

Unities and Diversities Regarding the Right to Education in Europe

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1. Introduction

We commence this article with a tribute to Katarina Tomaševski, both for her courage in the defence of the right to education and for her scholarly contributions in this domain. In a certain sense this work is deeply indebted to her ideas and employs her theoretical tools in order to present an overall vision of the right to education.² To this end, the paper will focus on two tasks: first, identifying the educational consequences of the Convention on the Rights of the Child (CRC) of 1989 and its relation to the right to education, and, second, analysing the situation in Europe, using Tomaševski's 4-A scheme.³ With this work, we wish to underline the importance that this approach has for comparative education, where education is seen from a different perspective using sources of information hardly used in this discipline.

The choice of the European case is interesting given that it is generally thought that the above-mentioned Convention arose in order to solve the problems of developing countries. Nevertheless, it should be pointed out that the study of the situation in Europe threw up a lot of information about the right to education, demonstrating certain similarities with respect to access to education, but many more differences regarding other aspects of this right. This corroborates the vision we Europeans generally have of our continent and which we can define as a set of unities and diversities, depending on the elements we are using for comparison.

2. Educational Consequences of the CRC and Its Relation with the Right to Education

A cursory reading of the CRC would suffice to reveal that, apart from a new conception of children's rights in relation to rights of autonomy, the treaty adopts a whole educational philosophy. This is explicit in Articles 17, 19, 23, 28, 29, 30, 31, 32, 37, 39 and 40 of the Convention, which address issues on access to suitable information, protection against all forms of violence, child labour, the disabled, victims of exploitation, minorities, justice for minors, play and recreational activities and, above all, the right to education. As can be observed from the Committee's recommendations, most of these rights are subject to certain discriminations, both in society and at school. This is why the tenor of the Convention urges that the education system and the schools should work towards fostering school integration as well as respect for diversity and education in human rights. Thus, we deem it pertinent to carry out an integral approach in education with regard to the rights of children since in this way we can highlight the true educational character underlying the whole of the CRC.⁴

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³ K. Tomaševski, *Preliminary report of the Special Rapporteur on the Right to Education, Ms. Katarina Tomaševski, Submitted in Accordance with Commission on Human Rights Resolution 1998/33*, 1998, Commission on Human Rights, E/CN.4/1999/4913 or K. Tomaševski, *Human Rights Obligations in Education. The 4-A Scheme* (Wolf Legal Publishers, Nijmegen, 2006a).

⁴ P. Dávila and L. M. Naya, 'Educational implications of the convention on the rights of the child and its implementation in Europe', in A. Alen (ed.), *The UN children's rights convention: Theory meets practice*

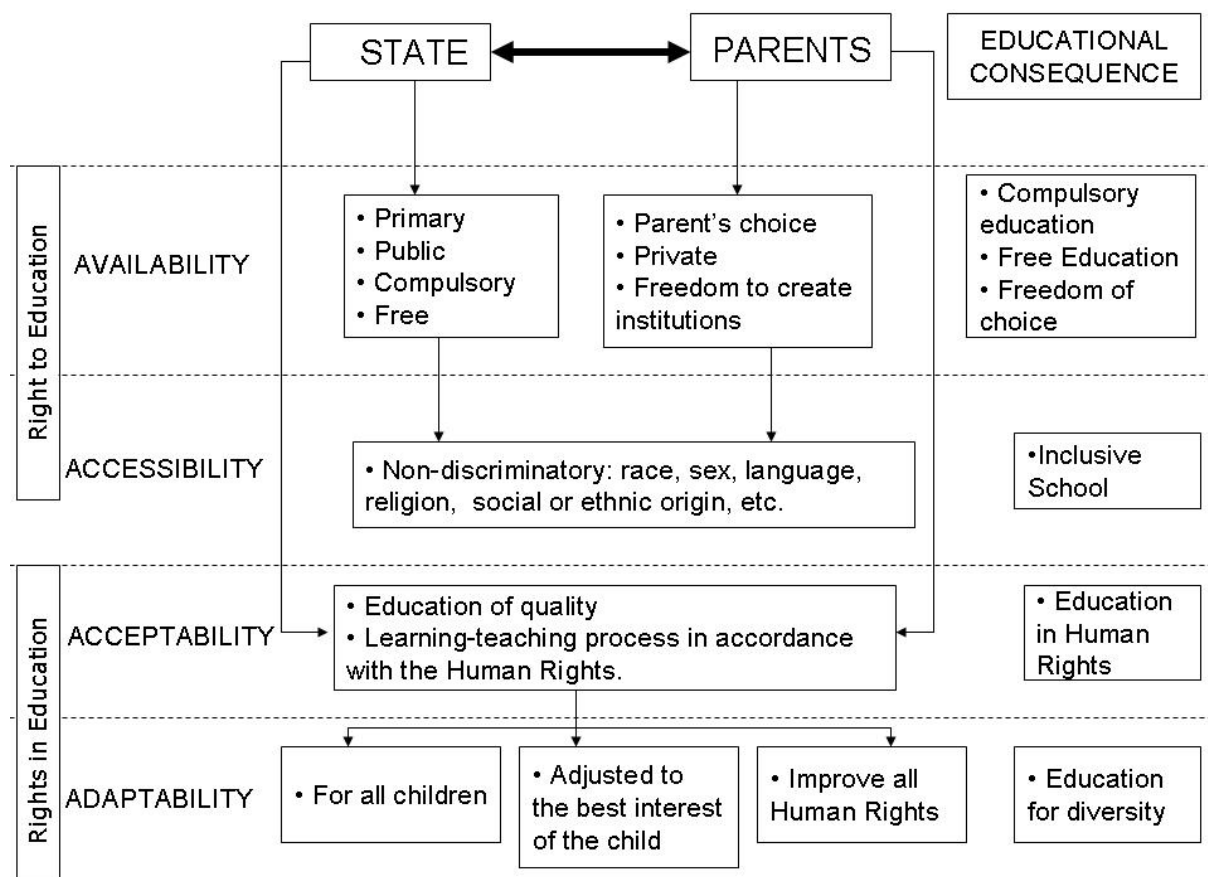
In this collaboration we are interested in focusing on the right of education, in a wide-ranging sense to be able to use it as a framework in the study of the European case, given that the dimensions that it presents and the categories included in it validate this right as a priority and as an indispensable condition for the exercise of the rest of the human rights, both political and civil, as well as economic, social and cultural. In this respect, although the right to education has a tradition in international judicial instruments, it is also true that, until the *Preliminary report of the Special Rapporteur on the Right to Education*, its characteristics were not systematised. Thus, the development of children's rights has enriched its initial conception. The analysis we present here used Tomaševski's conceptual framework as a basis – including the Committee's recommendations in each one of the As: Availability, Accessibility, Acceptability and Adaptability.

