

EUROPEAN TRENDS IN THE RIGHT TO EDUCATION DURING THE PANDEMIC. MEASURES TAKEN BY THE EUROPEAN COMMISSION DURING THE PANDEMIC TO ENSURE THE PROTECTION OF THE RIGHT TO EDUCATION

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ABSTRACT

The aim of this paper is to describe the implications of the European institutions for the basic legal framework for the protection of the right to study and the development of education in the context of the pandemic, by supporting and complementing the actions of Member States by the European Union.

Since the onset of the crisis, the European Commission has made efforts to coordinate, supplement and initiate the necessary measures to address all aspects of the coronavirus pandemic.

The digital sector plays an important role in the educational process.

KEYWORDS: *European institutions, fundamental rights, right to education, pandemic, action plan.*

SHORT INTRODUCTORY ITINERARY

The global Covid 19 crisis, with major and regional implications, has activated the spirit of solidarity of the Member States of the Union and required the intervention of the European institutions to stop the spread of coronavirus, to protect the lives of European citizens, but also to counteract the socio-economic impact.

Safeguarding European solidarity required joint efforts by the governments of the Member States, but also the reaction of the Union institutions.

Among the first measures to stop the spread of coronavirus we find the restriction of free movement of persons, but also the temporary transfer in the digital field of social and economic activities.

The Union institutions have intervened in several areas, including education, by supporting and complementing the acts of the Member States of the European Union.

The intervention of the European institutions was timely due to the magnitude of the negative effects of this crisis, but also due to the need for Member States not to resort to a strictly national and unilateral approach to combat the pandemic, as its consequences have cross-border dimensions.

The European Commission, by virtue of its role and responsibilities under the provisions of the Treaties, has taken action to coordinate, supplement and initiate the necessary measures to address all aspects of the pandemic in several areas, including education.

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The coronavirus pandemic has generated significant disruptions in educational, training and mobility activities for students and teachers in the European countries.

The digital infrastructure has allowed the continuation of learning and training activities in the field of education. To ensure the continuity of the teaching process, digital technology was used, using online platforms, video education systems, but also other digital tools (for example, stay at home digital toolkit) to access teaching materials and interact with pupils and students.

We will see below the legal framework of union interventions, the way to protect the right to study during the pandemic and the influences of digital technology on the field of education.

**1. THE GENERAL LEGAL FRAMEWORK OF THE EUROPEAN UNION.
GENERAL PROVISIONS OF THE TREATIES ESTABLISHING THE EUROPEAN
UNION**

The European architecture includes an institutional framework aimed at promoting European values, pursuing the objectives set out in the Treaties, upholding the interests of the Member States, guaranteeing the fundamental rights of citizens, ensuring the coherence, effectiveness and continuity of cohesion policy and Union action.

According to the provisions of art. 6 let. e TFEU "The Union is competent to carry out actions to support, coordinate or complement the action of the Member States" in several areas. These include the education sector.

Article 165 (1) TFEU provides that "The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, where necessary, by supporting and supplementing their action, fully respecting the responsibility of the Member States for the content education and the organization of the education system, as well as their cultural and linguistic diversity ", and paragraph 2 regulates the competences of support, coordination and completion of the action of the Member States by the European Union" The Union's action aims: to develop the European dimension of education ; to develop the exchange of information and experience on issues common to the education systems of the Member States; to encourage the development of distance education".

In order to achieve the Union's objectives, institutions have been set up by the Basic Treaties. They act, in order to fulfill the objectives inserted in the content of art. 3 TEU, only within the limits of the powers conferred on it by the Member States, subject to the principles of subsidiarity and proportionality.

The European Commission has a role to play in promoting the general interest of the European Union and in the application of Union policies. At the same time, the Commission agrees with the Union's programs and ensures the proper application of the Treaties.

According to art. 17 TEU "The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties and the measures adopted by the institutions pursuant to them. The Commission oversees the application of Union law under the control of the EU Court of Justice. It executes the budget and manages programs. The Commission shall exercise coordination, enforcement and administrative functions in accordance with the conditions laid down in the Treaties".

The outbreak of the Covid pandemic 19 and the many unknowns related to the new virus have led to unexpected challenges for Member State governments, dramatic socio-economic effects for Europe, and forced extraordinary and unprecedented action in Europe.

