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SOCIAL INCLUSION IN EDUCATION FOR ASYLUM-SEEKERS AND REFUGEES: A HUMAN RIGHT OR A HOPE?

by *Heliona Miço** and *Niuton Mullett***

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1. Introduction

The recognition and protection of human rights has evolved from the evaluation of good governance as a means to preserve the prosperity of its members¹, to the recognition of the equality and dignity of every human being as the duty of every Government for enabling all people to enjoy their inalienable rights and freedoms². The international human rights law emphasizes “all human beings”, “every human being”, “everyone”, by suggesting that what matters to implement the principle of equality and non-discrimination is the fact of being “human”³. Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it⁴. The Universal Declaration of Human Rights (UDHR) notes in its preamble that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. As an international act guaranteeing dignity and human rights, UDHR ensures the protection of human rights by the rule of law, especially in the case of rebellion against tyranny.

The inclusion of the right to seek and enjoy in other countries asylum from persecution⁵ shows that human rights are not only closely related to the country of birth,

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¹ J.J. ROUSSEAU, *The Social Contract or Principles of Political Right* [G.D.H. Cole translation], 1762, pp. 39, available at <<https://discoversocialsciences.com/wp-content/uploads/2018/07/Rousseau-Social-Contract.pdf>>.

² The 1948 United Nations Universal Declaration of Human Rights (UDHR), proclaimed on 10 December 1948 by the United Nations General Assembly Resolution 217 A.

³ C. HARVEY, *Time for Reform? Refugees, Asylum-seekers and Protection under International Human Rights Law*, in *Refugee Survey Quarterly*, Vol. 34, 2015, pp. 43-60.

⁴ INTERNATIONAL JUSTICE RESOURCE CENTER, *Asylum & the Rights of Refugees*, 2022, available at <<https://ijrcenter.org/refugee-law/#:~:text=The%201951%20Convention%20also%20protects,and%20regional%20human%20rights%20treaties>>.

⁵ UDHR, art. 14, para. 1.

but that they also have a supra-national scope, which serves as a guarantee for the equal and inalienable right of all the members of society⁶.

As a non-binding international instrument, the Universal Declaration of Human Rights is supported by a set of international and regional instruments with binding force for states which guarantee human rights and freedoms⁷. Some of these are comprehensive human rights instruments protecting all (or many) human rights of all persons whereas others address specific topics or the rights of certain vulnerable groups in society.

While legal instruments may follow the stated pattern more or less clearly and may support the objective aspect of human rights and freedoms of refugees and asylum-seekers, their implementation requires further steps towards equality as well as an inclusive and equitable society. Regardless of the fact that the rights listed in the Universal Declaration of Human Rights are provided in a normative form by international acts beyond the UDHR, the right to asylum remains a right not fully realized: “*The refusal of States to accept an obligation to grant asylum, in the sense of admission to residence and lasting protection against the jurisdiction of another State, is amply evidenced by the history of international conventions and other instruments*”⁸. According to the United Nations Refugee Agency (UNHCR)⁹, one solution to population equality is the local integration of refugees,¹⁰ a process which should begin when the asylum-seeker or refugee arrives in the host country¹¹. Integration may be defined as a process in which, all, irrespective of origin, have “equal opportunities, rights and obligations to participate,

⁶ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, of 12 July 1993, A/CONF.157/23, para. 23: “*The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one’s own country*”.

⁷ The 1966 United Nations International Convention on Economic, Social and Cultural Rights, adopted on 16 December 1966, by General Assembly Resolution 2200A (XXI);

The 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education;

Art. 2 of the Convention on the Rights of the Child;

The 1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965 by the United Nations General Assembly;

The 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979 by General Assembly Resolution 34/180;

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed on 25 November 1981 by General Assembly Resolution 36/55;

The 1951 United Nations Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V), and United Nations Protocol relating to the Status of Refugees, adopted on 16 December 1966 by the General Assembly Resolution 2198 (XXI);

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS No. 005, as amended;

The 1996 European Social Charter (Revised), ETS No. 163;

The 2007 European Union Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007, in European Union Official Journal C306, of 17 December 2007;

The 2012 European Union Charter of Fundamental Rights of the European Union, in Official Journal of the European Union C326/391, of 26 October 2012.

⁸ G.S. GOODWIN-GILL, J. MCADAM, *The Refugee in International Law*, 4th ed., Oxford, 2021.

⁹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), *Global Trends for Forced Displacement in 2018, 2019*, available at <<https://www.unhcr.org/5d08d7ee7.pdf>>.

¹⁰ S. ABUJAROUR, *Social Inclusion of Refugees Through Digital Learning: Means, Need and Goals. Pacific Asia Conference on Information Systems*, Twenty-Third Pacific Asia Conference on Information Systems, Dubai, 2020.

¹¹ EUROSTAT, *Expert Group on Refugee and Internally displaced Persons Statistics – International Recommendations on Refugee Statistics*, 2018.

in society¹². There is consensus that the notion of integration entails a multi-dimensional and multi-actor process of participation, interaction and understanding, encompassing societies as a whole, by comprising both a “civic” dimension (ways of life and values) and/or a language proficiency component (education dimension)¹³.

