paying system in the case of elementary education also; following this the proportion of participation in these countries dropped off to 84 percent. In the region at issue, the quite low salary of teachers also constitutes a problem, which affects the quality of public education. According to the Tomasevski study, in the Ukraine, for example, teachers' salaries are below the officially designated poverty line and in Tajikistan teachers earn as little as USD 5 per month.<sup>48</sup>

Nevertheless, the Tomasevski study also points out that in the case of these countries, a distinction has to be made between the guarantee generally given in the Soviet-styled constitutions and the matter-of-fact defray that burdens the state due to the participation of children in elementary education. The governments of this region hurried to preserve the myth of free education; nevertheless, according to data acquired from informal channels, the expenditures of public education devolved upon the individuals show a growing tendency. In certain Central Asian countries, however, the expenditures of school textbooks, school uniform and, up until the end of the fourth grade, daily hot meal are covered by the state and teachers are exempt from the burden of the expenditures of public utilities and those of transport.<sup>49</sup>

So what does free education mean? According to the Tomasevski study, education can be qualified to be free if parents do not have to pay at least for enrollment and for education.

The Tomasevski study, otherwise, warns us not to presume any automatic correspondence between the economic wealth of a country and free education. If we examine the indicators published by the OECD, we can see that in the United States and in Japan 10% of students attend schools predominantly financed through unsubsidized household payments<sup>50</sup>. Within the European Union, only 89 percent of the overall cost of education is borne

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<sup>47</sup> Tomasevski, K., 2006, 6–7.

<sup>48</sup> Tomasevski, K., 2006, 242.

<sup>49</sup> Tomasevski, K., 2006, 76.

<sup>50</sup> Tomasevski, K., 2006, 226.

by the public purse. In the United States, a country considered to be an economic superpower – as we have already mentioned – the proportion of partakers in elementary education is lower than in Argentina. And in the academic year 2001/2002, six percent of pupils within the age brackets 6-11, for whom education is compulsory, dropped out from school – quantifying this percent we can see that it means 1.3 million children.<sup>51</sup> So without doubt, the economically developed, industrialized countries spend more on education and generally offer education of better quality than their underdeveloped counterparts; nonetheless, there is a difference between the declaration of rights and their realization also in these countries.

According to Katarina Tomasevski, the definition of free education should involve the exemption of the persons concerned from the burden of the expenditures of enrollment, tuition, the textbooks necessary for their studies, school meals, the use of computers, sporting activities, the necessary transport of students to get to school as well as the expenses of extra curricular activities.<sup>52</sup> According to the results of the study, these elements listed are not realized fully in any country, although some countries strive to interpret more widely the concept of education free of charge. In Estonia, for instance, the public purse covers the expenses for teachers' salaries and the cost of buying textbooks. The Basic and Upper Secondary Schools Act establishes the right to use free of charge the school's buildings, rooms, library, learning, sports, technical and other facilities for extracurricular activities.<sup>53</sup> In France, on the other hand, measures have been taken to ensure that education remains free: school transport, canteens and supervised study have been introduced everywhere in order to promote school attendance. In addition, (used) school books and supplies are made available free of charge to enable school children to attend at no cost to their families.<sup>54</sup> In the Republic of Cyprus in a very few villages where the pupil population does not permit the functioning of primary school, adequate transportation is provided by the state so as to facilitate pupils attending nearby schools.<sup>55</sup> On the other hand, Germany has reported that each province have regulations governing the transport of pupils from home to school. Traveling costs for public transport may be reimbursed, or transport services may be established.<sup>56</sup> Sweden ensures that all teaching materials in compulsory school are free of charge to the individual. School meals and school transport necessary for children to get to school are provided free of charge for all those within the age brackets of compulsory education. In most municipalities, meals and school textbooks are also free of charge to upper secondary students.<sup>57</sup> In Switzerland, the Federal Council has ruled that the principle of free education requires that the commune should bear the cost

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<sup>51</sup> Tomasevski, K., 2006, 236.

<sup>52</sup> Tomasevski, K., 2006, 227.

<sup>53</sup> Tomasevski, K., 2006, 227.

<sup>54</sup> Tomasevski, K., 2006, 227.

<sup>55</sup> Tomasevski, K., 2006, 227.

<sup>56</sup> Tomasevski, K., 2006, 227.

