

The principle of subsidiarity in general education

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Abstract

This article examines the often complex and tense relationship between the State and parents in the sphere of pupils' education. It argues that while the State is responsible for promoting the common good and protecting the best interests of the child, parents retain significant rights in selecting educational institutions, collaborating with educators, and aligning their child's education with personal, philosophical or religious beliefs. Central to this dynamic is the principle of subsidiarity. This article aims to critically analyse the legal, ethical and practical dimensions of the relationship between the State and parents in educational decision-making, with a particular focus on the principle of subsidiarity. The article examines how the principle of subsidiarity shapes the distribution of educational responsibilities among parents, the state and municipalities, using legal-scientific methods to assess its implications for the child's best interests and good governance. The State requires active parental cooperation, including the provision of relevant health information and the conclusion of formal agreements with educational institutions. The article pays particular attention to situations in which parents assume primary responsibility for their child's education at home and legal, ethical and practical implications of balancing public educational mandates with private family rights.

Keywords

general education • parental care • principle of subsidiarity • socially responsible state

INTRODUCTION

This study aims to underscore the significance of the principle of subsidiarity in the context of general education as a foundational element for fostering effective cooperation among key stakeholders—namely the state, educational institutions and parents. This cooperation is essential to ensuring access to education that aligns with the best interests of the child. From the perspective of legal science, the article employs general research methods—including analysis, synthesis, case studies and various forms of legal interpretation (grammatical, historical, comparative and teleological)—to explore how the principle of subsidiarity is applied within general education. Particular emphasis is placed on the allocation of responsibilities among parents, the state and local municipalities, as well as the principle's implications for good governance in the educational sector. The concept of subsidiarity originates in Catholic social doctrine, notably articulated by Pope Pius XI in 1931. It emphasises respect for individual freedom and the autonomy of smaller social units (Pius XI, 1931). Over time, the principle has evolved beyond its religious origins, becoming a key element of secular political philosophy. It has gained

particular relevance within federal systems and in the institutional framework of the European Union (Vischer, 2020¹). Subsidiarity is thus more than a legal or administrative guideline—it is a philosophical stance advocating that public order should be structured from the bottom up, rather than imposed from the top down. It affirms the primacy of small communities and individual initiative, standing in opposition to excessive centralisation and bureaucratisation.

RESEARCH RESULTS AND DISCUSSION

Foundation of the principle of subsidiarity

At the time of the adoption of the UN Convention on the Rights of the Child, France emphasised the primary responsibility of parents in the upbringing and education of their children. It also highlighted the principle of subsidiarity, whereby the role of the State in such matters should be supportive rather than substitutive (United Nations, 2007). In line with this, the United Nations Children's Fund (UNICEF) recognises the vital roles played by parents, teachers, school leaders and children themselves in the pursuit of quality education. National supervisory authorities also play a crucial part by ensuring that children, parents and educators are involved

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in education-related decision-making processes. (UNICEF, 2006). In the context of learning ecosystems, it means a shift from the traditional, top-down model of schooling toward a networked ecosystem of learning, where schools, families, communities and external partners all contribute to young people's growth. UNICEF declares that equitable and inclusive social services, particularly education, are effectively coordinated and managed at national and sub-national levels. Formal and non-formal education programmes are accessible and inclusive, with a focus on girls, children with disabilities, refugees, displaced and other vulnerable children, supported by trained educators and monitored learning outcomes. Learning environments are safe, healthy and free from violence, with preventive health measures and age- and gender-appropriate mental health and psychosocial support in place. Education planning and budgeting are informed by risk and conflict analysis to ensure continuity of learning for all children. Children, caregivers and communities are informed, engaged and actively involved in preparedness and programme design (UNICEF, 2020).

To guarantee and facilitate the exercise of children's rights, the State must support parents in fulfilling their child-rearing responsibilities. This includes, for example, the provision of accessible childcare services and facilities. Moreover, the State is obliged to take all appropriate measures to ensure that children whose parents are employed have the right to access such services, including early childhood education and other relevant institutions (United Nations, 2014). The state's obligation to provide free education is linked to the so-called principle of a socially responsible state. In court practice, an element of this principle is recognised in the protection of the weak, such as an element of the principle of a socially responsible state (Strupish, 2015). Specifically, the Senate said that the state and local government's duty to assist a person exists insofar as the individual, or those who can assist him or her, is unable to provide for himself or herself. This means that state and local government action (social assistance, childcare, etc.) is only a subsidiary source of social support. First, the person has the right and at the same time the duty—to build his or her life and well-being, to care for his or her children. In other words, the State stated, as a legal organisation of persons, already exists in its basic form to provide support to citizens on matters which, individually or in smaller organised communities, are not dealt with by society itself (LV Senate, 2011).

