The Right to Education as an International Human Right

Jost Delbruck
Indiana University Maurer School of Law

Follow this and additional works at: https://www.repository.law.indiana.edu/facpub

Part of the Education Law Commons, and the Human Rights Law Commons

Recommended Citation
Delbruck, Jost, "The Right to Education as an International Human Right" (1992). Articles by Maurer Faculty. 2824.
https://www.repository.law.indiana.edu/facpub/2824

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
The Right to Education
as an International Human Right

By Jost Delbrück

The classical notion of human rights is clearly associated with the idea of individual freedom; freedom from interference with or violation of basic rights of citizens at the hands of governments, legislatures, or even judiciaries neglecting the constitutional or other wholesome restraints of the law. In a rather belated response of 20th century society to the so-called social question posed in the 19th century by the miserable plight of the toiling masses in a rapidly industrializing world, a “second generation” of human rights was developed: economic, social and cultural rights. The right to work, the right to at least a minimum standard of social security and, last but not least, the right to education have been included in national and international constitutional or other legal documents ever since.

The major difference between the classical liberal human rights and the new type of human rights is generally seen to consist in a reversal of their role and function in the relationship between citizens and State or government. While classical human rights aimed at keeping State authority out of the individual’s private sphere of action and personal development — a human rights philosophy pointedly articulated in the classical notion of “the right to be let alone”\(^1\) — the new human rights aim at getting the State or government “involved”, i.e. obliging the State or government to provide services to the people. Governments are now seen to be under an obligation to act in order to implement such human rights as the right to work or the right to education. The literally omnipresent modern welfare State is a direct product of this new human rights philosophy. This philosophy has almost universally taken deep roots in people’s minds because of its humanistic and social dimensions, and because it clearly addresses major concerns and needs of people world-wide.

However, from the beginning the “new generation” of human rights has also met with considerable opposition. In many quarters these rights were associated with “Socialism” — seemingly in and of itself a reproach not in need of more substantive argument. On a more profound level of argument, opposition to the “new rights”

The Right to Education as an International Human Right

was and is based on the contention that they are incompatible with the concept of a free, market-oriented social order. The most serious allegation against the "new rights", however, is based on the concern or fear that the necessarily strong State involvement in the process of implementing the "new rights" might threaten individual freedom and might undermine the very foundations of a free society altogether. Thus, the introduction of the "new rights" into national constitutions or international human rights stipulations is rejected al limine — following the principiis obsta principle.

This article attempts to probe into the validity of the arguments raised against the "new rights". It will focus on the right to education — understood as the right to receive an education, not as the right (e.g. of parents) to educate — and will try to shed some light on the full meaning of the right to education. In particular, it shall be discussed whether or not it is true that the right to education is, in fact, a right which can be so clearly distinguished from the classical liberal human rights as critics contend. In other words, the question to be asked is whether the right to education is aimed solely at an increased State "involvement" with all the inherent dangers for a free society, or whether the right to education is also inherently linked to the classical human rights notion of individual freedom, and if so, which conclusions can be drawn from this wider understanding of the right to education for the ways and means through which such a right should be implemented.

The article will be developed in three stages. In Part I, the anthropological and philosophical foundations of the right to education as they are perceived in modern societies will be summarized, and the place of this right in positive national and international law will be sketched out. In Part II, the meaning of the right to education according to its positive enactment in the law will be looked into, taking note of the various kinds and forms of education as well as the aims pursued in education. Particular interest will be taken in the role of the State as it is envisaged by the authors of the right in various legal documents, and the role of parents and non-governmental institutions involved in education. In a final section, Part III, the concept of the right of education, its role and function for the individual and vis-à-vis the State will be outlined.

I. The Anthropological and Philosophical Foundations of the Right to Education and its Codification in Positive Law

1. The process of growth of a human being — as that of any other living being — is determined biologically. But unlike other living beings, during infancy and after — until reaching maturity — a human being is dependent on the care of parents and/or other persons and institutions. There is no other way of decreasing and ultimately overcoming such dependence than developing in children the skills necessary to gradually enable each child to take care of him- or herself. In other
words, education of the human being from the day of birth is an indispensable prerequisite for survival and growing up. But the notion of education is not confined to the more or less "technical" aspects of learning skills of survival. The term "education" has a wider meaning, i.e. the intellectual, spiritual, and emotional development of the human being, of his or her intellectual, spiritual, and emotional potential. This meaning is expressed in both German and French in the separate terms "Bildung" — "Ausbildung" and "culture générale" — "éducation/instruction", respectively. From ancient times historical accounts of human development are replete with descriptions of how the task of education was discharged, by whom and toward what ultimate aims. The fascinating history of the unfolding of the concept of education cannot even be summarized here. Suffice it to say that education has always been characterized by the two major concerns of cultures and peoples, namely to transmit to the young the technical skills necessary to master the tasks of daily life as well as the religious (philosophical), cultural and social values of the respective societies, peoples, and the subgroups thereof.