The key Articles of the CRC for studying the right to education are, undoubtedly, 28 and 29, since they contain amalgams of questions relating to education, above all, those related to government obligations in education. That is to say, the Convention has correctly maintained the legacy of the right to education within the ambit of international instruments.⁵ Nevertheless, we deem it pertinent to highlight the contribution, both theoretical and methodological, of Katarina Tomaševski, a contribution of such wealth that provides us with valid analytical tools for gaining knowledge on the right to education and its situation in the world. More explicitly we refer to the analysis of the right to education which she has referred to as 'the 4 As' in order to explain the complexity of the obligations of governments and parents in relation to the right to education. In Figure 1, we have outlined aspects related to the right to education, just as it is interpreted by Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966), and subsequent interpretations and observations made by the Committee on Economic, Social and Cultural Rights and other principles that guide the right to education in international treaties, such as the Convention itself. This schema, approved by Tomaševski herself, synthesises her contributions in many aspects and, moreover, points out the educational and schooling consequences that, in our view, each one of the indicated categories has, in accordance with the approach explained at the beginning of this article:

(Intersentia, Antwerpen, 2007) pp. 243–265 or P. Davila and L. M. Naya, 'The rights of the child and education in Europe', XXXVII:3 *Prospects* (2007) pp. 381–399.

⁵ UNESCO, *World Education Report 2000. The right to education: towards education for all throughout life* (UNESCO, Paris, 2000) or K. D. Beiter, *The Protection of the Right to Education by International Law*. (Martinus Nijhoff Publishers, Lieden/Boston, 2006).

Figure 1: The 4-A scheme and their school and educational consequences



With this schema, we want to highlight the governmental obligations of the states parties with regard to their duty to invest in education, basically in infrastructure and maintenance to ensure that schools are *available*, with all their needs; assuring *access* to all groups, without discrimination either within the schools or in enrolment access to them, either in terms of non-attendance or of child labour exploitation. In the same way, the state has to establish and apply norms *in* education which enable an *acceptable* education with human rights and also one that *adapts* to cultural diversity. All this means the search for and the establishment of indicators which enable the confirmation of not only the recognition of the right to education, but also of rights in education.⁶ The quest for these indicators is the greatest challenge awaiting those concerned about a correct application of the rights of childhood and of education.

⁶ Tomaševski, *supra* note 2; K. Tomaševski, *Education Denied* (Zed Books, London, 2003); K. Tomaševski, 'Indicadores del derecho a la educación', 40 julio-diciembre *Revista IIDH* (2004) pp. 341–388; and J. Henaire and V. Truchot, 'Les Indicateurs du Droit à l'Éducation : le Défi d'une Mise en Œuvre', in Centre International de Formation à l'Enseignement des Droits de l'Homme et de la Paix, *Educational Challenges and Human Rights* (Geneva, 2003), pp. 57–80, <www.eip-cifedhop.org/utilisateurseip/fichiers/t11Henaire_Truchot.pdf>, visited on 20 January 2010.

