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## Religious Education of the Child as Part of Parental Duties – Comparative Legal Analysis of National Reports Submitted to the Commission on European Family Law

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### Abstract

**Research objectives and problems:** This article presents a comparative analysis of legal regulations in 21 European countries regarding parents' rights and obligations towards their children's religious education and upbringing. The author seeks answers to the following questions: Does religious upbringing and education of the child fall under parental rights and duties? What is the legal basis for this right and duty? Does a child have the right to choose his or her religion?

**Research methods:** The author carries out legal analysis of reports from 21 countries concerning parental responsibility, submitted to the Commission on European Family Law.

**Structure of the article:** By analyzing the provisions in the internal legislation of 21 European countries, based on reports submitted to the Commission on European Family Law, the author presents the legal solutions regulating issues of children's religious upbringing.

**Research findings and their impact on the development of educational sciences:** The analysis indicates that in each of the 21 legal systems examined, religious upbringing of the child is considered an element of parental responsibility. The most common legal sources for parental rights to a child's religious upbringing are constitutions, civil codes, and legal acts on family/children's rights, education, and freedom of religion. National legislation typically grants parents the exclusive right to decide on their child's religious upbringing for younger children. As the child matures, their right to self-determination in religious matters increases. The study shows that, despite national cultural and ideological differences, European countries have more in common than divides them regarding religious education of children within the context of parental responsibility. This study expands our understanding of the shared European belief among legislators about the appropriateness of entrusting such an important task as the religious upbringing of a child to the child's parents.

**Conclusions and/ or recommendations:** The presented considerations offer a general overview of the regulations in individual countries and serve as an introduction to a more in-depth analysis of the issue of religious upbringing of the child. Further research is needed to examine other aspects of religious upbringing, such as religious education in schools and possible legal remedies in case of conflicts between parents, parents and children, or families and the state.

**Keywords:** parental authority/responsibility, parental duties, child education, school

## Introduction

This article is based on a legal analysis of reports from 21 countries concerning parental responsibility, submitted to the Commission on European Family Law. The study focuses on one specific aspect of child-rearing: religious upbringing.

The care and raising of children are the parents' natural right and foremost obligation. Therefore, parents have the fundamental right to determine the upbringing of their children as they believe is best for the

child's welfare. The care of minor children, as part of parental responsibility (authority/ power) primarily "encompasses protection of the child's physical welfare and health, as well as direct supervision and upbringing, particularly the development of the child's physical, mental, psychological, and moral strengths, the fostering of its aptitudes, abilities, inclinations, and developmental capabilities, and its education in school and in an occupation" (Roth, 2004).

In this article, the author presents legal solutions from 21 countries that illustrate the scope of parental rights and obligations regarding the crucial aspect of a child's religious education and upbringing.

The author seeks answers to the following questions: Does religious upbringing and education of the child fall under parental rights and duties? What is the legal basis for this right and duty? Does a child have the right to choose his or her own religion?

## **Analysis of legal solutions in European countries**

### **AUSTRIA**

In Austria, the legal framework guiding parental responsibilities is the *Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch)*. Religious education for children is governed by the *Federal Act on the Religious Education of Children (Bundesgesetz über die religiöse Kindererziehung)* (Roth, 2004). According to § 144 of the *Austrian Civil Code*, parents jointly determine the child's religion and can jointly change it. In case of their disagreement on this matter and if one parent wishes to remove a child from religious instruction, the court may intervene to substitute the necessary consent of the other parent (Roth, 2004).

### **BELGIUM**

In Belgium, the primary legal foundation for parental responsibilities is the *Belgian Civil Code*.

According to Articles 203 and 374 of the *Belgian Civil Code*, parental responsibility encompasses the right of parents to decide on their child's

religious upbringing. Parents are expressly prohibited from imposing a religion that may jeopardize the child's development and autonomy once they reach the age of discernment. In the event of conflict, the paramount principle that guides the courts is the best interests of the child (Pintens & Pignolet, 2004).

