

# Research on the Essential Features of the Legal Relationships That Arise in the Realization of the Fundamental Right to Education

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**Abstract**—The fundamental right to education in the Republic of Moldova has a high importance in the context of reforming the economic and political system, modernization of all spheres of social life. In order to meet the challenges facing our country, there is a need of new approaches regarding the content of the fundamental right to education and the level of training and investment in the "human capital". They will contribute to the development of innovative processes in Moldova. The legal relationship deriving from the realization of the fundamental right to education is based on the principle of equality of participants in the educational process, autonomy of will, legitimate interests of parents, guardians, state and patrimonial independence of subjects providing educational services. Following these steps, this legal relationship expresses the humanistic nature of the fundamental non-material right to education. For this reason, the legal relationship arising from the realization of the fundamental right to education expresses the need to observe the main rights and freedoms, the common values of humanity and the unity of the general space of culture and education.

**Keywords**—education, training, learning, right, obligations, legal relationship, subjects, object, content

## I. INTRODUCTION

It becomes obvious that an undeniable priority of the process of modernization of the country lies in the formation of a new system of relations in the field of education. Such a project involves the joint investment of financial resources and the strengthening of the human effort of the society and the state, in order to obtain the education necessary for the formation of a free integral personality and its preparation for the social life. The core of the new education system should be the fundamental right to education established in art. 35 of the Constitution of the Republic of Moldova [1], which requires to be subject of a multiaspectual study. Awareness of the importance of the fundamental right to education has determined the need for a wide reform of the educational process, the beginning of which was laid by the adoption of

the Education Code, and the reform of the education system is at the center of attention of the public policies, implemented by the state.

## II. PURPOSE OF THE STUDY

To study the peculiarities of the legal relationships that arise in the realization of the fundamental right to education.

We propose the following research objectives:

- 1) to determine the content of the legal relationship that appears in the realization of the fundamental right to education.
- 2) to identify the legal relationships of realization of the fundamental right to education.
- 3) to analyze the results of the research.

## III. RESEARCH METHODS

- - methods of theoretical analysis (scientific, methodological literature, relevant to the research topic);
- - comparative analysis.

## IV. DISCUSSION

The character of legal relations facilitates the discovery not only of the peculiarities of the formal and material component parts of the content of legal relations, but also provides the possibility of concretizing the temporal-spatial action of the fundamental right to education [2, p.230]. In this context, it is worth mentioning that the analysed legal relationship includes the training legal relationships and the relationships arising in the field of education [2, p.230].

The legal relationships arising from the fundamental right to education are also characterized by a unique composition of subjects. It is distinguished not only by a great diversity [3,

p.256], from natural and legal persons, to special subjects - organs of state and municipal power, but also by a change in the legal status [4, p.89]. The amount of their rights and obligations is determined not only by the educational legislation, but also by norms of various branches of law, such as administrative, civil, labor law, etc.

The complicated structure of the object and the composition of the subjects of legal relations arising from the fundamental right to education reveal their unique character. It is manifested by a diversity of participants in the educational process and the change in their legal status. As a rule, the status of a person who has a right is formed as a result of the action of legal regulations of different branches of law in the process of guaranteeing the fundamental right to education. Therefore, the amount of powers of participants in the educational process is fully manifested if it is implemented in practice. Depending on the type of training to be carried out, one determines the respective composition of the content of the legal relationship. This hypothesis is demonstrated by the realization of the special fundamental right to education, with an aim of correction. The legislator typically defines the composition of subjects and their status.

## V. THEORY

The peculiarities of the subject and the object are best manifested in the legal relationship that arises from the realization of the fundamental right to pre-school education, in which case the child directly participates in the educational process, and his/her interests are fully represented by parents. The subjects of legal relations arising from the realization of the fundamental right to education are to be recognized persons who directly realize this right, who obtain knowledge and who control the level of the educational process.

In this connection, the legal status of participants and subjects may change. The change takes place in the learning process. This is defined by the legislator in relation to the specific type of the fundamental right to education, viewed separately. The transition from one quality to another is determined by the content of the activity and the amount of empowerment of the subjects in legal relations, derived from the fundamental right to education.

This peculiar feature demonstrates that the legal relationship can be classified as a specific and principal relationship. The given classification reflects the complicated structure of the object of the legal relationship, which derives from the realization of the fundamental right to education. There is a lack of unity in points of view on the object of the legal relationship in legal science and practice. The proposed constructions are quite different and do not always reflect the essence of the relations that arise from the realization of the fundamental right to education [6]. The legislator recommends as a reference point the distinctive characteristics in the construction of the education system that is applied in practice. It's about the so-called local approach. At the same time, educational services are considered an object of the fundamental right to education in the special national program of education development for 2015-2020 years. However, the Education Code of the Republic of Moldova [5] makes an

attempt to concretize its content. Social relations arising from the realization of the fundamental right to education, ensuring state guarantees human rights and freedoms in the field of education and under the conditions of realization of this fundamental right to education make up the object of regulation. Educational services include knowledge, professional activity in the field of education and other elements that have different explanations in a scientific environment.

