

# Constitutional Right to an Education in Selected Countries

Argentina • Brazil • China • Egypt • England and Wales • France • Germany  
Greece • India • Israel • Italy • Japan • Lebanon • Mexico • New Zealand  
Nicaragua • Russian Federation • South Africa  
Sweden • Turkey

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# Comparative Summary

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This report describes the law of twenty jurisdictions on the right to education, and whether the right appears in the national constitution or in statutory law. The jurisdictions selected for review have different constitutional arrangements and reflect diverse political, cultural, and economic experiences.

All of the surveyed jurisdictions recognize the right to education. Fifteen of them provide for the right in their national constitutions, while five provide for the right through legislation.

While the several surveys in this report reflect interesting diversity in how the right to education is recognized in varied jurisdictions around the globe, some of the surveys are of particular interest.

South Africa's 1996 Constitution enshrines the right to education in the Bill of Rights chapter to that Constitution. Courts in South Africa have held that the right to a basic education establishes an affirmative obligation on the state to provide a range of educational resources, including schools, classrooms, teachers, and textbooks.

In India, the right to education was added to the Constitution in a 2002 amendment; the Constitution now obligates the government to provide free and compulsory education to all children between the age of six and fourteen years, although the government may determine the manner in which such free and compulsory education is provided.

The Russian Federation's Constitution provides for a capacious right to education from preschool through the secondary level, as well as a right on a competitive basis to higher education. Scholars have noted that while the government is obligated by statute to provide education in a manner free of discrimination, in reality there is a lack of equal opportunities in access to education attributable to factors including regional differences, a lack of teachers in some areas, differences in teachers' qualifications, differences among schools in access to equipment and technology, and the unavailability of teachers and opportunities for learning in the languages of minorities living in Russia.

Two of the surveyed jurisdictions, New Zealand and England and Wales, have no written constitution. Both have what are described as unwritten constitutions derived from certain fundamental statutes, common-law decisions, and institutional conventions. In England and Wales, the right to education is found in the United Kingdom's Human Rights Act 1998, a statute that codifies most of the substantive rights in the European Convention on Human Rights, including rights frequently found in written constitutions. In New Zealand, the right to education is provided through the Education Act 1989, which is not a statute with constitutional status. The New Zealand Court of Appeal has indicated that there is no freestanding, general, judicially

enforceable right to an education that meets some abstract standard; only those rights established by the Education Act are justiciable.

In the case of Germany, the German Basic Law constitutes the federal republic's national constitution. The Basic Law provides that while the country's educational system is supervised by the national government, education falls within the competencies of the individual German states. While most of the German states in turn have chosen to provide for a right to education in their state constitutions, other states have provided for the right through statutory law.

# Argentina

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The 1994 National Constitution of Argentina provides that all individuals have the right to teach and learn, according to the laws that regulate the exercise of such right.<sup>1</sup> It further provides that Congress must enact legislation to provide for general and university education, and adopt laws on the organization and basis of education aimed at national unity and respect for particular provincial and local situations.<sup>2</sup> Educational legislation must ensure that the state fulfills its responsibility to provide equal access, with no discrimination of any kind, to a free public education; the state must also ensure the autonomy of national universities.<sup>3</sup>

In furtherance of the constitutional mandate, Law 26,206 on National Education was adopted on Dec. 14, 2006, to establish that education is a public asset and an individual and social right guaranteed by the state.<sup>4</sup> It also provides that public funds assigned to education in the national budget may not be less than 6% of GDP.<sup>5</sup>

Mandatory education runs from four years of age through high school.<sup>6</sup> However, national and provincial governments must make universal education services available to children at three years of age.<sup>7</sup> Elementary school must offer full and extended-day education.<sup>8</sup>

Children and adolescents in prisons have the right to education at all levels.<sup>9</sup> Those who for health reasons cannot attend school at the elementary and secondary level regularly for at least thirty days have the right to education in their home or hospital.<sup>10</sup>

The state must secure the material and cultural conditions for all students to reach good achievement levels of instruction, regardless of their social origin, geographic residence, gender, or cultural identity.<sup>11</sup>

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<sup>1</sup> CONSTITUCIÓN DE LA NACIÓN ARGENTINA art. 14, BOLETÍN OFICIAL [B.O.], Jan. 10, 1995, <http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/804/norma.htm>, archived at <https://perma.cc/JG7K-VCJR>.

