



Marta Prucnal-Wójcik

<https://orcid.org/0000-0002-2584-3165>

Ignatianum University in Cracow, Poland

marta.prucnal@ignatianum.edu.pl

Education of the child as part of parental duties – Comparative legal analysis of national reports submitted to the Commission on European Family Law¹

Submitted: 19.12.2024

Accepted: 28.11.2025

Published: 31.12.2025



Keywords:

international
education programs,
international schools,
formal education,
free market,
neoliberal culture

Abstract

Research objectives and problems: The author conducts a comparative analysis of the legal regulations of 21 European countries concerning children's education in the context of parental responsibility/authority.

The guiding questions are: *Is a child's education considered part of parental responsibility/authority? What is the legal source of this right and obligation? Does the law give children any ability to decide about their education? Do the national reports refer to compulsory schooling or education duty?*

Research methods: The author performs a comparative legal analysis of reports submitted by 21 countries² to the Commission on European Family Law on the subject of parental responsibility.

¹ This article is one of several thematically related pieces on the comparative analysis of the scope of parental responsibility in selected European countries. The previous article (Prucnal-Wójcik, M. (2024). *Religious Education of the Child as Part of Parental Duties – Comparative Legal Analysis of National Reports Submitted to the Commission on European Family Law*. *Multidisciplinary Journal of School Education*, 13(1(25)), 113–130. <https://doi.org/10.35765/mjse.2024.1325.06>) concerned the issue of the religious upbringing of children, while the present article focuses on the issue of child education.

² The author has selected those countries that have submitted their reports to the Commission on European Family Law.

Process of argumentation: Drawing on the provisions contained in the domestic legislation of 21 European countries, as documented in the reports submitted to the Commission on European Family Law, the author presents the legal solutions governing children's education in the context of parental responsibility/authority.

Research findings and their impact on the development of educational sciences: The analysis shows that in all 21 legal systems examined, a child's education is regarded as an element of parental responsibility/authority/care/custody. The most common legal sources of the parental right and duty to provide a child's education are provisions found in children's/family/parental responsibility acts or codes, constitutions, civil codes, and education laws. National legislation generally grants children an indirect right to influence their educational path. Most reports also outline, at least in general terms, the scope of compulsory schooling or education duty in their respective countries.

Conclusions and/or recommendations: The discussion offers a concise overview of the regulations in 21 European countries and serves as an introduction to a more detailed analysis of the issue of children's education.

Introduction

The principle that parents play the primary role in the education of their children is reflected in numerous international legal instruments. These include the Universal Declaration of Human Rights (1948); Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952); the Convention against Discrimination in Education (1960); the International Covenant on Economic, Social and Cultural Rights (1966); the International Covenant on Civil and Political Rights (1966); the UN Convention on the Rights of the Child (1989); the European Parents' Rights Charter (1992); and the Charter of Fundamental Rights of the European Union (2010).

Article 26(3) of the *Universal Declaration of Human Rights* grants parents the right to choose the kind of education that their children will receive. Article 2 of *Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms* underscores the right of parents to ensure that their children are brought up and educated in conformity with the parents' own convictions. The *Convention against Discrimination*

in Education likewise recognizes the right of parents to educate their children in accordance with their personal convictions (Article 5(1)(b)). Article 13(3) of the *International Covenant on Economic, Social and Cultural Rights* emphasizes parents' freedom to choose schools other than public institutions for their children and to ensure that their children receive an education consistent with their convictions.

The *UN Convention on the Rights of the Child* affirms the primary role of parents in raising and educating the child (Article 5), in accordance with the principle of the best interests of the child set out in Article 3. Article 18(4) of the *International Covenant on Civil and Political Rights* requires State Parties to respect the freedom of parents [...] to ensure that their children are raised and educated in line with their own convictions. The *European Parents' Rights Charter* recognizes parents as the "first educators" of their children. It grants them the right to choose an educational path that is closest to their beliefs and the values that they deem most important for their children's development, as well as the right to influence the educational policies implemented in their children's schools. Article 14(3) of the *Charter of Fundamental Rights of the European Union* emphasizes that "the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."

