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OPERATIONALIZATION OF CHILDREN'S RIGHTS EDUCATION POLICY: ANALYSIS OF THE DOCUMENTS ISSUED IN THE REPUBLIC OF CROATIA AND IN THE UNITED STATES OF AMERICA

Abstract: *The paper discusses the operationalization of education policies on children's rights. Children's rights primarily derive from fundamental human rights that foster the fulfillment of the biological, social, psychological, intellectual and spiritual needs of all. Adoption of the 1989 Convention on the Rights of the Child has brought a change in the understanding of the children's rights, whereupon the active role of the child as the holder of her/his own rights has become recognized as well as the philosophy of inclusion, which provides equal opportunities for all children and ensures the growth and development in accordance with the individual abilities of every child. The aim of this paper is to examine how children and childhood are presented in the documents on children's rights, with an emphasis on the active role of the child and protective attitude towards the child. The paper also seeks to examine in what way and to what extent the fundamental inclusive principles are represented in the documents on children's rights. The results of a qualitative descriptive analysis of documents indicate that although relevant literature promotes the role of the child as an active participant and a holder of her/his own rights, the aforementioned concept needs to be further developed.*

Keywords*: child as a right holder, children's rights, education policy, inclusion*

INTRODUCTION

Education system is deeply rooted in the social, cultural, political and economic context, all these systems having a direct or indirect impact on it (Louis, 1993). Education is closely linked to political power and the governing ideology, which enact the legal provisions and regulations that all citizens of a particular country are bound to abide by. For the purposes of this paper, policies can be defined as explicit or implicit decisions or groups of decisions that set guidelines for future decisions, which may initiate or delay action or guide the implementation of previous decisions (Haddad and Demsky, 1995).

Education policies can be defined as principles and government policies in the field of education or a set of laws and rules that govern the operation of education systems (Bell and Stevenson, 2006). The notion of education policies is not defined solely by prescribed principles and actions to be followed, but should be viewed as a dynamic rather than a static process (Trowler, 2003). Accordingly, Kovač (2007: 257) states that education policies necessarily go beyond "mere listing and describing executive, administrative, advisory and judicial institutions and/or official texts that target the field of education at different hierarchical (institutional) levels of government or educational organizations".

Education policy-making in every state is based on the policies of the ruling party. Government policies play a key role in facilitating and regulating the education system. Whether national or local, they have a direct impact on developments in schools and universities, as well as on their staff. The employees are responsible for implementing the policies that others have created, and in the process of understanding and implementing policies, they also form their own policies. The very process of making education policies is not something that is going on ''up there'' but also ''down here'' (Bell and Stevenson, 2006). Each education policy functions as a cycle consisting of seven stages: analysis of the current situation, designing policy solutions, evaluating policy solutions, decision making, planning the implementation of policies, assessing policy impact, and the following policy cycles (Haddad and Demsky, 1995), thus the effective functioning of education policy requires involvement of all participants. This means that key decisions should not be made without consulting those who will directly implement the decisions.

Since less visible structures affect education policies as well, it is impossible to analyze them separately from other factors affecting the education process (Kovač, 2007). The analysis of education policies must cover various levels at which they are formed and developed, such as the number of educational institutions and the importance of a particular cultural context (Bell and Stevenson, 2006). At times, practitioners may deviate from the original or agreed idea during implementation, which may result in poor effectiveness of the education policy itself. Therefore, in order to ensure the successful development and implementation of education policy, a good knowledge of the political arena in education policy is required, as well as of all participants involved in the process (Kovač, 2007).

THEORETICAL FRAMEWORK

CHILDREN'S RIGHTS

Respect for fundamental human rights also includes respect for children's rights. In the modern world, children's rights are governed by the *Convention on the Rights of the Child* (UN, 1989), which, in addition to defining the rights of the child, also emphasizes the responsibility and obligation of the state in securing those rights for every child. Each state which signed and ratified the *Convention* (Party to the *Convention*) is obliged to ensure "the development of optimal conditions for the child's

growth and development, enabling a harmonious physical, mental, emotional and social development, under conditions of freedom, dignity, acceptance, love and understanding" (Maleš, Milanović and Stričević, 2003: 13).

Drawing attention to the issue of children's rights for the first time in modern history highlights the idea of equality between children and adults, allowing the children the right to express their views and participate in social life (Kopić and Korajac, 2010). This is recognized in many international documents, the first of which is the *Geneva Declaration of the Rights of the Child* (1924). It promotes "the rights of the child to physical and spiritual development: the child's right to nutrition, health care and social protection, the right to help in need, protection from exploitation and raising the child so that he or she becomes aware of his or her abilities that serve human society" (Kopić and Korajac, 2010: 46). Furthermore, the 1948 saw the enacting of the UN *Universal Declaration of Human Rights* which guarantees children freedom and equality at birth, prohibits slavery, torture or humiliation, and guarantees judicial protection (Kopić and Korajac, 2010). Additionally, the 1959 *Declaration of the Rights of the Child* outlines the principles which parents, individuals and the government should adhere to in order to ensure happy childhood (Kopić and Korajac, 2010). Another major event leading to the improvement of children's rights was the UN proclamation of 1979 as the International Year of the Child. Emphasizing the rights of the child in public discourse has encouraged many states to look at and advance their national understanding of the status of the child. Importantly, then became apparent how policies, whether national or international, have a strong impact on the quality of children's life (Hayes, 2002).