### BULGARIA

In Bulgaria, parental responsibilities are governed by the *Bulgarian Family Code* of 1985, with religious matters regulated by the *Bulgarian Law of Religious Beliefs* of 2002. The *Bulgarian Child Protection Act* of 2000 plays a crucial role in safeguarding children's rights.

According to Article 6 § 2 of the *Bulgarian Law of Religious Beliefs*, parents and legal guardians have the right to raise their children according to their own religious beliefs. Article 14 of the *Bulgarian Child Protection Act* grants parents and legal guardians sole authority over the religious upbringing of children under 14 years of age. Decisions on the religious upbringing of children between 14 and 18 years of age require mutual consent between the child and his/her parents or guardians. In case of disagreement in this matter, the child may refer, through the relevant bodies such as the State Agency for Child Protection and Child Protection Departments in municipalities), to the District Court to settle the dispute. According to Art. 21 § 1 and § 14 of the *Bulgarian Child Protection Act*, the Child Protection Department may resolve disputes or can instigate court proceedings if the child is at risk, but it cannot substitute missing parental consent. Article 11 § 4 of the *Bulgarian Law of Religious Beliefs* mandates protection of children from coerced participation in religious activities, stating that religious denominations or institutions may only involve minors with the consent of their parents. (Todorova, 2004)

### DENMARK

In Denmark, the main source of law for parental responsibilities is the *Danish Act on Parental Authority and Contact* of 1995.

The holder(s) of parental authority has/have the right to decide on: the child's religion, baptizing the child; allowing the child to join

a particular church/religion; and withdrawing the child from a particular church/religion. As indicated by Lund-Andersen & Gyldenløve Jeppesen de Boer (2004), “according to the regulation on the establishment or cessation of membership of the Danish State Church, a child of 15 must consent to this.”

### ENGLAND & WALES

Parental responsibilities in England and Wales are primarily regulated by *The Children Act* 1989.

There is no legal obligation to provide a child with a religious upbringing. However, parents with parental responsibility have the authority to determine their child’s religious education. According to Section 71 of the *School Standards Framework Act* of 1998, parents can demand that their child be excused from religious studies lessons and school assemblies (Love, 2004).

### FINLAND

In Finland, parental responsibilities are governed by the *Finnish Child Custody* and the *Right of Access Act* of 1983, with regulations on a child’s religion and church membership or membership in another religious group are regulated in the *Finnish Religious Freedom Act* of 2003 (Kurki-Suonio, 2004). According to this legislation, the religious affiliation of a child under 12 years of age is determined jointly by the parents. Changing the religious affiliation of a teenager aged between 12 and 17 requires a joint decision of the child and their parents or guardian.<sup>1</sup>

### FRANCE

In France, the main source of law for parental responsibilities is the *French Civil Code* of 2016.

Within this framework, decisions regarding the religious upbringing of a child are considered part of parental responsibilities and are integral to the child’s education (Ferrand, 2004).

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<sup>1</sup> Freedom of religion – OKM – Ministry of Education and Culture, Finland

## GERMANY

In Germany, parental custody is primarily regulated by the *German Civil Code* of 1986.

The basic concept in German family law is parental custody which encompasses the care of the child, including religious upbringing. Parents with custody can jointly determine the religious upbringing of the child. In cases of disagreement, the Guardianship Court may intervene to resolve disputes. Under Section 5 sentence 1 of the *German Act Concerning the Religious Upbringing of Children* of 1921, a child of 14 has complete religious freedom. At the age of 12, a child cannot be coerced to adopt a different religion against their will, and at the age of 10, the child must be heard (Dethloff & Martiny, 2004).

## GREECE

In Greece the main source of law for parental responsibilities is the *Greek Civil Code* of 1940/46.

The concept of parental responsibilities in Greece encompasses both parental care and guardianship. Parents are both entitled and obligated to determine their child's religious upbringing. While there is no strict legal definition of maturity,<sup>2</sup> if a child is deemed sufficiently mature they may form their own religious beliefs (Koutsouradis, 2004).