This article is based on a legal analysis of reports from 21 countries concerning parental responsibility as regulated in their national laws, submitted to the Commission on European Family Law. The study focuses specifically on the education of the child. The author seeks answers to the following questions: *Is a child's education considered part of parental responsibility/authority? What is the legal source of this right and obligation? Does the law give children any ability to decide about their education? Do the national reports refer to compulsory schooling or education duty?*

Analysis of legal solutions in European countries

AUSTRIA

According to Sec. 144 of the Austrian Civil Code (CC), parental responsibilities include, among other things, the education of minor children. Under Sec. 146(1) Austrian CC, the term “education” refers to “the development of the child’s physical, mental, psychological, and moral strengths, the fostering of his or her aptitudes, abilities, inclinations, and developmental capabilities, and his or her education in school and in an occupation” (Roth, 2004). Parents are obliged to register their child for school at the age of six. Under Sec. 146(3) Austrian CC, the scope of the child’s education depends on the financial capacity and social position of the parents.

BELGIUM

Parental responsibilities include parents’ authority and care over the child, which encompass, among other things, the right to decide on the child’s type of education, school, and profession (Arts. 203 and 374 Belgian Civil Code). Parents who jointly exercise parental responsibilities must agree on the child’s education. If they cannot reach agreement, the competent authority will decide in accordance with the child’s best interests (Pintens & Pignolet, 2004). Under Art. 203 Belgian CC, parents are obliged, according to their means, to contribute to the child’s education. This obligation continues until the child completes his or her schooling and, in some cases, extends beyond the age of majority.

BULGARIA

According to Art. 47 § 1 of the Bulgarian Constitution of 1991, parents have both the right and the obligation to care for and bring up their children until they reach the age of majority. Under Art. 68 of the Bulgarian Family Code, parents are required to prepare children for “socially useful activity,” which is understood as a parental duty to provide for the child’s education (Todorova, 2004).

Pursuant to Art. 53 § 2 of the Bulgarian Constitution, parents must educate their child until the age of 16. If the child continues his or her

education beyond the age of majority (18), parents are required to support the child. Under Art. 47 of the Bulgarian Public Education Act, parents must enroll their child in school and ensure regular attendance. Until the child reaches the age of 14, parents have the right to decide on the type of school and education that the child receives (Art. 9, Bulgarian Public Education Act) (Todorova, 2004).

DENMARK

The Danish Act on Parental Authority and Contact of 1995 does not explicitly mention a child's education as part of parental duties; however, providing the child with a suitable education is generally considered an aspect of parental care. As Lund-Andersen & Gyldenløve Jeppesen de Boer (2004) note, "it follows from the *travaux préparatoires* that the holder(s) of parental authority has/have a duty to provide education taking into account the child's abilities and interests."

According to § 76 of the Danish Constitution of 1953, all children are entitled to free education in a state school. Parents are required to provide education for their child from age seven. They may choose either school-based education or home education. Under Art. 34(1) of the Act on State Schools of 2003, the compulsory education requirement ends once the child has received nine years of schooling.

ENGLAND & WALES

Parental responsibility includes, among other things, providing for a child's education in accordance with the child's intellectual needs and abilities (Love, 2004). Under Sections 7–8 of the Education Act 1966, parents of children aged 5 to 16 must ensure that their child receives "efficient full-time education suitable (a) to his/her age, ability and aptitude, and (b) to any special educational needs he/she may have" (Love, 2004). Parents may choose education at a state or independent school or home education. Under Section 36 of the Children Act 1989, a child who is not receiving education may be made subject to an education supervision order, and under Section 443 of the Education Act, criminal proceedings may be brought against parents who fail to ensure their child receives "efficient full-time education."

FINLAND

In Finland, the main legal concept governing parental rights and duties toward the child is *child custody*. Custodians are entitled to make decisions concerning the child's education. According to Sec. 1 para. 2 of the Finnish Child Custody and Right of Access Act of 1983, a child "should receive an education that corresponds to his or her wishes and talents." Under Sec. 16 of the Finnish Constitution of 1999, every child has the right to free basic education, which usually lasts nine years and begins in the year the child turns seven (Kurki-Suonio, 2004).

FRANCE

Education is part of parental duties. Parents have the right to decide on the type of school and the child's future professional direction. Under Law No. 75-620 of 11 July 1975, children are subject to compulsory schooling from ages 6 to 16, and parents are responsible for ensuring the child's education until the child reaches majority or is emancipated. Failure to meet this duty may result in criminal prosecution (Art. 222-17, French Criminal Code). According to Art. 371-2 of the French Civil Code (2016), parents must contribute to the child's education and maintenance in proportion to their means and the child's needs (Ferrand, 2004).