The key turning point in the understanding of children's rights occurred in 1989 when the UN adopted the *Convention on the Rights of the Child.* Since then, numerous documents have been issued that emphasize the need for concrete action to be taken by the global community (Kopić and Korajac, 2010). Shortly thereafter, in 1990 the *World Declaration on the Survival, Protection and Development of Children* (1990) was adopted, followed by the *Plan of Action for Implementing the World Declaration* and a final document entitled *A World Worthy of Children*, based on the principles of "eliminating discrimination, equal evaluation of each child, acting in accordance with the best interests of the child, listening; investing in children − to achieve improvements in health, nutrition and education through the redistribution of funds; protecting children − from war, violence, exploitation, disease, abuse, neglect and to preserve the environment for future generations" (Kopić and Korajac, 2010: 47-48). Nowadays, the European Union continues to emphasize the importance of constantly promoting and protecting children's rights and developing strategies to better protect children's rights in practice. As the European Union relies heavily on documents issued by the Council of Europe, the ratification of conventions by Member States achieves an equal standard in the field of children's rights protection (Hrabar, 2013).

Aiming to conduct a comparative study of human rights education policies in the Republic of Croatia and the United States, further in the paper we have presented the

key documents on the development of children's rights as well as the documents focused on the rights of children in educational institutions in the two countries. At the center of the comparison there are links between the two systems with regard to the curricular approach that lies in the structure of education systems and the existence of structured laws on children's rights reflected in education practice. Considering the international documents on children's and human rights and the way they are implemented in the two systems, whereupon Croatia is a signatory to the relevant international agreements and the United States are not a signatory to the agreements and only partly assume the responsibility given by the mentioned documents. In the context of a comparative research approach, the comparison of the two systems leaves room for discerning similarities and differences in the implementation of human and children's rights policies, with the aim of reaching conclusions on possible variations in the exercise of children's rights.

DEVELOPMENT OF CHILDREN'S RIGHTS IN THE REPUBLIC OF CROATIA AND THE UNITED STATES OF AMERICA

Although the value of the rights of the child has been recognized in the Republic of Croatia and many documents have been adopted (*Family Law, Instruction on Implementation of the Law on Population Register and Birth Registration, Social Welfare Act, Foster Care Act, Child Benefit Act, Maternity Leave and Parental Benefits Act, Criminal Code, Criminal Procedure Code, Law on Execution of Sanctions Imposed to Juvenile Offenders, Courts Act, Penal Code, Amendments to the Primary School Education Act, Primary and Secondary Education School Act, Ordinance on the Procedure for Determining the Psycho-physical Condition of the Child, The Asylum Act, The Foreigners Act, The Court Rule Book, The Firearms Act, The Audiovisual Activities Act, The Electronic Media Act, The Road Traffic Safety Act, The Commerce Act, The Consumer Protection Act, Legal Aid Act*, according to Filipović, 2009) with the aim of protecting and fostering the rights of children, still there are numerous problems in the legislation itself, but above all in the application and protection of children's rights in practice. The Ombudsman for Children is an important factor in protecting and promoting human rights and an indicator of the level of advocacy of children's rights. The offices of the Ombudsman for Children play a special role in supervising the work of the state administration and fulfilling obligations in protection and promotion of children's rights at the national level (the Ombudsman, 2016). According to a report by the Ombudsman for Children (2014), it has been confirmed that the greatest number of problems relate to discrimination in the field of education, with a frequent occurrence of the problem related to respecting the right for freedom of thought, conscience and religion, while the problem of violence among children remains at a very high level. Also, decision-making often fails to consider the best interest of the child, does not sufficiently respect the child's opinion, still does not protect the privacy of the child in the public and the media, and children are subjected to arbitrary or unlawful interference with their private lives. In the case of violence among children and young people, it can be concluded that the

protocols are applied in a superficial and incomplete manner, lacking a multidisciplinary and multisectoral approach to solving problems and providing assistance to child victims and child perpetrators (Ombudsman for Children, 2014).

The legal basis for the protection of the rights of children in educational institutions in the Republic of Croatia derives from the following documents: *Constitution of the Republic of Croatia, Law on Primary and Secondary School Education, Act on Education in the Languages and Scripts of National Minorities, Labor Act, School Inspection Act, Professional Pedagogical Supervision Act, Personal Data Protection Act, Family Law, Social Welfare Act, Act on Protection against Domestic Violence, Regulation on Primary and Secondary Education of Gifted Students, Regulation on Primary and Secondary Education of Students with Disabilities and Larger Developmental Disabilities, Ordinance on Student Monitoring and Assessment, Protocol on Treatment of Domestic Violence, Protocol on the Treatment of Violence among Children and Young People*.

In drafting its legislation, the United States are guided by international and regional human rights and children's rights documents such as the UN *Declaration of the Rights of the Child, Minimum Age Convention, The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights* and *The American Convention on Human Rights*. Although the United States signed the UN *Convention of the Rights of the Child* in the 1990s, it has not been ratified yet. This may be due to the fact that the ratification of this document would mean the US Government would affect the autonomy of the policies of each federal state, since it would require changes to their policies and laws on children's rights. Another reason lies in the legislation, because although some US laws almost completely comply with the Convention, others are completely opposed to it (Walker, Brooks and Wrightsman, 1998).

Notwithstanding this fact, the rights of children in the United States have evolved since 1974 and the enacting of *The Child Abuse Prevention and Treatment Act* (CAPTA). Since then, the United States Congress has approved several laws (specifically 30) that have had a significant impact on state organizations for children's rights. Laws most often required ministries and organizations to enact or amend national policies and regulations. The new laws also encouraged state-level co-operation by adopting uniform state legislation, developing or revising state agencies' policies and regulations, and implementing new programs (US Department of Health and Human Services, Children's Bureau, 2016).

It can be concluded that the rights of children in the United States are nonetheless protected by law and are related to the promotion and protection of rights to social welfare, health insurance, the educational and special needs of each child, preventing child trafficking, child labor and regulating the way the legal system treats minors. Thus, each state has its own legal and administrative framework pertaining to the protection of the rights of children and families, but their legislation must comply with national requirements and guidelines (US Department of Health and Human Services, Children's Bureau, 2016).

CHILDREN'S RIGHTS IN THE EDUCATION SYSTEM

The basic right that children exercise is the right to education, which gives each person the opportunity to develop and gain intellectual, spiritual and social independence through the acquisition of knowledge, skills, values and attitudes (Širanović, 2012). This is a fundamental, indivisible and inalienable right in the category of cultural rights and freedoms, and derives from the human right to the undisturbed development (Spajić-Vrkaš, 2001).

