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The "mandatory" right to education as means of reintegration into society

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Abstract

Internationally, human rights law guarantees a universal right to education. Education and training of inmates help reduce the social costs of crime. People outside of the prison environment have the luxury, or better yet freedom, of choosing the reason for pursuing a form of education or training, whilst for prisoners it is predetermined. Given that its final scope is the reintegration of prisoners into society as full functioning citizens, the right to education becomes an obligation to the state to guarantee the access to the resources available. Thus, the complexity of this right can be better seen in the prison environment, as its final purpose is to ensure that discipline and order are maintained in society.

Keywords: penitentiary; ECHR; education; freedom; reintegration

Introduction

The penitentiary is a place of execution of the sentence and, in order to achieve its aim, which is to prevent the repetition of antisocial acts, it is necessary to conduct itself according to well-established rules, applied with exigency and firmness. Some inmates tend to see prison as a place where they no longer have any rights. Many prisoners succumb to such thoughts, especially in the early stages of their confinement and when they are negatively influenced by those in positions of "seniority" in the prison. This results in a decline in moral potential as well as resistance to the political, educational, and cultural activities conducted there. Deprivation of liberty refers to temporary loss of control over your time and self. It does not involve social exclusion.

However, the social integration or reintegration of those who have committed offences or violations of the rules of social coexistence and the law must be seen as a process that involves the following three dialectically interdependent aspects*: personal psycho-social*

reintegration, economic reintegration and *cultural reintegration*.[1] This can be achieved through proper schooling and training programs.

It is hard to deny the value and effectiveness of proper education in prisons. Inmates can benefit from having a chance to learn new skills and being given a newfound sense of purpose, making them less likely to reoffend. Additionally, their chances of finding a job after release should be higher. It seems sense that, depending on the local and national context, education in prison might take on diverse meanings and forms.

In this context, we ask ourselves whether in the carceral environment education is still a right of the individual or an obligation of the state. The hypothesis that leads to this question is that the link between education and reintegration in this context is consequential. In other words, education is the means to achieve the principal function of a penitentiary which is the reformation and reintegration of a delinquent into society. In this respect, we start our analysis by determining the difference between rights and freedoms. Then we determine the limits of this particular right to emphasize its mandatory aspect.

Education - not a freedom

Education is a universal fundamental human right that cannot be denied by the state. We come across the constitutional traditions of the member states of the European Union in which the state, in the exercise of the functions it will assume in the field of education and teaching, shall ensure access to education for all people and may not arbitrarily deny it. Furthermore, the scope of these regulations has been extended to the access to vocational and continuing training.

As we can see, the Article 26 of the Universal Declaration of Human Rights states that *„Everyone has the right to education."* In this same line of thought, Article 14 of the Charter of Fundamental Rights of the European Union provides that "*Everyone has the right to education and to have access to vocational training and further training".* Article 2 of the Additional Protocol to the European Charter of Human Rights indicates that *"No one shall be denied the right to education."* Also, according to Article 32 paragraph (1) of the Constitution of Romania: "*The right to education shall be ensured through compulsory general education, secondary and vocational education, higher education, and other forms of instruction and further training."*

At a first glance it is important to acknowledge that, in all the aforementioned provisions *we are in the presence of a right, and not a freedom.* Therefore, education comes in a form of the individual's entitlement to have or do something, and not just a mere absence of necessity, coercion, or constraint in choice or action. By analysing this technique used by the lawmaker, we can fairly assess that the state owes its people access to proper education and professional training. Because of the *universal aspect of this right,* people who have been deprived of their freedom are also included in its sphere of application. The right facilitates the process of rehabilitation of detainees and their successful reintegration into society.

[1] Vasile Preda, *Profilaxia delincvenței și reintegrarea socială*, Editura științifică și enciclopedică, București, 1981, pp. 104.

Normally, we could say that the rights help us achieve a state of freedom. However, as Michel Foucault notices, there are similarity between schools and prisons. He asks: *"Is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?"*.[2] The question raises the problem of the development of the disciplinary society in which we are turned into docile bodies, capable of self-discipline. Discipline, according to Foucault, is used by those in power who are using a variety of instruments, techniques, and procedures to reform an individual. To Foucault prisons are not as different from any other institutions. They all have similarities such as the presence of an authoritarian structure, loss of individual autonomy, negative reinforcement, emphasis on silence and order and so on. [3]

However, the right to education does have an element of freedom for the people in the outside world. Behind bars, this element shrinks almost into inexistence because of the particularities of the institution. If we take into account the final purpose of this institution, we see that a low recidivism rate is the only proof that reintegration was ensured. In order for that to happen, the delinquent's behaviour must be normalized. Thus, one could argue that *education in prison becomes a mandatory objective for the state whose primary scope is to ensure discipline in society*. Therefore, in this scenario, education transforms from a right into an obligation.