The crisis caused by the coronavirus required an immediate and firm response from the Member States, but also the intervention of the Union institutions in its management and in finding solutions to combat the effects of the pandemic.

The European Commission has mobilized all the tools and resources at its disposal to enable Member States to cope with the effects of the pandemic, which has affected all areas, including education and training systems at European level, changing the ways of learning, teaching, communication and collaboration. the educational community as a whole.

The measures and means of intervention used by the European institutions are to be dealt with in full in a separate section of this paper.

At the same time, we will proceed to a brief analysis of the effects of the pandemic on fundamental human rights, with special reference to the right to study.

2. THE FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION AND HUMAN RIGHTS ENSHRINED IN THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH SPECIAL REFERENCE TO THE RIGHT TO EDUCATION.

The consecration of fundamental rights initially at the level of the European Communities and then of the European Union has been achieved progressively, in line with the amendments and completions of the European Convention on Human Rights, through Protocols¹, but also through the jurisprudence of the ECHR and the CJEU which interpreted and applied it.

The Maastricht Treaty² is the first source of primary EU law to report these rights to the Convention, including them in the category of general principles of law³.

Fundamental rights are guarantees by which the European citizen defends himself, among other things, from the power of the states, ensuring the protection of his private sphere⁴.

According to Article 6 (2) TEU, the Union accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms, respecting the fundamental human rights provided for in the Convention and the EU Charter of Fundamental Rights⁵.

The adoption of the Charter of Fundamental Rights of the Union unequivocally establishes a direct relationship to the Convention of the rights it guarantees, which does not preclude the identification of a direct relationship between fundamental rights under other European legal acts and human rights under the Convention⁶.

The Charter reaffirms, in accordance with the competences and tasks of the Union and the principle of subsidiarity, the rights deriving from the constitutional principles and

¹The provisions of Protocol no. 1 and, in particular, of Protocol no. 15, 6,7,7,12,13 in Rome, 4.11.1950. Convenience and ratification of Romania by Law no. 30/1994, published in the Official Gazette No. 135 / 31.05.1994. Protocol no. 15, Strasbourg, 24.06.2013, Romania was ratified by Law no. 157/157/2014, public. In the Official Gazette no. 886 / 5.12.2014.

²7.02.1992, in force from 1.11.1993, <http://eur-lex.europa.eu>.

³I.Gâlea, Accession of the European Union to the European Convention on Human Rights. Critical Analysis, Ed. C.H. Beck, Bucharest, 2012, p.36.

⁴M.Pătrăuș, European Institutional Law. University course, Ed. ProUniversitaria, Bucharest, 2018, p.91.

⁵7.12.2000, adopted in Strasbourg, 12.12.2007.

⁶O. M. Salomia, Legal instruments for the protection of fundamental rights at the level of the European Union, Ed. C.H. Beck, Bucharest, 2019, p.26.

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traditions of the Member States⁷, the European Convention for the Protection of Human Rights and Fundamental Freedoms and strengthens the individual rights of European citizens⁸.

The United Nations and European bodies, through all adopted human rights documents, state that the right to education is a priority, because its exercise depends on the social maturity of the individual and the exercise of other rights. In this sense, it is recommended to all states to ensure at all levels of education access to formal education - institutionalized, non-formal - complementary to educational institutions, informal - through cultural institutions, access to information, training and professional development, access to culture.

The Convention stipulates the conditions under which the exercise of fundamental rights may be restricted by States, which undertake, in their legal order, to "guarantee to any person the exercise of fundamental freedoms"⁹.

The Treaty or the general principles of European law developed by case law by the Luxembourg Court of Justice sometimes allow Member States to restrict fundamental rights, on grounds of public policy or for the protection of health.

Restriction of the rights conferred on European citizens must be provided for by law, respect the substance of the law and can be achieved at Member State level in restrictive situations, such as in a state of emergency, when measures are necessary to protect health, but respecting the principle of proportionality, provided in art.5 paragraph 4 TFEU.