The concept of human rights is realized within respective country, with the right to education being recognized as an economic, social and cultural right, which are often treated as quasi-rights leading to violations of the right to education not being resolved (Tomaševski, 2001). Furthermore, the education policies of individual countries are influenced by global trends and the perception of education as a market activity (Tomaševski, 2001). There are differences in the definition and the way in which free education is implemented among education policies of individual countries. When exercising the right to education in certain education systems, the extent of funding and the level of education that is compulsory in a particular system are taken into account. Compulsory education implies the possibility of free education at a certain educational level within the framework of public education in a particular system (Batarelo, Podrug and Apostoloski, 2009). In countries where the government is ready to remove all financial barriers for children's staying in school, a broader definition of free education is used, which is in line with international human rights law (Tomaševski, 2008).

The right to education is the right to equal opportunities without discrimination, and it must be available, accessible and inclusive to all children (UNICEF, 2014). The concept of the right to education is closely related to the notion of educational inclusion, which, under the influence of UNESCO's actions, has become part of the global vision of education policy (UNESCO, 1994, 2000, 2015). Educational inclusion is a multidimensional concept that entails respecting and promoting diversity and variety in human rights, social equality as well as promoting the integration of children with disabilities and special needs as a special form of education. The event that fostered the development of educational inclusion was the World Conference on Education for All, held in 1990 in Jomtien, and the adoption of *The Salamanca Statement and the Framework for Action on Special Needs Education* within the World Conference on Special Needs Education, which was held in 1994 (Vican and Karamatić Brčić, 2013). Although the document focuses on children with special needs, it has been emphasized that the concept of inclusion in education cannot be developed separately but should be the basis of all education policies, strategies and reforms of the entire school system (UNESCO, 2009). In a world where many unfavorable factors, most notably poverty and marginalization, are adversely affecting education on a daily basis (UNESCO, 2009), the possible answer is precisely at the level of implementation of inclusion in schools that should ensure a change in the overall paradigm of education, methods and strategies used in education, with

an emphasis on the child, his or her participation in education, and equal access to education (Hornby, 2014).

Prohibition of discrimination is one of the fundamental principles of the European Union, and precisely the Union and the Council of Europe adopted a series of directives prohibiting discrimination based on sex, race, skin color, ethnic or social origin, genetic traits, language, religion or belief, political or any other opinion, belonging to a national minority, property status, birth, disability, age and sexual orientation. The basis for promoting equality for all is contained in *The European Social Charter, The European Convention on Human Rights* and the *Charter of Fundamental Rights of the European Union* (European Union Agency for Fundamental Rights and the Council of Europe, 2015). Although Europe has made significant strides in respecting and protecting children's rights, there is still too much segregation of Roma children in schools, as well as third-country nationals and asylum-seekers (European Union Agency for Fundamental Rights and the Council of Europe, 2015).

The Republic of Croatia has ratified the most important international conventions on human and minority rights and adopted the legal framework of the European Union for the achievement of education for all. Legally speaking, Croatia accepted the proposals needed to promote full inclusive policy (Ivančić and Stančić, 2013), but it can be noted that social inclusion is not regulated by specific laws in the Croatian education system. It is an integral part of *The Primary and Secondary School Education Act* (2008), *The Act on Preschool Education* (2007), *The Primary School Education Act* (2003), *The Secondary School Education Act* (2003), *Vocational Education and Training Act* (2009) and *The Law on Science and Higher Education* (2003)[13], which are based on the principle of integration and inclusion. Additionally, in the Republic and Croatia the right to education, as part of personal and political freedoms and rights, is determined by Article 66 of *The Constitution of the Republic of Croatia* (2010). However, despite all legal efforts, education policies for students with developmental disabilities often do not follow legal regulations on the inclusion of children with disabilities in the regular education system. Common problems that arise are: discriminatory actions as well as lack of adequate selection, training and financial support of teaching assistants for children with developmental disabilities (Ombudsman for Children, 2014), the ordinance on the number of students in mixed classes, lack of funds, inappropriate school buildings and gaps in teacher education (Batarelo Kokić, Vukelić, and Ljubić, 2009).

In the United States, special attention is given to the inclusion of all students in the educational system, and especially of children with special needs. There are numerous laws regarding the education of children with special needs and the prevention of their discrimination. The basic laws defending the rights of children with special needs are: *The Individuals with Disabilities Education Act* (IDEA), which came into force in 2004, and *The Vocational Rehabilitation Act* (2015), which replaced the 1973 *Rehabilitation Act*. Inclusion in the US education system refers to

13 https://zakon.hr/

a commitment to ensure that all children with disabilities are enrolled in regular schools to the fullest extent possible. This is supported by the following data: about ninety-six percent of students with disabilities attend regular schools, and only four percent go to institutions that are specifically organized to work with children with special needs; the majority of children attending regular schools are placed in regular classrooms with appropriate support and assistance; the number of hours a child spends outside the regular classroom varies with the particular needs of each student; however, about half of students with special needs spend eighty percent or more of their time in the primary classroom (US Department of Education, Office of Special Education and Rehabilitative Services, 2008). Better care for inclusive rights in the United States can be closely linked to the fact that grants and benefits are being allocated for vocational rehabilitation services while special forms of education are continuously developing, existing practices are being enhanced, and new research and training programs for people working with children with disabilities are implemented (US Department of Education, 2017).

RESEARCH METHOD

A qualitative descriptive analysis method was used to examine how children and childhood are presented in children's rights documents. The aforementioned method of analysis is based on particular facts that are always conditioned by the particular context and situation that give meaning to those facts. This method seeks to portray a particular situation as faithfully as possible and to minimize the personal interpretations of the researcher (Sandelowski, 2000).