The given conclusion is supported by the analysis of normative acts subordinate to law. The composition of the content of educational services may include, firstly, the conditions of the organization and conduct of the educational process, secondly, the quality of the received knowledge, thirdly, the content of educational activity, fourthly, the state of the legal order in the educational institution. The given structure is not exhaustive and therefore, the object of the legal relationship can be supplemented.

The interdependencies between the participants in the education process are established on the basis of formal and material aspects of the legal relations that derive from the realization of the fundamental right to education. The nature of such a legal link is dictated by activities for the realization of rights, and not by formal rights and obligations of the participants to this process. It is the material aspect that determines the interdependencies of the subjects of the given legal relationship and the participants in the educational process. The complex nature of aspects concerning the subject and object and the material aspect of the content of the legal relationship, arising from the realization of the fundamental right to education, also establishes the difficulty in determining its nature. The confirmation of this elusive goal is found in the multitude of legal regulations managing the educational process. In regards to this, all measures of realization of the fundamental right to education require not a linear approach to the problem, but the formation of a multilevel mechanism. Moreover, the main importance in the given problem lies within the character of the educational activity. The given uncertainty at the level of adoption of laws has an impact on the content of the legal relationship, as it has a negative impact on the quality of education. The problem lies in the fact that different levels of education have specific differences. They are manifested in the age of the right holder and in the requirements determined by the state for the level of knowledge. That is why the education activity is directed by the content of the provided educational services. They refer to the sphere of social ties that are not related to property rights. Therefore, the nature of legal relations deriving from the realization of the fundamental right to education is not a patrimonial one [7]. However, they can be modified in patrimonial relations during the realization of the fundamental right to education [7]

The mentioned qualitative state of legal relations, which result from the realization of the fundamental right to education, attests the diversity of legal components. As a rule, they form the peculiar features of the emergence and development of the legal relationship, which arise from the exercise of the fundamental right to education. Moreover, the legal components make up the normative basis for the

transformation of certain elements of the structure of the legal relationship.

Legal components determine to some extent the peculiar features of the provision of educational services, such as admission and study in the higher educational institution of the Ministry of Defense. The requirements for the right holder are much higher than for the admission in civil higher education institutions. In this regard, the legal components represent a normative instrument for limiting the fundamental right to education, which is carried out in special educational institutions of the Ministry of Defense or the Information and Security Service.

By their content, the legal components are not homogeneous either in relation to the structure of the legal relationship, which results from the exercise of a certain type of fundamental right to education, for example, the right to schooling or the fundamental right to education on a budget or contract basis. That is why legal components play an important role in forming the content of the educational process and the realization the fundamental right to education.

The specific elements of the legal components are expressed fully in the process of carrying out of the admission procedure in educational institutions and organizations, as well as in the course of carrying out of the educational process. In particular, the regulation of the professional education process in military and civilian universities differs by the amount and content of rights and obligations of the subjects of the legal relationship, which arises from the exercise of the fundamental right to education.

As a rule, people participate in different types of relationships, the totality of which makes up the structure of the educational process. The role of the fundamental right to education in human life is also changing together with the change of the character of these relationships. When studying this type of evolution, one has to take into account not only the classical aspects of the legal relationship, but also the interests, the real possibilities of the holder of this right. Such transformations find a wider reflection in the demands of people regarding certain specialties in the sphere of vocational education.

It is the legal relationship that makes it possible to determine the objective effectiveness of the fundamental right to education in the system of values, which the social environment needs. The demand for knowledge is satisfied by the appropriate professional activity of educational institutions and by the factual possibilities of rights holders. Thus, the legal relationship resulting from the exercise of the fundamental right to education makes up the empirical-legal evaluation criterion of the state of the education system in the Republic of Moldova.

It should be noted that the fundamental right to education attains its purpose to the extent that it is actually guaranteed by the state. That is why the legal relations, which result from the realization of the fundamental right to education, reproduce the real potential of the guarantee measures taken by the state. However, the realization of the fundamental right to education

is not limited only to the actions of the state, for example, spiritual education.

The presence of such values extends the functional possibilities of the fundamental right to education and the legal relations that arise from its realization. They are manifested in the resolution of controversial issues, determined by the realization of the fundamental right to education, the transformation of subjective rights and legal obligations of the participants to this type of legal relations or the restoration of violated rights. The legislator and law enforcement bodies admit the use of such procedural forms [8, p. 123]

In view of the above mentioned, one can reach the conclusion that the legal relationship, which results from the realization of the fundamental right to education, is a legal form of materialization of the fundamental right to education. The legal relationship shows all the positive and negative qualities of the realization of the fundamental right to education. The legal relationship represents the qualitative feature of the legislation in the field of education and educational services provided to the population of the country.

