


# The Right to Education and Rights in Education



Jan De Groof  
Gracienne Lauwers  
Kishore Singh  
(eds.)

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*European Association for  
Education Law and Policy*

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*Jan De Groof*

*Gracienne Lauwers*

*Kishore Singh*



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### RELIGION, EDUCATION AND THE STATE

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## Foreword

The right to education is essential for the realization of all other human rights. It is an integral part of UNESCO's constitutional mission. Promoting the full realization of the right to education for all, which is UNESCO's key area of action, is also the aim of the European Association for Education Law and Policy (ELA). ELA brings together professors of education law and policy, researchers, judges, senior government officials and high level experts in the field of education law and is UNESCO's partner.

The *World Conference on the Right to Education and Rights in Education* was organized by ELA in cooperation with professional associations and UNESCO from 25 to 30 November 2004 in the Netherlands, and was hosted by H. E. Maria J.A. van der Hoeven, Minister of Education, Culture and Science of the Netherlands and Mr. Job Cohen, Mayor of Amsterdam. The opening address, given by Mr Mohammed Bedjaoui, Member of UNESCO's Executive Board, and former President of the International Court of Justice, brought into focus major challenges and concerns of UNESCO. Besides the members of the professional bodies in education law, dignitaries notably several Ministers of Education as well as chief justices and judges of Supreme Courts from different countries and eminent experts in the area of the right to education, actively participated in the World Conference.

Dr. Kishore Singh from the Division of Basic Education, Education Sector, who represented UNESCO at the Conference, collaborated with ELA in this global event. The themes addressed by the Conference, identified in collaboration with UNESCO – education as a human right, access and equity in education, universal access and equal educational opportunities, financing of education, freedom in education, education of immigrants and minorities – respond to major areas of UNESCO's work. The Conference gave greater visibility to UNESCO's work in the field of the right to education. The first *International Journal of Education Law and Policy* was launched on the occasion of the World Conference.

The deliberations at the Conference resulted in the *Declaration of Amsterdam on the Right to and the Rights in Education*. The Declaration recognizes the importance of facing the crucial challenges that education in general and the right to education in particular face today, and acknowledges the importance of UNESCO's work in this field. It makes an appeal to international organizations, multinational and regional organizations, UNESCO, and the Office of the High Commissioner for Human Rights to give greater urgency to promoting the right to education, indispensable for the exercise of all other human rights. It also appeals to states to adhere to international conventions and treaties in the field of education and take measures with a view to incorporating their international legal obligations into the domestic legal order.

The World Conference was a landmark in UNESCO's collaboration with ELA which has grown in recent years especially since 2000 – with a focus



on promoting equality of educational opportunity for all without discrimination or exclusion, universalizing access to education and meeting the challenge of fully implementing the fundamental right to basic education for all. UNESCO's collaboration with ELA has also contributed to developing and refining legislation concerning education at the national as well as at the European level, and offering a forum for major debates on European and international matters concerning education law and the right to education. As a result, UNESCO's collaboration with ELA has made it possible to address the issues of critical importance in the field of the right to education.

The 'Right to Education' has been one of the central themes of numerous conferences, symposia and seminars organised by ELA in cooperation with UNESCO in recent years. Reinforcing UNESCO's partnership with ELA is very valuable with a view to drawing upon ELA's high level expertise for UNESCO's work, especially research and studies on key issues in the field of the right to education. Growing collaboration between ELA and UNESCO and pooling their knowledge and experience offers a range of imaginative and diverse approaches that could be further developed in the field of the right to education, with a focus on 'Education For All'.

## **Acknowledgement**

We would like to express our deep gratitude to the education law experts all over Europe, Africa, Australia and New Zealand, the USA, Asia and South America for having contributed to this publication. Educational rights have their roots only in the last fifty or, at most, the last hundred years when they were laid down in international and European conventions and national constitutions. If we have managed to achieve so much in so short a time, prospects are open to us for further development in the future.

A special word of thanks goes to Prof. Dr. Charles Russo, from the University of Dayton, Prof. Dr. Charles Glenn, from Boston University, who were most gracious and generous with their expertise in reviewing, and editing selected chapters of the book.

Prof. Dr. Jan De Groof (Belgium)  
President ELA

Ass. Prof. Dr. Gracienne Lauwers  
Executive Director ELA

## **About the European Association for Education Law and Policy (ELA)**

### **Background: reorganisation of the educational sector in Europe**

As with the reorganisation of all major social problems, the issue is to focus on how to get from where we happen to be now to wherever we would like to go tomorrow and to establish what the role of the state in education will become. The question of reorganisation requires both a strong compass to set the direction and a large amount of practical politics. Research is the intellectual compass which contributes in setting these goals. However, inspired political leadership is necessary to deal with the vexing consequences of reorganisation.

Moral arguments are often used to protect 'big' government interference. If we emphasise equality, we emphasise its collective aspect. Even so, one cannot deny that the paternalistic welfare state no longer reflects current reality where economics pervades everything. According to Dr. Jane Kelsey, 'those who focus on narrow sectoral concerns and ignore the pervasive economic agenda will lose their own battles. Leaving economics to economists is fatal.'<sup>1</sup> Although most Western-Europeans only know the relative luxury of a reasonably resourced, good quality state education system, free market principles are being applied to every conceivable situation in human life and society, including education. For example, talk of vouchers in education has not been taken seriously in West-European countries although it has sometimes been put forward as a possible way to organise funding for higher education.