Migration flows are triggered by various factors such as natural disasters¹⁴, global warming, race, religion, nationality, and belonging to a particular social group¹⁵. The UNHCR data show that at the end of 2021, 89.3 million people worldwide were forcibly displaced¹⁶ as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order; 26 million of whom are asylum-seekers and refugees. Moreover, refugee families escape from conflicts and violence¹⁷ towards financial possibilities and educational opportunities. All migrants, particularly refugees and asylum-seekers, face numerous challenges in their country of origin as well as in the host country. Often, these challenges remain unaddressed leaving social inclusion out of attention and therefore out of the scope of the protection of human rights for refugees in hosting countries. According to the United Nations Department of Economic and Social Affairs, social inclusion is defined as the process of improving the terms of participation in society for people who are disadvantaged on the basis of age, sex, disability, race, ethnicity, origin, religion, or economic or other status, through enhanced opportunities, access to resources, voice and respect for rights¹⁸. On the other hand, the World Bank defines social inclusion as “*the process of improving the ability, opportunity, and dignity of people, disadvantaged on the basis of their identity, to take part in society*”¹⁹. The European Union (EU) defines social inclusion as “*a process which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in the economic, social and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live*”²⁰. Social inclusion also ensures that “*vulnerable groups and persons have greater participation in decision-making which affects their lives and that they can access their fundamental rights*”²¹. In this context, social inclusion in education is related to both society and the individual.

¹² G. BROCHMANN, A. HAGELUND, *Comparison: A model with three exceptions? Immigration Policy and the Scandinavian Welfare State 1945-2000*, London, 2012, pp 225-275.

¹³ S. CARRERA, Z. VANKOVA, *Human Rights Aspects of Immigrant and Refugee Integration Policies: A Comparative Assessment in Selected Council of Europe Member States*, Issue Paper, 2019.

¹⁴ A. FEJES, M. CHAMBERLAND, R. SULTANA, *Migration, Educational and Career Guidance and Social Inclusion*, in *International Journal for Educational and Vocational Guidance* Vol. 22, 2022, pp. 347-361.

¹⁵ D. FABER, C. SCHLEGEL, Give Me Shelter from the Storm: Framing the Climate Refugee Crisis in the Context of Neoliberal Capitalism, in *Capitalism, Nature, Socialism*, Vol. 28, Issue 3, 2017, pp. 1-17.

¹⁶ THE UNITED NATIONS REFUGEE AGENCY, *Figures at a glance. UNHCR Global Trends 2021, 2022*, available at <<https://www.unhcr.org/figures-at-a-glance.html>>.

¹⁷ G. HALL, M.V. PORCHE, J. GROSSMAN, AND S. SMASHNAYA, Practices and Approached of Out-of-School Time Programs Serving Immigrant and Refugee Youth, in *Journal of Youth Development*, Vol. 10, Issue 2, 2015, pp. 72-87.

¹⁸ UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *Report on the World Social Situation 2016 Leaving no one Behind: The Imperative of Inclusive Development*, 2016.

¹⁹ WORLD BANK, *Inclusion Matters: The Foundation for Shared Prosperity. New Frontiers of Social Policy*, 2013. p. 4.

²⁰ M. PANTEA, Social inclusion of Young People in Europe: Trends and Policy Measures Summary Report on the 2013/14 Social Inclusion Country Templates, 2015.

²¹ EUROPEAN COMMISSION, *The European Social Fund and Social Inclusion*, 2010, available at <https://ec.europa.eu/employment_social/esf/docs/sf_social_inclusion_en.pdf>.

Different researchers have accepted that education is one of the best ways that contributes to the social inclusion process of refugees²². According to the EU, education in all of its types and at all levels and from an early age plays a pivotal role in promoting common values. It helps to ensure social inclusion by providing every child with a fair chance and equal opportunities to succeed. It provides opportunities to become active and critically aware citizens, and it also increases understanding of the European identity²³. Moreover, education and training should level the playing field for all and serve as a strong vector for the social and economic inclusion of disadvantaged groups by embracing diversity in all its forms²⁴. Education has become increasingly important in the digital, knowledge-based society where the idea of a life-long learning process has been accepted as an integrated part of the right to education. Only basic knowledge and skills do not serve to integrate successfully in society. This becomes more relevant for refugees and asylum-seekers²⁵ who need to integrate and participate with equal rights in society²⁶.

Art. 13 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) covers the international solidarity in the right to education, by giving rise to obligations of state parties beyond their own territory. The right to education is connected to the right to development. The United Nations (UN) has considered the right to development as an inalienable human right by virtue of which every human being and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized²⁷. “The process of development” is centered around equity and justice progressively leading to improved levels of the realization of human rights by comprising both the achievement of the objectives of development and the way they are achieved²⁸.

Different studies have recognized refugee children and youth as being part of major marginalized groups due to the specific nature of their vulnerabilities which make them face insuperable barriers in their access to schooling. Such barriers – the absence of home and family, extreme levels of social stigma, the compulsion to work or migrate, and fear and insecurity associated with conflict, among others – compel the refugees to stay away from school altogether or drop out of school²⁹. From this point of view, the article will discuss the challenges in accessing education in the framework of the fight against discrimination in education, at the global and local level, by paying particular attention to the implementation of social inclusion in education for refugees and asylum-seekers in the Albanian context. By addressing the problems encountered at the level of policies and legislation, the article answers the following question: How do

²² S. ABUJAROUR, H. KRASNOVA, *Understanding the Role of ICTs in Promoting Social Inclusion: The Case of Syrian Refugees in Germany*, in *Proceedings of the 25th European Conference on Information Systems*, 2017, pp. 1792-1806.

²³ Council Recommendation, *on Promoting Common Values, Inclusive Education, and The European Dimension of Teaching*, of 22 May 2018, C 2018/C 195/01, in OJ C 195, of 7 June 2018, par 5.

²⁴ Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, *On Promoting Socioeconomic Development and Inclusiveness in the EU Through Education: The Contribution of Education and Training to the European Semester*, of 24 February 2016, 2016/C 105/01, in OJ C 105, of 19 March 2016.

²⁵ F. COOMANS, *Education as a Human Right for Migrants UNESCO Chair in Human Rights and Peace*, Centre for Human Rights Maastricht University, 2016.

