

Implementation of the Right to Education: General Education in Lithuania

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Summary

The article presents a review of national legal sources related to the right to education in Lithuania and consists of two parts. The first part of the article reviews the legal regulation and legal acts that embed the right to education on a national level. The second part of the article presents the legal system of Lithuania in the context of the right to general education and the institutional system of education. The importance of the state role insuring the proper access and availability of the right to education is introduced in light of international legal framework, which makes the right to education a universal right of an individual, and a binding obligation of the state to make such a right generally available and accessible.

I. Introduction

Right to general education is undoubtedly one of the most fundamental rights proper implementation of which is essential for the wellbeing of any society. Education itself is a human right, with its own content and protected by the state.¹ The educational system of Lithuania, as well as of other countries of Europe has undergone significant alterations over the last decades, which were “initiated through legislators, governments, the international community, the socio-economic environment, donors and schools themselves”.² Various provisions or international instruments on human rights make education an inalienable universal right. The international legal framework, regional integration on the European level have triggered irreversible processes of ‘*harmonisation*’ which refers to “the integration process that does not lead to the creation of uniform law, but rather the creation of common goal”.³ The most important guidelines for the content of the right to education, provided in the International Covenant on Economic, Social and Cultural Rights (1966)⁴, and then reaffirmed in almost all treaties or other international documents, related to human rights, are qualitative measures and the specified obligations of the states in respect of this right,⁵ which consist of four “A’s” – availability, accessibility, acceptability and adaptability.⁶ Availability means that states must ensure a free and compulsory, good quality education available for all children, with safe schools and appropriate infrastructure and facilities. Accessibility means the state’s duty to eliminate any discrimination on the basis of internationally prohibited grounds: ethnicity, economic status, gender, etc. Acceptability means that education

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1 B.Pranevičienė, A.Pūraitė, Right to Educatio in International Legal Documents, ISSN 1392–6195 (print); ISSN 2029–2058 (online); Jurisprudencija [Jurisprudence] 2010, 3(121), p.134;

2 Charles L.Glen, Jan De Groof, Balancing Freedom, Autonomy and Accountability in Education, Volume 2, Wolf Legal Publishers (WLP), 2012, p.I;

3 Charles L.Glen, Jan De Groof, Balancing Freedom, Autonomy and Accountability in Education, Volume 2, Wolf Legal Publishers (WLP), 2012, p.V;

4 International Covenant on Economic, Social and Cultural Rights, <http://www2.ohchr.org/english/law/cescr.htm>

5 B.Pranevičienė, A.Pūraitė, Right to Educatio in International Legal Documents, ISSN 1392–6195 (print); ISSN 2029–2058 (online); Jurisprudencija [Jurisprudence] 2010, 3(121), p. 133–156;

6 The concept of these four “A’s” was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomaševski, more about this concept in K.Tomaševski „Human rights obligations: making education available, accesible, acceptable and adaptable”, Right to Education Primers No. 3, Swedish International Development Cooperation Agency, Gothenburg, 2001.

should be acceptable to children, parents and teachers, with relevant content and methods, respecting everyone's rights. Adaptability imposes the obligation to ensure that education is adaptable to the child's specific situation and ability (especially for minority, children with disabilities, child migrants).

International human rights instruments make education, as such, not only a right, but also a responsibility for the child, the child's parents (or guardians) and, of course, the states. For example, education must not only be provided (at least at an elementary level) for free, but it is compulsory for all children between certain ages (depending on the national regulations of the states), and the obligation is, therefore, imposed on parents to ensure that their children are both enrolled at and attend school.⁷

The right to education in Lithuania is inherent from a constitutional duty to learn, as one of the requirements raised for children to educate themselves until the age of 16.⁸ The reform of the system of general education in Lithuania has been in process for several years now. Especially intensive changes in legal regulation have been taking place within the past decade. Therefore it is purposeful to evaluate how the changes of legal regulation of general education coincide with the common principles and goals, raised by the international legal framework and European integration.

