

Enforceability of the Right to Education and Rights in Education for Refugees after the European Refugee Crisis

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Abstract : The right to education is a fundamental human right, which has been entrenched in many international and regional treaties and national constitutions. Nevertheless, practice shows that many obstacles impede easy access to quality education for refugees. Overall, the material effects of international human rights legislation on improving (irregular) migrants' access to social rights in the European countries have remained limited due to the lack of guarantees on effective incorporation in the municipal legal order and due to the lack of effective enforcement mechanisms. After the recent refugee crisis in Europe, this issue has grown in importance. The presentation aims to give a brief overview of the most important issues impeding the effective enforceability of the right to education for refugees. I. Do refugees fall within the scope of application of the relevant human rights treaties and to which extent can they invoke human rights treaties in domestic courts to set aside domestic legislation? II. How is the justiciability of the right to education organized in those treaties? III. What is the legal answer to questions raised in practice when dealing with the influx of refugees in Europe: (i) can refugees be placed in separate schools or classes until they can follow the regular curriculum?; (ii) can higher school fees be asked from pupils without legal documents?; (iii) do refugees have a right to be taught in their own native language until they learn to speak the national language? To answer the above questions, the doctrinal and comparative legal method will be used. The normative framework, as interpreted within Europe, will be distilled from the recent and relevant international treaties and European law instruments (in particular the Convention on the Rights of the Child, the European Convention on human rights, the European Social Charter and the International Covenant on Economic, Social and Cultural Rights) and their underlying policy documents, the legal literature, the (limited) European jurisprudence, and the general comments to those treaties. The article is mainly descriptive in nature. Its aim is to serve as a summary of the legal provisions, case law and legal literature on the topic of the right to education for refugees. The research shows that the reasons for the delicate enforceability of the rights to and the rights in education are multifold. The research will categorize the different contributing factors under the following headings: (i) problems related to the justiciability of international law as such; (ii) problems specifically related to the educational field; (iii) problems related to policy issues in the refugee debate. By categorizing the reasons contributing to the difficult enforceability of the right to education and the rights in education for refugees, this research hopes to facilitate the search for solutions to this delicate problem.

Keywords : right to education, refugees, discrimination, enforceability of human rights

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