²⁶ Y. ABAMOS, *The Peripherality of Social Inclusion of Refugees into Higher Education: Insights from Practices of Different Institutions in Norway*, in *Higher Education Policy*, 2021.

²⁷ The 2011 United Nations Declaration on the Right to Development, adopted on 4 December 1986 by General Assembly Resolution 41/128.

²⁸ K. BEITER, *op. cit.*, p. 10.

²⁹ CENTRE FOR EQUITY STUDIES, *India Exclusion Report 2013-2014*, 2014.

institutions understand and operationalize the social inclusion of refugees into the education system, with the aim of empowering students to transition to a suitable education, towards a society which aims at the consolidation of democracy as well as the respecting of human rights and freedoms?

2. Is the Policy and Legal Framework for Refugees' Social Inclusion in Education Enough?

2.1. The International Context

Transforming refugee education towards meaningful inclusion of refugees is part of the UN Agenda and other international organizations³⁰. This process can be defined as “transforming” because the global crisis in education complicates the implementation of the right to education which is protected at the international level³¹. Therefore, the transformation of the right to education towards an adaptable approach using the language of social inclusion for various vulnerable groups in society, particularly refugees and asylum-seekers, becomes indispensable. The COVID-19 pandemic highlighted the fragility of human rights and the impossibility of realizing them for marginalized groups³². This development affected the spirit that permeated society, thus putting democratic principles at risk.

The right to education as a means towards social inclusion is stipulated and articulated in various international instruments³³. The very purpose of education is directly related to the full development of the human personality and to the strengthening of the respect for human rights and fundamental freedoms. The universal and unlimited enjoyment of the right to education refers also to asylum-seekers, refugees and migrants. Yet, it will have to be appreciated that in the time of globalisation, digitalisation, pluralisation and lack of sustainability, the right to education needs better support in international law accompanied by a well-constructed national policy and legal framework³⁴. Regardless of the features of the Romano-Germanic system of laws in the largest part of European countries, it is necessary to ensure greater elasticity with regard to the legal means of the recognition of the right to education and especially its implementation by the state members.

What are the guarantees of the right to education for refugees and asylum-seekers? Many hard and soft law international instruments and interpretative guidelines have been adopted at the global and regional level attempting to explicate the content of the right to education and its resilience towards vulnerable groups³⁵. Article 26 of the Universal Declaration of Human Rights establishes that “*everyone has the right to education*” by

³⁰ United Nations World Food Program USA, *Seven of the Largest Refugee Crises Around the World and Their Effect on Hunger*, 2022, available at <<https://www.wfpusa.org/articles/largest-refugee-crises-around-world-effects-hunger/>>.

³¹ K. BEITER, *op. cit.*, p. 1

³² UNESCO, *Reimagining Our Futures Together: A New Social Contract for Education. Report from the International Commission on the Futures of Education*, 2021.

³³ H. MIÇO, The Right to Education of Asylum Seekers and Refugees. The Reflection of International Instruments and Standards in Albanian Legislation, in *EUWEB Legal Essays. Global & International Perspectives*, No. 2, 2022, pp 115-127.

³⁴ United Nations Human Rights Council, *The Right to Education of Migrants, Refugees and Asylum-Seekers. Report of the Special Rapporteur on the Right to Education, Vernoz Muñoz*, of 16 April 2010, A/HRC/14/25.

³⁵ K. BEITER, *op. cit.*, p. 2.

granting it to every human being without discrimination. The place that the right to education occupies in the Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (1966) shows the special importance that this right carries in the life of every individual. By recognising the aim of education to enable all persons to participate effectively in a free society, every member state of ICESCR has accepted that education is the right instrument to help the individual to be included and to enjoy the benefits of society. Pursuant to art. 13, states recognize the right to education to everyone. Education shall be directed to the human personality's "sense of dignity", it shall "*enable all persons to participate effectively in a free society*", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups³⁶. By "all" in the meaning of the covenant means "*to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation*"³⁷. This is related to the nature of the right to education, which is recognized to the individual beyond the territorial borders of the proper state, giving a voice to refugees in the search for their human rights and freedoms³⁸. The Convention clearly entails the obligation of states to make sure that primary education is compulsory and available for free to all. This is one of the provisions with direct effect. On the other hand, secondary, vocational and higher education will be made equally accessible to all, allowing states to take progressive measures according to the availability of resources (art 13 (2)). Given the differential wording of Article 13 (2) in relation to primary, secondary, vocational and higher education, the parameters of a State party's obligation to fulfil (provide) are not the same for all levels of education. However, it is important to be noted that the prohibition of discrimination is subject to neither progressive realization nor the availability of resources³⁹.

Asylum-seekers or refugees as rights-holders are recognised by the Convention against Discrimination in Education, which has provided in details the prohibition of all forms of violations that may be committed against the right to education. The Convention prohibits discrimination in education based on race, colour, sex, language, religion, political or other opinions, national or social origin, economic condition or birth, by offering particular protection for human rights despite the underlying circumstances⁴⁰. Another international law act such as the 1989 UN Convention on the Rights of the Child (CRC)⁴¹ has recognised the refugee children as rights-holders by strongly emphasizing the right to education for all without discrimination. The Convention specifically focuses on the child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law, and who, regardless of the circumstances

³⁶ Office of the High Commissioner for Human Rights, *CESCR General Comment No. 13: The Right to Education (Art. 13)*, E/C.12/1999/10, adopted on 8 December 1999 at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights.

³⁷ United Nations Economic and Social Council, *General Comment No. 20. Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, of 3 July 2009, E/C.12/GC/20.

³⁸ K. BEITER, *Why Neoliberal Ideology, Privatization, and Other Challenges Make a Reframing of the Right to Education in International Law Necessary*, in *The International Journal of Human Rights*, 2022, pp. 1-46, p. 8.