The modern debate in the Western hemisphere on how to educate and to what ends started in the wake of the break-down of the medieval ordo. This entailed the emancipation of the individual from the tutelage of the Church and from secular, feudal bonds; a process which culminated in the age of Enlightenment. As a result, education, its modes and ends, increasingly became the object of critical philosophical and also political reflection. Under the impact of these developments traditional educational structures and institutions of socialization broke down, but new uncontested concepts or "philosophies" of education did not (and could not) replace the traditional concepts. Education was discovered as constituting a concept related to the needs, convictions, and political, cultural and social perceptions of the times. The emergence of a science of education is symptomatic of this new understanding of the notion of education, and the abundant, rather disparate literature on the subject is indicative of the "educational paradise lost". However, in recent decades it seems that despite the diversity of educational "philosophies" and aims, modern societies have in a way returned to the undisputable fact that the human being does not only need to be familiarized with the skills indispensable in a modern civilized society. Rather, it seems to be widely recognized that education in a broader sense, in the sense of "Bildung", is a prerequisite for the human being to understand the world around and to find his or her identity as a human being endowed with a distinct personality and dignity.2 All diversity or

---

3 For a concise survey of the development of the concept of education see Ernst Lichtenstein, entry "Bildung", in: Joachim Ritter (ed.), Historisches Wörterbuch der Philosophie, vol. 1, Darmstadt 1971, col. 921 et seq.
4 Lichtenstein, op. cit., col. 931 et seq.
even controversy over the "true" educational ways and ends notwithstanding, there seems to be a growing consensus that education must enable the human being to live a responsible life within society, to participate in communal life, and to develop his or her personality and identity, ideas inherent in the notion of human dignity. How this concept of education has found its way into the written law of today — national and international — and to what extent, has to be the next step of inquiry.

2. Throughout much of history, education was a matter of concern for the family, religious institutions, and secular corporate entities such as guilds and similar groupings. With the increasing emancipation of the individual and the gradual realization that education was a matter of public concern for the emerging modern State, a significant shift from the traditional social agents of education to the State took place. Simultaneously, this meant that education took on a legal dimension, that is to say, education as a public responsibility of the State necessitated the regulation of some vital issues by law. The hitherto almost unchallenged determining role of the parents in the education of their children had to be restricted and marked off vis-à-vis the role of the State; the question had to be answered as to whether or not every child had to submit to schooling, i. e. public or private education, and for how long; and last but not least the question had to be settled as to how religious education was to be handled — outside the schools or inside (or both), by the Church (or the respective churches) or by parents and school teachers.

In the 18th century school attendance was made mandatory. In Germany, the State of Prussia introduced mandatory school attendance in 1717 and in 1794 the Prussian General Code of Law (Allgemeines Landrecht) declared schools which until then had been the responsibility of the churches, foundations or city governments, to be State institutions. More or less similar developments took place in other European States and abroad. Thus, one may say that by the end of the 19th and early 20th century, the obligation on the part of parents and children to secure some kind of at least basic education for children was established, in principle, by law. Reality, however, was a different matter. In the highly stratified pre-World War I societies — despite mandatory school attendance — education to a large degree remained a privilege of the upper strata of society, of the so-called "Bildungsbürgertum" (the educated bourgeoisie).

The injustice of the prevailing distribution of educational opportunities led to another almost revolutionary change of perspectives with regard to education: the emphasis on mandatory school attendance rapidly was shifted to the demand for equal access to education which was increasingly perceived as the key to social advancement. The spread of democratic ideas, particularly the right to equality under and through the law, contributed to the gradual development of the notion of a basic or human right to education. During the inter-war period between 1919 and 1939 a considerable number of national constitutions, particularly those of States either just established or having changed to democratic government, included the right to education alongside the rights of parents with regard to the education of their children, and a definition of the State responsibilities in the field of education. Other countries — while not adhering to the notion of a right to education — opened their secondary and tertiary educational institutions to society at large in an effort to provide equal opportunity through education for all, an effort which gained another moral dimension when the provision of equal educational opportunities was no longer a matter of eliminating privileges based on class but on race. The development of this idea in the United States, particularly after the landmark decision of Brown v. Board of Education of Topeka (1954), is a telling example in point. The right to education has also gained considerable importance with regard to the elimination of discrimination against women in education.