Where the paternalistic welfare state perishes, civil society at large and educational institutions should fill the vacuum. Freedom, understood as freedom from state interference, implies an acceptance of the introduction of market mechanisms in education with the result that inequalities generated by the market and corporatization and privatization strategies limit State influence. On the other hand, it is difficult to see how a market system will allow the voices of disadvantaged groups to be heard or will ensure the quality of teaching staff forced to accept marginalising conditions of work such as lower pay rates, short term contracts, and loss of sabbatical in a competitive educational market.

### **The areas and themes of interest of the Association**

The areas of interest covered by the European Association for Education Law and Policy (ELA) are educational rights, education law, and educational policy including globalisation of education and financing of the educational system. ELA aims to encourage progress in educational rights as well as

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<sup>1</sup> Kelsey, Jane (1995), *A Review of Economic Fundamentalism: The New Zealand Experiment – A World Model for Structural Adjustment?*, Pluto Press, London.

education law and policy, by trying to elaborate educational rights, and education law and policy as a discipline by actively supporting every serious effort made toward the gradual and progressive codification of educational rights and educational legislation.

During the ten years since the founding of ELA, its work has encompassed practically the whole area of education law and policy. Yet, we are still far from exhausting all questions calling for regulation. The development of internationalization and globalization of education gives rise to new problems. There are, for instance, the legal problems created by mobility of students in Europe after the Bologna Declaration to which ELA has to give serious consideration. There are problems associated with financing the educational system created by financial restraints of governments which should guarantee equal access to quality education at all levels to which ELA will devote much time during the next years. Also, due to the progress of scientific research in the field of law itself and jurisprudence, questions which have already appeared once on the agenda of the Association have to be resubmitted for further study.

### **The aim of the Association**

The founders and leaders of ELA believe that its recommendations should carry sufficient weight because its members are more or less restricted to persons of specialized knowledge on education law and policy. The Association's conferences and workshops are in principle open by invitation only. Legal educational problems are sometimes so technical that their meaning and significance can be appreciated only with great difficulty by those who are not well versed in education law and policy. It is through its professional approach to very difficult issues in the educational sphere that the Association strives to achieve its aim.

ELA aims to encourage progress in educational rights as well as education law and policy, by trying to elaborate educational rights, and education law and policy as a discipline by actively supporting every serious effort made toward the gradual and progressive codification of educational rights and educational legislation.

### **The importance of the work of the Association**

Education and the Law is the motto of the Association. Education has the potential to unlock the door to equality and participation, it constitutes the basis necessary for empowerment of each individual. Education law means constructing, block by block, the foundation that will support educational rights in all nations and for all peoples and individuals. However, the true facts of everyday life show that there is still a long way off when all nations will be ready to fully acknowledge the importance of fulfilling educational rights, especially if they contradict other vitally important interests of the ruling class.

The Association bases its work on recognition of the fundamental truth that the advancement of law in the educational field is the basis necessary for the promotion of all human rights. The importance of the law notwithstanding, we are aware of the relative value of each legal principle – whether it is founded on a convention or on some other legal source. The purpose of law is to serve development. The final aim of the Association is therefore developing progressively educational rights in practice.

Prof. Dr. Jan De Groof (Belgium)  
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Ass. Prof. Dr. Gracienne Lauwers  
Executive Director

Dr. Kishore Singh  
UNESCO, Education Sector, Division of Basic Education

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Prof. Dr. Theodore Fortsakis (Greece)  
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Dr. Dympna Glendenning (Ireland)  
Prof. Dr. Charles Glenn (USA)  
Mr. Stig Klingstedt (Norway)  
Prof. Dr. André Legrand (France)  
Prof. Dr. Paul Meredith (United Kingdom)  
Mr. Frank Nordberg (Sweden)  
Prof. Dr. Ingo Richter (Germany)  
Prof. Dr. Ben Vermeulen (Netherlands)  
Prof. Dr. Paul Zoontjens (Netherlands)

The right to education is clearly articulated in the *Universal Declaration of Human Rights* and further elaborated in the *Convention against Discrimination in Education*, and in the *International Covenant on Economic, Social and Cultural Rights* and other international and regional treaties. The very act of states making commitments entrenched in international agreements generates expectations of compliance at the national level. Yet, enough questions remain about incomplete compliance with provisions on the right to education. As a result, even though entitled to education, millions of children and adults remain deprived of it. States should take normative action for promoting education accompanied by economic and social measures in order to allow young people to complete the course which will lead them on to higher education.

In their written contributions, experts of the European Association for Education Law and Policy (ELA), US-ELA, SAELPA (South African Education Law and Policy Association), LEAGUE OF EDUCATION LAW (Russian Federation), ANZELA (Australia and New Zealand Education Law Association), CAPSLE (Canadian Association of the Practical Study of Law in Education), and high-level representatives of governments and NGO's, present best practices as well as their concern for the right to education and rights in education. The publication aims to stimulate the debate about the necessity of stricter enforcement of existing conventions and laws dealing with the right to and rights in education.

*No person shall be denied the right to education:  
the influence of the European Convention on  
Human Rights on the right to education and  
rights in education*

Jan De Groof, Gracienne Lauwers (eds.),  
Nijmegen, Wolf Legal Publishers, 2004, 725 p.

The book was prepared in conjunction with the first World Conference and offers insights into responses as to how decisions of the ECtHR in educational matters play out in domestic law.

