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RESEARCH ARTICLE

Digitalization in Education as a Means to Fulfil International Obligations of the State Regarding the Right to Education Without Segregation or Discrimination

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ABSTRACT

The aim of this article is to analyse the international obligations of states concerning the protection of the right to education, with a particular focus on the requirements of the peremptory norm prohibiting segregation and racial discrimination. The article examines whether digitalization in education can assist states in fulfilling their international legal obligations to eliminate discrimination and segregation. By exploring the potential of use of digital tools and platforms, this study seeks to understand whether technological advancements might contribute to creating a more inclusive and equitable educational environment, thereby supporting states in meeting their commitments under international laws.

1. INTRODUCTION TO THE INTERNATIONAL LEGAL ASPECTS OF THE PROTECTION OF EDUCATION AS A HUMAN RIGHT

The starting point of the article is the fact that the right to education and its value is important not only for individuals, but also for states that act at the international level within a certain social context of shared norms and values (Brown 2001). Education is considered a way to ensure the gradual elimination of poverty among the poorest. Moreover, education, and especially the process of education as such, is both a goal and a way to achieve this goal. The right to education and its realization is thus one of the basic prerequisites for the realization of other fundamental human rights (ICESCR Committee 1999).

In this regard, education, and the necessity of ensuring the right to education can be seen as a driving force that influences the actions of states. On the other hand, it is important to be aware of the different content of the obligations that States have at international level. The obligations of States regarding the prohibition of segregation and discrimination in the realization of the right to education must be seen in the light of the differences that bind States at the level of international law. For example, as early as 1990, the World Summit for Children at UNICEF (United Nations International Children's Emergency Fund, since 1950 referred to as the United Nations Children's Fund) stressed the importance of education and set the goal of halving illiteracy among children

(World Declaration 1990). However, in her well-known 2006 report, Katarina Tomaševski, the first special rapporteur on the right to education, pointed out, for example, that the increase in school attendance from 40 to 60% is perceived as a success in the case of political commitments, while no one addresses the attendance of the remaining 40% of children whose right to education continues to be violated (Tomasevski 2006).

As the former Special Rapporteur on the right to education, Kishore Singh, pointed out, "the right to education has an indispensable impact on development itself" (Special Rapporteur report 2013). Linking States' obligations regarding the right to education to political commitments is essential to achieve the full realisation of this right to education for all. However, it is particularly important that States are held accountable for their actions or inactions (Tomasevski 2006). Therefore, the challenge is to emphasise the international legal obligations of states more than the political ones. For this reason, the present article focuses on state obligations from the perspective of legal positivism. It examines the State's treaty obligations in the area of non-discriminatory realization of the right to education in terms of the systemic obligations of the State, their obligations regarding the protection of human rights in general and regarding the right to education *in concreto*. These obligations are linked to elements of non-discrimination and non-segregation in the individual subchapters. The article then focuses on selected decisions of relevant judicial and quasi-judicial bodies, exploring whether digitalization in education could be an effective means of eliminating discrimination and segregation in the educational system.

2. NATURE OF STATES' INTERNATIONAL LEGAL OBLIGATIONS TO PROTECT HUMAN RIGHTS

Under international law and international relations, human rights are an important issue in the conduct of international relations (Forsythe 2006). The Charter of the United Nations (UN), in its article 55, provides the basis for the international human rights protection area by requiring UN Member States to universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The area of protection of human rights and fundamental freedoms is of wide interest and has a very broad scope (Brownlie 2013). Although some of the norms of international human rights law may be regarded as customary law norms (Grant, Parker 2009), or even *ius cogens norms* (VCLT, art. 53), the vast majority are treaty obligations. The most important treaties that form the basis of international human rights law are: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966; the Convention on the Elimination of All Forms of Racial Discrimination of 1965 (CERD); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT); and the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW), Convention on the Rights of the Child, 1989 (CRC), Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (CMW), Convention on the Rights of Persons with Disabilities, 2006 (CRPD), and Convention for the Protection of All Persons from Enforced Disappearance, 2006 (CED).

The selection of the treaties mentioned here is specific in that they have created institutional background to provide better conditions for more effective protection of human rights, they have established autonomous committees to supervise implementation of the treaty obligations.