The principle of subsidiarity is included in the introduction to the Constitution of the Republic of Latvia, i.e. it indicates that everyone takes care of themselves, their loved ones and the common good of society by being accountable to others, future generations, the environment and nature (Constitution of the Republic of Latvia, 1993). It follows that a person is obliged to look after himself or herself and his or her relatives; that

is to say, the principle of subsidiarity defines the limits of the principle of a socially responsible State (Kovalevska, 2018). It should be noted that the principle of a socially responsible country can justify restricting the rights of one person in order to provide protection to others, weaker persons, including children (Maurer, 2005). The Senate recognises that children should be taken care of primarily by those who have created children, that is, parents. That means a family relationship axiom that's beyond discussion (LV Senate, 2010). The principle of a socially responsible state also means that an individual is connected to society and therefore also has obligations towards society. So an individual has to come to terms with the limitations of their discretion that are imposed to promote social cohabitation (Kovalevska, 2018). Public welfare according to legal scientist Egils Levits, covers the overall material well-being of society. This includes various measures aimed at increasing or redistributing the overall material benefits of the company between members of the public. Tax and social legislation play a central role, thus legitimately restricting, for example, the ownership of an individual guaranteed by Article 105 of the Constitution. However, the concept of 'welfare of society' also covers the intangible aspects necessary for the harmonious functioning of society. This includes, for example, the obligation to send children to school, which restricts the rights of parents guaranteed by Article 110 of the Constitution (Levits, 2000). The State also aims to promote prosperity. The concept of prosperity is broadly understood. It includes not only material well-being, but also, in particular, mental, social and cultural well-being. Prosperity is first a matter of individual desires and work, which the State cannot provide, but the State's goal is to help facilitate this. The reference in the Constitution to the fundamental values of society—freedom, honesty, justice, solidarity, equality is important. These values are necessary for the functioning of a democratic and legal state and its corresponding rights, since any rights are always based on axiomatic fundamental values and are also reflected in the structure of the state. That is, family and work are morally and legally recognised forms of social life and encouraged (Saeima of the Republic of Latvia, 2014). It should be noted that State institutions, have a duty to defend the values included in the Constitution's core. Otherwise, the State loses its legitimacy. The general moral obligation therefore, allows the State to adopt laws, which, in the light of considerations of proportionality and others, make it a legal obligation in certain constellations. For example, the obligation imposed by the Civil Law on parents to care for children and vice versa is primarily moral, and only where it is laid down by law, is it legal in nature. The duty of care for yourself and your loved ones must therefore be understood in the context of the primacy of a legal State and of a socially responsible country (Levits, 2013).

The principle of subsidiarity plays an important role in the legal relations of education, those between the parents of pupils and educational institutions. The basic objective of this principle is to determine the degree of independence of 'a lower level' institution (for example, family) in relation to 'a higher level' institution (for example, educational institution, local government, etc.) (Sand, 2020). At the same time, parents have a prior right to choose the kind of education that shall be given to their children (United Nations, n.d.). It is recognised also that the family has the primary responsibility for the nurturing and protection of children, in the best interests of the child, and that children, for the full and harmonious development of their personality, should grow up in a family environment and in an atmosphere of happiness, love and understanding, in which the rights of all members of the family are recognised (United Nations Human Rights Council, 2023). In accordance with the subsidiarity principle, specific issues must be addressed at the lowest or least centralised level. This means that 'together (or at a higher level) only what cannot be done as well and successfully individually (or at a lower level) must be done' (Rudevskis, 2020). Article 10 of the Law on Public Administration provides that public administration is to be organised in accordance with the principle of subsidiarity (Law on the Structure of State Administration, 2002). Subsidiarity is closely linked to the principles of proportionality (proportionality) and necessity. This makes it possible to ensure the link between the decision-making process and the public by regularly checking whether the activities carried out are justified in the light of national and local capacities. According to that principle, only activities that are more effective at the level of public administration concerned are carried out. This principle therefore requires that the public authority's responsibilities are exercised as far as possible by the power closest to the person (e.g. the child) and capable of ensuring effective implementation of the duties at a lower level of government (Cabinet of Ministers of the Republic of Latvia, 2015).