Document analysis is a systematic process of reviewing or evaluating documents − print and electronic (computer and internet) materials. Like other analytical methods in qualitative research, it involves reviewing and interpreting results to foster meaning, gain understanding, and develop empirical knowledge (Corbin and Strauss, 2008). The analysis of the document is based on the assumption that no document should be accepted at face value, and that the reading of the documents must be accompanied by a context study. Wellington (2015: 215) lists seven components that were used as the framework for document analysis in this study, namely recognition of: context; authorship; targeted audience; goals and purposes; interest groups; genre, style and manner of writing; presentations and appearance.

Furthermore, when analyzing documents, the researcher uses his or her starting points, knowledge and theoretical views and relates them to the views expressed in the document and those of the author of the document. Such dialogue entails the creation of a ''hermeneutic circle'' in which we understand the text by relying on the frame of reference in which the document originated (Wellington, 2015).

RESEARCH PROCEDURE

The research procedure used in this study can be represented through the course of performing qualitative descriptive analysis (Figure 1).

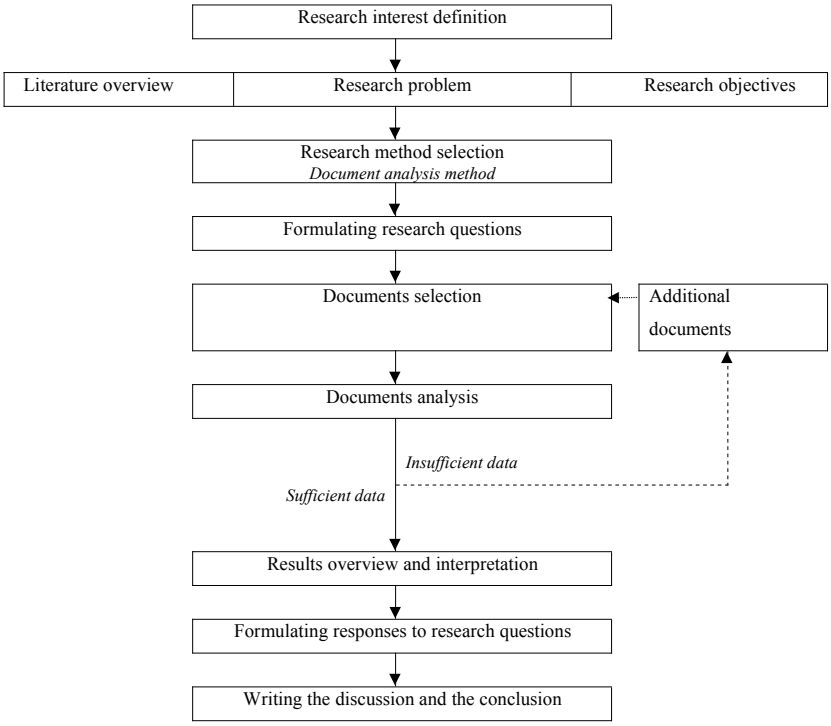

Figure 1. The procedure of qualitative descriptive analysis[14]

When selecting documents, it is important to check the authenticity (origin or authorship of the document), reliability (estimation of the accuracy and authenticity of the document), representativeness (assessment of the typicality of the document) and the meaning (evaluation i.e. analysis of the document itself) of the document (Wellington, 2015: 213). In order to answer the research questions, we employed the method of analysis of the following national documents of two countries, the United States of America and the Republic of Croatia:

1. *World Declaration on the Survival, Protection and Development of Children,* 1990
2. *European Convention on the Exercise of Children's Rights,* 1996
3. *The Constitution of the United States,* 2011
4. *Elementary and Secondary Education Act of 1965* (ESEA)[15]
5. *Individuals with Disabilities Education Act,* 2004 (IDEA) [16]
6. *The Constitution of the Republic of Croatia, 2010* and
7. *Primary and Secondary School Education Act,* 2008.

14 Adapted from the qualitative research procedure flow chart (Nie, 2017).
15 Elementary and Secondary Education Act, 1965.
16 Individuals with Disabilities Education Act, 2004.

RESEARCH PROBLEM AND RESEARCH QUESTIONS

The research problem is related to two approaches to the understanding of the concept of child as described in the relevant literature on children's rights. The first approach concerns the understanding of the child as a legal entity that is at the same time the holder of her/his rights, and the second approach to the understanding of the child as an entity whose rights need to be protected (Holzscheiter, 2010). The questions arise regarding the extent to which the documents on children's rights represent the active role of the child and regarding the representation of aspects related to the protective attitude towards children. Furthermore, contemporary literature views inclusion as a multidimensional concept that entails respect and encouragement of diversity. In order to answer the question of the representation of inclusive determinants in documents on children's rights, we will examine the extent to which the documents promote non-discrimination and equality for all children and provide equal opportunities for children regardless of their specific needs.

The following two research questions were raised:

1) How are children presented in the documents on children rights, with particular emphasis on the active role of child as opposed to the protective attitude towards child?
2) How and to what extent are inclusive determinants present in the documents on children rights?

ANALYSIS RESULTS

1. *How are children presented in the documents on children rights, with particular emphasis on the active role of child as opposed to the protective attitude towards child?*

As of the end of the twentieth century, the image of the child has changed and the child is viewed as equal with adults, still often we find in documents on children's rights instructions and orders for adults how to protect and promote children's rights. *The World Declaration on the Survival, Protection and Development of Children* (1990) highlights the responsibilities and tasks that must be fulfilled for children to enjoy their rights. Child is perceived as a vulnerable being dependent on adults (Article 2), and the discourse of child protection permeates throughout the document (Articles 8, 11 and 20). Although the whole document lacks the full active child engagement aspect, Article 2 defines child as a curious and active being full of hope, while Article 15 emphasizes that children should be given the opportunity to find their own identities, to understand the importance of their own existence in order to be ready for responsible citizenship and participation in the cultural life of society.