When states ratify international treaties that guarantee the right to education, they must guarantee and implement this right at national level. Although the right to education is universally recognized, this implementation may vary according to each state's legal system. This concerns not only the form of implementation but also the content of this right. In some cases, school curricula may reflect the multitude of national minorities living within the state, while other states focus more on indigenous

populations or other cultural phenomena. In any case, however, it is necessary to ascertain, first of all, whether the State in question is a party to the relevant treaty, what constitutional guarantees it provides for the realisation of the right to education, whether it has adopted specific legislation in this area, what its policy is regarding the right to education, apart from this formal approach, and how the right to education is ensured in practice by the judicial and other State authorities. In this context, it is also useful to look at various statistical data and databases. Some of the data on the fulfilment of States' obligations can be found on the official websites of the State bodies, while others must be supplemented from the various reports that the State must submit or from the recommendations that the State receives. Some of the provisions of the Conventions, if they are sufficiently precise, and that the relevant national legislation allows it, are so-called self-executing norms (Čepelka, Šturma 2003). It means that they can be invoked directly in front of national courts without the need to implement them in national law.

In addition to the above treaties, other international treaties relevant to the protection of the right to education have been adopted at the United Nations, such as the UNESCO Convention against Discrimination in Education or the Convention on the Suppression and Punishment of the Crime of Apartheid, which is specific in that it regulates *ius cogens* norms. However, no special committee has been established based on these conventions.

Although human rights are inseparable and equal, the violation of some nevertheless provokes greater indignation. Although there is no legally defined hierarchy among human rights, segregation (and its form of apartheid) and discrimination (specifically based on race) are nevertheless considered particularly reprehensible. Their prohibition is regarded as a customary norm of a mandatory nature, i.e. it is a peremptory norm accepted and recognised by the international community of States as a whole as a norm from which it is not permissible to derogate (VCLT, art. 53). In this context, it is necessary to define what States are under an obligation to prohibit.

2.1 Prohibition of segregation

Although the term of segregation is not defined in international law in any international convention or declaration (ECRI 2002), it is worth mentioning in this context the former High Commissioner for National Minorities of the Organization for Security and Cooperation in Europe, Max van der Stoel, who said that the existence of a minority is a matter of fact and not of definition: Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one (OBSE 1993). Similarly, segregation is a question of fact.

Unlike discrimination in general, segregation involves physical separation. In some cases, e.g. due to geographical or residential demarcation, a particular group may be separated for national or racial reasons. However, the CERD Committee, in one of its first general comments regarding the elimination of discrimination, pointed out that the States Parties had clearly agreed to create an international community free from racial segregation and discrimination (CERD Preamble). The CERD Convention as such prohibits all forms of racial segregation in all countries. In this regard, the CERD Committee has expressed that the obligation to eliminate all practices of racial discrimination includes the obligation to eliminate the consequences of such practices carried out or tolerated by previous governments or supported by actors outside the State. Moreover, the CERD Committee pointed out that segregation may also arise as an unintended by-product of the actions of private individuals. In many cities, residential zones are affected by group differences in income, which are sometimes combined with differences in race, colour, descent, or ethnicity. Individuals may therefore be discriminated against not only on racial grounds, but also in combination with other grounds (CERD Committee 1995). The CERD Committee has therefore confirmed that situations of racial segregation can arise without any initiative or direct involvement of the State authorities. In this regard, the CERD Committee urged the State party to keep a close watch on trends that may lead to racial segregation, to work towards eliminating the negative impacts that result from these trends

and to address the measures taken in their reports submitted to the CERD Committee (CERD Committee 1995).