The principle of subsidiarity is also linked to Article 77.¹ of the Law on Administrative Procedure, allowing the authority against whose administrative act a challenge has been lodged to correct its own error, and Article 63.¹, to facilitate the use of the administrative contract as an instrument of administrative procedure (Briede, 2014). This is important in the European Union's (EU) education policy, given the wide variety of EU education and training systems (Council of the European Union, 2019).

Legal aspects of the relationship between the state, general education institutions and parents

The UN stresses that, in the context of children's rights, the term 'education' is broader because it goes far beyond formal education. It covers a wide range of life experiences that allow a child to develop their talent, personality, abilities and

finally live a full, satisfying life in society, both individually and collectively (United Nations Children's Fund, 2006).

Already in the mid-20th century, sociologists Pjers Bourieu, Jean Klods and Claude Passeron pointed out that any pedagogical effect depends on members of one, a social formality or group (diffuse upbringing), family group to whom the culture of that group or class entrusts such a task (family upbringing). They added that a system of agents directly mandated for that institute, whose direct or indirect, exceptional or partial function is upbringing (institutionalised upbringing) (Bourdieu and Passeron, 1990). Broadly speaking, the parenting process can be carried out by any member of the public who influences the child (so-called 'diffuse parenting', Mr. Burdier), from within the family (family parenting), or in a narrower context that involves state agents implementing institutionalised education in an educational establishment.

The compulsory acquisition of education may cause some tension between the parents of the child and the educational institution. The question therefore arises as to whether the compulsory nature of education say contributes to any competing rights between the parent of the children, to raise and educate his or her child according to his or her own discretion, and the educational establishment, which must implement the acquisition of education taking into account the content determined by the State and clearly regulated procedures. Historically, there was a view that the educational establishment was solely responsible for the intellectual or cognitive development of the child, while the family should be responsible for the emotional and moral development of the child (Mullaney, 1955). Raising a child was considered the most important parental right. Latvian law scholar A. Būmanis pointed out that, while family rights are absolute and exclusive, as are personal rights, they also have a relative side. In family law, the relationship between persons manifests itself in certain situations that can be defended against all third parties. So, for example, in parent-child relationships, parents can reclaim their children from anyone who illegally detains them (Būmanis, 1931). In the United States, too, until the late 19th century, the father played a leading role in the family, i.e. he was the head of the family and had almost unlimited power over family affairs, including children. The public authority, or state, did not interfere in that relationship.

However, with the development of human rights, which included the right of a child to be protected from violence, the dominance of parental power diminished. In the case law of the United States, it was already pointed out in the 19th century that education, at least at its basic level, is in the best interests of the child and also in the interests of society as a whole. In particular, if parents are indifferent to the best interests of the child and also to the public good, without having to ensure that the child is educated, then this becomes an important and serious political (public) issue. That is, the natural right

of a child's parents to control their children's lives cannot run counter to the common good or public interest, because it is they that help the child get a proper education (Teitelbaum and Birkhead, 2012). In the 20th century, Western European countries extended the rights of the child to social rights and focused on the welfare of children, including education. This shows that the State recognised the child as a (special) rightholder (Garsvāne and Ziemele, 2021).