It was not, however, until after the end of World War II that the right to education was also recognized in international law. When the United Nations General Assembly in 1948 solemnly recognized that the protection of human rights had become an international responsibility, and to that end adopted the Universal Declaration of Human Rights on 10 December 1948 it included a number of “second generation” rights in the document. Amongst these was the right to education in Article 26. Although the Universal Declaration is a resolution passed by the General Assembly and as such does not have the binding force of law, it is worthwhile to quote Article 26 in full, as it spells out the whole range of issues

---

6 The earliest German constitutional codification of this kind was introduced into the Paulskirchenverfassung of 1849, which, however, did not enter into force: “Das Unterrichts- und Erziehungswesen steht unter der Oberaufsicht des Staates, und ist, abgesehen vom Religionsunterricht, der Beaufsichtigung der Geistlichkeit als solcher enthoben.” (§153). “Für die Bildung der deutschen Jugend soll durch öffentliche Schulen überall genügend gesorgt werden.” (§155) — Similar, even more detailed provisions were contained in the Weimar Constitution of 1919 (arts. 144, 147 and 149) which were taken as the basis for the present provision of art. 7 of the German Basic Law and the constitutions of the German Länder after the end of World War II.


discussed in the national and international debates on the proper place and role of education in the constitutional and social fabric of modern society:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be made accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

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

This first solemn international commitment to the recognition of the right to education was further elaborated and refined and ultimately included into the UN Covenant on Economic, Social and Cultural Rights of 1966 which entered into force in 1976 and in 1990 had been ratified by more than 90 States. In the present context it is important to note that the educational goals — set out in paragraph 2 of Article 26 of the Universal Declaration — were now included in paragraph 1 of Article 13 of the Covenant and significantly amended. The sentence now reads: “[The States Parties] agree that education shall be directed to the full development of the human personality and the sense of its dignity”. Furthermore, Article 13, paragraph 1, is more specific with regard to the operative ends of education, i.e. that “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations”. State responsibilities in the provision of educational opportunities are also spelled out more specifically. The rights of parents to have their say in the education of their children are more clearly defined and the existence of private schools alongside public schools is expressly guaranteed. The authority of the State to maintain a minimum standard of educational quality with regard to private schools is also recognized.

The right to education has also been recognized with the force of law in other universal human rights treaties specifically dealing with the elimination of discrimination based on race, sex or religion. Thus Article 5 d (v) of the Convention on the Elimination of all Forms of Racial Discrimination of 1966 and the UNESCO Convention Against Discrimination in Education of 1960 provide for the international protection of the right to education. The right of parents to freely
determine “the religious and moral education of their children in conformity with their own convictions” is once again guaranteed in the UN Covenant on Civil and Political Rights of 1966.\textsuperscript{14} The most recent codification of the right to education is contained in the Convention on the Rights of the Child of 1989\textsuperscript{15} which, however, has not yet entered into force.

On the regional level the right to education has found its way into the 1952 Protocol [No. 1] to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 2),\textsuperscript{16} the Charter of the Organization of American States (Article 47),\textsuperscript{17} the American Convention on Human Rights of 1969 (Article 12, paragraph 4, and Article 26),\textsuperscript{18} and the Banjul (African) Charter of Human Rights and Rights of Peoples of 1982 (Article 17).\textsuperscript{19} The list of positive, legally binding guarantees of the right to education is impressive indeed. What the exact meaning and scope of this right is and whether or not the fears and dangers associated with the concept of the “new rights” are valid have now to be discussed in turn.

II. The Meaning and Scope of the Right to Education

1. The focal point and ultimate basis of the right to education as embodied in the various national and international constitutional or other legal instruments is the unequivocal commitment to the dignity inherent in every human being and hence to the development of the human personality. The Universal Declaration of Human Rights and the UN Covenant on Economic, Social and Cultural Rights expressly emphasize this point in the very articles dealing with the right to education. Other instruments like the European Human Rights Convention make only indirect reference to human dignity as the anchor point for the right to education, \textit{i.e.} by reference to the Universal Declaration of Human Rights which the Council of Europe intended to implement by the adoption of the European Convention. Human dignity thus not only forms the basis of the right to education but also gives the right a normative dimension beyond the force of positive law. This interpretation finds ample support in the practice of the UN General Assembly. In its numerous pronouncements on the right to education it time and again emphasized the “paramount importance of the implementation of

\textsuperscript{14} UNTS, vol. 999, 171 \textit{et seq.}


\textsuperscript{16} UNTS, vol. 213, 221 \textit{et seq.}; (ECHR); European Treaty Series No. 9 (Protocol).