The object of the research: The system of the legal regulation of the general education in Lithuania.

The objective of the research: To systematically analyze legal framework of general education in Lithuania.

The article aims to:

- analyze national laws, which establish system of education in Lithuania;
- introduce Lithuanian system of general education.

68 **Methodology of the Research:** Methods of systemic and analytical-critical analysis were applied for the research of the article. In addition, methods of documentary analysis and generalization were used.

II. Legal Background of the Right to General Education

Constitutional Regulation of education in Lithuania goes back to 1922, when the first permanent Constitution of the Republic of Lithuania was adopted. Until then education and individual rights to science and education were not subjects of legal regulation.

After re-establishment of the independent State of Lithuania, the new Constitution of 1992 determined the main aspects of structure and operation of the educational system of Lithuania. Constitution of the Republic of Lithuania ensures and protects the right to education. Article 40 determines that there are state and non-state educational institutions. The State, according to this article, carries an obligation to oversee the activities of such institutions. Article 41 of the Constitution provides that: "education shall be compulsory for persons under the age of 16; education at State and municipal schools of general education, vocational schools and schools of further education shall be free of charge; higher education shall be accessible to everyone according to his individual abilities. Citizens who are good at their studies shall be guaranteed education at State schools of higher education free of charge"⁹. Secondary education is not only a right, but also a duty, which means that children are required to attend school until they are 16 years of age. Freedom of enunciation, culture, science and research, as well as state

7 Sally Varnha, Joan Squelch, *Education and the Law*, Vol. 20, No. 3, September 2008, 193 – 208; p. 193; ISSN 0953-9964 print / ISSN 1469 – 5774 online;

8 Rūta Petkuvienė, *Švietimo tiekėjų tinklo organizavimas Lietuvos mokyklose, atsižvelgiant į teisę mokytis* [Organizing of the network of education providers in Lithuania, taking into account the right to education], *Jurisprudencija* [Jurisprudence], 2008 5(107), p.36;

9 Constitution of Republic of Lithuania, Article 41, *Official Gazette*, 1992, No. 33-1014; (<http://www3.lrs.lt/home/Konstitucija/Constitution.htm>).

support for culture and science is embedded in Article 42. Article 45 embeds an important provision related to independence of ethnic communities while managing issues of their ethnic culture and education. According to Article 38 of the Constitution “the right and duty of parents is to bring up their children to be honest people and faithful citizens and to support them until they come of age”¹⁰, which encompasses the duty of parents (or guardians) related to the right of education to make sure that children attend school and acquire proper schooling.

The right to education is further detailed in other national laws adopted by the Parliament and legal regulations, such as governmental decisions, orders of the Minister of Education and Science, legal regulations adopted at municipal levels. Policy of education is embedded in guidelines and strategies, that are adopted at the level of national and municipal governments and that serve as required prerequisites for future legislation and legal regulation. For example, the Strategy of Education for the year 2003 – 2012 which embedded long term guidelines for reorganization of the educational system.

The main law regulating the educational system of Lithuania is the Law on Education¹¹, which determines aims and principles of the system of education in Lithuania, basis for structure, activity, relations of the educational system, as well as state obligations in the system of education. The Law was adopted in 1991 and has been significantly amended since then – only in 1994 the notion of educational institution was defined, educational institutions were separated into state (formal) and non-state (non-formal) institutions, in 2003 the Law embedded notions of formal and non-formal institutions, self-education and assistance for students, teachers and schools, etc.

It is important to emphasize, that by making education compulsory until the age of 16, the State also obliges to provide such education free of charge (Article 41 of the Constitution). The system of financing of the education works, is that each individual who comes of school age is provided with the so called – “student’s purse”, i.e., the amount necessary to school a child in an educational institution. The “student’s purse” is ‘tied’ to the student notwithstanding the fact if a student chooses to go to a state or a non-state formal education institution. The difference between state and non-state formal school is that the state school shall always be free of charge, a non-state institution may charge their students any extra fees according to an inner order of that particular non-state school. Therefore, students are not discriminated when it comes to the financing of their education.

