



Can the right to education be restricted during health crises? Remarks on the Caucasus and the issue of planning state response

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Abstract: COVID-19 affected the right to education. The lack of strategic planning often made states' response ineffective, harming the education process. It is necessary to develop a roadmap to ensure the state positive obligations to safeguard the right to education during crises.

COVID-19 as a global healthcare crisis created challenges to guaranteeing many human rights and freedoms. The right to education of millions of students and pupils was restricted, including based on objective reasons. However, this does not exclude the state's positive obligations to safeguard the implementation of human rights. One could even argue that the responsibility of public authorities to guarantee the right to education by ensuring that the education systems fulfil all major purposes of education even increases.

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The right to education is a fundamental right for everyone and is enshrined in several treaties: for instance, Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Articles 28 and 29 of the Convention on the Rights of the Child (CRC); Article 1 of Protocol 2 of the European Convention on Human Rights (ECHR); Articles 17, 7, 10 and 15 of the European Social Charter (Revised) (ESC). These instruments envisage the possibility of restrictions of the right to education.

In this regard, [Article G](#) of the ECS states that, among other rights enshrined in the charter, the right to education may also be subject to limitations. Considering the imminent threat caused by COVID-19 to several essential principles aimed at ensuring public safety, democracy and rule of law, there are strong grounds to believe that exercising restrictions on some human rights, including the right to education, may be considered justified. However, as stated in Article G of the ECS, those restrictions must be 'prescribed by law' and be 'necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.'

Although there is no concrete case law of the European Court of Human Rights which assess the possible limitations on the right to education during the COVID-19 pandemic, it is worth highlighting a general principle:

Restrictions on the right to education do exist even though no express restriction can be found in Article 2 of Protocol No. 1. However, any restrictions must not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness. They must be foreseeable for those concerned and pursue a legitimate aim, although there is no exhaustive list of 'legitimate aims' under Article 2 of Protocol No. 1 ([Leyla Şahin v. Turkey, § 154](#)).

To sum up, under the aforementioned international instruments and in the jurisprudence of human rights monitoring bodies, the right to education is not absolute, and can be subjected to certain limitations. The latter must pursue a legitimate aim and be proportionate, as well as prescribed by law and foreseeable. Furthermore, the restrictions on right to education can be imposed if it is necessary in a democratic society, among other issues, for the protection of the rights and freedoms of others or the protection of public health, as in the case of the COVID-19 pandemic.

As stated in the [Roadmap for Action](#) on the Council of Europe education response to COVID-19, 'even a crisis as severe as the COVID-19 pandemic cannot abrogate the right to education, even if it may modify how the right is exercised and ensured'. Therefore, the restrictions imposed by public authorities cannot in any way affect

the very essence of the educational process. They might only change the means and methods of how this process is used to be organised.

However, in the aftermath of the COVID-19 pandemic, students and teachers faced several challenges in the implementation of the right to education. One of the key issues was the lack of preparedness and strategic planning of public authorities to respond to such a crisis and adapt the educational system, by envisaging necessary features aimed at effectively guaranteeing the right to education for everyone. In several cases, the public authorities failed to exercise their exclusive responsibilities, for ensuring the maximum possible level of education. It concerns issues about accessibility, availability, acceptability, and adaptability.

In addition, children with disadvantages of various types were often even more negatively affected. In its [statement](#) on COVID-19 and social rights, the European Committee on Social Rights (ECSR) underlines that:

The closures of schools and other educational institutions during the pandemic have unmasked and exacerbated pre-existing inequalities in education, raising issues in terms of Articles 10, 15, 17, and Article E of the Charter. The necessary recourse to remote learning during lockdown periods has highlighted and exacerbated the issue of digital exclusion. There is a generalised risk of learning loss and a development gap that for many children, and also for several adolescents and adults, will be difficult if not impossible to make up. In many instances, a move from face-to-face teaching has severely impacted access to, and the quality of education enjoyed by, children with disabilities and special educational needs.

The ECSR considers that access to education is crucial for every child's life and development. Under Article 17§2 of the Charter, equal access to education must be ensured for all children during the COVID-19 crisis. In this respect, particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children with disabilities, children in hospitals, children in care, pregnant teenagers, children deprived of their liberty, etc.

Moreover, the [report](#) on the impact of the COVID-19 crisis on the right to education by the UN Special Rapporteur on the right to education highlights the lack of strategic planning, recommending that

[s]tates should develop emergency education preparedness within national education systems globally (...). States should create an institutional mechanism for crisis and disaster planning and management.

Some remarks on the Caucasus region

In [analysing](#) the right to education in the Caucasus in the course of the COVID-19 pandemic, a research group from the region have investigated its impact on this right in 2021 in view of the measures taken by public authorities to respond to the new challenges and the concrete situation faced by children in the region. The research has focused on the COVID-19 experience of four countries in the post-Soviet space: Armenia, Belarus, Georgia and Russia, observing that

[I]n all cases, the accessibility, availability, adaptability and acceptability of education were challenged by the pandemic, especially in the presence of parallel difficulties resulting from war, an influx of displaced children or existing socio-economic inequalities and special needs.

However, this [research](#) has identified some advantages of the experience in Belarus, namely:

[T]he approach chosen by the Republic of Belarus to provide access to education during the pandemic is authentic and has not spread much into neighbouring countries. It consists in ensuring the safety of learning in the regular mode without a comprehensive transfer of the educational process to the online format.

A significant [finding](#) of the research group was the role of civil society in supporting children's education. In particular, considering the significant efforts by NGOs in Armenia, Belarus, Georgia and Russia, as well as their achieved results, these states have been recommended to ensure that necessary support is provided to NGOs and schools which either perform individual initiatives in order to fulfil relevant state policies, or introduce alternative approaches that create equal opportunities for stakeholders to exercise the right to education in the difficult context of the COVID-19 pandemic.

An important conclusion of this [research](#) conducted in 2021 has been that, while some examples of response could be seen in Armenia, Belarus, Georgia and Russia, the lack of structured, informed, and timely responses made it difficult for children to fully enjoy their right to education in these countries.

In light of all the findings of this research, it remains crucial to reinforce and adjust the state policies as well as the legal and regulatory frameworks to face the possible next crisis. In order to ensure a human rights-based approach, the following steps should be considered:

- Conducting an assessment of the impact of the closures of educational institutions;

- Integrating the availability, accessibility, acceptability and adaptability framework at all levels of the education system;
- Ensuring the right to inclusive quality education;
- Developing a human rights-based emergency education preparedness plans;
- Establishing social assistance programmes for vulnerable groups, with a particular focus on their needs aimed at excluding any kind of discrimination;
- Supporting civil society groups to develop ways of ensuring the right to education in the wake of potential future crises.