

Module 10: Comparative review of law regulating school systems in Europe

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**M.S. Comment: Primary focus of this module – constitutional and legislative response to the challenges arising in European education systems, the functions, the types, and the effectiveness of legal regulation. We focus on domestic regulation of school systems rather than their separate elements. Out of the scope of this module: judiciary response (Module 14), constitutional rights (Module 6), federal – regional competences (Module 3), administration and governance (Module 9).*

Module on: Comparative review of law regulating school systems in Europe

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Lecture 1 – Constitutional framework for national school systems

1. Common European principles of education manifested through national constitutions – Origins of transnational education law in Europe.
2. Reflection in the national constitutions of the three pillars of the right education: minimal duration of free education; freedom of parents and school autonomy; state responsibility for the provision of education.
3. Constitutional values of education: citizenship, inclusion, education as a public good.
4. Constitutional guarantees of the overall accessibility of public education – Non-discrimination, admission, selection procedures – constitutional response to the situation when there are more applicants than the maximum capacity of the school.
5. Constitutional guarantees of school funding – Fixed percentages of revenues or spending – Established stipends.

Lecture 2 – Educational legislation: patterns of decentralization

1. Regulatory approaches in unitary and federal states –Regulatory levels: (federal) national, regional, provincial, district, city, a single school, or a cluster of schools.
2. Dynamics of decentralisation (geographic divide West to East, chronological development post 1980s, starting from the U.S. and West European, than to East European countries) – Identification of the system components which are best managed at the highest and the lowest levels – Incentives for decentralization reforms (financial reasons, civil society pressure for more diversity, learning from best practices of other states).
3. Different models of decentralization of educational legislation – (1) Centralized: Latvia, Lithuania and Romania: little or no inclination towards accountability despite the control on accreditation of schools. – (2) Partially decentralized: post-reform Bulgaria and Estonia: the state assumes the overall responsibility for the supervision and inspection of schools and the accountability expands to the use of national unified tests and international tests. – (3) Decentralized, high rate of decentralization and accountability: Czech Republic, Poland and Slovenia. Educational systems are based on a three-tier governance model. The State is mainly responsible to draw up national curricula, promote further development of schools, and monitor them. The responsibility of school resources (financial and other) is shifted to the local level. School governing bodies have autonomy in managing their funds and in planning their activities. This

'multi-level governance' model requires a high level of accountability in order to coordinate different stakeholders in managing schools. Thus, the internal and external assessments take a fundamental role in enhancing school performance.

Lecture 3 – Accountability structures inherent in education systems of Europe

1. From state control to self-assessment and monitoring – From school performance to school outcomes – From state control over resources or over teaching methods, to the establishment of standards to evaluate students' outcome.
2. Limiting state control to the assessment of standards of academic achievement in core subjects (reading, writing, mathematics and science) – National examinations, standardized tests on the level of learning of students in reading, mathematics and science, and in other core subjects, external evaluations of schools by the public inspectorate and by non-governmental entities, self-assessment techniques – Transparency of the assessment of school performance (Sweden, United States and United Kingdom (high) contrary to Austria, Greece and Italy (low)).
3. Results-based accountability – (1) 'consequential systems' based on rewards and sanctions, high-powered incentives such as prizes or in financial penalties (both for schools and for the leaders and teachers), social recognition, designed to push schools to achieve high performance. – (2) Reporting systems having the primary intention of communicating the results of the assessment to the school and other stakeholders.
4. From public bureaucracies to market mechanisms in the coordination and control of educational services.

Lecture 4 – Typology of schools as the main elements of the school system: Diversity of regulatory approaches

1. The dualism of public/private and state/church relations in European education systems – Binary systems of education (clear division between public and private schools – Germany, Russia) – Multipolar systems (no clear distinction – UK).
2. Legislative approaches to regulate public and private education – Balancing between the state's obligation to provide free education and the rights of parents to choose education in accordance with their convictions.
3. Public / private education divide in the context of public law / private law divide – For example, the binary structure of the Dutch education system is linked to the dichotomy makes between public law relating the vertical-hierarchical relation between state and citizen, and civil law that concerns the horizontal relation among individuals, including civil law corporations.
4. Legal distinction between the choice for a school type and the claim to admission to a specific school.

