GUARANTEEING THE RIGHT TO EDUCATION IN THE ERA OF ARTIFICIAL INTELLIGENCE

Andra Nicoleta Puran[1]

National University of Science and Technology Politehnica Bucharest

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Abstract: The rapid expansion of artificial intelligence (AI) is fundamentally transforming the educational landscape and raises essential questions regarding the effective guarantee of the right to education in a digitalized environment. The paper that we propose examines the legal, ethical, and social implications of using AI in education through the lens of national, European, and international normative frameworks. The analysis begins with the constitutional enshrinement of the right to education in Romania and integrates new European guidelines on AI regulation, particularly those related to digital literacy and the prohibition of systems with 'unacceptable risk'. The study highlights the need to reinterpret the concept of education in the digital era, where teaching and learning processes are increasingly mediated by algorithms and intelligent systems. In this context, guaranteeing the right to education implies not only formal access to instruction but also ensuring digital competence, technological equity, and protection against the abusive use of AI.

Keywords: the right to education, artificial intelligence, digital literacy, human rights, the role of education in the digital age, educational equity.

1. INTRODUCTION

The profound transformations generated by the accelerated development of artificial intelligence (AI) pose major challenges for contemporary legal and educational systems. In an era in which algorithms, linguistic models and machine learning technologies are becoming ubiquitous tools in the educational process, a reassessment of the way in which the right to education is understood, guaranteed and protected is required. The right to

[1] Lecturer PhD., National University of Science and Technology Politehnica Bucharest; Faculty of Economic Sciences and Law, e-mail: andra.puran@upb.ro Link ORCID: https://orcid.org/0000-0002-8773-1548.

education, constitutionally enshrined in Romania in accordance with the provisions of the European Convention on Human Rights and developed through the jurisprudence of the European Court of Human Rights, must be reinterpreted in light of new technological realities, so that equitable access to education is not compromised by digital barriers, information asymmetries or the discriminatory use of AI.

In this context, recent international and European rules, such as Regulation (EU) 2024/1689 establishing harmonised rules on artificial intelligence, also known as the EU AI Act ("AI Act")[2], bring to the fore the principle of digital literacy and the need for a culture of responsible use of AI, while prohibiting systems considered to pose "unacceptable risks" to fundamental rights and freedoms. Beyond the legal dimension, the emergence of AI implies a profound rethinking of the purposes of education, the role of the teacher and the learning paradigm. Education can no longer be seen exclusively as a process of transmitting knowledge, but as an adaptable formative framework, designed to develop critical, ethical and technological skills essential for the digital citizen of the 21st century.

The right to education acquires multiple nuances and specific characteristics in the digital era, drawing the attention of international bodies, particularly as education was among the first sectors to test digitalisation due to the need for rapid adaptation during the COVID-19 pandemic[3].

Therefore, this article aims to analyse, from an interdisciplinary perspective, how the right to education is configured and guaranteed in the context of the new regulations on artificial intelligence.

[2] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L, 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj.

[3] Drăghici A., *Children's rights in the digital environment*, 2025, In: Cremades, J., Hermida, C. (eds) Encyclopedia of Contemporary Constitutionalism. Springer, Cham. https://doi.org/10.1007/978-3-319-31739-7_229-1

2. THE RIGHT TO EDUCATION IN THE ROMANIAN CONSTITUTION

In Romania, in shaping the constitutional content of the right to education, the instruments of universal validity that our state has ratified were taken into account, mainly the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, but also regional instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

Thus, the right to education is regulated by the provisions of art. 32 para. (1) (7) of the Constitution and has a mixed legal content, which combines the freedom to educate with the obligation of certain forms of education. It implies equal opportunities for all citizens to follow any form of education provided for by law, including higher ones, and selection in this regard is carried out by using the criterion of competence as a priority. The purpose of the right to education is the full development of the human personality, through the acquisition of the fundamental values of culture and, in this way, active integration into society.

The legal content of the right to education consists in the fact that[4]:

a) the organizational forms through which the right to education is realized are established;

b) it establishes the supremacy of the law in the establishment and activity of all forms of education. The organization of education of all levels, state or private, is carried out only on the basis of the law, in a broad sense, as normative acts;

c) guarantees university autonomy. In accordance with the framework provisions of the special law, each university autonomously establishes its own rules for carrying out the educational process, has autonomy in the use of financial resources and the material base allocated for the training and establishment of the structure of the teaching staff. University

[4] Andreescu M., Puran A., *Drept constituțional. Teoria generală și instituții constituționale. Jurisprudență constituțională (Constitutional law. General theory and constitutional institutions. Constitutional jurisprudence)*, 5th edition, C.H. Beck, Bucharest, 2025, p. 309.

autonomy is a principle of constitutional law, which characterizes the organization and activity of any university, including state ones. University autonomy also implies, under the terms of the law, the possibility of establishing private universities whose financing is not carried out through the state budget. This principle must correspond to and achieve the performance and quality criteria of education imposed by law;