<sup>2</sup> *Id.* art. 75.18.

<sup>3</sup> *Id.* art. 75.19.

<sup>4</sup> Ley 26.206 de Educación Nacional [Law 26,206 on National Education] art. 2, Dec. 14, 2006, B.O., Dec. 28, 2006, <http://www.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123542/texact.htm>, archived at <https://perma.cc/YN34-Z83W>.

<sup>5</sup> *Id.* art. 9.

<sup>6</sup> *Id.* art. 16.

<sup>7</sup> *Id.* art. 19.

<sup>8</sup> *Id.* art. 28.

<sup>9</sup> *Id.* art. 59.

<sup>10</sup> *Id.* art. 60.

<sup>11</sup> *Id.* art. 84.

In Argentina, the right to education has a highly developed legal framework and is widely recognized. As a result, in the 2001–2010 period, Argentina adopted policies that have facilitated access to education, in particular the retention and completion of mandatory education levels.<sup>12</sup> Despite the law, however, not all individuals or groups can access the right to education or access it in conditions of equality, such as those who attend school in poorer or rural areas.

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<sup>12</sup> Ingrid Sverdlick & Rosario Austral, *Derecho a la Educación y Situación Educativa de la Población en Argentina. Una Mirada Panorámica en Base a los Censos 2001 y 2010* [The Right to Education and the Educational Situation of the Population in Argentina. An Overview Based on the 2001 and 2010 Census], 4(4) REVISTA LATINOAMERICANA DE EDUCACIÓN COMPARADA 83 (2013), <http://www.saece.org.ar/relec/revistas/4/mon6.pdf>, archived at <https://perma.cc/43RT-JJNX>.

# Brazil

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Article 205 of the Brazilian Constitution determines that education, which is a right of all and the duty of the government (*Estado*) and of the family, must be promoted and encouraged with societal collaboration, seeking the full development of the individual, preparation for the exercise of citizenship, and qualification for work.<sup>1</sup>

The Constitution further determines that the government must fulfill its duty towards education by guaranteeing

I – free compulsory elementary education from four to 17 years of age, including assurance that it will be offered gratuitously for all who did not have access to it at the proper age;

II – progressive universality of gratuitous secondary school education;

III – special educational assistance for the handicapped, preferably within the regular school system;

IV – early education in nurseries and preschool for children up to 5 years of age;

V – access to higher levels of education, research and artistic creation, according to individual capacity;

VI – provision of regular night courses adequate to the student's condition; [and]

VII – educational assistance in all stages of basic education by means of supplemental programs of school books, teaching materials, transportation, nutrition, and health care.<sup>2</sup>

Access to compulsory and free education is a subjective public right.<sup>3</sup> The government's failure to offer compulsory education or offering it irregularly implies liability on the part of the competent authority.<sup>4</sup> The government has the responsibility to conduct a census of elementary school students, to take attendance, and to make sure, jointly with parents or guardians, that students attend school.<sup>5</sup>

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<sup>1</sup> CONSTITUIÇÃO FEDERAL art. 205, [http://www.planalto.gov.br/ccivil\\_03/Constituicao/ConstituicaoCompilado.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm), archived at <https://perma.cc/L57K-THKD>.

<sup>2</sup> *Id.* art. 208 (translation by author).

<sup>3</sup> *Id.* art. 208(§ 1). A “subjective public right” is a right an individual may claim against the state that is enforceable in court.

<sup>4</sup> *Id.* art. 208(§ 2).

<sup>5</sup> *Id.* art. 208(§ 3).

# People’s Republic of China

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## I. Constitutional Provision on the Right to Education

The 1982 Constitution of the People’s Republic of China (PRC or China) declares that a citizen has not only the right, but also the obligation to receive an education. Specifically, article 46 of the Chinese Constitution states as follows:

[c]itizens of the People’s Republic of China have the duty as well as the right to receive education.

The State promotes the all-round development of children and young people, morally, intellectually, and physically.<sup>1</sup>

Article 46, however, does not explicitly provide for a fair and equal right to education. Equality is provided by paragraph 2 of article 33 of the Chinese Constitution, which states that “[a]ll citizens are equal before the law.”