In 1995, the CERD Committee submitted its general comments on the unintended de facto segregation consequences that may occur, for example, in schools due to the demographic makeup of the population living in the vicinity of the school. In this context, the historical experience of segregation, desegregation and resegregation in the U.S. territory is interesting. The abolition of slavery in 1865 with the adoption of the Thirteenth Amendment to the US Constitution did not automatically mean full freedom for all, nor did the subsequent Reconstruction period. Despite the dictates of the Thirteenth Amendment to the U.S. Constitution on equality before the law, the U.S. Supreme Court introduced the concept of "separate but equal" (US Supreme Court 1896). This ruling opened the door for other segregation laws. In the 1950s, the U.S. Supreme Court admittedly recognized the importance of interaction between white and black college students with each other and also regarding the professional community in the cases of Sweatt v. Painter and McLaurin v. Oklahoma State Regents, but it was not until the 1954 decision Brown v. Board of Education of Topeka that interpreted the principle of "separate but equal" as a violation of the principle of equality guaranteed by the 14th Amendment to the U.S. Constitution. Desegregation was about to begin in the US. However, the Brown II decision of 1955 allowed for desegregation with all deliberate speed, which resulted in several districts hardly starting the desegregation process at all. Parents were also opposed to the enforcement of the Brown decision, sometimes using their own bodies to prevent black students from entering an educational institution, resulting in either white flight, i.e., the relocation of white families to the suburbs, or, in worse cases, the drafting of the armed forces. The issue of discrimination, sometimes even de facto segregation is still an issue in the public life of the civil society in the US (Time 2021).

2.2 Prohibition of discrimination

The prohibition of discrimination is the broadest of the trinity of the prohibitions against segregation, a particular form of segregation - apartheid and discrimination. The term discrimination comes from the Latin word discriminare, which means to separate, isolate, distinguish (online Latin dictionary). Non-discrimination is a concept that is contained in all international treaties adopted to protect fundamental human rights. This concept did not become fully part of international law until after 1945.

After the non-legally binding Universal Declaration of Human Rights, it was the International Convention on the Elimination of All Forms of Racial Discrimination that was the first legally binding universal international treaty designed to protect human rights, this treaty is based on the principles of the dignity and equality of all human beings. The principle of equality, which is the backbone of the CERD, combines formal equality before the law and equal protection of the law, i.e. with substantive or de facto equality in the enjoyment and exercise of human rights (also ICESCR Committee 2009). The principle of equal treatment is the goal towards which the implementation of the CERD principles prohibiting both direct and indirect discrimination is directed, i.e. both conduct where an individual is treated less favourably than another person in a comparable situation on some prohibited discriminatory ground and conduct resulting from law, policy or practice which appears neutral but has a disproportionate effect on the exercise of rights because of a distinction on the basis of prohibited grounds of discrimination ICESCR Committee 2009.

The Convention thus provides for the prohibition of both intentional, purposeful discrimination and discrimination in result. In discharging the duty regarding the prohibition of discrimination, it must be borne in mind that the aim is not uniform treatment where there is an objective and reasonable justification for the difference in treatment. This follows from the well-known fact that it is just as discriminatory to treat in the same way an individual or group whose situation is objectively different as it is to treat unequally persons whose situation is the same. When comparing direct discrimination

and discrimination in result, it is irrelevant, in the light of the State's international law obligations, whether the discrimination is the result of deliberate action or inaction or whether the differential treatment is 'merely' the result of the exercise of legally binding legislation. Only the full application of the principle of equal treatment and non-discrimination ensures that individuals in identical situations are treated as equal before the law and in practice.

The terms 'distinction', 'exclusion', 'restriction' and 'preference' are used to describe differential treatment. Any conduct denominated by one of these terms would be sufficient to show conduct for the purpose of discrimination or discrimination in result.

The term "preference" deserves special attention. Discrimination in such a case arises from the disproportionate favouring of one group to the detriment of another. However, it is important to emphasise that not all differentiation or differential treatment will amount to discrimination. In this context, two types of situations may arise. Firstly, there may be a situation where the difference in treatment is based on specific measures which have the exact opposite intention or result to discrimination. These special measures are intended to create a level playing field for the same situations and people. Secondly, although there may be a difference in treatment, there is no breach of the prohibition of discrimination if the difference in treatment has an objective and reasonable justification and there is a justifiable proportionality between the aim pursued and the legitimate means employed. However, the second case of 'non-discrimination' may not be a permissible option in every case.

2.3 Special measures

Discrimination can result not only from unjustified "distinction, exclusion, restriction" but also from unjustified "favouritism". It is therefore particularly important for States Parties to distinguish the concept of special measures from unjustified requirements.

In this context, the term "positive discrimination" is sometimes used. As the CERD Committee notes, in the case of international human rights law there is a "contradictio in terminis" (CERD Committee 2009). This is related to the fact that the term discrimination has acquired a negative connotation and therefore it is appropriate to use other labels, such as positive action, special measures, special measures aimed at achieving effective equality.