## HUNGARY

Hungary's legal framework for parental responsibilities draws from several key legislations, including *The Hungarian Child Welfare Act* of 1997, *The Hungarian Family Act* of 1952, and *The Hungarian Order of Guardianship* of 1997. In Hungary, the religious upbringing of a child falls under joint parental responsibility. The Hungarian law, guided by the *Hungarian Constitution*, prohibits state intervention in religious upbringing. According to Weiss & Szeibert, parents cannot seek court or public guardianship authority intervention in religious matters. However, the

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<sup>2</sup> Some authors claim a child reaches maturity at age 10, while others suggest ages 12 or 14.

*Child Welfare Act* states that children under state care “have the right to freedom of religion, conscience, (to declare and exercise it) and religious education” (2004).

## IRELAND

In Ireland, parental responsibilities are governed primarily by *The Irish Child Care Act* 1991. Central to Irish law governing parental responsibilities are concepts of guardianship, custody, and access, which encompass the rights and duties of parents, including religious upbringing. In custody matters, courts consider the child’s religious upbringing, with a general tendency not to disrupt the child’s religious and moral formation (Shannon, 2004).

## ITALY

In Italy, the main sources of law for parental responsibilities are the *Italian Constitution* of 1947 and the *Italian Civil Code* of 1942. The fundamental concept in Italian family law is “parental authority” which encompasses the rights and duties of parents in the interests of the child. Parents are responsible for making all decisions necessary for the care and moral support of the child, including their educational and religious upbringing. Parents of children in lower school levels are entitled to choose their children’s religious education. However, all decisions regarding the child’s education (including religious education) must be consistent with the child’s capacity, natural inclinations, and aspirations. Parents must satisfy their children’s preferences as long as they are consistent with societal norms, even if the parents do not share these preferences (Patti et al., 2004). According to Article 1 of the Law of 18 June 1986 on the *Capacity to choose the type of the school and enrolment in high schools*, secondary high school students<sup>3</sup> have the right to choose whether to take part in religious education and optional classes.

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<sup>3</sup> Generally over the age of 14.

## LITHUANIA

In Lithuania, the main sources of law for parental responsibilities are the *Constitution of the Republic of Lithuania* of 1992, the *Lithuanian Civil Code* of 2000, the *Law on the Protection of the Rights of the Child* of 1996, and the *Law on Education* of 1991. According to Articles 26 and 40 of the *Lithuanian Constitution*, parents are entitled to educate their children, including to provide religious education. “Parents and guardians shall, without restrictions, ensure the religious and moral education of their children and the children under their guardianship, in conformity with their own convictions.” Article 17 of the *Law on Education* states that “upon the wish of parents (or guardians), children may have religious instruction in school by individuals authorized by church dignitaries of the chosen denomination. Children in ward shall be instructed in the religion which is professed by their families or relatives.” (*National Report: Lithuania, 2004*).

## THE NETHERLANDS

In the Netherlands, the main source of law for parental responsibilities is the *Civil Code of the Netherlands*, reformed in 1992. According to Dutch law, parental responsibilities include the duty and the right of the parent to care for, raise, and protect their child. Parents are free to determine the religious upbringing of their children (Boele-Woelki et al., 2004). By virtue of Article 60 § 1(a) of the *Juvenile Assistance Act*, when the court appoints a legal person as guardian of the child, it must take into account the religion of the child (Boele-Woelki et al., 2004)

## NORWAY

In Norway, the main sources of law for parental responsibilities are the *Constitution of Norway* of 1814 and the *Norwegian Children Act* of 1981. Individuals with parental responsibilities have both the duty to care for the child and the right to make decisions on behalf of the child. Parents who are members of the Church of Norway have a duty to educate their children in the Evangelical-Lutheran religion (Article 2 of the *Constitution of Norway*) until the child reaches the age of 15. According to Article 6, Section 1 of the *Norwegian Act on Religious Societies* of 1969,



parents who do not belong to the Church of Norway can enroll the child in religious societies or discontinue his/her membership. Parents must consult a child aged 12 or older. A child aged 15 or older has the right to self-determination in religious matters (Lødrup & Sverdrup, 2004)