Lecture 5 – Compulsory education as an element of school systems defining legislative approaches to freedom of education

1. The duty to attend school in legislation of European states – The earliest example, the Prussian Constitution of 1848/1850.
2. The minimum education is guaranteed in all European states – variations in the right to homeschooling and to establish private schools.
3. Compulsory education does not mean anymore that every child has to attend the public local school, but that the right of every child to a minimum education is guaranteed. Right to a minimum education which can be fulfilled within the family (e.g. by homeschooling), in private schools and in state schools. In state schools it is free of charge. The state can set standards for homeschooling and for private schools. The state can develop and implement curriculum guidelines and qualification requirements for teachers in private and in state schools. The state can offer central exams and certify the results.
4. Different legal approaches on the ability of private schools, being of equal quality, to replace compulsory attendance in public schools. Although recognised in some constitutions (Austria, Finland, Georgia, Ireland, Italy, Poland, Portugal, Spain) often interpreted by courts in a

- restrictive manner. Example: German constitutional court has interpreted the authority of the state to “supervise the school system” so that it excludes the practice of home education.
5. Different legal approaches whereby countries recognize the practice of home education as complying with the compulsory attendance law or as a legal exception to that law: No regulation (England, Wales, Finland, Georgia, Kosovo) – Low regulation (Russia) – Moderate regulation (Austria, Australia, Azerbaijani, Belgium, Denmark, Ireland, Northern Ireland, Norway, Portugal, Slovenia) – High regulation (Albania, Belarus, Czech Republic, Estonia, France, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Sweden) – Homeschooling not permitted (Bulgaria, Germany, Greece, Spain) – Homeschooling not formally recognized or rare (Bosnia-Herzegovina, Malta, Romania, Ukraine).
 6. Legal liability of parents for not ensuring their children’s systematic school attendance – Punishable course of action and established liability – Mismatch between the established lawful homeschooling / private schooling practices and the operation of the national enforcement personnel –The extent to which a state permits or impedes parents’ ability to homeschool is indicative of that government’s willingness to incorporate pluralism, parental autonomy, and freedom in education.

Lecture 6 – Neutrality, distinctiveness and appreciation of diversity as the main legal principles of school systems in Europe

1. Legislative guarantees of political and ideological neutrality of public education – Religious neutrality (France), ban on political propaganda (Russia) – De-ideologization of Post-Soviet education systems: legal tools and entrenchment in the legal system Distinction between citizenship education and political indoctrination.
2. Negative neutrality (political and social interests are not represented within the educational system) – Positive neutrality (all social interests are equally represented within the educational system, the state has the duty to balance the different political and social interests).
3. Education responding to the needs of an open, free and pluralistic society – Example: public education must by law pay due respect to everyone’s religion or belief (Article 23, subsection 4 of the Dutch Constitution).
4. Legislative approach to regulate the lack of neutrality – Religious instruction in public schools (Germany).
5. Legislative response to the conflict over values of education – Decentralisation of the issue of contentious school uniform in Russia.
6. The right to education as a right to distinctiveness – Approaches to accommodate distinctiveness: (a) external plurality – the state leaves it to the ‘market’ to represent the different social interests in education; (b) internal plurality – all relevant social interests are represented within a public school system; (c) mixed – a certain internal plurality is guaranteed in state schools, but the right to private schooling is also acknowledged.

Reference:

Charles L. Glenn, Jan De Groof (eds.) *Balancing Freedom, Autonomy, and Accountability in Education* Volumes 1 – 4 (WLP, 2012)

Eurydice – Description of national education systems of 42 European countries
<<https://webgate.ec.europa.eu/fpfis/mwikis/eurydice/index.php/Countries>>