Special measures are explicitly provided for, for example, in the CERD Convention or the CEDAW Convention. However, special measures can also be derived from the general positive obligation of the parties to the relevant conventions to ensure that human rights and fundamental freedoms are protected without discrimination against persons and groups under their jurisdiction. In this case, it is a general obligation which derives from the provisions of the relevant treaties as a whole and which is also an integral part of all treaty provisions (ECHR, art. 14, ICESCR, art. 26). As noted above, it is not enough to treat the same individuals in the same situation in the same way in order to fulfil the obligation to respect and ensure respect for the rights of individuals without discrimination; sometimes, for example, it is necessary to temporarily favour a group in view of historical discrimination.

Special measures must be distinguished from the concept of special obligations of States towards vulnerable groups such as minorities and their right to enjoy their own culture, etc. These rights are protected by special conventions which regulates these special positive obligations of States. The fundamental difference between this special positive obligation and the special measures is the temporary nature of the special measures. This arises from the fact that special measures are taken solely to "ensure the adequate development of certain racial or ethnic groups or individuals who are in need of such protection as may be necessary to secure for them the equal enjoyment or exercise of human rights and fundamental freedoms" (CERD, art. 1). This exclusivity also includes a temporal aspect, because once the appropriate development is secured, the special measures become

irrelevant. Temporariness is one of the conditions for the measures adopted to be regarded as special measures, since the qualification of the measures adopted turns them into discriminatory measures if they remain in force after the objectives for which they were adopted have been achieved. At the same time, this characteristic of the temporary nature of the measures adopted must also be apparent from their substance and from the justification for their adoption (CERD Committee 2009). In the implementation of specific measures in this regard, there must be a mechanism for monitoring and evaluating them (CERD Committee 2009).

The second defining feature of special measures is the condition that they do not lead to the maintenance of unequal rights for different groups. Thus, efforts to eliminate one discrimination cannot result in causing discrimination against another. The best example is probably the often-discussed classes created with the declared aim of helping, for example, the Roma minority to cope with their lack of knowledge of the official language of instruction (ECtHR, Oršuš v. Croatia).

Special measures should reflect not only the transitional situation and the needs of groups or individuals whose position should be equal to that of other individuals but should be measures that are necessary in a democratic society and proportionate to the objective pursued. It is therefore important to examine the principle of proportionality in the light of the concept of affirmative action or special measures. This need arises not only from the fact that a distinction in treatment is not discrimination if the criteria for such a distinction are legitimate, but above all from the fact that it is not discrimination if the criteria for such a distinction, having regard to the objectives and purposes of the relevant conventions, are applied in accordance with a legitimate aim and are proportionate to the attainment of that aim (CERD Committee 2004).

The forms of special measures vary, international treaties provide several examples. They may include a variety of legislative, executive, administrative, budgetary, and other regulatory instruments, at all levels of the State apparatus. Similarly, they may include various plans, policies, programmes, or preferential regimes in areas as diverse as the care of the Roma population or unaccompanied migrant children or victims of trafficking.

Special measures and their effects are not an exception to the prohibition of discrimination, but an integral part of it (CERD Committee 2009).

3 RIGHT TO EDUCATION

The right to education, first enshrined in Article 26 of the non-legally binding Universal Declaration of Human Rights (UDHR), has a special status among human rights. As stated above, education is a human right in its own and is also an indispensable means of realising other human rights (ICESCR Committee 1999).

After the UDHR, the right to education was further elaborated in the International Covenant on Economic, Social and Cultural Rights, which provides the most comprehensive article on the right to education in its article 13. It recognises the universal right to education without discrimination of any kind and presents a framework for achieving the full realisation of this right,

In the case of the right to education, its content can be explained using the so-called 4As concept, according to which States have an obligation to respect, protect and fulfil the right to education by making education available, accessible, acceptable, and adaptable. This is the framework put forward by the first UN Special Rapporteur on the right to education, Katarina Tomasevski, which the Committee on Economic, Social and Cultural Rights has adopted and elaborated in its General Comment No. 13 (ICESCR Committee 1999).