Another important aspect of national legislation in regards to financing of the general education is that schooling is not limited by family income. Article 41.2 of the Constitution of Republic of Lithuania states that “education at State and municipal schools of general education, vocational schools and schools of further education shall be free of charge”¹². Article 70.1 of the Law on Education of Republic of Lithuania provides that “education in state and municipal school according to pre-school, elementary and secondary programs and vocational programs to acquire first qualification are free of charge”¹³. Therefore, since formal elementary and secondary education in state school is provided free of charge by the state, there is no real issue of whether any parents are able or not to afford schooling for their children. There are private schools that do charge a tuition fee for attending, but such schooling is free by choice, and therefore, only those who can pay the tuition can choose to school their children in private schools.

10 Constitution of Republic of Lithuania, Article 38.6, Official Gazette, 1992, No. 33-1014; (<http://www3.lrs.lt/home/Konstitucija/Constitution.htm>).

11 Law on Education of the Republic of Lithuania, Official Gazette, 1991, No. 23-593;

12 Constitution of Republic of Lithuania, Article 41, Official Gazette, 1992, No. 33-1014;

13 Law on Education of Republic of Lithuania, Article 70.1; Official Gazette. 1991, Nr. 23-593;

III. System of Education in Lithuania

According to Article 6 of the Law on Education of Republic of Lithuania¹⁴, the educational system of Republic of Lithuania consists of formal and non-formal education, self-education, and educational assistance. The extent of the educational system has expanded over time and currently each of the branches of educational system encompasses different stages, levels and forms of education:

Formal education:	Non-formal education:	Self-education:	Educational assistance:
Primary education; Main education; Secondary education; Formal vocational education; Higher education.	Pre-school (2 types); Other non-formal education of children and adult education (as well education supplementing formal education).	(no diversification)	Vocational orientation; Informational, psychological, social, pedagogical, special-pedagogical and special assistance to education; Health care in school; Consultancy, requalification of teachers and other assistance.

1 picture. Stages of the Educational System of Lithuania

The content of this analysis describes three levels of formal education: primary, main and secondary:

Elementary and secondary levels of education comprise two mandatory parts of the formal educational system of Lithuania, and are divided into primary, main and secondary levels of education. According to the Constitution of Republic of Lithuania education until the age of 16 is mandatory. Primary education is commenced when a minor turns 7 during the year of commencement of primary education. After completing primary and main education levels, the students may choose formal secondary or formal vocational education. As a general rule, all those who continue their education on a secondary education level, complete their education at age 18.

All together elementary and secondary education lasts for 12 years. Primary education continues for 4 years and is comprised of 4 primary level grades. Main education continues until 10th grade and continues for another 6 calendar years. Secondary education continues for another 2 calendar years until the 12th grade. Elementary and secondary education is mostly provided and fully funded by the state public schools. Only a very small percentage of elementary and secondary education is provided by privately established schools.

The main purpose of *primary education* is to provide for an individual the basics of moral and social maturity, culture (as well ethnical), elementary literacy, help in preparing to continue main education. A child commences primary education when he or she becomes 7 years of age in the year of commencement of primary education. Under request of the parents, primary education may be commenced only one year earlier, i.e., at the age of 6. Law on education provides for an optional educational model for those minors who have special conditions and can be educated under conditions of home schooling.¹⁵

Main education is provided to minors who have acquired primary education and is directed at providing maturity of moral, socio-cultural and civic nature, general literacy, technology skills, developing national awareness, acquiring goals and ability to make a decision related to choosing the next level of schooling (secondary or vocational). Main education continues for 6 years and is divided into two parts