3. The Implementation of the CRC in Europe and the Right to Education

Most European countries ratified the CRC immediately after its approval by the United Nations (UN) in 1989. Some of them indicated reservations regarding certain articles,⁷ to the extent that from 1992 the various states parties began to remit their reports to the Committee on the Rights of the Child in Geneva and some European countries had already presented their second or even third reports. This situation has made a wide selection of documents about the situation of the rights of children in Europe available for analysis.⁸ In this article we will only analyse the recommendations of the Committee⁹ related to the articles concerning the right to education, in order to elucidate on the unities and diversities of this right in Europe. In this respect, a salient point of convergence is the express recognition of the right to education in the majority of European constitutions.¹⁰ However, in order to understand the nature of this right, it is necessary to examine the treaties that have contributed to the development of its recognition as a right.

Research on the implementation of the CRC also requires other frameworks of understanding that bear directly on education. For example, one of the key domains to be considered in the exercise of recognised rights is age. While the CRC places the limit at 18 years (Article 1),¹¹ an analysis of this question reveals considerable variability within Europe alone as a result of various contextual factors. In the majority of cases analysed, the minimum age for working is 15. Moreover, the eligible age for marriage in some places in Europe is less than 18. More importantly, the age of legal responsibility is lower than 18 in some places (e.g. 7 in Switzerland and about 14 in the UK). This problem of a non-uniform age criteria for distinguishing the age of minority from the age of majority makes the exercise of the rights of the child a complex issue and may pose some impediments to it.¹²

Moreover, regarding questions more directly related to education, another series of indicators should be considered as relevant contextualising factors for the right to education. First, the starting and finishing ages of compulsory education. In the majority of European countries, compulsory schooling starts at 6 and ends at 15 (up to 18), or a total of ten years. However, the 'school life expectancy' for a four-year old child (including infant, primary and secondary level schooling as well as higher education) is usually longer, even as much as 17 years (Finland) to 19 years (Belgium). Second, the enrolment net rate at primary level normally ranges between 90 and 100 per cent of the school population. Third, the teacher-pupil ratio, which in most cases registered a ratio of less than 20 pupils per teacher, indicates

⁷ See Committee on the Rights of the Child webpage, <www2.ohchr.org/english/bodies/crc/index.htm>, visited on 20 January 2010.

⁸ P. Davila and L. M. Naya, 'La Infancia en Europa: una Aproximación a partir de la Convención de los Derechos del Niño', 9 *Revista Española de Educación Comparada* (2003) pp. 83–133; UNICEF, *Study on the Impact of the Implementation of the Convention on the Right of the Child* (Innocenti Research Centre, Firenze, 2004); S. Ruxton, *What about us? Children's Rights in the European Union next steps* (The European Children Network, Brussels, 2005); or Instituto degli Innocenti, *Survey on the CRC Committee's Concluding observations on the last EU countries' Report* (Florence, Italy, 2006), available at <www.childoneurope.org/activities/pdf/su00-Survey.pdf>, visited 20 January 2010.

⁹ For this article, the recommendations of the Committee to all the European countries and included in their reports corresponding to CRC/C/15/, with their respective Concluding observations have been analysed. These documents are available on the webpage of the Committee on the Rights of the Child, see *supra* note 5 as are the reports of the non-governmental organisations, available at <www.crin.org>, visited on 20 January 2010.

¹⁰ The 'right to education' is included in various ways by the great majority of European constitutions: 'Legal status of the right to education', in Right to Education Project, <www.right-to-education.org>, visited on 20 January 2010.

¹¹ A. Melchiorre, *At What Age?* (UNESCO, IBE, Right to Education, Geneva, 2006).

¹² P. Trinidad, *El Niño en el Derecho Internacional de los Derechos Humanos* (Universidad de Extremadura, Cáceres, 2002).

a general sign of quality education. Regarding funding for education, there are also a couple of indicators that are crucial: provision of free education, a system in place in the majority of European countries (though in some cases text books, school materials, extracurricular activities, school canteen or school transport expenses have to be paid for); and the percentage GDP earmarked for education, which fluctuates between 3 and 7 percent in the cases studied. This whole set of statistical indicators gives a general backdrop against which the right to education as recognised by the majority of reports from international bodies¹³ can be viewed.