<sup>57</sup> Tomasevski, K., 2006, 227.

of a bus service where the bus is used to transport pupils who would otherwise have an excessively long journey. Besides, most cantonal legislation lays down that school supplies are to be provided free of charge.<sup>58</sup> In Denmark, education in schools run by the state is free of charge and textbooks and teaching aids and materials are free as well. In private, independent schools, which are attended by 11 per cent of the pupils, about 85 percent of the expenditure is publicly subsidize.<sup>59</sup> In Finland, the country that has become seen as the impressive performer in international ranks by learning accomplishments, one meal is served every day free of charge to those attending school. In cases where the journey to school is longer than five kilometers or, considering the age or other circumstances of the pupil, too tiring, free transport to school must be arranged.<sup>60</sup>

According to the results of the examination, however, not even the member states of the European Union share the model of uniform, state-provided school. Due to parental freedom to educate their children, the child can also go to a non-state school or be educated at home. In some European countries the government is prohibited from discriminating between state and non-state schools, while in others opting out of public school also means relinquishing the right to free education. The guarantees of parental choice in the mirror of European constitutional provisions basically extend to the right of choosing non-state i.e. educational institutes run by a church or other civil organization instead of institutions run by the state.<sup>61</sup> In Europe, the notion that education is the responsibility of the state has historical roots. Especially in the countries that have kept the Soviet-styled educational model education is interpreted as a monopoly of the state – concludes the report quoted. By all accounts, we can only talk about real freedom of choice for parents provided that non-state educational institutions are also entitled to state subsidies – points out Katarina Tomasevski.

According to a EURYDICE<sup>62</sup> report written in 2000, more than 90 percent of students go to educational institutes maintained by the state. The government of Norway, for example, reported in 1994 that education had always been regarded as the responsibility of the state. They do not have a private school tradition, and there are still few such schools compared with

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<sup>58</sup> Tomasevski, K., 2006, 227.

<sup>59</sup> Tomasevski, K., 2006, 229.

<sup>60</sup> Tomasevski, K., 2006, 227.

<sup>61</sup> Tomasevski, K., 2006, 229.

<sup>62</sup> The EURYDICE network was established by the European Commission in 1980 with the aim of facilitating cooperation between the member states in the field of education. Since September 2008, it has been functioning as part of an agency (Education, Audiovisual and Culture Executive Agency, EACEA), under the supervision of the Directorate-General for Education and Culture of the European Commission. The network consists of a coordinating Eurydice unit established by the European Commission in Brussels and 35 national units. Hungarian representation is done by EURYDICE National Unit within the European Union Relations of the Ministry of Education and Culture.

(source: <http://www.okm.gov.hu/main.php?folderID=1014>)

other countries.<sup>63</sup> The Swedish model is based on the entitlement of all school-aged children to a place within the public school system while independent schools (enrolling 6 percent of children) are allowed to charge fees.<sup>64</sup> In Ireland, the government enables parents to exercise their choice of educating their children at home, in private or public school, while subsidizing their cost of compulsory education so as to make it free. In the Netherlands, respect of freedom of education had led to a variety of private schools established following religious or other convictions, and as far as their funding is concerned, laws do not make a difference between institutions on the basis of whom they are run by. The participation in education is free only until the age of sixteen.<sup>65</sup>

Finally let us see a table from the 250-page Tomasevski report, containing interesting comparative data. Table 3 illustrates the pattern of charges levied upon school children by different states despite the fact that compulsory elementary education should be free for all.

Unspecified private financing of public schools	Albania, Angola, Columbia, Congo/Kinshasa, Equatorial Guinea, Fiji, Guinea-Bissau, Haiti, Liberia, Maldives, Nicaragua, Somalia, Sudan, Pakistan
Child labor at school (work to cover a part of the expenses)	Burma/Myanmar, China, Turkmenistan, Uzbekistan
Periodic charges during school attendance	Azerbaijan, Benin, Bhutan, Bolivia, Burkina Faso, Burma/Myanmar, Burundi, Cambodia, China, Ecuador, Egypt, El Salvador, Ghana, Guinea, Guyana, Indonesia, Israel, Jamaica, Kazakhstan, Kirgizia, Laos, Lebanon, Liberia, Madagascar, Mali, Moldavia, Mozambique, Nepal, Nicaragua, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Sierra Leone, Senegal, South Africa, Swaziland, Tajikistan, Togo, Viet Nam, Yemen, Zimbabwe
Parental "participation"	Armenia, Botswana, Cameroon, Congo/Brazzaville, Ecuador, Israel, Kenya, Mali, Mozambique, Namibia, Peru, South Africa, Suriname, Turkey, Uganda, Ukraine, Zambia, Zimbabwe
Community "participation"	Cameroon, Chad, El Salvador, Eritrea, Ethiopia, Guatemala, Bissau-Guinea, Honduras, Laos, Madagascar, Mali
Supplementing salaries of teaching and support staff	Burundi, Ethiopia, Fiji, Georgia, Kenya, Malawi, Moldavia, Niger, Senegal, Tanzania, Tajikistan, Timor-Leste, Ukraine, Zambia

<sup>63</sup> Tomasevski, K., 2006, 229.