Available education is related to compulsory attendance. In practice, it means the availability of the right infrastructure and adequate facilities with appropriate books and materials for pupils. Buildings should meet both safety and hygiene standards (ICESCR Committee 1999). At the same

time, this availability also means that parents have the right to choose their child's education, considering the child's best interests and the minimum standard required by the state.

Educational accessibility refers to the fact that all children should have equal access to education regardless of, for example, gender, race, religion, ethnicity, or socio-economic status, so it is universal education. As it has been already submitted, provisions prohibiting discrimination in education are included in key international human rights treaties. Their content ranges from establishing an obligation on States to prohibit discrimination in access to education to a commitment to combat discrimination through education, for example by revising curricula and texts (Tomasevski 2004). For marginalised groups, sufficient efforts should be made to ensure their inclusion. This may include also measures that consider existing digital divide between individuals with access to communication technologies who can make use of services offered on the internet, and those without (OECD iLibrary).

The obligation not to discriminate concerns not only its formal declaration but ensuring that the right to education is exercised in practice, which includes its physical and economic accessibility. Economic accessibility also depends on the level of education; primary education is free, higher education should be free according to the possibilities of the State (ICESCR Committee 1999).

The acceptability of education is underlined by its relevant, non-discriminatory, and culturally appropriate content, which is focused on quality. It is this aspect of the 4A scheme that has been highlighted to ensure universal primary education for all. In achieving this goal, it must not be forgotten that it is not enough to go to school; what and how children learn is equally important. The acceptability of education therefore requires that a minimum standard of education be set, including the content and manner of teaching, or providing discipline. At the same time, active recruitment, proper training, and appropriate methods of cooperation should ensure that sufficiently qualified staff are available in every school (Tomasevski 2004).

The final aspect of the 4A's concept, the adaptability of education, focuses on the development of education regarding the changing needs of society and the individual, challenging inequalities and adapting to specific local needs and contexts. Adaptive education means that the school responds to the needs of the child, whether they are a child with a disability or an unaccompanied minor (Tomasevski 2004). Adaptability has changed the view of school and aims to change the view of the school, i.e. it is not adapting the child to the school, but the school to the child, to ensure the inclusion of every child with his/her specific needs.

3.1 Specific obligations of States regarding the right to education

There are three phrases in Article 2(1) of the Covenant that are particularly important to understand the obligation of State Parties to fully realize the rights recognized in the ICESCR, including the right to education. First, the States Parties undertake to take action "by all appropriate means". This means that it is not enough to take legislative measures. The State must also take appropriate administrative, judicial, or economic action. States Parties are also obliged to set priorities and develop policies in accordance with the Covenant. In this context, it is essential that States can assess progress after these measures have been taken and to provide an effective remedy, legal or otherwise, in the event of a violation of a relevant right, including the right to education.

Regarding the obligation for States to fulfil their obligations "to the maximum of their available resources", it is incumbent on States to demonstrate that the measures taken are sufficient to realize the right to education for everyone in the shortest possible time, making maximum use of available resources.

The obligation to "achieve progressively the full realization of the rights recognized in the Covenant" must be interpreted in the light of article 13 of the Covenant. This obligation of progressive

realization exists independently of an increase in resources; rather, it requires the effective use of available resources. It is true that the ICCPR does not have a similar article regulating the progressive realisation of the rights set out therein. However, this does not mean that economic and social rights are not just as justiciable as civil and political rights. In this regard, it is important to note that just as some aspects of economic and social rights are immediately realisable without significant resources, such as the right to collective bargaining or the right of parents to establish and manage educational institutions, the exercise of some civil and political rights requires a non-negligible financial investment, such as the right to a fair trial. The ICESCR Committee uses the term 'minimum core obligations' in this context (ICESCR Committee 1990).

For the purposes of this article, it is important to emphasise the aspect of access to education without distinction of any kind. The right to education is universal and does not allow for any form of exclusion or discrimination. However, despite agreeing to the prohibition of discrimination, States face challenges in guaranteeing equal opportunities for all in access to education and in education systems. It may concern especially with disabilities, unaccompanied minors or children that are members of ethnic minorities, such as Roma children reality.