## II. Impact on Legislation

The PRC Law on Education (Education Law) was promulgated in accordance with the Constitution.<sup>2</sup> In addition to repeating the constitutional declaration of the right to education, article 9 of the Education Law explicitly provides for the equal right to education:

Citizens of the People’s Republic of China shall have the right and obligation to receive education.

All citizens, regardless of ethnic group, race, sex, occupation, property status, or religious belief, shall enjoy equal opportunities for education according to law.<sup>3</sup>

## III. Court Decision

Although in practice the implementation of the equal right to education as provided by the Constitution and the Education Law may still be problematic, a historic court ruling issued in 2001 specifically affirmed the constitutional right to education.

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<sup>1</sup> 宪法 [CONSTITUTION] art. 46, § 2 (1982, *as amended* Mar. 14, 2004), ZHONGHUA RENMIN GONGHEGUO FALÜ FAGUI HUIBIAN: XIANFA JUAN [LAWS AND REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA (PRC LAWS AND REGULATIONS): CONSTITUTIONAL LAW] 1–35.

<sup>2</sup> 教育法 [Education Law] (adopted by the National People’s Congress, Mar. 18, 1995, last amended Dec. 27, 2015, effective June 1, 2016), art. 1, PRC LAWS AND REGULATIONS: ADMINISTRATIVE LAW 1181–97.

<sup>3</sup> *Id.* art. 9.

In 1990, the plaintiff, Qi Yuling, passed the entrance examination and was admitted by a specialized secondary professions school in Shandong Province. The defendant, a classmate of Qi who failed the examination, stole Qi's admission letter and, with the help of other defendants including her father, studied under Qi's name and went on to take a good job in a bank upon graduation. Qi did not find this out until a decade later, during which time she was not able to find a good job due to her lack of a technical education.<sup>4</sup> The first-trial court ordered emotional damages caused by the infringement of Qi's right to her name, which is protected by civil law, but declined to provide a remedy for the alleged violation of her right to education protected by article 46 of the Constitution.

On appeal, the Shandong High Court requested a judicial interpretation from the Supreme People's Court (SPC). The SPC held in a reply issued in 2001 that the plaintiff's "basic right to education as provided by the Constitution" was violated. The Shandong High Court went on to order higher damages based on the defendants' infringement of the plaintiff's constitutional right to education.<sup>5</sup>

The *Qi Yuling* case is called China's "first constitutional case" inasmuch as, in recognizing the constitutional right to education, the SPC explicitly cited a constitutional provision as the legal ground for a judicial decision or interpretation for what is believed to be the first time.<sup>6</sup> However, it appears there have not been any subsequent cases decided on constitutional grounds following the *Qi Yuling* case. In fact, in December 2008, the SPC under a new president issued a document that officially voided the aforementioned judicial interpretation.<sup>7</sup>

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<sup>4</sup> ZHANG QIANFAN, *THE CONSTITUTION OF CHINA: A CONTEXTUAL ANALYSIS* 173 (2012).

<sup>5</sup> *Id.* at 173–74.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 175.

# Egypt

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Article 19 of the Egyptian Constitution of 2014 guarantees the right to education to every citizen and makes education compulsory through high school or its equivalent. Article 19 not only protects the right of free education, but also expands the level for which education must be free over previous constitutions. The Egyptian Constitution of 1971 and its amendment of 2007 stated that education was to be free through the primary school level, while the 2014 Constitution requires the state to offer free education through high school.

In addition to free compulsory education, article 19 also requires the Egyptian Parliament to allocate no less than 4% of GDP for government spending on education in the national budget. By setting a specific figure for education in the national budget, the Parliament is legally committed to insert this figure in the national budget law. If it fails to pass a national budget law with the 4% allocation, any Egyptian citizen has a legal right to file a petition before the Egyptian Supreme Constitutional Court to repeal the law as unconstitutional.

Based on a recent statement issued by the Minister of Finance concerning the Egyptian budget, education spending will increase by less than 5% in fiscal year 2016–2017, which starts in July. Spending on education will rise to EGP 104 billion (about US\$11.71 billion) from EGP 99.3 billion (about US\$11.18 billion) in the last budget, the Minister said.<sup>1</sup>

Article 19 of the Egyptian Constitution reads as follows:

Every citizen has the right to education. The goals of education are to build the Egyptian character, preserve the national identity, root the scientific method of thinking, develop talents and promote innovation, establish cultural and spiritual values, and found the concepts of citizenship, tolerance and non-discrimination. The State shall observe the goals of education in the educational curricula and methods, and provide education in accordance with international quality standards.

