

EDUCATION LAW FOR THE FUTURE

*summary of the hybrid international expert seminar
at the Pázmány Péter Catholic University*

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Abstract

This paper summarises the outcomes of an international scientific expert seminar titled Education Law for the Future held at the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University in cooperation with the European Association for Education Law and Policy. Professors, professionals and experts were invited world-wide to share their opinion and research results. The expert seminar underlined the need for the rephrasing of international law related to the right to education as well as the importance of rethinking the relation between hard and soft law in domestic legislation.

Keywords: right to education, teaching, learning, digitisation, soft-law, international law

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1. Ongoing research tracks on Education Law at the Pázmány

On 11 October 2022, the Ereky István Public Law Research Centre¹ of the Pázmány Péter Catholic University and the European Association for Education Law and Policy (ELA)² organized an international scientific expert seminar.

The ELA and the Ereky István Public Law Research Centre have collaborated on a number of events, hosted by the Faculty of Law and Political Sciences of Pázmány Péter Catholic University. In 2016, a conference on “The Justiciability of the Prior Right to Education - The Role of Civil Society for the Awareness, Advocacy and Accountability of the Right to Education” took place, followed in 2020 by an international conference on “Safe Schools and Education Rights in a (Post) Pandemic Era”, which will be held online. The Ereky Public Law Research Centre plays an active role in international and domestic academic activities related to the right to education.

On 12 October 2022, Jan de Groof was awarded the title of Doctor Honoris Causa by the Grand Chancellor of Pázmány Péter Catholic University, and the international expert seminar was organised as a further step in the professional cooperation. Speakers came from Europe, the USA and South Africa. The conference was co-sponsored by the Pázmány Péter Catholic University, the Embassy of Belgium in Budapest and the Flemish Government Delegation to Hungary. The conference was chaired and moderated by Professor Jan De Groof and Szabolcs Balázs Gerencsér, habilitated associate professor.

The theme and the issues raised by the conference focused on the right to education and the problems of the present, but also those that will affect future generations. New challenges of the 21st century, such as the rise of digitalisation, the use of neuroscience and artificial intelligence in education, economic inequalities, pandemics, migration and the energy crisis were addressed.

The sections of the conference were organized around the following issues: (1) State-of-the-art: Education Law for the future and the role of the ELA within; (2) rephrasing international education law; (3) Future Design of Sound of Education Law related to Education Policy and Governance; (4) Protection and promotion of children’s education rights; (5) The needs for the right to education in Ukraine.

2. State-of-the-art: Education Law for the future and the role of the ELA within

In the first session, after the opening speech of professor *Jan de Groof*, and *Balázs Sz. Gerencsér*, *Pablo Meix Cereceda*, Professor of Administrative Law at the University of Castilla-La Mancha, spoke about consciousness-raising, equal opportunities and the challenges posed by neurotechnologies. Regarding consciousness-raising, he stressed the need to promote values that support education and the priority of culture.

¹ Ereky István Közjogi Kutatóközpont (PPKE) [Ereky Public Law Research Center]. <https://ereky.jak.ppke.hu>.

² European Association for Education Law and Policy (ELA). <https://www.lawandeducation.be>.

Education must be made accessible to all people, to all social groups, such as women and the poor, but for this to happen, sufficient financial support for the functioning of schools is also essential. It is also important for teachers to receive continuous training to maintain their skills and preparation. With regard to equal opportunities for people from less advantaged economic and social backgrounds, he drew attention to the disingenuous nature of sports scholarships. Poor but physically fit young people are lured into schools with over-idealised promises of sporting activities that hinder their intellectual development. The professor also highlighted the dangers of technological progress. In ten to twenty years' time, science will be able to reproduce the neurological mechanisms of human thinking and learning, so that the human brain can be linked to artificial databases. Artificial intelligence could become a powerful risk for human freedom and privacy, as an individual's thoughts could be made public against his or her will. An individual's thoughts can be made public against his or her will. To counterbalance this, the right to education and the right to freedom of information need to be further differentiated in terms of content. It is necessary to elaborate the content of the right to cognitive freedom, the right to psychological freedom, the right to freedom of thought/reflection and the right to integrity (intellectual and psychological).

Charles Glenn, Professor Emeritus at Boston University (USA) drew attention to the responsibility of states. He considers it of the utmost importance that a state's education policy be thoroughly and carefully drawn up, taking into account the spirit and values of education. Governments have a duty to ensure that all children have access to an education of adequate quality, particularly in terms of equipment.

3. Rephrasing International Education Law

Klaus D. Beiter, professor at North-West University in Potchefstroom, South Africa, asked why neoliberalism, privatization and other challenges are pushing for a reform of the international right to education. Challenges leading to the global crisis in education include privatization; the extraterritoriality of states' international human rights obligations in the face of globalization; poverty and (apparent) lack of resources; the failure to accept inequality and exclusion; and unsustainable development. He suggests that, although in some cases new international law may need to be created or existing international law amended, a soft law type document – such as the (revised) General Comment of the UN Committee on Economic, Social and Cultural Rights or an international expert document – should consolidate and further develop existing international law on the right to education.