4. DECISIONS OF JUDICIAL AND QUASI-JUDICIAL BODIES IN CASES INVOLVING VIOLATIONS OF THE PROHIBITION OF DISCRIMINATION IN THE EXERCISE OF THE RIGHT TO EDUCATION

Although the previous sections focused on the obligations of State Parties to the ICESCR, this section will take account of the decisions of the European Court of Human Rights (ECHR, Court). This is related to the fact that the substance of the right to education as protected by the ICESCR is comparable to the protection provided by the European Convention on Human Rights and Fundamental Freedoms (art. 2 of its Additional Protocol), however, Court decisions are legally binding (ECHR, art. 46) and the decisions of the CERD Committee and other human rights convention committees are not, their implementation is subject to political pressures. Nevertheless, the purpose of this article is to examine the legal obligations of states, not the political commitments, and to determine whether the enforcement of these obligations would be facilitated by digitalization in education.

The ECtHR has developed a certain methodology of decision-making, which has also been applied to cases where it has decided whether there has been a violation of the right to education in conjunction with the prohibition of discrimination. Consequently, there have been particular features of decision-making in this area which reflected the specific position of both the vulnerable Roma minority and the level of proof of indirect discrimination. Roma minority has been chosen because of frequent submission of violation of the right to education in this vulnerable group.

The following cases are important in the decision-making practice of the ECtHR in the examined area: D.H. v. Czech Republic, Sampanis v. Greece, Oršuš v. Croatia, Sampani v. Greece, Horváth and Kiss v. Hungary and Lavida v. Greece. In these cases, the ECtHR examined the application of the objective and reasonable justification test, which it introduced in the area under review in a similar case concerning certain aspects of the laws on the use of languages in education in Belgium, and which it also applies when examining violations of other rights (ECtHR, Belgian Linguistic Case 1968). This test consists of an examination of whether there is a legitimate aim for the difference in treatment and an examination of the principle of proportionality.

The order of the cases above follows the timeline of the ECtHR's decisions. The ordering in this article results from the similarities in some aspects of the relevant decisions. The cases of Sampanis, Sampani and Lavida concern the enrolment of children of Roma ethnicity into physically separate schools. The D.H. and Horváth cases deal with the issue of enrolment in auxiliary, special schools. The Oršuš case analyses enrolment in separate classes within one school. Often, when defending the

decisions of their authorities, States point out that these are in fact special measures aimed at helping a vulnerable group, for example by creating special classes to improve the language of instruction. However, in this respect, it should be borne in mind that these measures must be temporary and must not, by eliminating one discrimination, lead to the creation of further discrimination. Failure to meet these conditions results in discrimination because the condition of proportionality between the means employed and the objective is not fulfilled. The question of proportionality is relatively clearest in the case of the physical separation of children, i.e. in the Greek cases.

In the context of the Oršuš case, it could be noted that, insofar as the States provided for the obligation to transfer pupils from preparatory classes to general classes within a specified timeframe; while applying detailed rules for such transfer, these would be considered special measures. In that case, both conditions would be met, i.e. they would be temporary measures aimed at integrating members of a vulnerable group, thereby avoiding the creation of 'new' discrimination. However, due to the lack of a set timeframe, the Court also found a violation of the right to education without discrimination in this case as well.

4.1 Scenario testing

Since the COVID-19 pandemic, no one doubts that digitalisation in education offers many benefits for students and teachers (Patra, Sahu 2020). It enables access to a vast array of resources and information, breaking down traditional barriers to learning. Online platforms offer flexibility in scheduling, allowing students to learn at their own pace and convenience. Moreover, interactive digital tools engage students more effectively, making learning enjoyable and enhancing comprehension. It is also true that distance learning programs facilitated by digital technology make education accessible to remote and underserved communities. It may be also submitted that collaborative online projects encourage teamwork and communication skills development among students. Furthermore, care for individual learning styles and needs usually motivates students to explore new topics independently. Finally, no doubts that such an approach improve digital literacy skills of students involved.

However, there are several disadvantages of digitalisation in education that are essentially important to answer the research question whether digitalisation in education might help the States to eliminate discrimination and segregation from the point of view of their international legal obligations.