\textsuperscript{17} UNTS, vol. 119, 3 \textit{et seq.}; vol. 721, 324 \textit{et seq.}


\textsuperscript{19} International Legal Materials, vol. 21, 1982, 59 \textit{et seq.}
The Right to Education as an International Human Right

The right to education for the full development of human personality and for the enjoyment of other fundamental international human rights and freedoms."\(^{20}\)

The General Conference of UNESCO also adopted a number of important resolutions which elaborated on questions of vocational and professional education. The most important UNESCO resolution on the subject was, however, the "Recommendation sur l'éducation pour la compréhension, la coopération et la paix internationale et l'éducation relative aux droits de l'homme et aux libertés fondamentales" of 1974\(^{21}\) which highlighted UNESCO’s perception of an integrated notion of education (general and vocational/professional) as the basis of the full development of the human personality. Therefore, it can be safely concluded that the human personality inherent in human dignity forms the basis of all aspects and implications of the right to education and as such has to be taken into account in determining the meaning and scope of the right, especially with regard to the role of the State in the process of implementing the right to education.

2. The right to education as codified in the legal instruments referred to above clearly distinguishes between education as the provision of basic skills — general and specific vocational and professional — and education as the broader development of the personality of the young. The role of the State in the provision of the former kind of education is strongly emphasized in all the codifications named and in respective domestic constitutional documents as well. Basic or fundamental education in elementary schools and in vocational or professional training is to be provided by the State authorities in public institutions although private schools are not ruled out. But here again the State authorities are vested with rather extensive supervisory powers. Furthermore, this kind of education is to be open and free for all. This means that the provision of education is not only perceived of as a responsibility of the State in terms of substance, i. e. in terms of the upholding of certain quality standards, but in terms of a financial responsibility, as well, which certainly adds to the strong role that the State is to play in the field of education. The obligation to provide for free education according to some of the codifications of the right to education is to be gradually extended to the field of higher education as well. Thus the strong role of the State is also to come to bear on this level. Interestingly, the proviso of Article 26 of the Universal Declaration which stated that higher education is to be accessible to all "on the basis of merit" has not been carried over to the Covenant on Economic, Social and Cultural Rights. Broad access to institutions of higher education as part of the right to education evidently is considered to have priority over the individual intellectual capabilities.

---

20 GA res. 34/170 of 17 December 1979.

This is not surprising given the fact that a large number of States participating in the drafting of the Covenant were certainly more concerned with combating illiteracy and strengthening the general level of education — a prerequisite for the economic and social advancement of their respective countries — than with individual educational aspirations. Under this perspective, the right to education shows a more instrumental character than one would accord to it from the point of view of a broader concept of education in the sense of building a well-rounded personality in the tradition of the liberal arts or humanistic educational ideals. This aspect of education is, however, not altogether neglected by the respective codifications of the right to education.

As the text of Article 26 of the Universal Declaration and Article 13 of the UN Covenant of Economic, Social and Cultural Rights show, the education to which every human person is entitled shall lead to the full development of the human personality, tolerance, respect for human rights and for other racial, ethnic or religious groups. Although this may not be a comprehensive catalogue of educational goals, this enumeration of educational goals certainly points beyond the narrower understanding of education instrumental to the economic and social advancement of particular societies. But it is also quite evident that the respective international legal enactments of the right to education are much less specific with regard to these overall goals than they are with regard to the implementation of the right to education on the elementary and secondary levels. Particularly, one would be hard put to find any express reference to the value of a broad education with regard to the exercise of individual freedom as the basis of a socially responsible life in a free society. To be sure, the phrase in Article 13 of the UN Covenant on Economic, Social and Cultural Rights that “education shall enable all persons to participate effectively in a free society” comes close to this fundamental aspect of education. But the phrase still seems to have a certain “instrumental” ring in that it speaks of “effective” participation in a free society, and it does not refer to the individual as the focal subject, but rather to collectivities like “all persons” and “society”. From this perspective, it looks as if the right to education is to be interpreted solely in terms of a social right which corresponds with an obligation of the State to provide for educational opportunities and — in exercising this right — subjects the child to mandatory education (at least at the elementary level). But this may not be the final word on the matter. The question to be asked is whether it can be established that the right to education is also linked to the protection of individual freedom, i.e. the classical human rights concept, as it may be seen to be suggested by the reference of the human rights instrument analyzed here to the goals of personal development, tolerance and respect for human rights. This problem is addressed in the following section.