4. Availability

Availability is one of the aspects most directly involved in the obligations of the state in regard to compulsory and free educational provision. Nevertheless, these questions clearly call out for a theory of the state, as has been highlighted by Carnoy,¹⁴ to know the limits of state intervention, the right of parents to choose, the role of public and private sectors, and the curriculum.¹⁵

The core concerns of the Committee are as follows: school dropout and school absenteeism, deprivation of the right to an education; schools in rural areas; schooling age and access to secondary education. As regards *school dropout and school absenteeism*, the Committee referred to the following cases:¹⁶

- The European Union (EU) up to 2004: Spain (2), Finland (1), Greece (1), Italy (1) and Portugal (2).
- New members of the EU (from 2004): Slovenia (1), Estonia (1), Latvia (1), Lithuania (1) Malta (1) and Bulgaria (1).
- Other European countries: the Russian Federation (1), Macedonia (1), Moldova (1), Serbia & Montenegro (1) and the Ukraine (2).

Other aspects considered are related to difficulties in accessing secondary education such as in Belarus, Slovenia and Macedonia, among others. Also a cause for concern is the situation of maternal schools, which are insufficient in Europe, but particularly so in Iceland and Lithuania where the local populations that can support these are scarce. The fact that populations in rural areas have difficulties in accessing compulsory schooling is also discriminatory, as is observed in the Russian Federation, Romania, Poland and Greece.

Another aspect is school discipline. The Committee is concerned about the situation in Ireland “of children expelled from school arising from sanctions imposed by teachers, as well as by the negative consequences these expulsions have and their possible repercussion on the rates of abandonment and school attendance”.¹⁷

By contrast, a number of states parties have received eulogies from the Committee for their favourable procedures in the educational field. Such cases are: Germany (1), Denmark (1), Finland (1, 2), Italy (2), Portugal (2), Slovakia (1), Turkey (1) and Norway (1).

With respect to free education, an element emphasised in the reports, the references by the Committee are less numerous and, in the majority of cases, cited the extra cost to the family

¹³ UNESCO, *Global Education Digest 2005* (UNESCO Institute for Statistics, Montreal, 2005); UNESCO, *supra* note 4; UNICEF, *supra* note 7.

¹⁴ M. Carnoy, ‘Rethinking the Comparative – and the International’, 50:3 *Comparative Education Review* (2006) pp. 551–570.

¹⁵ Tomaševski, *supra* note 2, pp. 15–40.

¹⁶ The numbers within brackets indicate the version of the report where these recommendations had been made, e.g. (1) for the first report by the state party, or (2) for the second report. We have maintained the separation of EU countries up to 2004, as the majority of reports are prior to that date.

¹⁷ CRC Committee, *Concluding Observations: Ireland*, UN doc.CRC/C/15/Add. 85, para. 22.

budget of extracurricular activities, the purchase of school materials or of school textbooks (Andorra, Serbia & Montenegro, the Ukraine) or the changes in budget allocations for education (increases in Portugal; decreases in Sweden). Apart from these, Tomaševski's¹⁸ observations on the cost of education are pertinent with reference to the payment of taxes.

5. Accessibility

Accessibility not only refers to the obligations of the state to provide access to basic education, but also to other levels of education which oftentimes is fee-paying. It is also necessary to consider that this right to access should be free of discriminations and allow for school inclusiveness. In this respect, there are many international agreements where the opposition to any kind of discrimination by international bodies is made clear, such as the reports referring to discrimination in the exercise of the right to education.¹⁹ Discrimination in terms of access to education affects, above all, girls, the disabled and ethnic minorities.

Non-discrimination, being one of the basic principles of the CRC, is a theme that impregnates the whole treaty, pointing the way for educational practices and policies regarding the protection of children. With respect to disabled children, our starting point is that disability cannot and should not be an obstacle to enjoying the benefits of human rights, as has been pointed out in a number of international treaties on the subject.²⁰ Following this line of argument, the CRC incorporates these rights in two cases that have educational repercussions. We refer, on the one hand, to the right of disabled children (Article 23), incorporating the right to enjoy a full and decent life, apart from ensuring that the child has "effective access to and receives education, training [...] preparation for employment". In defence of this right, both non-discrimination and the right to education go hand-in-hand, given that there exists an unbreakable bond between disability and human rights founded on the dignity of the disabled as a human person. Thus, "ensure full and explicit recognition of people with disabilities as equal holders of human rights" although there is no reference to them in the International Covenant on Civil and Political Rights nor in the International Covenant on Economic, Social and Cultural Rights.²¹ There also exists another set of rights within the sphere of non-discrimination against children of minority groups or of indigenous peoples. This is embodied in Article 30 which recognises their right to "enjoy their own culture, to profess and practise their own religion, or to use their own language", the corresponding educational nature of which is evident.

With respect to *disabled children*, the Committee indicates that "States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention".²² It also systematically

¹⁸ K. Tomaševski, *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report* (2006), <www.katarinatomasevski.com/images/Global_Report.pdf>, visited on 20 January 2010.