The European Convention on the Exercise of Children's Rights (1996) is based on a completely different philosophy. Namely, almost the whole document starts from the assumption that child is a legal entity, emphasizing the need to inform children about their own rights, to enable them the right to express their own views and to make their own decisions, as well as the need to explain children the consequences of their own and others' actions (Article 1, 3 and 10).

The document analysis on the state level was seen in the analysis of the *Constitution* (2010), *Education Act of the Republic of Croatia* (2008) and the pertaining US documents: *The Constitution of the United States* (2011), *Elementary and Secondary Education Act* (1965) i *Individuals with Disabilities Education Act* (2004). Since acts and constitutions are by nature different documents from declarations and conventions, and their purpose is not solely to promote the rights of children, it can be seen the documents lack a primary focus on the child.

The Constitution of the United States (2011) and *The Constitution of the Republic of Croatia* (2010) regard children as equal citizens of their respective country who have the same civil rights as adults. *The Constitution of the United States* does not prescribe a definition of a child or special rights that apply exclusively to children. *The Constitution of the Republic of Croatia* is imbued with the discourse of protection and in the Articles 63 and 64 it specifically protects motherhood, children and youth, and prescribes the tasks and duties of the state and parents to be fulfilled in order for a child to live in well-being. *Primary and Secondary School Education Act* (RH, 2008) in defining the rights of students emphasizes their active role. It is dominated by the image of a competent child who is capable of independently deciding on his or her own educational process, who requires support in order to develop her or his potential to the maximum through own engagement (Article 61).

Laws in force in the US are complex documents primarily focused on children with disabilities and children poorer results on annual school exams. The document *Elementary and Secondary Education Act* (1965) provides a detailed funding plan for local education organizations and schools to achieve full inclusion and improve academic success for all children. Children are defined as all persons under the age of twenty-one, assuming that all children are competent and able to actively participate in the educational process (Section 1001) and require adequate support in the form of science-based programs in order to achieve all their potentials (Section 5462). In addition, particularly emphasized are the specific tasks that each school and local educational agency must complete, such as school programs and additional activities that enhance the quantity and quality of teaching (Section 1001 (8)). In order to achieve this, special attention is paid to the quality of teaching and the professional development of teachers (Section 1001 (10)).

2. How and to what extent are inclusive determinants present in the documents on children rights?

In the educational system, inclusion starts from ensuring equal opportunities and equal access as well as forms of education in accordance with the individual needs of children, including children with special needs (children with disabilities and gifted children), displaced persons, refugees, immigrants and children from the deprived and disadvantaged community. Among the documents analyzed, the *European Convention on the Exercise of Children's Rights* (1996) contains no specific inclusive elements, except by stating in Article 1 that it promotes equality of rights and opportunities and applies to children who have not reached the age of 18 years.

A greater focus on inclusive determinants is found in *The World Declaration on the Survival, Protection and Development of Children* (1990), which promotes international cooperation in the protection of rights and equality of educational opportunities (Article 20 (6)), regardless of economic status, nationality, sex or special needs of children. *The Declaration* specifically targets children with special needs and those living in difficult circumstances (Article 20 (7)), promotes the need to provide special assistance and support to children from developing or underdeveloped countries (Article 20 (10)), children separated from their parents (Article 20 (5)) and equal opportunities for women (Article 12).

The Constitution of the Republic of Croatia (2010) and *The Constitution of the United States* (2011) protect the fundamental civil rights of all citizens: the right to life, freedom, and equality (*The US Constitution*, 2011, Article 1, Amendment 1), regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, property, birth, education, social status or other characteristics (*The Constitution of the Republic of Croatia*, 2010, Article 14). *The US Constitution* (2011) guarantees the right to vote to persons over the age of eighteen (*The US Constitution*, 2011, Amendment 26), which should not be denied to anyone on the basis of race, color, previous slavery (*The US Constitution*, 2011, Amendment 15), or sex (*The US Constitution*, Amendment 19). *The Constitution of the Republic of Croatia* specifically protects the rights of national minorities (Article 15), guarantees all citizens equal rights before the court and other bodies (Article 26), and provides refuge to stateless persons (Article 33). It guarantees the rights to practice one's religion (Articles 40 and 41) and emphasizes the need for protection of disabled persons (Article 58) and inclusiveness in the educational system (Article 66).

Educational acts are extremely inclusive. *The Primary and Secondary School Education Act of the Republic of Croatia* (2008) in the Article 4(1)3 guarantees all students the right to education "in accordance with general cultural and civilizational values, human rights and children's rights". Equality of educational opportunities according to individual abilities is promoted (Article 4 (2) 2), primary education is compulsory (Article 4 (2) 1), and secondary school enrollment is equal for all (Article 22 (4)). Children of EU citizens, asylum seekers and foreigners under subsidiary protection or temporary protection have the same educational rights and conditions (Articles 45 and 46). Persons belonging to national minorities are allowed to study according to the curriculum in the language and culture of the national minority (Article 142 (3)). The state is also obliged to provide support for the teaching of the mother tongue and the preparation of teachers to carry out these forms of teaching (Articles 43 and 44). Schools are obliged to arrange free transportation for students from distant areas (Article 69). Furthermore, special forms of education must also be provided for children with special needs (gifted students and students with disabilities) (Article 62 (1)). The school is obliged to monitor and encourage gifted students and organize additional classes (Article 34) and additional work according to their interests and abilities (Article 63). Students with disabilities are students with developmental or learning disabilities, behavioral or emotional problems, and disabilities

caused by educational, social, economic, cultural and linguistic factors. Depending on the type of disability, specific forms of education, curricula and appropriate forms of learning assistance (Article 65) may apply, whereupon teaching may take place in separate classrooms (Article 32) and during supplementary classes (Article 33), involving teaching assistants or expert communication mediators (Article 99). For students who are unable to attend classes, with the approval of the Minister, classes can be organized at home or in a health institution, and they have the opportunity to take the subject or class examination (Article 42). Distance learning can be carried out through electronic communication means and the school is obliged to provide appropriate aids (Article 42).