GERMANY

One aspect of parental custody is personal care of the child, which includes, among other things, the child's education. Under § 1631(1) of the German Civil Code (1986), parents are both entitled and obligated to educate their child and to choose the type of schooling. In exercising this right, they must take into account the child's abilities and inclinations. Germany does not have a single nationwide period of compulsory school attendance; the specific duration is determined by the public law of each *Land*. Parents are responsible for ensuring that the child attends school. Failure to fulfill this obligation may lead to administrative proceedings and the imposition of educational measures (Dethloff & Martiny, 2004).

GREECE

One aspect of parental responsibilities in Greece is *parental care* (the other being guardianship), which includes, among other things, the child's education (Art. 1518(1) of the Greek Civil Code of 1940/46). According to Arts. 1511, 1648, 1518(3) and 1606 of the Greek Civil Code, parents are both entitled and obliged to decide on their child's education, taking into account the child's best interests, individual capabilities and aptitudes, as well as the child's own views and level of maturity. In fulfilling this duty, parents must cooperate with school authorities and, when necessary, with competent public services (Koutsouradis, 2004).

HUNGARY

In Hungary, a child's education falls under *child care*, which is one of the components of parental responsibility (The Hungarian Child Welfare Act of 1997; The Hungarian Family Act of 1952; The Hungarian Order of Guardianship of 1997). Both parents are entitled and responsible for decisions regarding their child's education. They are also required to respect the child's views, taking into account the child's age and maturity. Once a child reaches age 12, his or her participation in educational decisions becomes mandatory (Weiss & Szeibert, 2004).

IRELAND

The Irish Constitution of 1937 underlines the primacy of parental authority in decision-making regarding, among other matters, a child's education. Article 42 states that "the primary and natural educator of the child is the family" and affirms that parents have both an inalienable right and a duty to provide for their child's education. Under the Irish Education (Welfare) Act 2000, parents are required to ensure that their child attends a recognized school regularly. Exceptions exist, for example, when a child is being educated outside the recognized system or outside the State (Shannon, 2004).

ITALY

In Italy, parents and the State share responsibility for the education of children. According to Art. 30 §1 of the Italian Constitution of 1947 and Art. 147 of the Italian Civil Code of 1942, parents are obliged to educate their children, “taking into account the children’s capacities, natural inclinations and aspirations.” This obligation must be exercised in the child’s best interests. Parents of younger children are entitled to choose their education (in line with the child’s capacities, natural inclinations and aspirations). A minor aged 14 or older is granted greater freedom in choosing an educational path (Patti et al., 2004).

Under Art. 34 of the Italian Constitution, the State is required to provide institutions that support parents in fulfilling their educational responsibilities towards their child and to supervise parental compliance with those obligations (Patti et al., 2004).

LITHUANIA

Arts. 26 and 40 of the Lithuanian Constitution of 1992 and Art. 3.155 of the Lithuanian Civil Code of 2000 specify parents’ right to educate their children. Under Art. 3.165 of the Civil Code, parents have a duty to ensure appropriate learning conditions for their children during the period of compulsory schooling (up to age 16). According to Art. 21 of the Law on Education of 1991, parents must send their child to school at age six or seven. They are also required to “create living and studying conditions for their children that guarantee sound and secure development of their mental and physical abilities” and to “cooperate with educational institutions in matters concerning their child’s education” (National Report: Lithuania, 2004).

THE NETHERLANDS

Under Art. 1:247 of the Dutch Civil Code of 1992, parental responsibilities include the right and duty to foster and guide the child in the development of his or her personality. One aspect of this guidance is the child’s education (Boele-Woelki et al., 2004).

NORWAY

According to Art. 30 sec. 2 of the Norwegian Children Act of 1981 (NCA), one element of parental responsibility is the obligation to ensure that the child receives an education suited to his or her interests and abilities. This duty must be carried out in accordance with the child's best interests and needs. Under Art. 32 NCA, once a child reaches age 15, he or she has the right to make all decisions concerning education without parental consent (Lødrup & Sverdrup, 2004).

POLAND

According to Art. 70 sec. 1 of the Polish Constitution of 1997, education is compulsory until the age of 18. Under Art. 70 sec. 3, parents have the freedom to choose schools other than public schools for their children. The 1964 Polish Family and Guardianship Code (PFGC) does not refer specifically to education. However, Art. 96 §1 identifies, as one element of parental authority, the obligation to care for the child's development and to prepare the child to work for the good of society in accordance with his or her abilities, which is understood as a parental obligation to ensure appropriate education (Mączyński & Mączyńska, 2004).