¹⁹ G. Siemienski, *Education Rights of Minorities: the Hague Recommendations. Working Paper submitted by Mr. Guillaume Siemienski*, Commission on Human Rights, 1997, E/CN.4/Sub.2/AC.5/1997/WP.3; K. Tomaševski, *The Right to Education. Report Submitted by the Special Rapporteur, Katarina Tomaševski*, Commission on Human Rights, 2004, E/CN.4/2004/45; and V. Muñoz, *Girls' Right to Education. Report Submitted by the Special Rapporteur on the Right to Education, Mr. V. Muñoz Villalobos*, Commission on Human Rights, 2006 E/CN.4/2006/45.

²⁰ With reference to the European case, see Commission of the European Communities (2003): *Equality of opportunities for disabled persons*, Ref. COM (2003) 650 final. One can also consult the UN document: <www.un.org/esa/socdev/enable/history.htm>, visited on 20 January 2010, and the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 by the United Nations.

²¹ R. Hodgkin and P. Newell, *Implementation Handbook for the Convention on the Rights of Child*, 4th edition (UNICEF, Geneva, 2007) p. 322.

²² Report on the 16th period of sessions, September/October 1997, CRC/C/69, para. 338e.

recommends “their inclusion into the general educational system and into society”.²³ The 1996 Report from the Special Investigator on the supervision of the application of Uniform Norms observed that in 10 of the 80 countries that provided information on their legislation, there was no guarantee that the disabled child had a right to education. With this kind of proposal and recommendation, what is being affirmed is that the educational system should provide for the integration of children with disabilities and consequently, albeit indirectly, that the school be inclusive. This involves making the school accessible to all those children who in some way may be subject to discrimination.

On analysing this question, we attempt to draw a discrimination map of the situation of disabled children in Europe based on an analytical reading of the Committee’s recommendations. Several countries have made a positive effort of enshrining the principle of non-discrimination in their national legislation, and giving recognition to school integration. Such are the cases of Austria, Belarus, Spain, Slovenia, Finland, France, Iceland, Italy, Latvia, Lithuania, Luxembourg, Norway, Portugal, the UK, the Czech Republic, San Marino and Sweden. Nevertheless, the Committee has pointed out that this legal recognition is either not sufficiently applied to disabled persons or, in reality, there exists patent discrimination, either in their access to schools or in their non-integration into normal schools. Such is the situation prevailing among cases in:

- The European Union up to 2004: Germany (2), Belgium (2), Greece (1), Ireland (1), Luxembourg (1) and the United Kingdom (2).
- New members of the EU (from 2004): Cyprus (2), Slovenia (2), Estonia (1), Lithuania (1), Latvia (1), Malta (1), Romania (2) and Poland (2).
- Candidate countries: Turkey (1).
- Other European countries: the Russian Federation (2), Macedonia (1), Moldova (1), Norway (2) and the Ukraine (2).

With regard to *minorities and indigenous peoples*, the Committee pointed out that “the provisions of article 30 might seem redundant. However, the overwhelming evidence of serious and continuing discrimination against minority and indigenous populations justifies mention of their rights in a separate article”.²⁴ As in the previous case on disabled children, the application alone of the principle of non-discrimination should have avoided the need for this explicit provision in Article 30. This Article, as the Committee pointed out, is more concerned about cultural, religious and linguistic rights than economic or political rights. The motives behind discrimination, in the majority of cases, are ethnic or linguistic, involving minority groups that exist in the states parties.²⁵ One of the ethnic groups discriminated against, if not the most discriminated against in Europe, is the Roma minority, as declared in the final observations of the Committee. Thus, in the majority of countries, we find similar recommendations:

- The European Union up to 2004: Austria (1), Spain (2), Finland (2), France (2), Greece, (1), Italy (1, 2), Portugal (2) and the United Kingdom (2).
- New members of the UE (from 2004): Slovakia (1), Slovenia (2), Hungary (1), Lithuania (1), Poland (1, 2), Romania (2) and the Czech Republic (1, 2).
- Other European countries: Belarus (2), Macedonia (1), Moldova (1), Norway (2) Serbia and Montenegro (1), Switzerland (1) and the Ukraine (2).

²³ Hodgkin and Newell, *supra* note 20, p. 328.

²⁴ *Ibid.*, p. 455.

²⁵ France, as with Turkey, expressed reservations about this Article, being applied to principles of equality and non-discrimination, the existence of minorities in France not being recognised as having specific legal rights.

Further recommendations of the Committee address the discrimination of other *ethnic minorities* and the use of *xenophobic and racist* expressions. With exceptions such as Germany, which received praise for its campaigns to prevent racism,²⁶ the general tone of the recommendations reflects the difficulties these minorities have in exercising their rights. Such are the cases in:

- The European Union up to 2004: Belgium (2), Denmark (2), Greece (1), the Netherlands (1) the United Kingdom (2) and Sweden (2).
- New members of the EU (from 2004): Cyprus (2) and Romania (1).
- Candidate countries: Croatia (1).
- Other European countries: Andorra (1), the Russian Federation (2), Iceland (2), Liechtenstein (1) and Switzerland (1).

