CHAPTER TEN

ARTICLE 13 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE RIGHT TO EDUCATION

1. Introduction

The purpose of this Chapter is to analyse article 13 of the International Covenant on Economic, Social and Cultural Rights. First, a few words will be said on the first sentence of article 13(1). Article 13(1) first sentence recognises everyone’s right to education. It will be explained that this provision should be seen as an open-ended fundamental norm in the sphere of education. This will be followed by a commentary on the aims of education, as laid down in article 13(1). The discussion in this regard will substantially rely on General Comment No. 1 of the Committee on the Rights of the Child on the educational aims in article 29(1) of the Convention on the Rights of the Child. Subsequently, article 13(2), which protects the social aspect of the right to education, will be studied. There will thus be an analysis of the guarantees contained in each of article 13(2)(a) to (e) on primary, secondary, higher and fundamental education, and developing a system of schools, establishing a fellowship system and improving the material conditions of teaching staff, respectively. This will, however, be preceded by an examination of four essential features which education, in all its forms and at all levels, is required to exhibit: Education must be available, accessible, acceptable and adaptable. The 4-A scheme for studying the obligations in article 13(2) has been developed by Katarina Tomaševski, former Special Rapporteur of the Commission on Human Rights on the Right to Education. The said scheme promises to facilitate a holistic understanding of the right to education. Thereafter, the freedom aspect of the right to education, as protected in article 13(3) and (4), will be studied. Whereas paragraph (3) guards parental rights in the field of education, paragraph (4) guarantees the right of individuals and bodies to establish and direct educational institutions. In this respect, relevant case law of the Human Rights Committee, supervising the ICCPR, and of the former European Commission of Human Rights and the European Court of Human Rights, will be referred to. The discussion of article 13 will be concluded by suggesting that the tri-partite typology of state obligations discussed in Chapter 3, in terms of which all human rights entail obligations
to respect, protect and fulfil, may be usefully applied to analyse the normative content of the right to education, as protected in article 13. Whenever appropriate, the discussion of article 13 in this Chapter will refer to General Comments Nos. 11\(^1\) and 13.\(^2\) Whereas the former concerns plans of action for compulsory and free primary education under article 14 ICESCR, the latter deals with the right to education under article 13 ICESCR.

2. **Article 13(1) First Sentence ICESCR: A General Right to Education**

Article 13(1) first sentence ICESCR\(^3\) states:

> The States Parties to the present Covenant recognise the right of everyone to education.

Article 13(1) first sentence does not stand isolated. The provision introduces a series of guarantees which must be understood to explain the right to education laid down in this provision. Article 13(1) second and third sentence set out the aims of education which must be assured in schools, article 13(2) formulates certain requirements for the different levels of the education system and article 13(3) and (4) provide protection against undue interference by states parties in the sphere of education.

It may be asked whether the various guarantees mentioned exhaust the normative content of article 13(1) first sentence, or whether they merely serve to illustrate some of the implications of the right to education in article 13(1) first sentence.

A number of arguments can be advanced in support of the former contention. Article 13(2), for example, expressly refers to the right to education in the first sentence of article 13(1)\(^4\) before setting out the duties of states parties in relation to the different levels of education in five clearly structured subparagraphs. This appears to suggest that there are no obligations for states parties beyond those mentioned in the said subparagraphs.\(^5\) A comparison with other rights provisions of the ICESCR further shows that the scheme used in article 13 of first mentioning the basic right protected, which is then followed by individual guarantees, is typical. In two

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\(^1\) CESCR, General Comment No. 11 (Twentieth Session, 1999) [UN Doc. E/2000/22] Plans of action for primary education (art. 14 ICESCR) [Compilation, 2004, pp. 60–63]. The full text of the General Comment is included in the Annex to this book.


\(^3\) On art. 13(1) first sentence ICESCR, see Gebert, 1996, pp. 286–292.

\(^4\) Art. 13(2) ICESCR states, “The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right . . .”. Author’s italics.