³⁹ K. WILLEMS, J. VERNIMMEN, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, in *European Educational Research Journal*, Vol 17, Issue 2, 2018, pp. 219-232.

⁴⁰ K. SINGH, *Universal Access to Education and Equality of Educational Opportunities: International Legal Framework and its Implementation*, in J. DE GROOF, G. LAUWERS (eds.), *The Right to Education and Rights in Education*, The Netherlands, 2006, pp. 39-55.

⁴¹ Convention on the Rights of the Child, art. 2.

in which he finds himself, must be offered necessary protection and means to enjoy the rights set forth in the Convention⁴².

The right to education for refugees and asylum-seekers is guaranteed on a par with nationals regarding elementary education by the 1951 Convention relating to the Status of Refugees (CSR) and its 1967 Protocol (PCSR)⁴³. With respect to the other levels of education, the Convention relating to the Status of Refugees provides the obligation of the state parties to accord to refugees as equal treatment as possible. The instruments that member states should offer to refugees regarding the implementation of the right to education concern access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges as well as the award of scholarships. However, asylum-seeker status is frequently coupled with policies that make it difficult to realize the right to education in an essential way⁴⁴.

2.2. *The European Context*

2.2.1. *European Convention on Human Rights, First Protocol to the Convention*

In addition to the protection provided to the right to education internationally, this right is also recognized and protected by a range of regional legal instruments. The most well-known instruments of the Council of Europe that have dealt with the right to education are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter, both in its original version (1961) as well as in the revised version (1996). Regarding the European Union, the most important legal instrument that stipulates the right to education is the Charter of Fundamental Rights of the European Union (2009).

Of all the international acts protecting human rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms is the most advanced⁴⁵. This is due to the fact that the provisions of the Convention are interpreted by the European Court of Human Rights (ECtHR), located in Strasbourg⁴⁶, whose main task is to ensure that signatory states respect the rights and guarantees specified in the Convention. The rulings of the court are final and binding upon all the signatory states. For this reason, the interpretations and jurisprudence of the European Court of Human Rights that is related to the right to education, will serve to better analyze and understand this right.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) does not contain an article that protects the right to education. It is the First Protocol to the Convention (1952) that contains an article that explicitly recognizes and protects the right to education⁴⁷. Art. 2 of the Protocol provides the following recognition of the right to education: “*No person shall be denied the right to education.*”

⁴² H. MIÇO, *op. cit.*, p. 7.

⁴³ United Nations Convention relating to the Status of Refugees and UN Protocol relating to the Status of Refugees, art. 22, para. 2.

⁴⁴ J. HATHAWAY, R.A. NEVE, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, in *Harvard Human Rights Journal*, Vol. 10, 1997, pp. 115-211.

⁴⁵ Albania signed the European Convention on Human Rights on 13 July 1995 and ratified in on 02 October 1996. The Convention entered into force on 02 October 1996.

⁴⁶ K. BEITER, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*, Leiden/Boston, 2006, p. 159.

⁴⁷ Albania has signed the First Protocol of the European Convention on Human Rights on 02 October 1996 which was ratified and entered into force on the same day.

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”.

Art. 2 includes two different and interrelated rights. The first sentence covers the right to education, whereas the second protects the right of parents to ensure that the education of their children is in conformity with their religious and philosophical convictions. The European Court of Human Rights has ruled about this article that: “*Article 2 constitutes a whole that is dominated by its first sentence, the right set out in the second sentence being an adjunct of the fundamental right to education*”⁴⁸. Parents have the right and duty to raise and educate their children. In this process they have the right to request from the state to respect their religious and philosophical convictions. Nonetheless, the right of children to receive education precedes the right of parents.

According to Beiter⁴⁹ the negative formulation of the first sentence of Art.2 of the First Protocol to the European Convention (“*No person shall be denied the right to education*”) means that the aspect of freedom is included more in the right to education compared to the social aspect. The first includes negative state obligations, whereas the second includes positive state obligations. The right to education includes the right to access the transfer of knowledge and intellectual development, in educational institutions that exist at a certain time, but also the possibility to enjoy the benefits of the education received, which otherwise means the right to receive official recognition of studies completed, *i.e.*, through qualification⁵⁰. Art. 2 of Protocol No. 1 refers to basic education, secondary education, higher education, as well as specialized courses. In this manner, bearers of the right guaranteed in Article 2 of the Protocol are not only the children, but also adults, as well as any other person who wishes to benefit from the right to education. This facilitates the transfer and recognition of knowledge in the case of asylum-seekers and refugees, thus creating the possibility for social inclusion.

The European Court of Human Rights has commented on the nature of the right to education provided in the first sentence of Art.2 of the First Protocol of the European Convention in the *Belgian Linguistic* case⁵¹. Clarifying the scope of this right, the Court stated that, when the First Protocol was signed, all the member states of the Council of Europe had, and continue to have, a general official education system. The court declared that “*the negative wording shows [...] that States Parties do not recognize the right to education as such, since this would require them to establish, at their own expense, or to subsidize, education for every case or level*”. As a result, the Court reached the conclusion that specific states cannot be required to organize such a system, but only guarantees, for persons under their jurisdiction, for the right they enjoy based on the existing educational opportunities⁵². The Court further ruled that “*the right to education would be meaningless if it did not [also] imply, for the benefit of its beneficiaries, the right to be educated in the national language or one of the national languages, as the case might be*”.

⁴⁸ European Court of Human Rights, Judgment of 25 February 1982, Application No. 7511/76 and 7743/76 *Campell and Cosans v. United Kingdom*, para. 40.

⁴⁹ K. BEITER, *op. cit.*, p. 162.