Another domain of discrimination is language. The Committee recommended to the States that have not yet recognised this right or in fact violate it, to offer teaching in the minority languages. These include:

- The European Union up to 2004: the United Kingdom (1).
- New members of the EU (from 2004): Estonia (1) and Latvia (1).
- Candidate countries: Turkey (1).
- Other European countries: Belarus (2) and Serbia & Montenegro (1).

Elaborating on these linguistic aspects, the Committee insisted on the training of teachers in these minority languages, as well as the elaboration of teaching materials in these languages.

There is also the discrimination for *religious* reasons, eliciting some recommendations from the Committee regarding cases related to the Muslim minorities or to religious education. This is the case in France and Germany where the Committee has expressed their concern about the legislation being debated in certain Landers (in Germany) on the prohibition of women schoolteachers from wearing a veil, given that this does not contribute to the child's understanding of freedom of religion. Nevertheless, the most notable case is that of Norway where parents who do not wish their children to receive religious instruction must present an official document indicating the beliefs of the child, a situation which may constitute a violation of the child's privacy.

Lastly, despite the fact that one of the common discriminations in general in the world is that of impediments to access of education for *girls and, in some cases, boys*, the recommendations concerning this in Europe are not so evident. The Committee refers to the following cases:

- The European Union up to 2004: Italy (2) and Portugal (2).
- New members of the EU (from 2004): Cyprus (2) and Romania (2).
- Candidate countries: Turkey (1).
- Other European countries: the Russian Federation (1), Macedonia (1), the Holy See (1) and Serbia & Montenegro (1).

6. Acceptability

²⁶ CRC Committee, *Concluding Observations: Germany*, UN doc. CRC/C/15/Add.43, para. 6.

Acceptability is aimed at quality education and one that complies with health and safety standards, and with an educational process which guarantees, not only the “right to education”, as in the cases of availability and accessibility, but also to the “rights in education”, which can affect acceptability and adaptability. Such is the case of the right to use minority languages in schools, the exercise of which leads to greater educational acceptability. Similarly, the issue over the protection against child labour has ramifications on access to schooling, which this form of violence impedes. It is also of interest to underline the fact that in the European case school violence is becoming an object of attention as reflected in the Committee’s recommendations.²⁷

Although Article 19 is more wide-ranging, stating the aim “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”, it is worth emphasising that it has a direct relation to Article 28 (2) on school discipline without violence. The Article declares that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity”. Thus, states are made responsible for the prevention of all kinds of violence against children, whether by employees of the state or by parents, teachers or others charged with their care. Also, the Committee has emphasised that corporal punishment in the family, in schools or other institutions, or within the penal system, no matter how light it might be, is incompatible with the CRC.

The Committee has pointed out that both legal and educational measures are needed in order to change attitudes, customs and practices. On the one hand, there are countries where existing legislation prohibits all kinds of violence or ill-treatment of children, such as Germany, Andorra, Austria, Denmark, Estonia, Spain, Finland, Greece, Iceland, Latvia, Malta, Monaco, the Netherlands, the United Kingdom (except Northern Ireland), Switzerland, Sweden and Turkey. In this respect, Sweden has been the first country in the world to prohibit corporal punishment by means of a Paternity/Maternity and Guardianship Code, whereby children cannot be subjected to corporal punishment or any other offensive treatment.

On the other hand, there are those countries criticised by the Committee for allowing certain ‘permissiveness’ in discipline in the home (Finland, Switzerland, France, Spain or the United Kingdom). Even stronger criticism is directed at countries where there is no clear prohibition of corporal punishment in the family, within other forms of child care, in schools and in the penal system (France, Poland, Belgium, Italy, Croatia, Ukraine, Portugal, Luxembourg, the Czech Republic, Bulgaria, Malta, Slovenia, Slovakia, Macedonia, Lithuania and Serbia & Montenegro). The Russian Federation and Belarus received the heaviest criticism. For those countries, the Committee requested that all forms of corporal punishment be expressly prohibited. The map of school discipline should thus take into account these observations, in which practically almost all countries receive criticism and recommendations to definitely eliminate this type of discipline by violence. In any case, legislation appears insufficient to change the long traditions of social and school behaviour. Indicators analysing this right can be observed in the legislation on the protection against all forms of corporal punishment, both in the home as in public and private schools and care institutions. A special phenomenon is *bullying* which is becoming more visible.