<sup>64</sup> Tomasevski, K., 2006, 229.

<sup>65</sup> Tomasevski, K., 2006, 229., 233.

Additional and/or private tuition	Armenia, Azerbaijan, Cambodia, Egypt, Georgia, Guyana, Japan, Kenya, Kirgizia, Macedonia, Moldavia, Russia, South Korea
Examinations, tests, certificates	Burma/Myanmar, Cambodia, Cameroon, China, Guatemala, Indonesia, Kenya, Lesotho, Nigeria, Romania, Zambia
Teaching and learning materials	Armenia, Austria, Belorussia, Bangladesh, Belize, Benin, Bosnia and Herzegovina, Burundi, Cambodia, Cameroon, Columbia, Ghana, Guatemala, Iran, Japan, Kazakhstan, Kirgizia, Lesotho, Liberia, Macedonia, Mauritania, Moldavia, Nepal, Philippines, Serbia, Trinidad and Tobago, Togo, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Viet Nam, Zimbabwe
Use of textbooks or libraries	Armenia, Belorussia, China, Jamaica, Lesotho
School building and maintenance	Armenia, Azerbaijan, Bhutan, Columbia, Ethiopia, Fiji, Georgia, Guatemala, Kazakhstan, Kirgizia, Laos, Lesotho, Mauritania, Namibia, Peru, Uzbekistan, Zambia, Yemen
School furniture and supplies	Benin, Bhutan, China, Gabon, Kazakhstan, Macedonia, Mauritania, Timor-Leste, Togo
Basic amenities (water, sanitation, heating, telephone)	Burma/Myanmar, Cambodia, Costa Rica, Georgia, Greece, Kirgizia, Peru, Serbia, Tanzania

School uniforms	Belize, Bhutan, Cameroon, Columbia, Egypt, El Salvador, Ghana, Guatemala, Japan, Kenya, Lesotho, Liberia, Namibia, Nepal, Peru, Philippines, Rwanda, Tanzania, Trinidad and Tobago, Swaziland, Viet Nam, Zimbabwe
School transport	Armenia, Austria, Bhutan, Botswana, El Salvador, Gabon, Kenya, Kirgizia, Macedonia, Namibia, Nepal, Peru, Serbia, St. Vincent and Grenadines, Swaziland, Togo, Turkey
Boarding	Botswana, Lesotho, Mongolia
School-based health services	Cameroon, China, Egypt, Jamaica, Lesotho
School meals	Botswana, El Salvador, Grenada, Guatemala, Japan, Kazakhstan, Kenya, Kirgizia, Lesotho, Macedonia, Peru, Rwanda, Serbia, South Korea, St. Vincent and Grenadines, Tanzania, Turkey, Togo
Insurance of school children	Cameroon, Egypt, Kenya, Serbia
Payments for extra curricular activities	Belgium, Burma/Myanmar, Bosnia and Herzegovina, El Salvador, Indonesia, Israel, Jamaica, Kenya, Kirgizia, Lesotho, New Zealand, Serbia

Entertaining visiting dignitaries	Bangladesh
Membership in children's organizations	China, Serbia
Charges for children without birth certificate	Croatia, Dominican Republic, Honduras, Madagascar, Malaysia, Philippines, Serbia
Charges for non-residents	China, Russia
Charges for non-citizens	Antigua and Barbuda, Botswana, Bhutan, Brunei, Central African Republic, Croatia, Dominican Republic, Jordan, New Zealand, Qatar, Singapore, Thailand