22 The relevance and importance of education for the less developed countries is a pervading theme in the various resolutions adopted by the United Nations and UNESCO, see, e.g., reference in note 20 above.
3. In order to answer the question as to whether the right to education is solely to be interpreted as a right to demand from the State the provision of adequate educational opportunities, or whether the right could also be understood as a right protecting specific aspects of individual freedom, as a first step, one has to consider more closely the implications of the preceding findings with regard to the right to education. The right to education has been found to mean that everybody is entitled to access to educational facilities and to a quantitatively and qualitatively adequate education. This entails an obligation on the part of the State to provide the necessary financial resources for schools and other learning institutions. Furthermore, the State is under an obligation not only to supervise private schools with regard to their qualitative performance but also public schools and institutions. This supervisory function, in turn, enables the State to exercise active influence on the curricula, and governmental practice shows that this function is extensively used by the public authorities time and again. Educational goals are defined in State laws, school books are selected by the government authorities (or at least must be approved by them) and in many cases — even in pluralistic, democratic societies — governments attempt to promote the teaching of a particular ideology or “Weltanschauung”, a phenomenon that cannot be overlooked. These often successful attempts usually are the outcome of considerable political pressure from various ideological groups or segments of the societies concerned. Even the Universal Declaration of Human Rights is not free of the temptation to link the right to education to a specific political goal, i.e. to “further the activities of the United Nations and the maintenance of peace” (Article 26, paragraph 2). Although none of these goals may be objectionable the phrasing of Article 26 supports the view taken here, that the right to education, once made operative, entails wide possibilities of State control over the educational system in terms of its organizational structures, goals and the curricula. Seen from this angle, the right to education, indeed seems to form a typical “new” or “second generation” (social) right demanding State “involvement”, and not a right to protect the individual from State interferences. But there is another side to the picture.

First of all, it may be mentioned here that the right to education in the Protocol [1] to the European Convention on Human Rights — quite differently from the other codifications — is couched in negative terms: “No person shall be denied the right to education” (Article 2 — emphasis added). It is to be granted that this formula presupposes the existence of a — most likely — State supported educational infrastructure. But the right is conceived in a way that the protection of the right to education is emphasized. It shall not be infringed by any governmental authority. This is the philosophy of the classical human rights concept. This different approach to the formulation of the right to education, limited to the (Western) European context as it is, must not be overestimated in its significance. It still indicates that the right to education must not necessarily be merely conceived of as right to State “involvement”. The example of Article 2 of Protocol
[1] of the European Convention gives a first indication that there may be, indeed, a dimension of individual freedom to the right to education. And a closer look into the international instruments analyzed here reveals that there are other indications for the existence of this dimension of individual freedom of the right to education. These are, for one, to be found in the guarantee of the rights of parents to ensure that their children are instructed in "conformity with the religious and philosophical convictions" of the parents — a guarantee contained in almost all of the international and regional human rights instruments. This guarantee constitutes a strong barrier against forcible State indoctrination — a precondition for the preservation of individual freedom also in the field of education. It has to be recognized, however, that this guarantee protecting the young from undue indoctrination and thereby his or her individual freedom, does not directly pertain to the young person protected. It is a right of the parents which only operates in favor of the young person. The question is whether one could even find a basis for the interpretation of the right to education so that it belongs directly to the young individual him- or herself, which would prove that this right itself has a dimension of individual freedom to be protected against State infringement.

Such an interpretation is indeed possible. It has been shown above that the right to education is ultimately based on the belief in the value of the human personality and in the inherent dignity of every human being. The unfolding and development of these qualities — although inseparable from the social and educational setting and depending on intense communication with the communal environment — is ultimately an individual process of the human being. If education is to enable a person to truly understand the world around, to exercise tolerance and to live a responsible life in community with others, and all this based on well-reasoned individual decisions, no governmental authority charged with whatever responsibilities in the field of education may force particular ideas or value judgments upon the individual persons educated. They have to be introduced to the world of ideas, conflicting values and social concepts, but only with the aim of enabling them to make up their own minds, to develop a critical and open personal stand towards the subjects laid before them. But the right to fend off direct State indoctrination in education, as it is sketched out here, does not cover the whole problem of the protection of individual freedom in education.