According to Art. 95 §4 PFGC, before making decisions on important matters concerning the child (such as education), parents should listen to the child if the child's mental development, health and degree of maturity allow it, and should take the child's reasonable wishes into account to the extent possible. Under the Education Law of 2016, "a child's school duty begins at the beginning of the school year in the calendar year in which the child turns 7 and lasts until completion of primary school, but no longer than until the child turns 18." This Act defines the scope of parental responsibilities relating to the implementation of both school and education duties.

PORTUGAL

According to Art. 1878 No. 1 of the Portuguese Civil Code of 1966, a child's education is one of the principal elements of parental responsibility. Under Arts. 1885 Nos. 1 and 2 of the Portuguese Civil Code, the level

of a child's education depends on the child's talents and abilities, as well as the parents' economic capacity (De Oliveira Rosa Martins, 2004).

RUSSIA

Under Art. 28(2) of the Russian Constitution of 1993 and Art. 63 of the Russian Family Code (FC) of 1995, a child's education is one element of parental responsibility, regarded as both a right and a duty of the parents. According to Art. 63(3) FC, parents are entitled to choose the type of school and form of education for their child, and must respect the child's opinion in exercising this right. Art. 63(2) FC further provides that parents are obliged to "ensure that the child receives basic general education." Parents may fulfil this obligation personally or by temporarily entrusting education to others, such as family members or educational institutions (kindergarten, etc.) (Antokolskaia, 2004).

SPAIN

According to Article 27 of the Spanish Constitution of 1978, education is one of the fundamental rights of every person. Under Art. 154 of the Spanish Civil Code of 1889, education is one of the duties encompassed within parental responsibility. As González Beilfuss (2004) notes, in Spain "the right of parents to educate their children according to their religious and moral convictions is derivatively limited by the right of the child to attend school. The state must ensure that this right is not infringed by parents. There is even an obligation imposed on school teachers and directors to notify public child protection bodies if a child does not habitually attend school [...]. School non-attendance justifies intervention by public child protection bodies." (González Beilfuss, 2004)

SWEDEN

According to Chapter 6, Sec. 2 of the Swedish Children and Parents Code of 1949 (SCPC), ensuring that a child receives satisfactory education generally falls to the custodial parents. This obligation must be exercised in line with the best-interests principle (Chapter 6, Sec. 2a SCPC)

and with regard to the child's "age, development and other circumstances" (Chapter 6, Sec. 2 para. 2 SCPC) (Jänträ-Jareborg et al., 2004).

SWITZERLAND

Under Art. 302 of the Swiss Civil Code of 1907, parents are obliged to ensure both general education and appropriate vocational training for the child. They must exercise this duty with regard to the child's welfare, abilities, predispositions, age and the parents' economic circumstances. If necessary, parents are required to cooperate with the school and relevant public or community services (Arts. 301 and 302 Swiss CC) (Hausheer et al., 2004).

Research findings

The study made it possible to answer the questions posed at the outset.

Q1: Is a child's education considered part of parental responsibility/authority?

The analysis of the legal provisions governing children's education indicates that in all 21 legal systems examined, education is considered an element of parental responsibility/authority/care/custody. In the reports from six countries, additional regulations were identified concerning the implementation of parents' duty to ensure their child's education, particularly those indicating that the scope of the child's education may depend on the parents' financial capacity:

- Austria: The scope of a child's education depends on the financial capacity and social position of the parents.
- Belgium: Parents are required to contribute to their child's education according to their means.
- France: Parents must contribute to the education and support of the child proportionally to their means and to the child's needs.
- Lithuania: Parents are obliged to "create living and studying conditions for their children that guarantee the sound and secure development

of their mental and physical abilities” and to “co-operate with educational institutions in matters concerning their child’s education.”

- Portugal: The level of a child’s education is dependent on the parents’ economic resources.
- Switzerland: Parents must ensure the child’s education with due regard to their economic situation.

Q2: What is the legal source of this right and obligation?

The most common legal sources of the parental right and duty to provide a child’s education in the legal systems analyzed are provisions found in:

- children/family/parental responsibility codes or acts (Bulgaria, Denmark, England & Wales, Finland, Hungary, Ireland, Lithuania, Norway, Poland, Portugal, Russia, and Sweden);
- constitutions (Bulgaria, Denmark, Finland, Ireland, Italy, Lithuania, Norway, Poland, Portugal, Russia, and Spain);
- civil codes (Austria, Belgium, France, Germany, Greece, Italy, Lithuania, the Netherlands, Portugal, Spain, Switzerland); and education acts (Bulgaria, Denmark, England & Wales, Ireland, Lithuania, and Poland).