Table 3<sup>66</sup>

It is well-known that many children terminate their studies all around the world due to the fact that their parents are unable to cover the expenses that go with their children's school attendance. Well, Table 3 gives a taste of the wide range of expenditures families can be burdened with. Table 1, on the other hand, shows countries where the age limit is the lowest concerning access to employment. According to the data compiled within these two tables there are countries like for example Angola and Burma (Myanmar), where compulsory education lasts only until the age of nine i.e. it is limited to the completion of three academic years of education. In contrast to this, the UNESCO and the UNICEF considers that in the interest of the acquirement of the competences attached to the skills of reading and writing, at least six years of elementary education should be made compulsory. Moreover, as early as in 1921, ILO proposed that the age of fourteen should be marked as a minimal limit of compulsory education; and as years passed by and an overt correspondence could be discovered between the introduction of compulsory elementary education free of charge and the decrease in the number of working children, in 1999 ILO urged that the entitlement to free education should be made compulsory up until the age of eighteen.<sup>67</sup>

### **8. Final thoughts**

The right to compulsory and free elementary education appeared as early as in 1948 when the Universal Declaration of Human Rights stated that everyone has the right to education. Since this time, the right to free education has been incorporated in a number of other international documents.<sup>68</sup>

<sup>66</sup> Tomasevski, K., 2006, 246–247.

<sup>67</sup> Tomasevski, K., 2006, XXI.

<sup>68</sup> See, for instance, the UNESCO Convention Against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (more commonly known as the Protocol of San



The Tomasevski examination, however, also sheds light on that unfortunate fact that the majority of countries have not been able to meet the requirements of the international legal documents up until today; moreover, processes opposing the ideology of these covenants can be experienced. Such educational policy strategies appear and such international financial undertakings are made which lead to a fee-paying scheme of compulsory studies. One of the reasons for this lies in the phenomenon that international financial institutions providing resources of money for development are interested in the moderation of expenditures qualified as unproductive.<sup>69</sup> This intention, however, is in full contrast with international human rights documents which stipulate the access to education as public responsibility and which require the assertion of adequate budgetary resources in order to assure that this right is achieved.

In 2000, i.e. more than fifty years after the adoption of the Universal Declaration of Human Rights, the United Nations Organization was compelled to prescribe the assertion of partaking in elementary education for all children (both boys and girls) in the Millennial Development Goals, the fulfillment date of which is the year 2015, which fact makes one think. It is evident that the emphasis made on taking part in elementary education is of great significance; on the other hand, however, it is also true to say that the great majority of those who leave primary school only have opportunities for low-paid jobs. Thus free and compulsory elementary education formulated in Article 26 of the Declaration of 1948 should only be the minimal condition; for the construction of a society based on knowledge there is a need to make higher levels of education general, i.e. compulsory and free.

Global educational strategies all agree that poverty and impoverishment can be fought through learning and training, i.e. through partaking in education. The moral that can be drawn from Tomasevski's report is that in the majority of countries it is not the recognition of the right to education that constitutes a problem but rather those rules of details determined by the social policy of the individual state which exercise great influence on the age brackets of those who can take part in public education. This is true not only when examining a given continent but also when having a look at a certain region; for example, considering the chance of the assertion of this right, these rules of details can make a great difference within the member states of the European Union as well. Through the analysis of the types of expenditures that may burden the parent who is raising a child associated with their child partaking in "free" education and through the examination of individual states in order to see which of these expenditures are considered to be those that the state must pay for from the public purse, the Tomasevski study has also shed a light on

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Salvador 1988), the Convention on the Right of the Child (1989), the African Charter on the Rights and Welfare of the Child (1990), the European Social Charter (1961) and the further developed version of the same, the Revised European Social Charter (1996).

<sup>69</sup> See more details in CESCR General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant) Fourth session, 1990.

([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3659aaf3d47b9f35c12563ed005263b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3659aaf3d47b9f35c12563ed005263b9?Opendocument))

the fact that the right to education in the majority of the countries of the world is still a privilege of those who can afford to cover the expenditures of this process themselves.

For lack of definition, individual states can interpret the concept of free education differently (be it elementary or at higher level) – and according to the Tomasevski examination, they do interpret it in a number of ways. Hence it would be essential to amend international legal documents with such a decree that interprets the concept of free education in great detail.

The Tomasevski report also shed a light on the fact that the negative effects of political tendencies that do away with constitutional guarantees and give preference to short-term financial considerations cannot and should not be ignored. Educational expenses and low school attendance are directly proportional to undesirable child labor.

So education is also an investment of society – of course, it is one that does not bear fruit at once. However, education as part of the educational process does not only serve the success of the individual but constitutes a part of social commonwealth, which is indispensable in the interest of socialization and social relations. Hence the one who does not acknowledge the right to education and to learning as a human right deprives man from the essence of their human existence.

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