The state of emergency decreed by most European states, justified by the Covid crisis 19, motivated by the need to ensure public health, affected the rights of nationals of Member States to free movement, but also other rights guaranteed by the above-mentioned regulations. With regard to the right to education, we can speak of a restriction on the exercise of this fundamental and individual right of the European citizen through the measures taken at Union level. However, the imposed measure passes the test of proportionality, as the objective of the measure imposed in the context of the pandemic was to respond, in exceptional circumstances, to a real, present and sufficiently serious threat to a fundamental interest of society, and the objective pursued in this way humanitarian purposes and is necessary to ensure a higher level of protection for European citizens. The Court of Justice of the European Union has ruled in this regard when examining the proportionality of the measures ordered by the Member States¹⁰.

⁷P. Craig, G De Burca, European Union Law. Comments, jurisprudence and doctrine, ed. VI, Ed. Hamangiu, Bucharest, 2017, p. 432.

⁸Art.14 "every person has the right to education, as well as access to vocational training and continuing education". This article is inspired by Article 2 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. "No one shall be denied the right to education. The state, in the exercise of the functions it will assume in the field of education, will respect...". The right to education is guaranteed by art. 32 of the Romanian Constitution, revised, published in the Official Gazette of Part I, no. 758 / 29.10.2003.

⁹Fr. Rigaux, Human Rights Protection: The European Perspective. Protection HumanRights: The European Perspective, Ed. Carl Heymans Velang KG, Berlin, Bonn, Munich, 2000, p1206, apund O.M.Salomia, op.cit., p.107.

¹⁰C-331/16 and C-366/16, *K/Staatssecretaris van Veiligheid en Justitie and H.F/Belgische Staat*, ECLI:EU:C:2018:296; C-316/16 and C-424/16, *B/Land Baden-Württemberg and Secretary of State for the Home Department/Franco Vomero*, ECLI:EU:C:2018:256.

The principles established in the practice of the Strasbourg Court and the Luxembourg Court find their applicability also in the context of the pandemic, even with regard to Romania, even if our country has derogated from the obligations provided by the Convention, through the request registered at the General Secretariat of Council of Europe on 17.03.2020.

3. INVOLVEMENT OF THE EUROPEAN COMMISSION IN THE DEVELOPMENT OF EDUCATION AND COMBATING THE EFFECTS OF THE PANDEMIC IN THIS FIELD

According to the provisions of Article 5 paragraph 2 TEU, the European Union acts only within the limits of the competences conferred by the Member States by the Treaties, in order to achieve the objectives inserted in the content of the Treaties¹¹.

The above-mentioned provisions must be corroborated with the provisions of Article 13 paragraph 2 TEU, according to which each institution or body of the Union must exercise only the competences with which they have been invested, these having a limiting character.

In the field of education, the Union may have recourse only to encouragement, except for any approximation of the laws for which the Member States are responsible¹².

To this end, the European dimension aims to develop the European dimension of education, as well as the exchange of information and experience on issues common to the education systems of the Member States, and at the same time to encourage the development of distance education¹³.

In order to achieve these objectives, the European Parliament and the Council shall take encouraging actions, acting in accordance with the ordinary legislative procedure¹⁴ and after consulting the Economic and Social Committee and the Committee of the Regions. At the same time, the Council shall adopt recommendations on a proposal from the Commission.

The Commission, as a promoter of the general interest of the Union, may adopt recommendations.

In the context of the pandemic that broke out at the end of February 2020 and spread rapidly throughout Europe¹⁵, the Commission decided to support Member States in combating the effects of the coronavirus pandemic on the education system as well.

Education and training are essential for Europe's future, as they play an extremely important role in stimulating growth, innovation and job creation.

The very assertion of European identity on the international stage is considered to be inextricably linked to European education and training systems.

The crisis triggered by Covid 19 at European level required the intervention of Member States, but also of the EU institutions in order to maintain the health and safety of students and teachers, in order to limit the spread of the virus. The school and educational communities must have accurate and detailed information on preventive measures. The closure of schools and higher education institutions creates major disruptions, affects the right to study, which is why effective measures were needed. Member State governments, together with education decision-makers, have called for joint efforts to identify ways in which the educational process can take place during the pandemic in optimal conditions, using digital

¹¹Art.5 paragraph 1 TEU regulates the principle of attribution of competences at the level of the European Union.

¹²M.Pătrăuș, *op.cit.*, p.62.

¹³Art.165 para. 2 TFUE.

¹⁴Art.294 TFUE.

¹⁵Art.17 para.1 TUE.