While in Britain, for example, until the early 70s, there was a so-called 'hands off' approach. Parents had a broad right to choose how to address or enforce decisions in childcare, parenting and the country's parenting process did not intervene. As a result, domestic violence was not officially detected until the 1970s (Barnett, 2022), highlighting how the principle of subsidiarity in national and family relations was effectively ignored, because the State did not intervene in them. The other 'pitfall', when the country, on the other hand, when there is too much interference from the State, as was typical of the Soviet Union, for example, it was thought that the State was primarily responsible for providing the education for the child, while the parents had to comply with the requirements set by the State. For example, it was thought that the state was the one with the responsibility to provide education for the child, and the emphasis was on the fact that it was the state that was primarily responsible for the child's education, while parents had to accurately comply with the requirements set by the state. In the Soviet Union, the child protection system was based on labour productivity and collective consciousness (collective responsibility). This approach was based on the need for mothers (parents) to be able to work and to be exempt from childcare (Linno and Strömpl, 2023). This was so-called state paternalism, meaning the state took full responsibility for every child. For example, the Soviet Latvian Marriage and family Code stipulated that motherhood should be protected by the state. This meant that the mother in the Soviet Socialist Republic of Latvia should be honoured and respected by all the people, protected and supported by the state. The protection of the interests of mothers and children should be ensured through specific measures to protect women's work and health, creating conditions enabling women to reconcile work with mothers' duties, etc. (The Latvian Soviet Socialist Republic. Ministry of Justice, 1969). At the same time, communist ideology, as well as educational politics, were fundamentally not conducive to democratic values or the ability to promote critical thinking. The educational establishment was seen as a propaganda platform for Soviet ideology. This means that the principle of subsidiarity basically did not exist because the country was the one that dictated parenting, both in school and in the family. It must therefore be borne in mind that each case of a relationship of power must be carefully analysed, since there are sometimes conflicting forms of power (Giroux, 1988).

Finally, the expression of the will of the parents towards the child may be subject to restrictions irrespective of their beliefs if it is established that they could physically or mentally harm the child's future development (Saeima of the Republic of Latvia, 1998). Parental rights are not absolute and may be restricted by the State in the best interests of the child. At the same time, unless there are compelling arguments that the lifestyle offered by parents harms the child, there is no reason for the state to intervene (LV Senate, 2020). The European Court of Human Rights (ECtHR) has recognised in its case-law that, at the time when a family-child relationship is established, it is for the State to act in such a way as to maintain and develop that relationship, to establish legal safeguards to strengthen that relationship (European Court of Human Rights, 1994). This means that interference in family legal relationships must be mitigated as much as possible by the state. The ECtHR also points out that the State has broad discretion (margin of appreciation), to decide on matters relating to the care of children outside the family or, for example, to determine the legal framework for marriage, or the legal status of the child, etc. (Council of Europe/European Court of Human Rights, 2021). The 1976 judgement of the ECtHR in *Kjeldsen, Busk Madsena, Pedersen v. Denmark* (*Kjeldsen, Busk Madsena and Pedersen v Denmark*) is significant (European Court of Human Rights, 1976). Notably, in 1970, Denmark introduced compulsory sex education in public primary schools as part of a national curriculum aimed, among other things, at reducing the prevalence of unwanted pregnancies among teenagers and promoting respect for each other, as well as reducing abortion rates. These changes to the curriculum were imposed by the Danish Parliament Act. In other words, Denmark strengthened compulsory sex education in public schools in its legislation. When the bill was introduced to the Danish Parliament, the Christian People's Party tabled an amendment that would allow parents to ask for their children to be exempt from the programme, i.e. sex education. This amendment was rejected by the Danish Parliament (The Right to Education Initiative, 2020). On the other hand, the opposing parents complained with the European Commission on Human Rights ('the Commission'). In the complaint, the parents argued that the existing legal framework infringed their rights as parents in the provision of their children's education and did not comply with the European Convention on Human Rights (ECHR), Article 2 of the First Protocol and Article 14 (right to freedom from religious discrimination) and their right to respect for their private and family life (Article 8 ECHR) and Article 9, that is to say, their right to freedom of thought, conscience. The Commission brought an action before the ECtHR. For its part, the ECtHR concluded that Denmark had not infringed the right to education laid down in the First Protocol to the ECHR (Council of Europe, 1950) nor