14 Law on Education of the Republic of Lithuania, Official Gazette, 1991, No. 23-593;

15 Law on Education of the Republic of Lithuania, Article 9.1,3,4; Official Gazette, 1991, No. 23-593;

of 4 and 2 year periods. First period of four years encompasses a period of general studies, the second period encompasses two years of general studies, which can include modules of vocational education programs (which are later credited for during the period of vocational education); main education can be implemented together with education of art, music, sports and other.¹⁶

Secondary education is provided to children who have acquired main education and is aimed at providing general objective, socio-cultural, technological literacy, developing moral, national, and civic maturity, elementary professional knowledge. Secondary educational level continues for a period of two years according to a program that consists of obligatory or optional courses, as well as educational module related to developing professional competency (in such a case secondary education may last longer). The period of secondary education is completed after the period of two (or more, if applicable) years and taking secondary level final exams.¹⁷

All schools in the system of formal education are differentiated between state-schools (public schools) and non-state schools (private school). This differentiation is based on who is the establisher of a certain school. In general terms, a state-school is a school that is established by the state institutions (the Parliament, the Government, the ministries, other state institutions) separately or together with other state institutions or individuals. The state-schools are also divided into schools of state and municipal level (again, this differentiation is made according to the institution that established). There are currently 32 state level schools and 1241 municipal school registered in Lithuania¹⁸.

A non-state school is a school that is established by institutions or entities or individuals other than Lithuanian state institutions. In general, any individual, private or public entity can establish a non-state school, as long as they meet the norms of establishment for schools foreseen in the hygienic norms determined by the order of the Minister of healthcare¹⁹. These norms determine the number of students allowed, requirements for classrooms, other teaching and general facilities, teaching equipment, size of facilities, commencement and conclusion of classes, etc.

Formally, state schools have better off conditions than non-state schools, because the latter are burdened by high costs of establishment and further maintenance. Both state-schools and non-state formal education institutions are fully supported from the national budget, because the way the financing of the education is set up, i.e., how the “student’s purse” is ‘tied’ to the student no matter which school he or she chooses. However, non-state school might charge extra costs for attending. As a rule almost all non-state formal institutions are public entities, and their establishers are individuals or public non-profit institutions. The general opinion is that the formal non-state educational institutions provide an education more oriented towards religious, philosophical, secular outlooks of parents and children.

Article 29 of the Law on Education provides that a person has a right to choose a state, municipal or non-state school, as well as change it. The order according to which a student is admitted to a state or municipal school is retained after the institution which holds the rights and obligations of the owner, according to the accepted general criteria. There is a right of priority according to which a student is admitted to a school and that is decided according to the place of residence of a student (if he or she resides in the area of a certain state or municipal school). On request of parents (or guardians) a student may be accepted to another school, provided that there are spaces available at the newly selected school. A minor under the age of 16 cannot terminate an educational program according to the program of mandatory education. A school which cannot provide a proper education due to objective reasons (insufficient psychological, special educational, special or social pedagogical aid), with consent of the parents (or guardians) and in coordination with psychological and child protection services, may offer that minor to choose a different educational institution.

16 Law on Education of the Republic of Lithuania, Article 10, Official Gazette, 1991, No. 23-593;

17 Law on Education of the Republic of Lithuania, Article 11, Official Gazette, 1991, No. 23-593;

18 Register of Scientific and Educational institutions in Lithuania, http://www.aikos.smm.lt/institucijos_registr.htm;

19 Order of the Minister of Education of Lithuania, Official Gazette, 2011, No.: 108-4585;

Non-state school accepts their students according to the criteria set by that particular school. Parents (or guardians) of the student choose such a school on their own free will and consent under acceptance policies provided by the non-state schools. However, a student is free to change his or her educational institution at any time, if he or she so desires.