It is the analysis of the legal relationship that makes it possible to take measures to substantially increase the responsibility of the participants in the educational process. In this regard, it serves as the basis for the performance of the function of record keeping and control by the empowered legal subjects. An eloquent example in this view is the redistribution of budget places by the Ministry of Education between specialties in higher vocational education institutions from the Republic of Moldova.

The legal relationships arising from the exercise of the fundamental right to education fully reflect the nature of the links that are established between the participants in the educational process. Thus, the legal relationship reveals the peculiar features of their interaction and demonstrates its place and role in legal practice. We must recognise the role of the legal relationship in transforming the set of existing legal provisions governing the provision of educational services.

The examined phenomenon materializes the process of exercise of the fundamental right to education. That is why the legal relationship objectively presupposes the need to take into account the legal regime of action of the fundamental right to education. For example, the legal regimes of provision of educational services in pre-school and higher educational institutions differ in a principled manner. In the context of globalisation and regionalisation, the legal regimes of educational processes must be typified, and not at the local level [9].

Taking into account the above mentioned, we can formulate the characteristic features of the legal relationship, which arise from the exercise of the fundamental right to education: firstly, the legal relationship, which is established in the process of exercise of the fundamental right to education between the participants in the educational process; secondly, such a relationship is determined by the legitimate interests of the holders of rights and; thirdly, the relationship between the participants in the educational process is a real

and immediate consequence of action of the fundamental right to education; fourthly, this relationship expresses the degree of compliance with the rights and obligations of the participants to the legal relationship, which arises from the exercise of the fundamental right to education; lastly, the character of such a relationship can be both a legal and illegal one.

On the basis of the carried out analysis, we can give the following definition. The legal relationship, which arises from the exercise of the fundamental right to education, represents the legally relevant relationship, determined by the interests of society and the individual, which is established between the participants to the educational process and materializes the realization of the need to obtain knowledge and ensure a degree of training by minimizing illiteracy.

One has to take into account a number of specific peculiarities, which define the content of the investigated problem, in the process of formation of the concept of the mechanism of exercise of the fundamental right to education. One of these peculiarities is the question of correlation between the exercise mechanism and the insurance mechanism. Despite their common nature, these have significant functional-quantitative and qualitative differences.

The insurance mechanism works to prevent, combat and restore the violated fundamental right to education, i.e. before the exercise process has started. Therefore, the purposes of the functioning of the analysed mechanisms are also different. If the insurance mechanism has protection and defense purposes, [10, p. 85-134], then the exercise mechanism solves the problem of creation of conditions for a maximum possible degree of accessibility to educational services, provided in the Republic of Moldova. Therefore, the insurance mechanism is a necessary condition for the exercise of the fundamental right to education.

Thus, the concept of the exercise mechanism must take into account the complex nature of the fundamental right to education. The structure of its content and the factors that determine the exercise at the individual level, form the basis of the constituent elements and the foundation of the formation of the theoretical-empirical idea of the concept. That is why the creation of the concept unequivocally rejects the principle of schematism or simplism. This statement is also conditioned by the fact that the exercise of the fundamental right to education depends not only on the action of the right as such, but also on the economic, ethnic, religious and other aspects that determine the degree of accessibility to educational services in the Republic of Moldova.

The ideology of education requires the ability to correctly identify and formulate the long-term goals and objectives of the development of education, to carry out strategic planning and technological reconstruction of the educational-methodical base of educational institutions. Therefore, the ideology expresses the concept of transition from short-term stimulation of the provision of educational services and their commercialization to long-term planning of basic indicators of development of the educational system in our country.

## VI. CONCLUSIONS

The concept in question means that Republic of Moldova must dismiss the market orientation in the provision of educational services and transfer to the concept of cultural and value perception of the fundamental right to education, as a formalized orientation towards ensuring the interests of the society and the individual. In this regard, the public authorities in Republic of Moldova, guided by the criteria of a social state, must include the sphere of education in the exclusive competences of the state. All other forms of organization of educational institutions must be created on the basis of principles of compliance with state educational standards and private partnership relations for the purpose of developing national and cultural identity in the Republic of Moldova.

As a primary objective should be recognized the fact that education, its quality and accessibility will shape Moldova's potential for evolution. Therefore, the mechanism for realizing the fundamental right to education must ensure the achievement of the following objectives: to stagnate the degradation of national education; to regain the positions, lost as a result of the reform in the system of international division of labor; to create an effective system of administration of education; to create all the necessary conditions for a free and creative development of the human being; to satisfy the needs of the human being in obtaining quality knowledge.

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