⁵⁰ Council of Europe/*European Court on Human Rights, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights. Right to Education*, 2015, p. 3, para. 13.

⁵¹ European Court of Human Rights, Judgment of 23 July 1968, Application Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium (Merits)*.

⁵² M. NOVICKI, *Gurët udhërrëfyjes; Jurisprudenca e Gjykatës Evropiane e të Drejtave të Njeriut*, Qendra Europiane e Universitetit të Varshavës, Varshavë, 1996, translated in Albanian from Qendra Shqiptare për të Drejtat e Njeriut, Tiranë, 1999, pp. 515-516.

According to the Court, the first sentence of Art. 2 of the First Protocol contains three rights:

1. The right to non-discriminatory access to school institutions that exist at a certain time;
2. The right to receive education in the national language;
3. The right to official recognition of successfully completed studies.

Still, the first sentence of Art. 2 of the First Protocol also contain positive state obligations that are related to respecting, protecting and realizing the right to education. The absence of these obligations would invalidate this right. It is worth mentioning that basic education, and in some cases secondary education, are compulsory in the European education system. With the signing of the First Protocol, the states in a silent manner considered themselves under the obligation to ensure that public schools that guarantee a minimum education, are at the disposal of the beneficiaries of this right. It should not be forgotten that Art. 2 includes a positive obligation for these states to guarantee this minimum education. The exercise of the right to education, conceived as a right when individuals enjoy equal access, assumes the existence of minimum education. If the individual has been denied this threshold, meaning this minimum education, this will have very serious results in the development of the concerned individual and in the enjoyment of the other rights and freedoms recognized by the European Convention of Human Rights. According to the European Court on Human Rights “[...] *regardless of the negative obligations [...] the use of the term ‘right’ talks about the right to education. [...] Article 2 embodies this right*”⁵³. This means that in case the minimum education standards are violated in a Member State, the state has positive obligations to ensure this right is respected, in the meaning of the first sentence of Art. 2 of the Convention.

2.2.2. *European Social Charter (revised)*

The protection of the right to education at the regional level, specifically in the Revised European Social Charter⁵⁴ covers the aims of education and social dimension. Education is evaluated as one of the instruments that creates access to social inclusion and reduces inequality in society. The Revised European Social Charter is one of the first international instruments which highlights the teaching of the migrant worker's mother tongue to the children of the migrant worker. Both the original and the amended version of the European Social Charter contain a number of provisions that are related to the right to education, specifically in Arts. 7, 9, 10, 15, 17 and 19. Art. 7 deals with the rights of children and youngsters for protection, and in its third paragraph requires states “*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*”. Arts. 9 and 10 provide for the right to vocational guidance and training. Art. 9 brings an obligation to states to offer vocational guidance to all persons, for free, including both school children and adults. This is accompanied by Art. 10, which requires member states to offer vocational training to all persons “*and to grant facilities for access to higher technical and university education, based solely on individual aptitude*”. Art. 15 recognizes the right of handicapped persons to independence, social integration and participation in community life. Art.15, in para. 1, stipulates, amongst others, the obligation of state

⁵³ European Court of Human Rights, *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium (Merits)*, cit.

⁵⁴ European Social Charter (Revised), art. 30.

parties to take the necessary measures to offer persons with disabilities guidance, education and professional training.

Art. 17 contains the rights of children and young persons for economic, legal and social protection. Through this article the state aims to achieve the effective exercise of children's and young people's rights, so that they grow up in an environment that encourages the full development of their personality as well as of their mental and physical capacities. The right to free primary and secondary education emerged only after the amendments to the European Social Charter of 1996. According to Beiter⁵⁵, including the right to education in the amended European Social Charter is very important, because it adds the economic and social dimension of education to the Council of Europe, which was previously lacking.

Art. 19 refers to the right of migrant workers and their families to enjoy protection and assistance. The parties commit “*to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families*”. Moreover, the parties commit “*to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker*”. In addition, art. 30 pays special attention to social inclusion, engaging the state parties to take measures for promoting the effective access of persons who live or risk living in a situation of social exclusion or poverty and their families, to employment, housing, training, education, culture as well as social and medical assistance.

2.2.3. Charter of Fundamental Rights of European Union

The Charter of Fundamental Rights of the European Union brings together all the rights that are protected in the EU into a single document. The Charter contains rights and freedoms organized under six headings: Dignity, Freedoms, Equality, Solidarity, Rights of citizens and Justice. Published in 2000, the Charter became legally binding with the coming into force of the Treaty of Lisbon in December 2009. The Charter of Fundamental Rights of the European Union brings together all the rights that were spread out in a number of sources, including the European Convention of Human Rights and a number of agreements of the Council of Europe, United Nations and the International Labor Organization. Art.14 of the Charter specifically sanctions the right to education as follows: “*1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education. 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right*”.

In its first sentence, Art.14 stresses that everyone has the right to education and the right to have access to continuous vocational training. It also puts an emphasis on the right to non-discriminatory access to education and continuous vocational training. Such equal access means that citizens of the European Union who are students, employed, or dependents of those employed, do not need to pay administrative or registration fees to attend educational institutions that are higher than those paid by the citizens of the concerned member country⁵⁶. The right to education according to the Charter is only

⁵⁵ K. BEITER, *op. cit.*, p. 175.

⁵⁶ See EU Network of Independent Experts on Fundamental Rights, *Commentary of the Charter of Fundamental Rights of the European Union*, 2006.

applicable in the international context. Citizens of the European Union can require equal access to the right to education only when they move to work or study in another member country. They cannot ask for the right to education from their country based on provisions of the Charter. The second part of the first sentence of Art. 14 goes beyond the access to the right to education and continuous vocational training, holding the member states responsible for the building or the establishment of these institutions.