Elementary and Secondary Education Act (1965) in Section 1001 states that the purpose of the document is to provide all students with an equal opportunity to participate in high quality education and to train them for higher education or employment. They are especially targeted at children with special needs, children with poorer academic achievement, insufficient knowledge of English, migrants, natives. It is the government's responsibility to provide children who are members of minority with high quality primary education programs that will fulfill the unique culturally conditioned academic needs of these children (Section 7101, 7203, 7302, 7303 and 7304).

Special support is also provided to neglected children, children with behavioral disorders and no place of residence (Section 1115 (b)). For children who frequently change their place of residence, a comprehensive program is advised to mitigate interruptions and problems that children experience due to relocation (Section 1301). Children who do not have satisfactory competence in English are provided with English language learning programs (Section 3102). The emphasis is on using methods and strategies based on science-based research that are tailored to the individual needs of each student (Section 1115 (c)). Section 3247 prescribes the need for class and subject teacher training, the provision of instruction, mentoring, counseling and basic education services that are directly available in the school district, such as the financing of additional classroom materials, transportation costs, or other expenses associated with basic educational services. In order to meet the unique educational needs of children with disabilities, timely identification of such children is emphasized, along with support for parents and meeting the individual needs of all students, including gifted and talented children.

Individuals with Disabilities Education Act (2004) promotes the need to set higher expectations for children with special needs and to better train persons with special needs to lead independent and productive lives according to their capabilities (Section 1400 (c) (5) (A)). Emphasis is placed on the identification of children with disabilities, the creation of individualized educational programs (Section 1416 (d)) and the inclusion of children in regular classrooms (Section 1412 (a) (5) (A). Separation of students with disabilities in special classes or schools applies if it is not possible, even with special support, to provide a satisfactory level of education for a child with a disability. The Section 1400 (d) (1) (A) says that all children with

disabilities should have free education, pointing out individual methods of work and related educational services that are tailored to the special, unique needs of children to prepare them for further education and independent living. For each student, it is necessary to organize an *Individualized Education Program Team* consisting of the parents of a child with disabilities, at least one class or subject teacher, and one class or subject teacher trained for working with children with special needs, as well as an expert in special education who is competent to provide special educational services (Section 614 (d)). The implementation of the program takes place at school level and is based on scientifically tested teaching methods, positive behavioral interventions and early intervention services (1400 (c) (5)). It is necessary to provide funding for minority children in order to provide appropriate support, fund research, and train special education professionals. Additionally, emphasized is the need to provide appropriate services to facilitate the transition to further education or employment (Section 1400 (10)).

It certainly seems important to point out the encouragement of parents' active involvement in educational institutions (Section 1412, 1415 (a) (7)), mutual communication and the resolution of disagreements in a positive and constructive manner (Section 1400 (c) (8)). Emphasis is placed on the responsibilities of parents, their equal right to participate in the decision-making and organization of the most appropriate education for their child.

DISCUSSION AND CONCLUSION

The concept of children's rights has changed throughout history, yet the analysis of the documents on children's rights reveals that the image of a child as a being in need of protection is still present. This was especially evident in the *World Declaration on the Survival, Protection and Development of Children* (1990), which primarily emphasizes the need for child protection at the international level. It is important to stress that the declaration was enacted one year after *The Convention on the Rights of the Child* (1989), which for the first time has promoted the active role of the child as a holder of his or her own rights. As the primary purpose of this document is to protect children at an international level, it can be concluded that the protective attitude is a reflection of the real state of children's rights in the world and the position of the child in society. The active role of children can and should be achieved, but this is only possible in a society governed by democracy and non-discrimination, which still is not a common case in many countries. Liebel, Hanson, Saadi, and Vandenhole (2012) point out that the rights of child as a legal entity and the holder of own rights can only be exercised in societies based on democracy and social equality, which are based on the full respect and equality of all individuals.

But is it possible to protect children and at the same time encourage the right to their active engagement? On the one hand, Polić (2015) points out that by protecting children, acting in his or her best interests can sometimes neglect the child's perspective and view. On the other hand, if we understand a child as a political entity that actively participates in decision-making and expresses his/her wishes, it

is possible to manipulate him/her into situations and relationships that he/she still cannot understand. For this reason, *The European Convention on the Exercise of Children's Rights* (1996) emphasizes the right of children to express their opinions and to consult them in accordance with their level of understanding. However, such an interpretation does not provide a clear indication as to the based on what an adult evaluates a child's ability to understand a particular situation.

When analyzing national documents, it is important to take into account the socio-cultural specificities of each country. The United States of America are a federation of fifty states with a certain degree of autonomy. As the term child is interpreted differently in each country, *The US Constitution* (2011) does not have a clear definition of a child. Furthermore, it is important to emphasize that *The World Declaration on the Survival, Protection and Development of Children* (1990) and *The European Convention on the Exercise of Children's Rights* (1996) are documents whose primary and sole purpose is to promote children's rights, while constitutional and educational documents that are analyzed serve as an indicator of how the states implement the principles and rights of children set out in international conventions, charters and declarations.

Laws on education primarily define the work and quality of the education system, but they also rest on inclusive guidelines. Although The US defines inclusion exclusively as inclusion of people with disabilities in the regular education system, their laws provide equal educational opportunities and special resources, support and assistance to all students, regardless of economic status, national, ethnic or racial background. *The Primary and Secondary Schools Education Act* of the Republic of Croatia (2008) also rests on the inclusion criteria and seeks to involve all students regardless of differences in the educational process.