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means and platforms, but also to protect data and information. personal rights of pupils and students, teachers and to prevent or minimize the risks associated with the use of technology¹⁶.

Given the importance of education at EU level, at a Council meeting, EU education ministers exchanged information on their experiences in distance education and discussed possible solutions for assessing, obtaining diplomas and enrollment in higher education¹⁷.

The Commission explained how it gets involved by mobilizing all the tools and resources at its disposal to provide assistance in the field of education. Thus, reference was made to the possibility of structural funding that can be used to support distance learning and to guarantee equal access to quality education for all.

Streamlining the learning process is also ensured through the use of digital technologies that provide learning opportunities and open access to a wealth of information and resources.

This technology must be accessible to pupils, students, graduates of higher education institutions, but also to teachers.

To this end, the European Commission has adopted an Action Plan for Digital Education which sets out how education and training systems can more easily access the innovation and relevant digital technologies so necessary in training pupils and students in a digital age¹⁸.

This plan focuses on the initial education and training systems comprising schools, vocational education and training, as well as higher education.

From the Commission's point of view, education must be the backbone of economic growth and inclusion in the EU, so an important task is to prepare citizens to make the most of opportunities and meet the challenges of a globalized, interconnected worldmove fast¹⁹.

In order to guarantee the right to study in the digital age, cooperation at EU level involves the wider introduction of innovation in the education and training systems of its Member States and must be achieved through the exchange of good practice, mutual learning and learning. exchange of concrete data.

Joint actions can help teachers to identify effective solutions, while common tools such as eTwinning will increase efficiency and increase impact.

At Union level, innovative practices are used in education, which are mainly digital, take various forms and involve public, private and non-governmental actors. However, innovation in education systems is not an end in itself, but a way to improve the quality and inclusiveness of these systems²⁰.

¹⁶Requirements imposed by Directive 2002/58 / EC of the European Parliament and of the Council of 12.07.2002 on the processing of personal data and the protection of privacy in the public communications sector (Directive on confidentiality and electronic communications), published in OJ L 201 of 31.07.2002 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation), publ. in JOUE L 119 of 4.05.2016.

¹⁷Council meeting of 14.04.2020.Details https://ec.europa.eu/romania/news/20200415_impact_educatie_ro.

¹⁸Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Digital Education Action Plan, Brussels, 17.01.2018, <https://eur-lex.europa.eu/legal-content/RO/ALL/ ? uri = CELEX% 3A52018DC0022>.

¹⁹Idem, p. 2.

²⁰Idem, p. 3-4.

The Digital Education Action Plan includes 11 actions to support the use of technology and the development of digital skills in the education sector and defines the measures by which Member States can be helped to meet the challenges and take advantage of the opportunities offered by education in the digital age.

The action plan is based on “three priorities for action:

- a). better use of digital technologies in the teaching and learning process
- b). developing digital skills and competences relevant to digital transformation
- c). improving education through better data analysis and forward-looking vision”²¹.

The 11 actions set out in the Commission's Action Plan are:

- better use of digital technologies in the teaching and learning process (actions 1-3- connectivity in schools; self-assessment tool and mentoring program for schools; digitally signed qualifications)
- development of digital skills and competences (actions 4-8- higher education center; open science competence; EU school programming week; cyber security in education; training in digital and entrepreneurial skills for girls)
- improving education with the help of a better data analysis and a prospective vision (actions 9-11- studies on information technology in education; artificial intelligence and analysis; strategic forecasts).

At the same time, the Commission stated that the Digital Education Action Plan will be updated to respond to the current Covid-19 crisis and counteract the negative effects of the pandemic.

The aim is to establish measures to support Member States and educational institutions in "equipping" teachers and learners with digital skills, so that maximum benefits can be obtained using these tools and approaches.

In this regard, the Commission has proposed two investment initiatives for the response to Coronavirus that address both the health emergency crisis and its socio-economic consequences. Cohesion policy funds have been redirected to help national health care systems, SMEs and workers, as well as education and training providers, as well as students.

The European Social Fund will, among other things, be able to support education and training institutions to provide distance learning opportunities, as well as advice and counseling on home schooling. Additional flexibility in the rules of the funds was also provided, allowing Member States to redirect resources quickly to the most urgent needs.