Even if State authorities in the field of education are kept within the bounds of the right to education understood as a right also to secure individual freedom, this individual right to be free from undue or false indoctrination is not beyond the danger of actual or potential violations. For it has to be recognized that educators themselves may hold strong views and may be committed to particular philosophical, religious or political concepts. They may be — and quite often are — tempted to force these ideas upon their students. But educators everywhere have to live up

23 To my knowledge, only the African Charter does not contain such a clause.
to the same open and critical educational approach as State authorities themselves. Thus, if the right to education is to have any meaningful function in the protection of individual freedom in education, it also has to work as a barrier against whatever indoctrination by the educators. In part, this is expressly recognized through the right of parents to decide upon the philosophical or religious education their children should be exposed to a right which has been rather extensively interpreted by, for instance, the European Commission and the European Court of Human Rights. But this protective right of parents can only apply as long the child has not yet come of age in religious and related matters which usually takes place several years earlier than full majority in the legal sense. Thus, a fourteen or fifteen year old person normally would not be subject to parental authority in religious matters anymore, although majority in the legal sense has not yet been reached. Therefore, the right to education, understood as a right protecting the individual from indoctrination in educational institutions, must be interpreted as protecting the individual student having come of age in religious and related matters, as well. It entitles the bearer of this right to demand from the State in its supervisory capacity to keep educators under their authority from indoctrinating the students with their own personal views or beliefs.

This does not mean that educators may not hold their own firm beliefs and value orientations. But it does mean that they have to make it clear to the young people under their care that these are their personal, subjective views open to critical discussion like any other views. What educators at every educational level must be prohibited from doing is acting as “mouthpieces for constituencies”. Whenever they introduce their own convictions and beliefs, shared with whatever “constituency”, into their teaching it must be done in a way which helps the persons under their care to learn, i. e., “to transcend their original condition” and develop their personality. Phrased in broader terms, the meaning of the right to education in its dimension of protecting individual freedom may be summarized in the following way: education which makes an individual the object of instruction and/or indoctrination instead of the subject of learning is incompatible with human dignity.

On the basis of this conclusion, the full scope and meaning of the right to education can now be sketched out in the following concluding section.

---

24 See, for instance, the Kjeldsen case in which the parents of Danish high school students challenged the legality of State ordered sex education and the respective curricula; the European Court of Human Rights rejected the claim of a violation of the parents’ right to determine their children’s moral, religious or philosophical education, but made it clear that the subject introduced into the Court was clearly covered by art. 2 of the Protocol [1]; European Court Reports 23, p. 27, para. 54.
Based on the concept of human dignity inherent in every human being, the right to education shows a double nature. It is a “social right” in the sense of the whole range of so-called “second generation” human rights. As such it entitles every person to have access to and to receive an adequate education to be provided by the State. In contrast to the classical notion of human rights which are directed against undue State interference with the sphere of individual freedom, the right to education as a “social right” asks for State “involvement”, for active State intervention. But as a right based on human dignity as the ultimate anchor point, the right to education at the same time is a liberal (classical) human right protecting individual freedom from infringements at the hands of State authorities as well as educators as far as such infringements might occur in the process of education, i.e. by one-sided curricula or ideological indoctrination of whatever kind.

This double nature of the right to education makes it a rather unique right as compared with either the classical liberal human rights or the new social rights. As a right demanding an active role of the State in the provision of the educational infrastructure, financial resources and the exercise of extensive supervisory powers, it shares the characteristics of all social rights the exercise of which entails a pervasive State presence in whatever sphere of social life is affected. But on the other hand, the right to education provides for remedies against the dangers of an omnipresent State authority. The right to education as a liberal right delineates the limits of the lawful implementation of the obligations of the State charged to it by the right to education as a social right. Thus, the misgivings uttered against the new, the social rights are not justified from a doctrinal point of view in the case of the right to education.

But the question may be asked whether these doctrinal considerations have any meaning in practice. Is there any evidence that the right to education is exercised and implemented in its double nature in real life? The answer is a definite “yes”. There is ample jurisprudence of the courts of many countries, particularly in the United States and in European countries and of regional human rights bodies such as the European Commission and the European Court of Human Rights, which deals with both aspects of the right to education. Courts have uniformly upheld the right to education as the right protecting students from indoctrinations either by the State authorities or by educators.