In support to this claim, in the case of Flămînzeanu v. Romania[4], the Court underlined that the Education Law No. 84/1995[5] and the Law No. 275/2006[6] on the execution of sentences impose a *positive obligation* on prison administrators and education authorities to ensure access to compulsory education for prisoners. Therefore, the Court indirectly acknowledges the necessity of this right in the accomplishment of the final purpose which is reintegration, and since it cannot impose it on the individual, it turns it into an obligation of the state.

Prohibition to deny education

We can easily state that the right to education has roots in human dignity. Therefore, the aforementioned positive obligation of the state was to be expected. But, in order to guarantee access to education, especially in the carceral environment, the main *negative obligation of the state* is to refrain from any restriction of a person's freedom to develop his or her spirituality and access to the values of national and universal culture. It therefore *appears as mandatory for the state to ensure access to education.*

However, this approach is rather seductive for those with state authority since it does not imply a warranty regarding the results of the educational programs. The difficulty is that it is not always obvious why respect for human dignity entails the right to education.

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[2] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Paperback – April 25, 1995, originally published in 1975 in Paris, p. 228.
[3] Michel Foucault, *op. cit.*, pp. 220.
[4] Court of Justice of the European Union, *Judgment of 12 April 2011* Flamînzeanu v. Romania, Application no. 56664/08, ECLI:CE:ECHR:2011:0412JUD005666408, published in the electronic Reports of Cases (Court Reports - general),,
[5] *Education Law No. 84/1995*, published in the Official Journal no. 606 of December 10, 1999.
[6] *Law No. 275/2006* on the execution of sentences, published in the Official Journal no. 627 of July 20, 2006.

Nonetheless, the right ensures that the detainee is free from constraint regarding his or her access to education and professional training. In the case of *Velev v. Bulgaria*[7], the European Court of Human Rights explained that the prisoner's rights were violated when the state denied him access to education. The Court ruled that detainees cannot be deprived of their rights; moreover, rights cannot be arbitrarily and unjustifiably limited. An institution that already has the necessary resources cannot deny prisoners access to them without proper justification.

The Court also indicated that the only national regulation applicable in this case was the one that obliged the detention centres to encourage detainees to participate in educational activities.[8] The Court also reminded of the Council of Europe's European Prison Rules, which state that *" 28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations."*[9] While the Court is aware of the recommendations of the Committee of Ministers to the effect that educational facilities should be made available to all prisoners, it reiterates that Article 2 of Protocol No. 1 does not place an obligation on Contracting States to organise educational facilities for prisoners where such facilities are not already in place. Article 2 of Protocol No. 1 to the Convention does not impose a positive obligation to provide education in prison in all circumstances. Where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions. This case reminds us that, unfortunately, the right to education is often perceived by the authorities as a reward or a privilege instead of a basic human right. With this in mind, the challenge of having proper training programs is surpassed by the challenge of having access to education in prisons in general.

Reintegration in society – the true purpose of education

Eventually, almost all convicts turn into ex-offenders and are let back into the society they harmed. Therefore, there is a solid argument in favour of trying to prevent future crimes by increasing the likelihood that offenders will successfully reintegrate into society. Education, as we presented before, is acknowledged on a new level as a fundamental human necessity, not just a human right. Therefore, imprisonment shouldn't result in further restriction of civil rights, such as the right to an education, even if it is considered a justifiable form of punishment.