Regarding university autonomy, the Constitutional Court of Romania ruled in several decisions, showing that "the principle of university autonomy implies a vast content, which includes the internal norms, procedures and standards of each university, while respecting the limits imposed by the legislation in force, through which they tend to define and individualize their role within the community. University autonomy can be exercised only on condition of assuming public responsibility, which obliges any higher education institution to ensure managerial efficiency, and implies compliance with legal quality standards."[5] Also, " the principle of university autonomy gives the university community the right to establish its own mission, institutional strategy, structure, activities, organization and operation, management of material and human resources, but all of this must be done in strict compliance with the legislation in force, within the limits and conditions imposed by it"[6].

d) provides for free education. According to the special law, education must be free. In this sense, compulsory general education is par excellence free, and the other forms of education must also carry out their activity in accordance with this principle. By way of exception, under the terms of the law and in accordance with the rules of university autonomy, certain university activities may be carried out for a fee, without however changing the essence of the principle stated above. Private education of any form that is not financed by the state is not free;

e) freedom of religious education is ensured. This legal aspect is correlated with the provisions of art. 29 of the Constitution, which refers to freedom of conscience. Freedom of religious education concerns religious education organized by the state, as well

[5] Constitutional Court of Romania, Decision no. 1646/ 16 decembre 2010, published Official Gazette of Romania, Part I, no. 119 of February 16, 2011.
[6] Constitutional Court of Romania, Decision no. 161/ 8 february 2011, published Official Gazette of Romania, Part I, no. 304 of May 3, 2011.

as religious education organized by cults. In state schools, religious education is optional and at the same time must be carried out in relation to the students' own religious beliefs. For students in the elementary school cycle, parents or legal guardians decide whether students will attend religious courses, as well as which cult.

The organization and conduct of education must be carried out in the official language of the state, in the case of Romania, Romanian. The Constitution guarantees the right of persons belonging to national minorities to learn in their mother tongue and the right to be instructed in this language. The special law establishes the conditions in which these rights are exercised, as well as the concrete modalities. Regardless of the form in which education is organized in the language of the cohabiting minorities, schools or universities must also ensure the teaching and acquisition of the Romanian language, as the official language of the state and in accordance with the principle established by art. 32 of the Constitution of Romania. In this regard, there are also some provisions in the International Covenant on Economic, Social and Political Rights. Education can also be conducted in a language of international circulation, according to the law[7].

3. THE PROVISIONS OF THE EU ARTIFICIAL INTELLIGENCE REGULATION ON AI LITERACY AND THE IMPLEMENTATION OF AI SYSTEMS IN EDUCATION

Regulation of the European Parliament and of the Council of 13 June 2024 establishing harmonized rules on artificial intelligence represents the first binding regulation in the world adopted in this matter[8] , being considered in doctrine "a pioneering juridical-

[7] Andreescu M., Puran A., *Drept constituțional. Teoria generală și instituții constituționale. Jurisprudență constituțională (Constitutional law. General theory and constitutional institutions. Constitutional jurisprudence)*, 5th edition, C.H. Beck, Bucharest, 2025, p. 310.
[8] Senechal J., *The AI Act in its final - provisional - version*, a hydra with three heads. 2024. Dalloz-Actualite. https://www.dalloz-actualite.fr/flash/l-ai-act- in-its-provisional-final-version-a-three-headed-hydra

institutional approach, which bears the unmistakable mark of European normativity and expresses its particularities of vision and action"[9].

The Regulation completes the existing law, based on the constitutive treaties and the Charter of Fundamental Rights of the EU, as well as the derived law, providing requirements aimed at minimizing the risks generated by the use of artificial intelligence systems, but also the documentation and human control over the entire life cycle of AI systems.[10]

The Regulation entered into force on 1 August 2024, with general applicability from 2 August 2026, except (Art. 113 of the Regulation):

– Rules on prohibited AI systems, which will apply from February 2, 2025.

– Rules on AI Models for General Use, which will apply from 2 August 2025, as well as the rules on sanctions.

– Rules for High-Risk systems in Annex I, which will apply from August 2, 2027.

Thus, starting with February 2, 2025, AI system providers (entities that develop AI systems, introduce AI systems on the market or put AI systems into operation under their own name or brand) as well as AI system implementers (entities that use AI systems under their authority in the course of their professional activities) are obliged to take measures to ensure, to the greatest extent possible, a sufficient level of AI literacy of staff and other persons who are in charge of operating and using AI systems on their behalf[11]. Literacy must be achieved taking into account their technical knowledge, experience, education and training and the context in which AI systems are to be used and taking into

[9] Duţu M., *AI Act: First Western Legislation on Artificial Intelligence*, 2024, https://www.wolterskluwer.com/ro-ro/expert-insights/ai-act-prima-legislatie-occidentala-privind-inteligenta-artificiala

[10] Puran, A.N., *Protecting Human Rights in the Era of AI*, 2025 In: Cremades, J., Hermida, C. (eds) Encyclopedia of Contemporary Constitutionalism. Springer, Cham. https://doi.org/10.1007/978-3-319-31739-7_228-1

[11] Art. 4 of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence

account the individuals or groups of individuals in relation to whom AI systems are to be used.