## POLAND

In Poland, the main sources of law for parental responsibilities are the *Constitution of the Republic of Poland* of 2nd April 1997 and the Statute of 25th February 1964 – the *Polish Family and Guardianship Code* (Mączyński & Mączyńska, 2004) According to the *Polish Family and Guardianship Code*, a minor child remains under parental authority. Parents are both entitled and obliged to care for and raise a child. According to Article 48, Section 1 of the *Polish Constitution*, parents have the right to raise their children in accordance with their own beliefs, taking into account the child's level of maturity, freedom of conscience, religion, and beliefs. According to Article 53, Section 3 of the *Polish Constitution*, parents have the right to provide their children with moral and religious upbringing and teaching in accordance with their beliefs. Pursuant to Article 53, Section 4 of the *Polish Constitution*, the religion of a church or other religious association (with a regulated legal situation) may be taught in schools. Public kindergartens and primary schools offer religious education at the request of parents, and public secondary schools offer it at the request of parents or students. After reaching the age of majority, students decide for themselves whether to continue religious education (Article 12, Section 1 of the *Act on Education* of 1991).

## PORTUGAL

In Portugal, the main sources of law for parental responsibilities are the *Constitution of the Portuguese Republic* of 1976, the *Portuguese Civil Code* of 1966, and the *Portuguese Child Protection Law* of 1999. Parental responsibility (parental power) is seen as a collection of rights and duties imposed upon both parents, who are obliged and entitled to look after, raise, and educate their child. This education includes moral and religious upbringing (De Oliveira Rosa Martins, 2004) Parents are free to choose their

child's religion and decide how it should be taught and practised. Article 1886 of the *Portuguese Civil Code* recognizes the child's freedom of self-determination in matters of religion stating that a child over sixteen has complete freedom to decide upon their religion.

### RUSSIA

In Russia, the main source of law for parental responsibilities is the *Family Code of the Russian Federation* of 1995. Religious upbringing of the child is considered an element of the parental right to educate the child. The law (Article 5(5) of the *Federal Law On the Freedom of Conscience and Religious Organisations* states that “the religious education and upbringing of children is carried out by their parents, taking into consideration the right of the child to freedom of conscience and the freedom of choice of religion.” Therefore, parents are obliged to allow their child to express their opinion on this matter (Antokolskaia, 2004).

According to Article 57 of the *Russian Family Code*, parents must consider the opinion of the child if they are 10 years old or older. Parents cannot impose their decisions concerning religious upbringing on a child against their wishes. In case of parental disagreement on the religious upbringing of the child, parents can bring their dispute to the Guardianship and Curatorship Department. However, the Department cannot choose a religion for the child. Ultimately, it is the child who makes their own choice on religious matters once they are mature enough (Antokolskaia, 2004)

### SPAIN

In Spain, there is no single law that contains all the relevant rules concerning parental responsibilities. However, important sources of law include the *Constitution of Spain* of 1978 and the *Civil Code of Spain* of 1889. The *Spanish Civil Code* uses the concept of *patria potesta*, understood as “a function, established in the interests of children, whose contents consist more of duties than rights” (González Beilfuss, 2004)

According to Article 27.3 of the *Spanish Constitution*, parents have the right to educate their child according to their religious convictions

and moral beliefs. If the child has attained a sufficient degree of maturity,<sup>4</sup> they have the right to exercise their freedom of conscience and religion. In cases where there is a conflict between the parents and the child, the child's opinion prevails (González Beilfuss, 2004).

### SWEDEN

In Sweden, the main source of law for parental responsibilities is the *Children and Parents Code* of 1949. Unlike many other European legislations, Swedish law uses two terms – custody and guardianship – to define parental responsibility. The term *custody* encompasses the parents' right and obligation to care for, secure, educate, and bring up their children.