Education is compulsory until the end of the secondary stage or its equivalent. The State shall provide free education in the various stages in the State's educational institutions according to the Law.

The State shall allocate a percentage of government spending to education equivalent to at least 4% of the Gross National Product (GNP), which shall gradually increase to comply with international standards.

The State shall supervise education.<sup>2</sup>

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<sup>1</sup> *Egypt Healthcare, Education Bill to Account for 17% of Government Spending in FY16/17*, AHAM ONLINE (Apr. 18, 2016), <http://english.ahram.org.eg/NewsContent/3/12/201887/Business/Economy/Egypt-healthcare-education-bill-to-account-for--o.aspx>, archived at <https://perma.cc/7DQR-78S5>.

<sup>2</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, unofficial English translation available on the State Information Service website, at <http://www.sis.gov.eg/Newvvr/Dustor-en001.pdf>, archived at <https://perma.cc/DC9A-LKYE>.

# England and Wales

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## I. Right to Education

The right to education in the United Kingdom is provided for in Schedule 1, First Protocol, Article 2 of the Human Rights Act 1998, which provides as follows:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.<sup>1</sup>

While the UK does not have a written constitution, it is often said that the UK has an unwritten constitution made up of important statutes, common law precedents, and unwritten conventions.<sup>2</sup> The Human Rights Act 1998, which incorporates most of the substantive provisions of the European Convention on Human Rights into the domestic law of the UK, provides an informal codification of many of the rights typically contained in written constitutions.<sup>3</sup>

## II. Compulsory Education in England and Wales

In addition to the right to education being provided for by the Human Rights Act, the Education Act 1996 places a legal duty on the parent or guardian of a child aged five to sixteen years (known as compulsory school age), to ensure that the child attends and receives full-time education, either in a traditional school or by any other means that is appropriate for their age, ability, and aptitude, taking into account any special needs they may have.<sup>4</sup> The Act makes it a criminal offense for parents or guardians to take their child out of school without authorization from the school, and an offense for parents who are aware that their child is failing to attend school to not take reasonable action to ensure that the child attends. The offense of failing to ensure regular attendance at school is punishable by up to three months' imprisonment and/or a fine of up to £1,000 (approximately US\$1,600).<sup>5</sup> There are a number of statutory defenses to

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<sup>1</sup> Human Rights Act 1998 c. 42, sched. 1, first protocol, art. 2, <http://www.legislation.gov.uk/ukpga/1998/42>, archived at <https://perma.cc/DTW4-TH74>. This Act incorporated the European Convention on Human Rights into the national law of the United Kingdom.

<sup>2</sup> Douglas W. Vick, *The Human Rights Act and the British Constitution*, 37 TEX. INT'L L.J. 329, 331-340 (2002), <http://www.tilj.org/content/journal/37/num2/Vick329.pdf>, archived at <https://perma.cc/N8JQ-V5U2>.

<sup>3</sup> *Id.* at 351-54.

<sup>4</sup> Education Act 1996 c. 56, § 7, <http://www.legislation.gov.uk/ukpga/1996/56>, archived at <https://perma.cc/N6EJ-5ZL9>.

<sup>5</sup> *Id.* § 444(1A).

these offenses, such as the student's illness, absences that are authorized by the school, or home-schooling the student.<sup>6</sup>

### III. Impact of the Right to Education

There have been a number of cases that have relied upon the right to education provided for by the Human Rights Act.<sup>7</sup> These cases range from a case where a student was expelled from a school<sup>8</sup> to a case of judicial review concerning the prohibition on corporal punishment.<sup>9</sup>

The right to education reflected in the Human Rights Act—in particular the provision stating that the “State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”—was relied upon in part in a judicial review case where teachers and parents of an independent Christian school argued that the prohibition on corporal punishment in schools violated this right, as they fundamentally believed that the duty of education included the administration of corporal punishment to children who were disobedient. The High Court, Court of Appeal, and House of Lords, which was the highest court in the land at the time of the decision, all held that the law prohibiting corporal punishment was a “legitimate and proportionate limitation on the practice of parents’ religious beliefs.”<sup>10</sup>