Within the meaning of the Regulation, AI literacy involves providing the necessary concepts to make informed decisions regarding AI systems, so as to obtain the greatest possible benefits from intelligent systems but, at the same time, to protect fundamental rights, health and safety, and democracy.

The Regulation also states that AI literacy should provide all relevant actors in the AI value chain with the necessary knowledge for adequate compliance and correct application. In light of the provisions of the Regulation, the European Council on Artificial Intelligence is required to support the Commission in promoting literacy tools, public awareness and understanding of the benefits, risks, safeguards, rights and obligations associated with the use of AI systems. The Commission, together with the Member States, is also required to facilitate the development of voluntary codes of conduct to promote AI literacy among people involved in the development, exploitation and use of AI.

There are currently no specific sanctions for non-compliance with the AI literacy obligations; however, it is reasonable to consider that the degree of compliance with these obligations may be taken into account by the competent authorities as a relevant factor in determining the sanctions applicable to providers or implementers for other breaches of the AI Act.

Furthermore, the Regulation shows that the extent of the negative impact of the AI system on the fundamental rights protected by the Charter is particularly relevant when an AI system is classified as presenting a high degree of risk, among the rights affected including the right to education, of interest for the present work.

The Regulation proclaims the importance of implementing AI systems in education to promote high-quality digital education and training and to enable all learners and teachers to acquire and share the necessary digital skills and competences, including media literacy and critical thinking, to actively participate in the economy, society and democratic processes.

However, it is underlined that artificial intelligence systems used in education and training- in particular those used to determine access or admission, to allocate individuals to educational and training institutions or programmes at any level, to assess learning performance, to assess the appropriate level of instruction, to significantly influence the type or level of education and training to which individuals have access, as well as to monitor and detect prohibited behaviour of pupils and students during assessments- should be classified as high-risk AI systems. This classification is justified by the major impact that such systems can have on a person's educational and professional path and, implicitly, on their ability to secure their livelihood. If inappropriately designed or used, these systems can become highly intrusive, violate the right to education and training, as well as the right to non-discrimination, and contribute to the perpetuation of historical patterns of discrimination, including against women, certain age groups, people with disabilities, or those belonging to specific racial or ethnic groups or sexual orientations.

Article 6 of the AI Act regulates the two cumulative conditions for an AI system to be considered as presenting a high degree of risk:

" a) the AI system is intended to be used as a safety component of a product, or the AI system is itself a product, covered by the Union harmonisation legislation listed in Annex I;

b) the product whose safety component pursuant to point (a) is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment, with a view to the placing on the market or the putting into service of that product pursuant to the Union harmonisation legislation listed in Annex I."

Other AI systems are also listed in Annex III as presenting a high degree of risk, in various areas of interest provided in the annex. Thus, in the field of education and vocational training, the following are considered to present a high degree of risk:

"a) AI systems intended to be used to determine access or admission or to assign natural persons to educational and vocational training institutions at all levels;

b) AI systems intended to be used to evaluate learning outcomes, including when those outcomes are used to steer the learning process of natural persons in educational and vocational training institutions at all levels;

c) AI systems intended to be used for the purpose of assessing the appropriate level of education that an individual will receive or will be able to access, in the context of or within educational and vocational training institutions at all levels;

d) AI systems intended to be used for monitoring and detecting prohibited behaviour of students during tests in the context of or within educational and vocational training institutions at all levels."

Thus, the Regulation establishing harmonized rules on artificial intelligence establishes a coherent and innovative European legal framework, aimed at harnessing the benefits of AI, while preventing significant risks to fundamental rights. By focusing on AI literacy, human control and classifying systems used in education as high-risk systems, the regulatory act highlights the European legislator's concern for protecting the right to education and the principle of non-discrimination. Thus, the AI Act confirms the central role of education in the European digital ecosystem and the need for the responsible use of artificial intelligence in this sensitive area.

CONCLUSION

The analysis of the right to education from the perspective of Romanian constitutional regulations, the jurisprudence of the Constitutional Court of Romania and the regulations introduced by the Regulation on artificial intelligence highlights its complex and dynamic character, located at the intersection of classic constitutional guarantees and new technological challenges. The jurisprudence of the CCR confirms the essential role of the right to education in achieving human dignity and equal opportunities.

At the level of the European Union, the AI Act complements the national legal framework of guarantees of the fundamental right to education by establishing specific obligations aimed at preventing the risks generated by the use of artificial intelligence systems

in the educational field. By classifying certain applications of AI as high-risk systems and by focusing on human control, transparency and digital literacy, European legislation contributes to strengthening the protection of the right to education and the principle of non-discrimination in a digitalized context.

The complexity of the right to education and its connection with other fundamental rights, as well as the influence of AI on educational systems, reflects the need for an integrated approach, ensuring that technological innovation in education is carried out in full respect for the fundamental values of the rule of law and the European constitutional order.

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