Q3: Does the law give children any ability to decide about their education?

Most reports indicate an indirect right of the child to influence his or her educational path. Parents, who are responsible for providing the child’s education, are often required to take into account: “the child’s aptitudes, abilities, inclinations, and developmental capabilities” (Austria), “the child’s abilities and interests” (Denmark), “the child’s age, intellectual needs, abilities and aptitudes” (England & Wales), “the child’s wishes and talents” (Finland), “the child’s abilities and inclination” (Germany), “the child’s best interests, particular capabilities and aptitudes, his or her own opinions and maturity” (Greece), “the child’s views, based on his or her age and maturity” (Hungary), “the child’s capacities, natural inclinations

and aspirations" (Italy), "the child's interests, abilities, best interests and needs" (Norway), "the child's reasonable wishes" (Poland), "the child's talents and abilities" (Portugal), "the child's opinion" (Russia), "the child's age, development and other circumstances" (Sweden), "the child's welfare, abilities, predisposition and age" (Switzerland).

Only four reports indicate a direct right of the child to decide on his or her education. In Hungary, when a child reaches 12 years of age, his or her participation in decisions about education is mandatory. In Italy, a minor aged 14 or older is granted greater freedom to choose his or her educational path. In Norway, when a child reaches 15 years of age, he or she is entitled to make all decisions concerning education without parental consent. In Poland, before making decisions regarding the child's education, parents must listen to the child (if his or her mental development, health and maturity allow it) and take the child's reasonable wishes into account.

Q4: Do the national reports refer to compulsory schooling or education duty?

Most reports describe, in general terms, the extent of compulsory school attendance or education in their countries. In Austria, parents must register the child for school at the age of six. In Bulgaria, parents are obliged to enroll the child in school and ensure school attendance; the parental obligation to educate the child continues until the age of 16. In Denmark, when a child reaches seven years of age, parents are required to provide education at school or at home for at least nine years. In England & Wales, parents must ensure that children between the ages of 5 and 16 receive "efficient full-time education," either at school or at home; failure to fulfill this duty may result in criminal proceedings. In Finland, every child is entitled to basic free education, which usually lasts nine years beginning in the year the child turns seven.

In France, children are subject to compulsory schooling between the ages of 6 and 16, and parents are responsible for ensuring their education until the child reaches majority or is emancipated. Non-compliance with this obligation can result in criminal prosecution. In Germany, the extent

of compulsory school attendance is defined by the public law of each *Land*. Parents are responsible for ensuring their child's education at school. Failure to fulfill this duty may result in administrative proceedings and can lead to educational measures. In Ireland, parents are required to ensure that their child attends a recognized school on a regular basis.

In Lithuania, parents are obliged to send their children to school at the age of 6 or 7 and to provide adequate learning conditions throughout the period of compulsory education (up to age 16). In Poland, a child's school duty begins at the start of the school year in the calendar year in which the child turns 7 and continues until the completion of primary school, but no longer than until the child turns 18. Parents are fully responsible for ensuring the child's regular attendance at school. In Russia, parents are obliged to ensure that the child receives "basic general education," although the report does not explain the precise meaning of this term. In Spain, teachers and school principals are required to notify public child protection authorities if a child does not habitually attend school. School non-attendance justifies intervention by child protection services.

Conclusions

The analysis of legal provisions regulating children's education indicates that in each of the 21 legal systems examined, education is considered an element of parental responsibility, authority, care or custody. Thus, the national legislation of these countries confirms the principle of the primacy of parents in educational decision-making. This principle is universally recognized and affirmed in international legal documents.

Due to editorial limits on the article's length, the author has restricted the analysis to a general overview of the regulations in 21 European countries, intended as an introduction to a more in-depth examination of issues related to children's education. In the longer term, a more detailed analysis of the legal provisions discussed, as well as other aspects of education, such as compulsory schooling, the scope of parental obligations, parental liability for non-compliance, school systems, types of schools,

curricula, forms of cooperation between parents and teachers, and reasons for differences in national regulations appears both justified and necessary.

Funding: This research received no external funding.

Conflicts of Interest: The author declares no conflict of interest.

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