Beyond the negative obligation not to restrict access to education, it is clear that this right would be devoid of substance if it did not imply a number of positive obligations on the part of the state. This is because it is not enough to refrain from preventing access to these cultural values, but it is also necessary to ensure that these values are accessible in their own right, especially to the younger generations. Inmates who receive a quality education become more humane, less aggressive, and more connected to the outside world, reflecting on their positive traits and potential. As a result, prison life becomes more

[7] Court of Justice of the European Union, *Judgment of 27 May 2014*, Velyo Velev v. Bulgaria, Application no. 16032/07, ECLI:CE:ECHR:2014:0527JUD001603207 published in the Reports of Judgments and Decisions 2014 (extracts).
[8] *Idem*, paragraph 35.
[9] Article 28.1 of the *Council of Europe's European Prison Rules*, adopted by the Committee of Ministers on 11 January 2006 and revised and amended by the Committee of Ministers on 1 July 2020.

tolerable, its negative psychological impacts lessen, and increased physical and mental stimulation improves inmates' health and safety. According to Recommendation No. R (89) 12 of the Committee of Ministers of the Council of Europe on Education in Prison, this right is presented in prisons as an *"important means of facilitating the prisoner's return to society".*[10] Indeed, education is viewed as a tool that is crucial to one's growth as a person and their ability to contribute to society. It should not just be the rote memorization of facts; rather, it should prepare people to look beyond the exemplary data, to come to their own conclusions, and to use fundamental skills.

Whether we see it in prisons as a right or an obligation, one thing remains certain: its final purpose is defined by the status of those who are at the receiving end. Unlike people who are not sentenced to incarceration, and who can choose freely to educate themselves and the reasoning behind their choice, the right to education behind bars has a defined purpose of rehabilitation and reintegration in society of the prisoner. This turns things into a much different matter.

Given the fact that there must be equality of opportunity, open access, and enforced, monitored quality standards for this human right to function, the educational programs within a prison must be useful, up to date, and in accordance to the labour market demands. An even greater challenge nowadays consists in the recent economic developments that force member states to become more creative in developing prison education. Digital and technological progress have required the development of digital applications for the prison environment, to help keep up to speed with mainstream society and with the demand for skills on the labour market.

In this context, Foucault's claim that schools resemble prisons, hospitals, factories and barracks could be seen as criticism to the way the state tries to impose discipline in society, with no regard to individuality or sense of self.

Thus, education in both scenarios is a way to impose order and not to innovate or help people find a role. Whatever the case, one cannot afford to lack discipline once more after serving years in prison. This is the reason why the curriculum must be meaningful and practical so that they can overcome difficulties of resuming a life outside prison.

Conclusions

The right to education is not stated in any legal norms as a freedom, but as a right. The reason behind this legislative technique is to ensure a legal entitlement to having a universal access to education.

Education is the premise of discipline in a society described by Michel Foucault as one in which people are docile bodies, capable of self-discipline. This is the main reason different institutions such as schools and prisons have many points in common. However, in prisons, unlike in schools, education becomes to some extent mandatory, due to the final purpose of this institution: ensuring the delinquent's proper reintegration in society. Because of this, in prisons, the right to education changes its structure and becomes an obligation for the state to give access to the available means in order to achieve its final

[10] Preamble of the *Recommendation No. R (89) 12 of the Committee of Ministers of the Council of Europe* on Education in Prison adopted by the Committee of Ministers on 13 October 1989 at the 429th meeting of the Ministers' Deputies.

goal. In this respect, the means need to be practical, as inmates no longer have the luxury to choose why they pursue any form of training.

Reintegration also involves being up to date with the reality of the outside world. Therefore, in order for educational programs to be effective, they need to be updated so that real inclusion in society can occur. This means that the curriculum must be meaningful and practical so that they can overcome difficulties of resuming a life outside prison. One of the main challenges nowadays is keeping up with technology and introducing it in the carceral environment. This is due to high costs as well as the unfortunate way this basic right is sometimes perceived by the authorities as a privilege instead of a basic human right.

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Dreptul „obligatoriu" la educație ca mijloc de reintegrare în societate

Rezumat

La nivel internațional, legislația privind drepturile omului garantează un drept universal la educație. Educația și formarea profesională a deținuților contribuie la reducerea costurilor sociale ale infracționalității. Persoanele din afara mediului carceral au luxul sau, mai bine zis, libertatea de a alege motivul pentru care doresc să urmeze o formă de educație sau de formare profesională, în timp ce în cazul deținuților acest fapt este predeterminat. Având în vedere că scopul final este reintegrarea deținuților în societate ca cetățeni cu drepturi depline, dreptul la educație devine o obligație a statului de a garanta accesul la resursele disponibile. Astfel, complexitatea acestui drept poate fi mai bine văzută în mediul penitenciar, deoarece scopul său final este de a asigura menținerea disciplinei și a ordinii în societate.