Charles Russo, professor at the University of Dayton, USA, referred to a conference of the Sidney Education Law Society in 2020, where the main conclusion was the need to update and give new content to the right to education, especially in view of the challenges posed by digitalisation and the emergence of dependence on funding. In the former, he sees a serious problem in the fact that the degree of access to digital tools determines the possibility, scope and quality of access to education. The latter implies that education becomes dependent on funding conditions and opportunities. When public funding is inadequate, many companies provide financial

support to educational institutions, but this leads to a reduction in the autonomy of education, especially in developing countries. In the schools thus funded, the funding companies impose the obligation to teach the curriculum of their own country, often in a world language. For the schools financed, this can lead to the oblivion of national educational traditions and culture, and the marginalization of the mother tongue. He cites the example of South Africa, where a movement has been launched to promote mother-tongue education.

Ingo Richter, professor of law from the University of Tübingen, Germany, analyzed the decision of the German Federal Constitutional Court of 6 November 2021. This ruling states that in Germany, school operators cannot close schools for purely financial or energy reasons. The constitutional significance of the decision is underlined by the fact that the Federal Constitutional Court has for the first time declared that all children and adolescents, regardless of gender, race, etc., have the right to an education of an adequate standard. The Court sees three dimensions to the right to education: (1) the State must guarantee a minimum standard of education. This does not mean minimum competences for pupils, but minimum standards for the quality of the school system. (2) The State must guarantee free and equal access to the school system. Finally, (3) once the State has established a particular school system, any intervention in that system must comply with the principle of proportionality. Later in his lecture, he called for minimum standards to improve the quality of education.

Maria Smirnova, researcher and human rights expert at the Office of the United Nations High Commissioner for Human Rights (OHCHR), summarised the High Commissioner's priorities on the right to education: (1) combating cyberbullying³, (2) digitisation in education⁴, (3) equal access to education - for all girls⁵, (4) human rights of youth - including the right to education⁶, (5) the right to education of migrants and refugees⁷, (6) Coronavirus Epidemic and the Right to Education⁸, (7) Literacy⁹, (8) Education for Justice and the Rule of Law in the Context of Sustainability¹⁰, (9) World Programme for Human Rights Education.¹¹

³ 7 October 2022, Human Rights Council (HRC) adopted resolution 51/10.

⁴ Report 'Impact of the digitalization of education on the right to education' (A/HRC/50/32).

⁵ June 2021, HRC adopted resolution 47/5.

⁶ September 2022 session, HRC adopted resolution 51/17 'Youth and human rights'.

⁷ Special Rapporteur on the right to education to the General Assembly focus on the right to education of migrants (A/76/158) and refugees (A/73/262).

⁸ Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities Report of the Special Rapporteur on the right to education, A/HRC/44/39.

⁹ A/RES/75/155. Literacy for life: shaping future agendas.

¹⁰ A/RES/74/172 Education for Justice and the rule of law in the context of sustainable development

¹¹ World Programme available at: <https://www.ohchr.org/en/resources/educators/human-rights-education-training/world-programme-human-rights-education>, related resolution: A/HRC/RES/39/3 World Programme for Human Rights Education.

Ignasi Grau i Callizo, Director of OIDEL¹² (Switzerland), stressed the combined role of family, pluralism and culture. In his presentation he stated that the individual is both a social and a cultural reality. In his opinion, the family, as a socialising environment, is playing an increasingly important role in the socialisation of children and education must build on this role. The parent is the source best suited to transmit socialisation, cultural and linguistic traditions and competences to the child. Full development', as defined by international treaties, can be achieved only if the child can grow in the social and cultural environment and thus freely develop his or her personality.

4. Future Design of Sound of Education Law related to Education Policy and Governance

Pieter Huisman, Professor of Education Law at Tilburg University, the Netherlands, raised two questions. Firstly, the role of governments in improving education legislation and secondly, the role of law enforcement in this area. In his view, schools are no longer self-contained, but part of a network, linked, among other things, to the child protection system and, where appropriate, to companies. Soft law is becoming increasingly important in education and protocols are also used in schools. Hard law and soft law can be in conflict, and this conflict raises a dilemma. On the one hand, the emergence of soft law is a credible example of the realisation of educational autonomy, and demonstrates the integral link between educational legislation and the rule of law. On the other hand, the rise of hard law works against the previous two rule of law phenomena and can also lead to a democratic deficit, while hard law is inescapable for reasons of funding and education policy alone.