had there been any infringement on the right to prohibition of discrimination, the right to freedom of thought, conscience and religion, the right to respect for one's private and family life, apartment and correspondence and the right also include the freedom to change one's religious beliefs or beliefs and to commit to one's religion or beliefs. The ECtHR came to the conclusion that the Danish sex education programme was intended to reduce the number of unwanted pregnancies among adolescents, and that the objective and nature of the education programme were linked to the legitimate interests of the State, not to endorsement, that is to say, the State provided objective facts and knowledge on that subject, not postulates or convictions. In other words, the curriculum was implemented in such a way that it did not defend certain moral conclusions, but the education was conducted in an objective, critical and pluralistic manner. This means that this type of education, unlike religious education, could have been implemented and this judgement also applies to private schools. (Child Rights International Network—CRIN, n.d.). The ECtHR therefore states the following reasons: (1) the development and planning of an educational programme falls, in principle, within the competence of the Contracting States to the ECHR and there is nothing to prevent it from containing information or knowledge of a religious or philosophical nature. (2) The second sentence of Article 2 of the First Protocol to the ECHR prohibits States from pursuing the objective of ideological processing, which could be regarded as disrespecting the religious and philosophical views of parents (European Court of Human Rights, 2017). As we can see, ECtHR case law gave recognition to educational institutions (State) being entitled to determine the educational programme, including sex education. The State must implement the education programme in such a way that it is not related to any endorsement etc.

In its judgement of 21 December 1977, *BVerfGE* 47, 46, the German Constitutional Court also stated that the school should refrain from any desire to impose any conviction on the youth, and parents have the right to request information from the school about what and 'how the sex education programme is taught.' The German Constitutional Court noted that the issue of fundamental rights is no less important in the legal relationship of education. That is, the boundaries between the fundamental rights of the child and the national task of exercising the right to education, as well as the right of parents to raise and educate their children themselves, are often fluid and difficult to determine. Their definition is essential for the exercise of a given fundamental right, and it follows that the legislature has the task of defining them. That is, it is for the legislature to define educational objectives, tasks, etc. Germany's Constitutional Court added that the legislature must also allow teachers to conduct the teaching process themselves under academic freedom (the methodical

implementation of lessons should be flexible and adaptable to the specific, current situation) (Schwabe and Geissler, 2018). It should be added that the State is obliged to remain neutral. It must treat any child with tolerance and respect, as indeed with an adult. It must not engage in any attempt to suppress someone's conscience. Law scientist J. Rudevski, a law scholar, also points out, referring to the case-law of the ECtHR, that the right to education is not absolute. For example, the case of *Lautsi and Others v Italy* was concerned with the presence of crucifixes in Italian school classrooms. In that case, the ECtHR found no infringement of the second sentence of Article 2 of the First Protocol ('In carrying out the functions which it assumes about education and training, the State shall respect the right of parents to provide their children with education and training which is in accordance with their religious beliefs and philosophical beliefs'). It has been established that the ECtHR is obliged to respect the decisions of the domestic authorities on such matters, including the place devoted to religion in the course of teaching, provided that those decisions do not lead to child indoctrination and that the ECtHR recognises the wide discretion of the States (Rudevskis, 2020).

CONCLUSIONS

In summary, it must be concluded that the relationship between the State and the parents (family) of the pupils is complex, with some tension. It is the State that implements the so-called common good, or acts in the public interest as a whole, as well as the best interests of the child. Parents, on the other hand, have a wide right of choice. For example, in the education process, to choose an educational institution and an educational programme, collaborate with educators and have the right to know what is taught in an educational institution and how.

In a democratic country, education, too, has an important subsidiarity principle, from which it follows that the country forms the framework of education programmes in a way that maintains neutrality, for example by not propagandising an ideology, and that the family has the right to raise children in accordance with its philosophical and religious beliefs.

The right of parents to choose an educational institution is also not restricted. Parental and local authority supervision is exercised, which plays an important role in joint decision-making, etc. Furthermore, the principle of subsidiarity is also a prerequisite for the independence of the educational institution (for autonomy, which is corroborated in Section 28 of the Education Law—the educational institution is independent in the development and implementation of educational programmes, selection of employees, financial, economic and other activities in accordance with the Education Law, other laws and regulations and by-laws of the educational

institution). The State, for its part, has imposed an obligation on parents to cooperate with the educational organisation where the child is studying, including the obligation to provide information on the child's health and other circumstances which may affect the acquisition of the education, as well as the possibility of agreeing or concluding a contract with the educational establishment for the education and care of the child in the educational establishment.

A particularly wide field of co-operation between a general educational institution and parents of educatees opens up in a situation where the pupils learn the content of the education provided for in the first part of the primary educational programme in the family (for which his or her parents are responsible), as in such case the parties involved must agree on clear rules for co-operation between them.

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