

Freedom of education and state regulation

According to the Universal Declaration of Human Rights (1948) "everyone has the right to education" (art. 26, § 1). Associated with this right to benefit from education is the right of parents to provide it for their children: "Parents have a prior right to choose the kind of education that shall be given to their children" (art. 26, § 3). The signatory States of the International Covenant on Economic, Social and Cultural Rights (1966) undertake to "States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child (...)and to ensure the religious and moral education of their children in conformity with their own convictions" (art. 13, § 3). They also guarantee "the freedom of natural or legal persons to establish and direct educational institutions" (Ibid., Art. 13, § 4). These provisions are echoed in the International Declaration of the Rights of the Child (1989) in Articles 28-29.

At the same time, the International Covenant on Economic, Social and Cultural Rights affirms the State's duty to provide primary education that is free and accessible to all, to progressively introduce free secondary education and to ensure equitable and non-discriminatory access to higher education (Art. 13, § 2).

This division of the State's duty to educate and the parents' right to freedom in the means of educating their children, especially in a private setting, is accompanied by a principle of regulation of this freedom by the State. Indeed, the non-public institutions that parents have the right to choose must "conform to such minimum standards of education as may be prescribed or approved by the State" (Art. 13, § 3). Similarly, as to the institutions which they may establish or direct: "the education given in such institutions must conform to such minimum standards as may be prescribed by the State" (art. 13, § 4). Furthermore, whatever the free choice of parents, "Education shall be directed to the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity. (...) Education shall enable to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace" (Art. 13, § 1).

The Guiding Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Sector Involvement in Education, known as the "Abidjan Principles", adopted in February 2019, refer in their introduction to the fact that "potential tensions arise between different dimensions of the right to education. In particular, the application of the human rights framework to private sector involvement in education has the potential to create a tension between the obligations of States to ensure the provision of free, quality education to all without discrimination, and the freedom to choose and establish a private school. This tension, among others, often emerges in education policy debates, particularly in a context of increasing privatisation and marketization of education, where private interests and profit are sought at the expense of respecting, protecting, and fulfilling the right to education. "The Abidjan Principles set out strict conditions for the funding of private educational institutions:

"States shall give priority to the funding and provision of free, quality public education and may only fund eligible private educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation or other forms of indirect support, if applicable human rights law and standards are respected and all substantive, procedural and operational requirements are strictly observed. »

Under these circumstances, the following questions arise:

1. Is there a priority of the parents' right to freedom of education over the state's duty to ensure that all children have the right to an education?
2. State regulation of educational freedom should prevent harmful indoctrination of children contrary to human rights. How can the symmetrical danger of a state monopoly and ideological indoctrination be avoided when the state is itself totalitarian and a violator of human rights?
3. The right to education is intricately linked to the right to religious freedom, insofar as parents are free to educate their children according to their convictions. How can the necessary regulation of the right to education by the State be prevented from undermining the right to religious freedom?
4. How can a distinction be made between private education that is lucrative and primarily motivated by profit and private education that participates loyally in the common good of inclusive education, which is the responsibility of the State?
5. To what extent are educational institutions run by the Catholic Church exemplary or not in terms of respect for human rights?
6. Many members of the Dominican Family, friars, apostolic sisters, laity, etc., are involved in educational missions. How is this action situated, (1) in relation to the charism proper to the Order, (2) in relation to families (Catholic or not), (3) in relation to the hierarchy of the Catholic Church and to other religious families, and (4) in relation to the State?