An important factor in implementing inclusive determinants in the educational system is the competence of subject and class teachers to work with children with special needs. The US legislation specifically emphasizes this and points out the need for subject and class teacher training. The use of scientifically proven work methods and programs is also emphasized, which is hardly achievable in Croatia since the funds allocated by the state to the education sector are low. In addition, although *The Primary and Secondary Schools Education Act* (2008) emphasizes the need for professional development of teachers, in practice we often encounter subject and class teachers who do not have sufficient knowledge and skills to work with children with special needs because they are primarily trained to work with ''regular students'' (Batarelo Kokić, Vukelić and Ljubić, 2009), and no special support in the form of teaching assistants is adequately organized. Furthermore, unlike in the USA, the evaluation of the work of teachers at the national level is not carried out in the Republic of Croatia and there is no concrete plan for the implementation of the law in practice.

It can be concluded that, although the role of the child as an active participant and a holder of own rights is promoted in the literature, this concept still needs to be developed. In order to better understand and develop the concept of the child's

active role, it is proposed to examine the relationship between the child's active role and the protective attitude towards children in future researches. The answer to that research question would give a better insight into the possible dependence or independence of these two concepts. Furthermore, the analysis shows that basic inclusive determinants are strongly represented in documents on children's rights, but there is a lack of aspect of implementation of policies on children's rights at the educational institution level. An analysis of such documents (e.g. the school curriculum) would give a real insight into how inclusive philosophy is put into practice.

LITERATURE

1. European Union Agency for Fundamental Rights & Council of Europe. (2015). *Handbook on European law relating to the rights of the child.* Luxembourg: European Union Agency for Fundamental Rights. Retrieved from: http://fra.europa.eu/en (20.6.2017)
2. Batarelo Kokić, I.; Vukelić, A.; Ljubić, M. (2009). *Mapping Policies and Practices for the Preparation of Teachers for Inclusive Education in Contexts of Social and Cultural Diversity: Country Report Croatia.* Bologna: European Training Foundation.
3. Batarelo, I.; Podrug, Ž.; Apostoloski, T. (2009). Financing education in Croatia. U: C. Bischoff (ur.), *Public money for public schools: Financing education in South Eastern Europe* (79-102). Budapest: Local Government and Public Service Reform Initiative.
4. Bell, L.*;* Stevenson*,* H. (2006)*.* Education policy: process, themes and impact*. Leadership for learning.* London: Routledge.
5. Child Welfare Information Gateway (2016). Major Federal legislation concerned with child protection, child welfare, and adoption. Washington: U.S. Department of Health and Human Services, Children's Bureau.
6. Corbin, J., Strauss, A. L. (2008). *Basics of qualitative research.* Los Angeles, CA: Sage Publications Inc.
7. Council of Europe (2003). *Convention on Contact concerning Children. Strasbourg: Council of Europe.* Brussels: Council of Europe. Retrieved from: https://rm.coe.int/168008370f (15.6.2017)
8. Fairbrother G.P. (2007). Quantitative and Qualitative Approaches to Comparative Education. In: Bray M., Adamson B., Mason M. (ed.). *Comparative Education Research. CERC Studies in Comparative Education, vol 19.* (39-62). Dordrecht: Springer.
9. Haddad, W.D.; Demsky, T. (1995). *Education policy-planning process: an applied framework.* Paris: UNESCO, International Institute for Educational Planning.
10. Filipović, G. (2009). Iskustva iz prakse- inicijative ureda pravobraniteljice za djecu u području zakonskog uređenja prava djece. *Ljetopis socijalnog rada*, 16(3): 659-680.
11. Haddad, W. D.; Demsky, T. (1995). *Education Policy-Planning Process: An Applied Framework. Fundamentals of Educational Planning 51.* UNESCO. Paris France.
12. Hayes, N. (2002*). Children's Rights - Whose right? A review of child policy development in Ireland.* Dublin: The Policy Institute*.*
13. HG.org Legal Resources (n.d.). Children's Rights. Retrieved from: https://www.hg.org/children-rights.html (16.7.2017)
14. Holzscheiter, A. (2010). *Children's Rights in International Politics: The Transformative Power of Discourse.* London: Palgrave Macmillan.
15. Hornby, G. (2014). *Inclusive Special Educatio: Evidence-Based Practices for Children*