As it has already been mentioned, segregation means physical separation. Digitalisation in education is not considered to be a bar to such separation, on the contrary. There are two basic reasons for this claim. First, virtual interactions may be helpful for socially shy students, but it is not able to fully replicate the richness of face-to-face communication and human connection in the classroom. Quite on the contrary, use of digital tools may lead to decreased interpersonal communication skills among students and therefore lead to bigger separation. Online learning environments may lack the sense of community and camaraderie fostered in traditional classroom settings. Moreover, online courses may lack the personalized support and mentorship provided by in-person interactions with educators which is recommended in case of students "put aside". To sum this up, instead of inclusion, digitalisation may cause more exclusion (Special Rapporteur Report 2022).

Cases presented above included e. g. rejection of children of an ethnic minority by parents and confirmed officially by State authorities based on missing ability to use language of instruction. Online courses could have been helpful; however, this leads us to the second claim of low suitability of digitalisation of education for these cases. It can exacerbate the digital divide, leaving students without access to technology at a disadvantage. Roma minority is considered to live in resource-constrained environment. Focus on digitalisation would perpetuate inequalities in access to quality education. One can improve limited internet bandwidth and infrastructure in selected regions, what

could be considered a special measure, however, distance learning is especially not suitable for primary schools where it may exacerbate feelings of isolation and loneliness, particularly for students who thrive in social learning environments. As it has been pointed out also by the CRC Committee in its general comment, "States parties should pay specific attention to the effects of technology in the earliest years of life, when brain plasticity is maximal and the social environment, in particular relationships with parents and caregivers, is crucial to shaping children's cognitive, emotional and social development. … [taking into account the research on the effects of digital technologies on children's development,…]" (CRC Committee 2021). Presented cases included violation of the prohibition of discrimination or even segregation because of exclusion of children based on their ethnicity and related language or social incompetence to get enrolled into common schools, nevertheless, digitalization in education is not the proper tool to improve readiness of Roma children to be included into majority education system. The basic change is required from the approach of the personal substrate of the State, i. e. its population. It is day by day work on systematic changes accepted by civil society. The above-mentioned digital divide cannot be solved solely by policymakers and industry leaders. Civil society must get engaged in digital literacy programs and advocacy to empower their members and ensure their voices are heard in decision-making processes. Only in cooperation, together, sustainable solutions could be created that balance access and affordability for all the individuals.

5. Conclusion

Although most countries are party to relevant international treaties that recognize the right to education, this right is still denied to millions of children around the world due to a lack of resources, capacity, political will, and sometimes civil society readiness. Implementation of international legal obligation of the States is neither obvious nor easy, especially when it comes to systematic changes.

While international legal norms prohibiting discrimination are implemented in most national legal systems, the practical eradication of discrimination is a huge challenge worldwide. Prohibiting the denial of education to individuals simply because they belong to a minority group is the first step towards affirming the universality of the right to education and ensuring that States fulfil their obligation to provide education for all children. This first step, the formal prohibition of disparities in access, must be followed by further steps to redress the knock-on effects of years of discrimination. Discriminatory patterns change over time and with changing contexts. Effective government strategies for eliminating discrimination therefore include a variety of legal, educational, or economic measures as appropriate, including those to overcome a digital divide pattern. Ensuring non-discriminatory access to the right to education for Roma children whose case studies have been involved in this article also requires increased financial resources.

As with other social, economic, and cultural rights, the right to education requires some obligations to be implemented immediately by the State, but others can be secured gradually. The full realisation of the right to education may be hampered by a lack of resources and can therefore only be achieved over time; this is particularly the case in developing countries. Nevertheless, there are enough obligations that the State must implement without delay. These include the prohibition of discrimination in access to education, the obligation to provide free and compulsory education for all, and the prohibition on restricting the freedom of parents to choose education for their child. States also have an obligation to take steps that lead to the full realization of the right to education. Obviously, these steps will reflect resource constraints, but States cannot sit idly by and wait for resources to flow; they have a duty to work with at least those resources that are available to them. Part of this obligation is also the duty not to take measures that constitute a retrograde course regarding ensuring the right to education.

It is striking that, despite declaring the prohibition of racial discrimination as a mandatory norm, states sometimes disregard this obligation in the performance of their duties. Since political will

reflects the will of wider society, one of the challenges for the state is creating an environment for education and the development of civil society that recognizes that rights belong to all, including those who do not (yet) have access to the full range of digital tools in the educational process.

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