Thus, whereas Art.14 of the Charter, in its first sentence, sees the right to education concentrated mainly on equal access to education, this does not correspond with the interpretation of the European Court of Human Rights on Art. 2 of the First Protocol of the European Convention on Human Rights, “*No person shall be denied the right to education*”, which stresses the aspect of freedom in the right to education. Art. 14 of the Charter guarantees the right to education by suggesting that member states not only refrain from interfering in the human right to education, but that they also facilitate this right through positive action.

It is accepted that social inclusion is multi-dimensional and affects various life domains: economic, political, cultural and social⁵⁷. Integrating processes influence immensely the human rights dimension. However, the concept of integration lacks a commonly agreed understanding. It has been understood as a two-way process and the Parliamentary Assembly of the Council of Europe (PACE), in its Resolution 2176 (2017), has stated that integration is “*an ongoing process rather than a final destination, depending on constructive tripartite engagement between the authorities, the host community (especially civil society) and the refugees*”, focusing not only on immigrants themselves but also on the responsibilities of the receiving societies and state authorities⁵⁸. The Committee of Ministers of the Council of Europe has called for integration policies that “*respect the cultural diversity of society, and always avoid stigmatization of migrants and persons of immigrant background*”⁵⁹.

Yet, the United Nations Educational, Scientific and Cultural Organization’s (UNESCO) 2021 Report, entitled “*Reimagining Our Futures Together*”, finds that “*we need a new social contract for education that can repair injustices while transforming the future*”⁶⁰. Regardless of the commitment of the international community presented in the Dakar Framework for Action to pursue a broad-based strategy till 2015 for ensuring that the basic learning needs of every child, youngster and adult are met within a generation, supported by six objectives, targets and timelines, still the right to education for all needs a holistic support to be implemented for everyone, despite the person's status or conditions⁶¹. The Commentary to the Dakar Framework prioritizes an all-inclusive approach to education: “*The key challenge is to ensure that the broad vision of Education for All as an inclusive concept is reflected in national government and funding agency policies. Education for All [...] must take account of the need of the poor and the most disadvantaged, including working children, remote rural dwellers and nomads, and*

⁵⁷ S. CARRERA, Z. VANKOVA, *op. cit.*, p. 7.

⁵⁸ Council of Europe Parliamentary Assembly Resolution 2176 (2017), *Integration of Refugees in Times of Critical Pressure: Learning from Recent Experience and Examples of Best Practice*, of 28 June 2017, para. 4.

⁵⁹ Recommendation CM/Rec (2008)10 *on Improving Access of Migrants and Persons of Immigrant Background to Employment*, Adopted by the Committee of Ministers on 10 July 2008 at the 1032nd meeting of the Ministers’ Deputies, p. 2.

⁶⁰ UNESCO, *Reimagining Our Futures Together: A New Social Contract for Education*, cit., p. 3.

⁶¹ UNESCO, *Education for All 2000-2015. Achievements and Challenges*, Paris, 2015, p. 298.

ethnic and linguistic minorities, children, young people and adults affected by conflict, HIV/AIDS, hunger and poor health; and those with special learning needs”⁶².

To meet their human rights obligations, governments must carefully and thoughtfully weigh up the impact of the different policies and measures on achieving education for all. For instance, the lack of the recognition of basic rights, starting with the right to registration at birth and the right to citizenship, inevitably leads to children being denied the right to education⁶³.

Former UN Rapporteur on the Right to Education, Katarina Tomasevski has identified four stages towards establishing an all-inclusive policy in education. The first stage involves recognizing education as a right. Usually the recognition of the right is mainly attributed to nationals, and non-citizens are often excluded. In case the children are without identity documents, they are denied school registration, resulting in the lack of access to the right to education. Where the recognition of education as a human right is sanctioned in the legal framework, the second stage involves segregation, whereby vulnerable groups of children including refugees and asylum-seekers are given access to education but in the second- or third-rate schools. As stated by Tomasevski, the third stage involves integration but at the cost that the new groups or individuals who join the class must abandon their mother tongue or religion if they are enrolled into the general education system. The fourth stage requires that schools respond to the diversity of their students. This requires adapting the school to the needs of the student rather than the student to the conditions of the school⁶⁴.

The fourth stage leads toward the social inclusion of refugees, the realization of their human rights and freedoms and their integration in society. According to the Council of Europe, the notion of integration entails a multi-dimensional and multi-actor process of participation, interaction and understanding, encompassing societies as a whole, which is reflected in social inclusion to education⁶⁵.

3. Stages of the Social Inclusion in the Education of Asylum-Seekers and Refugees in the Albanian Legal Framework

European policies and international legislation on social inclusion for refugees and asylum-seekers are reflected in the national legal framework of Albania. Providing inclusive education and creating lifelong learning opportunities for all is an approach towards social inclusion in education reflected in the national education legislation⁶⁶ and policy⁶⁷. According to the Albanian national education strategy, inclusion in education, as an integral part of the Sustainable Development Goals (SDG4)⁶⁸, connects the Albanian strategy with the foreseen objectives of the United Nations towards democratic

⁶² World Education Forum, *The Dakar Framework for Action. Education for All: Meeting Our Collective Commitments*, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000, para. 19.

⁶³ K. TOMASEVSKI, *Manual on Rights-Based Education. Global Human Rights Requirements Made Simple. Collaborative project between the UN Special Rapporteur on the Right to Education and UNESCO Asia and Pacific Regional Bureau for Education*, Bangkok, 2004.

⁶⁴ K. TOMASEVSKI, *op. cit.*, p. 69.

⁶⁵ Council of Europe, *Measurement and Indicators of Integration. Community Relations*, Strasbourg, 1997, p. 8.