If the child is under joint custody, decisions concerning religious upbringing and membership in a religious community must be made jointly by both parents (custodians). In case of disagreement, it is not possible to register the child as a member of a religious community or as a pupil in a religious school. A child aged 12 years or older has the freedom to make decisions regarding religion on their own; from that age, the child's consent is necessary for entry into or withdrawal from a religious community (the *Swedish Act on Religious Communities*, 1998:1593) (Jänträ-Jareborg et al., 2004).

### SWITZERLAND

In Switzerland, the main source of law for parental responsibilities is the *Swiss Civil Code* of 10 December 1907. The *Swiss Civil Code* obliges parents to care for, raise, and protect their child as well as to support their physical, mental, and moral development

Article 301 § 4 of the *Swiss Civil Code* entitles parents to give their child a Christian name. Parents are entitled to the religious upbringing of their child until the child reaches the age of 16. From that point, the child has the freedom to make decisions regarding religion (Article 303 §§ 1 and 3 of the *Swiss Civil Code*) (Hausheer et al., 2004).

<sup>4</sup> Generally, children over the age of 12.

## Research findings

The study enabled the author to find answers to the questions posed at the beginning of the study.

Q1: Does religious upbringing and education of the child fall under parental rights and duties?

The analysis of legal provisions regulating the religious upbringing of children indicates that in each of the 21 legal systems examined, religious upbringing is regarded as an element of parental responsibility (authority) and often falls within the parental right to decide on the child's education.

Q2: What is the legal basis of this right and duty?

The most common legal sources of parental rights to a child's religious upbringing in the analyzed legal systems are provisions found in constitutions (stating freedom of conscience and religion and often granting parents the right to decide on their children's religious upbringing) in each examined country, in civil codes (Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain, Switzerland) and legal acts on family/children's rights/education/freedom of religion (Bulgaria, Denmark, England and Wales, Finland, Hungary, Ireland, Lithuania, Norway, Poland, Russia, Sweden).

Q3: Does a child have a right to choose his/her religion?

The parents' right to decide on their children's religious upbringing is strongly connected with the child's right to freedom of thought, conscience, and religion (expressed in Article 14 of the UN Convention on the Rights of the Child of 1989).<sup>5</sup> According to Article 14.2 of the Convention, parents are entitled "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

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<sup>5</sup> All European countries are Parties to the Convention.

Typically, national legislation grants parents the exclusive right to decide on their child's religious upbringing when the child is young. As the child matures, their right to self-determination in religious matters increases.

Legal acts in some countries specify concrete solutions in these matters:

In Greece, if the child is sufficiently mature (which is not strictly defined in law),<sup>6</sup> they may form their own religious beliefs.

In Norway, a child of 15 or older has the right to self-determination in religious matters.

In Poland, while raising their children, parents should consider the child's level of maturity, freedom of conscience, religion, and beliefs.

In Portugal, a child over sixteen has complete freedom to decide upon their religion.

In Russia, parents are obliged to consider their child's opinion on religious upbringing, with the weight of the child's opinion increasing with age.

In Spain, as the child attains a sufficient degree of maturity,<sup>7</sup> they have the right to exercise their freedom of conscience and religion.

In Sweden, a child aged 12 years or older acquires the freedom to make decisions regarding religion on their own.

## Conclusions

The study clearly shows that, despite national cultural and ideological differences, European countries share more similarities than differences regarding the religious education of children within the context of parental responsibility. This study highlights a shared European belief among legislators of the indicated countries that entrusting the important task of a child's religious upbringing to their parents is appropriate.

<sup>6</sup> Some authors claim that a child reaches maturity at the age of 10, while others suggest ages 12 or 14.

<sup>7</sup> Generally children over the age of 12.

The presented considerations provide a general overview of the regulations in force in individual countries and serve as an introduction to a more in-depth analysis of the issue of religious upbringing. Due to editorial constraints on the article's length, the author limited the scope to a general analysis of the legal regulations in 21 European countries concerning this research problem. In the longer term, a deeper analysis of the presented legal provisions and other aspects of religious upbringing, such as for example religious education in schools and legal remedies in case of conflicts between parents, parents and children, or families and the state, seems justified.

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