There is a possibility to educate the children at home, however, this can only be done only under certain conditions. Article 9.3 of the Law on Education is related to elementary education and it states that in individual cases when a child who has come of age when he or she is required to start elementary education, and if the child requires specialized help of qualified specialists, and a physically sensitive regime, on request of parents (or guardians) and according to an order confirmed by the minister of education and science, a child can be educated in pre-school institutions or at home, according to a specialized program fitted to the individual educational needs of the child.²⁰

Article 35.1 of the Law on Education provides that when a child who due to illness or a pathological state is unable to attend a secondary level formal educational institution, conditions are provided at a stationary health care institution or at home to acquire education and evaluation self sufficiently. The order of such education is prescribed by the minister of education and science in coordination with the minister of health care.²¹

Over the period of independence, some issues concerning the structure of schooling were observed, which are currently being resolved by implementing the optimization program. In 2004, following previous recommendations regarding the system of formal education, the process of optimization of the educational network was initiated. It is foreseen that by 2015 the mandatory education shall only have the levels of – primary, pro-gymnasium, main and gymnasium levels, i.e., there shall be no more secondary level. From the time of the adoption of the Law of Education in 1991, it has since been amended 23 times. Some of the changes were related to the system of general education were minor and insignificant, however others were essential to the reform of the whole system of education, for example, a unified system of state final exams was established, the current system of education was finalized.

First, the aim of the reorganization of the educational system is to optimize the number of schools within the educational system, in order to maintain an optimal balance between the number of students in a class, within a certain administrative region (city or rural area). This, in some cases, poses certain issues in context of the optimization of schooling institutions in more remote areas. The dynamics of demographics influence the process of optimization of educational network by putting off the children of rural areas in a slightly disadvantageous position by distancing the school itself and making it less accessible for children living in rural areas, than those who live in the cities. However, the state compensates this disadvantage by providing an effective system of school transportation, when each administrative district ensures that every minor of school age is properly transported and attends school. Therefore, the children living in more remote areas are not in any way discriminated in light of their right to education.

Second issue related to education of children that has become apparent over the last two decades – is ensuring the right to education in light of quite vast immigration processes. The state of Lithuania does not only carry a constitutional duty to provide education, it also makes education mandatory for all until the age of 16, it also puts an obligation on parents (or guardians) to make sure that their minor actually have proper conditions to access the obligatory education provided by the state. However, vast number of adults that have emigrated to foreign countries has influenced the status of the children in respect to their to education and proper schooling. In some cases, when adults emigrate from the country for longer periods of time without their children, the minors are left in care of their close relatives (grandparents, aunts, uncles, etc.). Until now there is no official tracking system that would ensure monitoring of the children who are temporary left without the care of their immediate parents,

20 Law on Education of Republic of Lithuania, Article 9.3; Official Gazette, 1991, Nr. 23-593;

21 Law on Education of Republic of Lithuania, Article 35.1; Official Gazette, 1991, Nr. 23-593;

there is no duty of parents to notify the school about the change of their child's immediate caregivers; the child is usually tended to with less discipline and demand. Hence, in some cases the children might develop bad disciplinary habits by skipping classes (few per day, or full days per week), the school cannot take proper measures in demanding the immediate parents in taking better measure to ensure that children attend school.

IV. Conclusions:

1. The international legal documents have formed a unanimous provision regarding the right to education, that it shall be universally accessible and available globally as well as nationally. It has also played a vital role in affirming the right to education by creating universal constitutional principles which have been transferred into the national legal systems of the states. Right to general education has a constitutional status in Lithuania and this constitutional right determined providing a balanced set of legal norms that regulate responsibilities of parents and children on the one side, and the state on the other side.
2. General education in Lithuania is fully accessible. Legal regulation both on constitutional and normative level ensures implementation of this right despite income, disabilities, religion, ethnicity, etc.
3. Since ensuring the right of education is not only a right but also a duty, legal provisions of Lithuania imposes a constitutional duty to provide education (for the state), makes education mandatory for all until the age of 16, puts an obligation on parents (or guardians) to make sure that their minor actually have proper conditions to access the obligatory education provided by the state.

V. Literature:

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