⁶⁶ Law 69/2012, *On pre-university education in the Republic of Albania*, of 21 June 2012, in Official Gazette No. 87, 2012.

⁶⁷ Council of Ministers Decision No. 621, *On the Approval of the National Education Strategy 2021–2026 and the Action Plan for Its Implementation*, of 22 October 2021.

⁶⁸ United Nations General Assembly Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, of 21 October 2015, A/RES/70/1.

principles and fundamental human rights and freedoms. The new Asylum Law and the framework of the related by-laws have created more opportunities for the social inclusion of refugees and asylum-seekers in Albania⁶⁹. The Law “On Asylum” paved the way for temporarily hosting evacuees/refugees from Afghanistan⁷⁰ and Ukraine⁷¹. Yet, the right to inclusive education should be made more explicit particularly regarding the instruments of implementation thus leaving no room for discrimination.

The understanding of the four stages of Katarina Tomasevski helps to better evidence social inclusion in the education of refugees and asylum-seekers. Regarding the first stage that involves recognition of education as a right, according to the national legal and policy framework, the children of persons who are refugees or asylum-seekers have the right to attend pre-university education under the same conditions as children with Albanian citizenship. In order to continue learning in basic education or in higher secondary education, it is necessary to document the knowledge obtained officially in the country of origin. However, the student is given the opportunity to be assessed for the level of knowledge by an inter-subject committee composed of teachers and the psycho-social service worker set up in the school⁷². Regardless of the possibility to evaluate students' knowledge as a means of measuring the respective educational level, the lack of knowledge of the local language will represent an obstacle to full access to education, consequently being a hindrance to social inclusion in education.

In another positive development concerning the recognition of and granting of equivalence to degrees, certificates and academic titles obtained during higher education, the criteria and procedures on the granting of recognition and equivalence to refugees, displaced persons and persons defined as being “similar to refugees” have been clearly stipulated for the first time in the Albanian higher education legislation in 2021, by dealing particularly with the instances when the said categories are not able to provide evidences of their respective qualifications and/or periods of study due to justified reasons⁷³.

The second stage, during which asylum-seeking or refugee children may suffer segregation in the framework of the right to education, is related to the transparency and responsibility of the state in providing educational institutions. Often these children are enrolled at inferior schools located in the suburbs, therefore affecting inclusion in education. It should also be stated that until recently the attention of Albanian authorities has been almost exclusively confined to reducing the social exclusion of Roma and Egyptian minorities including the reduction of segregation in schools concerning students

⁶⁹ Law No. 10/2021, *On Asylum in the Republic of Albania*, in Official Gazette No. 28, of 24 February 2021.

⁷⁰ Decision no. 501, dated 25.08.2021 of the Council of Ministers “*On granting temporary protection to Afghan nationals and stateless persons, with temporary or permanent residence in the Islamic Republic of Afghanistan, and for the establishment of task-force for flow management of applicants for granting temporary protection*”.

⁷¹ Council of Ministers Decision No. 173, *On Granting Temporary Protection to Ukrainian Nationals and Stateless Persons, and Persons Who Have Gained International Protection in Ukraine, with Temporary or Permanent Residence in Ukraine, and on the Establishment of Task-Force for Flow Management of Applicants for Granting Temporary Protection*, of 18 March 2022, in Official Gazette No. 45, of 24 March 2022.

⁷² Ministry of Education and Sports Instruction No. 10, *On the Registration and Support in Public Pre-University Educational Institutions of Children of Migrants, Asylum-Seekers and Refugees, Unaccompanied Foreign Children, Children Returning from Emigration, from Conflict Zones, or Child Victims of Trafficking in the Republic of Albania*, of 17 May 2021, Chapter 1, Point 3 and 4.

⁷³ Instruction No. 21, dated 15.10.2021, of the Ministry of Education and Sports, *On the recognition and equivalence of degrees, certificates, scientific degrees and academic titles issued by foreign higher education institutions and other authorized institutions*”, Chapter 4.

belonging to these communities. Despite the measures adopted to this end, limited progress has been achieved so far in the social inclusion of the Roma and Egyptian minorities⁷⁴. The educational and spatial segregation of Roma and Egyptian children continues to be an issue which needs to be systematically addressed particularly with a view to the recent decision by the ECtHR in May 2022 which concluded that Albanian authorities had failed to take steps to desegregate Roma and Egyptian pupils in a primary school in Korça and to implement the decision of the Commissioner for the Protection from Discrimination ordering the Ministry of Education and Sports to improve the situation⁷⁵. In this context, the lessons learned in the framework of the rising institutional and societal awareness on the issues pertaining to the educational segregation of Roma and Egyptian children can also be employed to avoid the emergence of similar situations with regard to asylum-seeking and refugee children.

The integration of refugee and asylum-seeking children means the removal of linguistic barriers to inclusion and learning, a process which takes place during the third phase. Nonetheless, refugee children are likely to engage in learning Albanian language rather than to have access towards a curriculum offered in a language they can understand. The pre-university educational institution prepares an individual plan for learning the Albanian language for students who have the status of refugees or asylum-seekers⁷⁶. However, the Albanian education system operates on the basis of clear central policies and schools are not autonomous units in the management of finances, curriculum or teaching staff. Such a mode of operation complicates the autonomous way of engaging teachers with individual teaching plans beyond the scheduled teaching hours. This is accompanied by the possibility of public educational institutions to provide textbooks for children who have the status of refugees or asylum-seekers. The lack of knowledge of Albanian language affects the understanding of textbooks, the teaching and learning process, as well as the engagement in school and in its activities by bringing obstacles in the direction of social inclusion in education⁷⁷.