with Special Needs and Disabilities. New York: Springer.
16. Hrabar, D. H. (2013). Nova procesna prava djeteta - europski pogled. *Godišnjak Akademije pravnih znanosti Hrvatske*, 4(1): 65-76.
17. Ivančić, Đ.; Stančić, Z. (2013). Stvaranje inkluzivne kulture škole. *Hrvatska revija za rehabilitacijska istraživanja*, 49(2): 139-157.
18. Kopić, Ž.; Korajac, V. (2010). Djeca i djetinjstvo u dokumentima o pravima djece. Život *i* škola*, 56*(24): 45 – 54.
19. Kovač, V. (2007). Pristupi analizi obrazovne politike. *Pedagogijska istraživanja,* 4 (2): 255-267.
20. Liebel, M.; Hanson, K.; Saadi, I.; Vandenhole, W. (2012). *Children's Rights from Below: Cross-Cultural Perspectives*. Basingstoke: Palgrave Macmillan.
21. Louis, L. (1993). *Obrazovne politike*. Zagreb: Educa.
22. Maleš, D.; Milanović, M.; Stričević, I. (2003). Živjeti *i učiti prava : odgoj za ljudska prava u sustavu predškolskog odgoja.* Zagreb: Filozofski fakultet, Istraživačko-obrazovni centar za ljudska prava i demokratsko građanstvo.
23. Mount, S. (2011). U.S. Constitution. Retrieved from: https://www.usconstitution.net/xconst.html (1.7.2017)
24. MZO (n.d.). *Obrazovanje na jeziku i pismu nacionalnih manjina.* Zagreb: Ministarstvo znanosti i obrazovanja. Retrieved from: https://mzo.hr/hr/rubrike/obrazovanje-nacionalnih-manjina (19.7.2017)
25. Narodne novine (2008). *Zakon o odgoju i obrazovanju u osnovnoj i srednjoj* školi*.* Zagreb: Narodne novine, br. 87/08.
26. Narodne novine (2010). *Ustav Republike Hrvatske.* Zagreb: Narodne novine, br. 85/10.
27. Nie, Y. (2017). Combining narrative analysis, grounded theory and qualitative data analysis software to develop a case study research. *Journal of Management Research, 9*(2): 53-70.
28. Polić, P. (2015). Što za pedagogiju znači pitanje o odnosu potreba i prava djeteta? *Pedagogijska istraživanja*, 12(1-2): 149-160.
29. Republika Hrvatska, Pravobranitelj za djecu (2014). *Alternativni izvještaj Odboru za prava djeteta UN-a.* Zagreb: Pravobraniteljica za djecu.
30. Republika Hrvatska, Pravobranitelj za djecu (2016). *Djelokrug rada.* Retrieved from: https://dijete.hr/pravobranitelj/sto-i-kako-radi-pravobraniteljica/ (21.5.2019)
31. Sandelowski, M. (2000). Focus of Research Methods. Whatever Happened to Qualitative Description? *Research in Nursing & Health, 16*(4): 334-340.
32. Spajić-Vrkaš, V. (2001). *Obrazovanje za ljudska prava i demokraciju: Zbirka međunarodnih i domaćih dokumenata.* Zagreb: Hrvatsko povjerenstvo za UNESCO.
33. Širanović, A. (2012). Pravo na obrazovanje između zakonske regulative i prakse. In: Nikolić, M. (ed.) *Unapređenje kvalitete* života *djece i mladih* (63-73). Tuzla: Udruženje za podršku i kreativni razvoj djece i mladih.
34. Tomaševski, K. (2001). *Human rights obligations: making education available, accessible, acceptable and adaptable.* Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.
35. Tomaševski, K. (2008). The State of the Right to Education Worldwide: Free or Fee?: 2006 Global Report. In: *Power, Pedagogy and Praxis* (pp. 19-53). Brill Sense.
36. Trowler, P. (2003). *Education policy. Education Policy (The Guildredge Social Policy Series)*. London: Routledge.
37. UN (1989). *Konvencija o pravima djeteta.* New York: United Nations. Retrieved from:

http://www.mvep.hr/hr/vanjska-politika/multilateralni-odnosi0/multi-org-inicijative/ujedinjeni-narodi/konvencija-o-pravima-djeteta/ (21.5.2019)
38. UN (1990). *World Declaration on the Survival, Protection and Development of Children.* New York: United Nations. Retrieved from: https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-general-declarations/world-declaration-survival_en (23.5.2017)
39. UNESCO (2009). *Policy Guidelines on Inclusion in Education*. Paris: UNESCO. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000177849?posInSet=1&queryId=-d117ebbe-414a-46bf-885e-3ece7995460d
40. UNESCO (1994). *The Salamanca Statement and Framework for Action on Special Needs Education.* Paris: UNESCO. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000098427?posInSet=1&queryId=316c471e-8861-49ba-a49c-0fb6381299e8 (5.10.2019)
41. UNESCO (2000). *The Dakar Framework for Action. Education for all: Meeting our Collective Commitments.* Paris: UNESCO. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000121147?posInSet=1&queryId=cfe919e7-5b1c-4869-ae8c-2cbfe4f5f030 (5.10.2019)
42. UNESCO (2015). *Incheon Declaration. Education 2030: Towards Inclusive and Equitable Quality Education for All.* Paris: UNESCO. Retrieved from: https://unesdoc.unesco.org/ark:/48223/pf0000245656 (5.10.2019)
43. UNICEF (2014). *Child Rights in Education: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools*. Geneva: UNICEF Private Fundraising and Partnerships Division. Retrieved from: https://www.unicef.org/eu/crtoolkit/downloads.html (5.7.2017)
44. United States (1965). *Elementary and secondary education act of 1965*. Washington: U.S. Government Printing Office. Retrieved from: https://www2.ed.gov/policy/landing.jhtml?src=pn (5.7.2017.)
45. United States (2004). *Individuals with Disabilities Education Act*. Washington: U.S. Government Printing Office. Retrieved from: https://www2.ed.gov/policy/landing.jhtml?src=pn (13.7.2017.)
46. United States. Department of Education (2017). *The Rehabilitation Act* of 1973. Washington D.C.: ED Pubs. Retrieved from: https://www2.ed.gov/policy/speced/reg/narrative.html (5.7.2017)
47. United States. Department of Education, Office of Special Education and Rehabilitative Services (2008). *Education and Inclusion in the United States: A Brief Overview.* Washington D.C.: ED Pubs. Retrieved from: https://www2.ed.gov/about/offices/list/osers/osep/index.html (9.7.2017)
48. United States. Department of Education, Office of Special Education and Rehabilitative Services (2015). *Vocational Rehabilitation Act.* Washington D.C.: ED Pubs. Retrieved from: https://www2.ed.gov/policy/speced/reg/narrative.html (9.7.2017)
49. United States. Department of Education (n.d.). IDEA *The Individuals with Disabilities Education Act*. Washington D.C.: ED Pubs. Retrieved from: https://sites.ed.gov/idea/#a/ (10.7.2017)
50. Vican, D.; Karamatić Brčić, M. (2013). Obrazovna inkluzija u kontekstu svjetskih i nacionalnih obrazovnih politika – s osvrtom na hrvatsku obrazovnu stvarnost. Život *i* škola*:* časopis *za teoriju i praksu odgoja i obrazovanja*, 59(30): 48-65.
51. Vijeće Europe (1996). *Europska konvencija o ostvarivanju dječjih prava.* Strasbourg:

Vijeće Europe.
52. Walker, N.E.; Brooks C.M.; Wrightsman, L.S. (1998). *Children's Rights in the United States In Search of a National Policy.* Thousand Oaks: Sage Publications, Inc.
53. Wellington, J. (2015). *Educational Research: Contemporary Issues and Practical Approaches*. London: Bloomsbury Publishing Plc.