Besides, and within the framework of protection against all forms of violence is Article 32 of the CRC, relating to economic exploitation and child labour, wherein it concretely specifies that states parties recognise the right to protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education. This right is related to another series of articles, apart from the optional protocols. Above all, it has been the subject of special attention by the International Labour Organisation (ILO), in

²⁷ To find out about the situation on corporal punishment <www.endcorporalpunishment.org/> may be consulted, visited 20 January 2010.

its Agreements: no. 138 of 1973 on the minimum working age, signed by 135 States as at 2004, and no. 182 of 1999 on the prohibition of the worst forms of child labour, signed by 151 States as at 2005.²⁸

The recommendations of the Committee are aimed at the suitability of fixing age limits taking into account the pertinent provisions within other international instruments. The Committee praised those countries that have ratified the two quoted ILO Agreements (Romania, France, Spain, the UK, Belgium, Italy, The Ukraine, Germany, Portugal, Slovenia, the Czech Republic, Hungary, Slovakia, Turkey, Greece, Moldova and Estonia), and recommended the States Parties that have not done so to do so (Denmark, Iceland and Austria). An interesting research domain is whether the non-fixing of these age limits can hinder the schooling of children and their education.

7. Adaptability

Adaptability is one of the elements requiring greater creative effort in the task of adapting the schools to the children, following the principle of the best interests of the child, one of the guiding principles of the CRC. As happens with the other As, adaptability is related to the domain of discriminations, but also to cultural, religious and other diversities. This is why adaptability is a necessary element for guaranteeing the enhancement of human rights by means of education. In this respect, programmes of education in human rights are required both at a worldwide level, as well as in schooling praxis.²⁹ In many cases the sphere of education in human rights has become education for citizenship.³⁰

As regards Article 29, most recommendations refer to the inclusion of human rights in school programmes. The educational aims set out in Article 29(1) continue a legacy in this type of treaty, be it with regard to the traditional focus on the development of the personality and a responsible life; respect for parents, for other national or cultural identities; or a more contemporary focus on respect for the natural environment. The Article “emphasizes that there is international consensus as to the aims of education which surmounts the often hostile boundaries of religion, nation and culture erected across so many parts of the world”.³¹ Moreover, many of these aspects impregnate programmes and curricula in schools, although not always in the direction marked by the guidelines of the CRC.

What appears to worry the Committee more is the scant presence of human rights in the education of children and also amongst the education professionals. In this sense, the map of the presence of human rights and the CRC in the educational system provides almost a black and white panorama but peppered with recommendations for the states parties to incorporate the rights announced in the CRC into their school curricula. The following countries have implemented (or have taken measures to implement) this recommendation: Belarus, Italy, Cyprus, Slovenia, Austria, Monaco and Estonia. There is however a group of States that is cause for concern because the countries therein do not sufficiently reflect the contents of Article 29, namely, Romania and Croatia. Finally, the majority of states received similar recommendations, more or less expressed in the following manner: “The Government should study the possibility of incorporating the Convention into the school curricula” at any of the

²⁸ International Labour Organisation, *The End of Child Labour: Within Reach*, ILO, Geneva, 2006, <www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=6176>, visited 20 January 2010.

²⁹ An example of this is the United Nations Decade for Human Rights Education (1995–2004). In the Latin American case, the Inter-American Institute of Human Rights (IIHR) is pioneer in this type of programme. Their webpage can be seen at <www.iidh.ed.cr>, visited 20 January 2010.

³⁰ For the European case see Eurydice, *Citizenship Education at School in Europe* (Eurydice, Brussels, 2005).

³¹ Hodgkin and Newell, *supra* note 20, p. 438.

educational levels. These are: the Russian Federation, France, Norway, Poland, Denmark, the United Kingdom, Belgium, the Ukraine, Germany, Portugal, the Holy See, Serbia & Montenegro, Iceland, Finland, Bulgaria, Ireland, Luxembourg, the Netherlands, Slovakia, Latvia, Lithuania, Turkey and Switzerland.

There is clearly something lacking with regard to knowledge about human rights and the child in school curricula, to such an extent that the Committee, being aware of the situation, repeatedly advised that not only should these rights be included in the school syllabus, but also that members of the education community put into practice education based on these human rights. The same happens with other targets referring to respect for parents, cultural identity, language, national values of the country of adoption, the country of origin and civilizations other than one's own. The idea that the Committee wishes to get across is that all people in and from all countries deserve to have the same value and to enjoy the same respect, and also that educational policies aim for a responsible life in society, for equality of the sexes, for an education for peace and for respect for the environment. Thus, the objective is to achieve an education which adapts to the diversity of everyone with equal rights to education, where "the previous requirement upon children to adapt to mainstream school is replaced by adapting education to everyone's equal right to education and equal right in education. There is not a country in the world that has put in place enforceable guarantees for *all* components of rights-based education for *all* diverse categories into which we have split the human race. Adaptation of education to each child is a dream as yet unfulfilled."³²

But it *is* a feasible goal if we believe that education is part and parcel of the rights of children.