The last stage provides for the school to meet students' needs, which is related both to the adaptation of the learning process to the needs of students and to the support that should be offered to students from a psycho-social perspective. On the other hand, special attention should also be paid to the pedagogical approach that will be used, taking into consideration the background of refugee students and their need for thorough understanding. However, it is noted that this stage has not been elaborated enough in the legal framework to enable the inclusion of refugee students. Meanwhile, the recognition of previous studies or academic qualifications for asylum-seekers or refugees is expected to be carried out through a simplified procedure, by recognizing the possibility of recognition of diplomas or studies only by the means of declaration before the relevant state authorities.

On the other hand, the UNICEF Report titled “Education, children on the move and Inclusion in Education”, presents a variety of scale up solutions for inclusion into national education systems. Removing financial and linguistic barriers to inclusion and learning as well as training teachers to support learning or overcome discrimination and exclusion represents evidence to the need for a comprehensive approach towards social inclusion in

⁷⁴ European Commission Staff Working Document, *Albania 2022 Report*, of 12 October 2022, SWD(2022) 332, p. 36.

⁷⁵ European Court of Human Rights, Judgment of 31 May 2022, Applications Nos. 73548/17 and 45521/19, *X and Others v. Albania*.

⁷⁶ Ministry of Education and Sports Instruction No. 10, cit., Chapter 1, Point 5.

⁷⁷ *Ibid.*, Chapter 1, Point 6.

education for asylum-seeking and refugee children⁷⁸. The Albanian approach towards inclusion in the right to education for refugees and asylum-seekers is incomplete and often impossible to be realized by both the educational institution and students.

4. Conclusions: More Can Be Done in Terms of Inclusive Education for Refugees and Asylum-Seekers

This article explores the place occupied by the right to education at the international level, taking into consideration not only the international instruments to this end but also the assessment of the implementation on the ground of the right to education with the aim of achieving the social inclusion of refugees and asylum-seekers. It provides the bridge between education and social inclusion, emphasizing the importance of this link in human rights. In this context, it is vitally important that human rights be recognized and protected on a permanent basis, especially by considering legislative changes in accordance with international policies. The access dimension of social inclusion in education, together with availability, acceptability and adaptability are analyzed in the light of the international and regional legal framework and policies alongside the elevated framework elaborated by former UN Rapporteur on the right to education, Katarina Tomasevski. This analysis served as a reflection of the implementation of social inclusion in education for refugees in the Albanian policy and legal framework. What stands out is the fact that from the moment of the ratification of the said international conventions by Albania until their implementation in the local legislation, the state has partially assumed the responsibility for securing the right to education in particular for asylum-seekers and refugees. Responsibilities taken in the direction of the materialization of the right to education and social inclusion appear sporadically in local legislation and in a few cases are found mainly in secondary legal sources rather than laws, thus giving a fragile nature to the protection of the right to education. On the other hand, the full materialization of this right and the inclusion of asylum-seekers and refugees towards social inclusion, requires a complete interweaving of the realization mechanisms of the right to education in the entire educational system, in order to achieve a good quality education.

The government should consider a variety of interrelated elements that influence the implementation of the right to education for refugees and asylum-seekers such as the language barrier, the variety of children's backgrounds and experiences, different educational systems as well as the pedagogical approach. Greater autonomy in developing educational systems and curricula must be balanced against individual rights, particularly each child's entitlement to free and compulsory education. Providing critical opportunities for increased access to education for refugees and asylum-seekers is considered to be an important element toward social inclusion, human rights and the well-being of individuals and more generally society at large⁷⁹.

To conclude, considering that Albania is a candidate state for EU accession, being a Member State of the Council of Europe and above all, being a country that has experienced extraordinary violations of basic human rights and freedoms due to the dictatorial regime, it is crucial for its future to show full consideration and respect for

⁷⁸ UNICEF, *Education, Children on the Move and Inclusion in Education. Lessons Learned and Scalable Solutions to Accelerate Inclusion in National Education Systems and Enhance Learning Outcomes*, 2022, available at <<https://www.unicef.org/reports/education-children-move-and-inclusion-education>>.

⁷⁹ European Commission, *Thematic Fiche: Inclusion of Young Refugees and Migrants Through Education. ET 2020 Working Group on Promoting Common Values and Inclusive Education*, Brussels, 2020.

human rights, and to also ensure their implementation in every aspect and for every single individual without discrimination.

ABSTRACT

From Rousseau's social contract theory to the present day, the recognition of human rights and freedoms by the state has taken on its primary importance at the national and international level. As currently formulated, the concept of human rights is almost a recent phenomenon. Article 1 of the United Nations Universal Declaration of Human Rights states: 'All human beings are born free and equal in dignity and rights'. However, the implementation of human rights encounters difficulties for certain categories of people, including foreign citizens seeking refugee status. Despite this, the world is moving towards globalization and social inclusion regardless of either discriminatory or incomplete policies for the protection of human rights. In this framework, education is one of the most appropriate tools to achieve social inclusion, international understanding, solidarity and cooperation. Ensuring inclusive, equitable, quality education for all is not only a principle but also a natural human right which is recognized not only for nationals but also for every foreign and stateless person. Through the method of qualitative analysis, the article will analyze the international policies in the field of social inclusion in education, with a special focus on asylum-seekers and refugees, as well as the emerging need for an inclusive approach to the right to education. The article will focus on challenges in accessing education in the framework of the fight against discrimination in education, at the global and local level, with a particular focus on Albania. The article will also address the problems encountered at the level of policies and legislation, answering the question of how institutions understand and operationalize the social inclusion of refugees into pre-university and higher education with the aim of empowering students to transition to a suitable education, towards a society which aims at the consolidation of democracy as well as the respecting of human rights and freedoms.

KEYWORDS

Human Rights, International Policies, Refugees, Right to Education, Social Inclusion.