Angelo Paletta, Professor of Economics at the University of Bologna, touched on the impact of New Public Management on education legislation. He also discussed the conflict between hard law and soft law. Soft law increases the autonomy of education in individual schools. However, basing on an empirical study conducted in Italy, he questioned the impact of widening autonomy on educational standards. Widening autonomy leads to differences in standards, and the question is how differences in standards affect student achievement. It argues that only 30 per cent of students' performance depends on the quality of education, the other 70 per cent on family background. Broad educational autonomy can promote equity, but it is not the same as inclusive education. Equity is an ethos that promotes community-level achievement gains for small and large communities in schools. An equity approach must therefore create learning communities within the school. And in community building, the teacher's personality is indispensable. He believes that digital tools cannot replace a good teacher who is able to lead.

Ausrine Pasvenskiene, Associate Professor at Vytautas Magnus University, presented Lithuanian education policy and the war experience. She argues that when students are told where to flee in the event of an air raid, and education is in Russian

¹² OIDEL. <https://www.oidel.org>

for Ukrainian refugee children, the importance of digital tools should not be stressed. Nevertheless, digital tools should be seen as an ordinary object, as digital tools cannot replace people. In her view, there are two extremes in the conflict between soft law and hard law: either there is an over-regulation or there are no rules.

According to *Alexandre Moreira*, PhD candidate at the University of Leuven and former National Secretary of Human Rights in Brazil, hard law is necessary, but soft law, because of its dynamic development, is inevitable. In his view, soft law makes uniform international legal education impossible, so he sees a perspective in revitalizing hard law. This should be achieved, on the one hand, by giving priority to the use of the mother tongue and, on the other, by reducing the importance of quantified standards. Although numbers are objective, they mask many human, spiritual, intellectual and emotional factors. Thirdly, he argues that national legislation is needed in each country, in accordance with the social conditions in that country. He pointed out that law alone is not enough, but that without law we can do nothing.

Christopher Cordeiro, founder of the Learn Free movement in South Africa, presented the state of education in South Africa. Finally, Paul Zoontjens, Emeritus Professor of education law, Tilburg University (the Netherlands), joined colleagues in stressing the importance of soft law.

5. Protecting and Promoting Children's Education Rights

The opening presentation of this session was given by *Lajos Aáry-Tamás*, Commissioner for Education Rights in Hungary. In his opinion, providing information and passing regulations is of the utmost importance in the world of education. The right to information forms the basis of educational rights. In public education, parents do not have the option to freely decide whether to enroll their children to school or not. Parents — along with their children — are users of the second largest public service of the country. As such, they are entitled to have rights. The public service is provided by the teachers, therefore they are the obligors in this relationship. He examined the relation of rule of law and the EU to the education systems. He underlined the utmost importance of the debate on education and to constantly search for solutions. The authorities, the protectors of rights, the professors, researchers and experts and last, but not least non-governmental organisations have significant experience in these fields. If they manage to find the forms of cooperation, then schools and families will not be abandoned. In the end, he highlighted that there is a great debt towards the Hungarian society: during the last three decades we have heard many debates over *what* we should teach, and even more debates over *how* we should teach. However, we haven't found an answer to the most important question concerning our educational system: *why* do we teach, what is the aim of it?

Jan Wolkowsky, research assistant at the Faculty of Theology of Nicolaus Copernicus University in Toruń, presented the state of Polish education law. He spoke of the rise of a marked secularism in the Polish public consciousness as an unfortunate phenomenon. The proportion of citizens who identify themselves as Catholics has fallen from 97% to 87% in just a few years. Religion is perceived by citizens as a

private matter, without a positive social image behind it. Secular thinking is evident in both legislation and constitutional court practice. Secularisation is undermining traditional Christian values, so that the new generation, the so-called “snowflake generation”, is facing a crisis of values and is not receiving moral guidance. This is why the speaker considers the socialisation role of the family to be important.

Finally, the discussion had a special focus on *the problems that education is facing in Ukraine as a consequence of the war*. Invited lecturers, professionals and ELA-friends, *Volodymyr Kovtunets*, the former Vice-Director of the Institute for Higher Education of the National Academy of Educational Science and father *Roman Nebozhuk*, the Chairman of the Board Charity Foundation, “Ukrainian Children of War” introduced the situation of education in Ukraine. The war affected the education system badly. Many schools in Ukraine have been victims of war destruction. Some five million children were left out of public education. The situation is even more complex as the education system needed to be reformed even without the war, which has now become more difficult.

6. Summary

In summary, the main findings of the conference included: (i) the need to rewrite international education law (CRC); (ii) the need to revise the general comments (soft law) of the CRC and ICESCR. (iii) rethink the relation of hard and soft law in domestic legislation, (iv) the need to develop new, more modern educational indicators to assess the quality of domestic education laws, (v) to open research activities to future technology such as the examination of the relationship between neurosciences and education. The speakers also agreed that the openness of the right to education and science needs to be maintained, especially with regard to other cultural views.