8. Conclusion

The overall picture of education in Europe from the perspective of compliance with the right of education based on a reading of the documents of the Committee on the Rights of the Child is a complex mosaic of unities and diversities. The tables below highlight those recommendations by the Committee fitting them into Tomaševski's framework of the 4-As.³³ The European Union (Table 1), including those new members that joined after 2004 (Table 2), provide a map where absenteeism, school dropouts and certain non-compliances with the right to education characterise (non)availability, while discrimination against minorities – particularly in reference to the Roma nation and to disabled children – denies a guarantee of this availability. As regards rights in education, the two elements characterising the European Union are: (i) the persistence of forms of discipline (with violence) not compatible with the rights of the child, these schools thereby being unacceptable, and little attention being paid to the best interests of the child; and (ii) the scarcity of programmes in favour of the defence of human rights and an education for diversity (adaptability).

³² Tomaševski, *supra* note 5, p. 190.

³³ Each sign (●) signifies that this country, in this sphere, has made a negative or critical recommendation

Table 1**The European Union up to 2004, recommendations made by the Committee on the Rights of the Child, adapting them to the framework of the 4-As**

| Indicators | Availability | | Accessibility | | Acceptability | Adaptability |
|----------------|--------------|------|---------------|--------------|--------------------|--------------|
| | Compulsory | Free | Minorities | Disabilities | Violence at school | Curriculum |
| Austria | | | • | | | • |
| Belgium | • | | • | • | • | •/•/• |
| Denmark | • | | • | | • | • |
| Finland | •/• | • | •/• | | | • |
| France | | | •/• | • | • | |
| Germany | | • | • | • | • | • |
| Greece | •/•/• | | •/•/• | • | | |
| Ireland | • | | • | • | | • |
| Italy | • | | •/• | | • | • |
| Luxembourg | | | | • | | •/• |
| Netherlands | | | | | | • |
| Portugal | • | • | •/• | •/• | | • |
| Spain | • | | •/• | | • | |
| Sweden | | • | •/• | • | • | |
| United Kingdom | | | •/•/• | •/•/• | • | •/• |

Table 2**New members of the EU (from 2004), recommendations made by the Committee on the Rights of the Child, adapting them to the framework of the 4-As**

| Indicators | Availability | | Accessibility | | Acceptability | Adaptability |
|----------------|--------------|------|---------------|--------------|--------------------|--------------|
| | Compulsory | Free | Minorities | Disabilities | Violence at school | Curriculum |
| Bulgaria | • | | | | | • |
| Cyprus | | | • | • | | |
| Czech Republic | • | | •/•/• | • | •/• | |
| Estonia | • | | •/• | • | • | |
| Hungary | | | •/• | | | |
| Latvia | • | | •/•/• | • | • | • |
| Lithuania | • | | • | • | • | • |
| Malta | • | | | • | • | |
| Poland | | | •/• | • | •/•/• | • |
| Romania | | | •/•/• | • | •/• | • |
| Slovakia | | | • | | • | • |
| Slovenia | •/• | | • | • | • | •/• |

The compliance with human rights on many occasions requires democratic conditions and economic resources that enable and facilitate their compliance. In this respect, Eastern Europe and the Balkan States (Table 3), both not in the EU and in transition towards democratic normalisation and economic modernisation, indicate worse conditions in the defence of the right to education than the rest of Europe, although they share the same ambits of recommendations from the Committee. However, from the perspective of the defence of the rights of the child, this group of countries received the strongest criticisms from the Committee and recommendations to change many practices not in consonance with the CRC.

Table 3

Eastern Europe and Balkans, recommendations made by the Committee on the Rights of the Child, adapting them to the framework of the 4-As

| Indicators | Availability | | Accessibility | | Acceptability | Adaptability |
|---------------------|--------------|------|---------------|--------------|--------------------|--------------|
| | Compulsory | Free | Minorities | Disabilities | Violence at school | Curriculum |
| Belarus | ●/● | | ●/●/● | ● | ● | |
| Croatia | | | ● | | | ● |
| Macedonia | ● | | ●/● | ● | ● | |
| Moldova | ● | | ● | ● | ● | |
| Russian Federation | ● | | ●/●/● | ● | | ● |
| Serbia & Montenegro | ● | ●/● | ●/● | | | ● |
| Turkey | | | ●/● | ● | ● | ● |
| Ukraine | ●/● | ● | ●/●/● | ● | ● | ● |

Finally, there is another group of small states such as Andorra, Liechtenstein, Monaco, San Marino and the Holy See where recommendations are directed at the better treatment of minorities, school discipline or, in the case of the Vatican, at the introduction of CRC education in Catholic schools. Other European states such as Iceland, Norway or Switzerland, which do not form part of the EU, received recommendations regarding ethnic minorities.

With this panorama, there remain a number of questions to be debated and resolved: Is the right to education being complied with in Europe? Are there rights in education in Europe? Where are the limits for education in human rights?