The European Social Fund²² must commit itself to combating early school leaving, promoting equal access to quality education, investing in education and training, improving the relevance of the labor market for education and training systems and strengthening lifelong learning, including formal, non-formal and informal learning pathways.

To increase educational mobility, the European Commission and the European Investment Fund launched²³, on 22.04.2020, a new pilot facility - "Financial Facility for Skills and Education" (C&E Pilot Facility) - designed to provide new opportunities individuals and organizations wishing to invest in skills and education, especially in the context of the Covid pandemic 19²⁴.

²¹Idem, p. 4.

²²Art.162-164 TFEU and Regulation (EU) no. 1304/2013 of the European Parliament and of the Council of 17.12. 2013 on the European Social Fund and repealing Regulation (EC) no. 1081/2006 of the Council, publ. in OJ L 347/470 of 20.12.2013.

²³For detailed information on the European Investment Fund <https://www.consilium.europa.eu/en/policies/investment-plan/strategic-investments-fund/>

²⁴<https://edu.ro>

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The C&E pilot facility will provide an EU guarantee fund of up to € 50 million, supported by the European Fund for Strategic Investments, which will trigger debt financing for skills and education projects in Europe, in order to mobilize Total funding of more than EUR 200 million. Eligible students and businesses will be able to access different types of funding (eg loans, deferred payments, income-related loans, etc.) through dedicated financial intermediaries, such as financial institutions, universities and vocational training centers, guaranteed by the EU²⁵.

The issues presented demonstrate the active involvement of the European institutions, since the outbreak of the pandemic, in order to mitigate their consequences.

The EU institutions have not only managed the situation during the pandemic, but have also taken steps to manage the gradual exit from the crisis.

To this end, the European Council launched a coordinated strategy on 26.03.2020, and the Commission in cooperation with the President of the European Council drew up a common European roadmap towards lifting measures to limit the spread of COVID-19²⁶.

The roadmap also sets out concrete recommendations that Member States need to take into account when planning to lift isolation measures. Thus, referring to the activities of schools and universities, the roadmap recommended that meetings be progressively authorized with specific measures, such as lunch breaks at different times, stricter cleaning, lower classes, greater use of online learning tools, etc²⁷.

4. CONCLUSIONS

The European institutions have been actively involved in combating the effects of the pandemic, through concrete intervention measures, at various levels, to protect human health, but also for the right to study of European citizens to be effective, not an illusory right.

In particular, the Commission, taking into account its competences, was actively involved, in partnership with the Member States, in crisis management and made a set of recommendations for the gradual exit from the current situation triggered by Covid 19.

The Commission's action plan is part of this EU institution's ambitious project to create a European area of education and complements the recommendations on common values and key competences.

The role of cutting-edge technology in a digital age is undeniable, and the 11 actions to support the use of technology and the development of digital skills in education will help Member States take the necessary steps to meet the challenges and opportunities of digital education.

In the current context, the Commission's action plan needs to be amended and supplemented to respond to the current Covid-19 crisis and to counteract the negative effects of the pandemic, but also of the excessive and exclusive use of technology in the education sector.

Interaction is the essence of life, and the unilateral acceptance of digital technology in education would be a fake that replaces reality, a monetized illusion, with devastating long-term²⁸ effects. The element of physical presence, so important in the relationship between

²⁵Idem.

²⁶For detailed information https://ec.europa.eu/commission/presscorner/detail/ro/ac_20_679.

²⁷https://ec.europa.eu/commission/presscorner/detail/ro/ac_20_679.

²⁸G.Agamben, Journal of the Crisis, Italian Institute of Philosophical Studies, 23.05.2020, <https://www.iisf.it>.

student and teacher, especially in the discussions during the seminars - the most lively part of teaching, cannot disappear permanently.

Therefore, we consider that digital technology is an important tool in the educational process, especially when we talk about professional mobility, because it facilitates distance education. However, this technology should not replace teaching and learning in classrooms, but only complement it.

Returning to the involvement of the Union institutions in the coronavirus crisis, although the competences in this segment are to support, coordinate and complement the actions of the Member States, in order to make the Member States accountable for the content of digital education and for the effective organization of the education system. European. The European Parliament and the Council should take stronger encouragement to contribute to the development of quality education, supporting and complementing the actions of the Member States, by developing the European dimension of digitized education, which cannot replace traditional forms of learning, but must fulfill them.

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