In a number of cases students permanently excluded from school commenced proceedings arguing that their exclusion was a violation of the right to education. In one of these cases, a student was suspended from school for a temporary period during a criminal investigation. During this time he was provided with educational materials to study at home. At the conclusion of the criminal investigation he and his parents were invited to the school for a meeting, which they failed to attend. This led to the student's permanent exclusion from school and, during the time of permanent exclusion before he could be enrolled in another school, he was not provided with any form of educational materials. His parents claimed that this violated his right to education. In this case, the court held that the exclusion from school was a proportionate measure and did not interfere with the “substance of the right to education.” Specifically, the court ruled that,

[f]or the ‘right to education’ to be effective, it was further necessary that, inter alia, the individual who was the beneficiary should have the possibility of drawing profit from the education received, namely the right to obtain, in conformity with the rules in force in each state, and in one form or another, official recognition of the studies which he had completed. It was recognised that in spite of its importance the right to education was not absolute, but might be subject to limitations. Provided that there was no injury to the

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<sup>6</sup> *Id.* § 444(1A).

<sup>7</sup> Human Rights Act 1998 c. 42, sched. 1, first protocol, art. 2.

<sup>8</sup> *Ali v. United Kingdom*, [2011] All ER (D) 96 (Jan), [2011] ECHR 40385/06, <http://hudoc.echr.coe.int/eng?i=001-102675>, archived at <https://perma.cc/LN6L-LWHG>.

<sup>9</sup> *R (on the application of Williamson and others) v. Secretary of State for Education and Employment and Others*, [2005] UKHL 15, [2005] 2 FLR 374, [2005] 1 FCR 498, ¶ 84, <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm>, archived at <https://perma.cc/QWG6-4Z2B>.

<sup>10</sup> *Id.*

substance of the right, those limitations were permitted by implication since the right of access 'by its very nature calls for regulation by the State'.<sup>11</sup>

In another case where a student was excluded, but provided with educational materials to study from home during the exclusion, the Supreme Court held that

there had [not] been any restriction on his right not to be denied effective access to such educational facilities as the school provided. [T]here was a breach of [the right to education] only if the person was denied effective access to such educational facilities as the state provided for such pupils. Ther[e] was no evidence that the arrangements made available for the appellant's home tuition were different from those that the state provided to any pupil who, for whatever reason, was not able to attend school.<sup>12</sup>

#### IV. Right to Education for Non-EEA Children

The right of children to receive education varies for the children of short-term, non-European Economic Area (EEA) migrants. Children in the following categories are entitled to receive education in the UK, but are not entitled to a place in a state-funded school:

- Children from non-EEA countries who are here as short-term visitors – these are children who live abroad but have been admitted to the UK for a short visit (for example as tourists or to visit relatives), and not to study.
- Children from non-EEA countries who have permission to study in the UK – these children are allowed to study in England on the basis that they attend an independent, fee-paying school.<sup>13</sup>

State schools that receive applications from children that fall within one of these categories are instructed not to deny the child a place. Instead, they must alert the Home Office school referrals team, who will investigate the case further. If this team determines that the child is not entitled to state-funded education, the Home Office will determine if any further action is necessary. However; rather contradictorily, schools are instructed that they should not deny a child a place in school on the basis of the Home Office's findings.<sup>14</sup>

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<sup>11</sup> *Ali v. United Kingdom* ¶ 52.

<sup>12</sup> *In the Matter of an Application by 'JR17' for Judicial Review*, [2010] UKSC 27; [2010] All ER (D) 186 (June) (accessed via Lexis), archived at <https://perma.cc/6CYB-UABM>.

<sup>13</sup> *Guidance: School Admissions: Applications from Overseas Children*, DEPARTMENT FOR EDUCATION (Mar. 25, 2014; last updated Dec. 1, 2014), <https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>, archived at <https://perma.cc/R4V7-4RBL>; see also Therese Bosrup Karlen & Maarja Vollmer, *Rights of Children in an Irregular Situation*, 2014, <https://www.nottingham.ac.uk/hrlc/documents/student-conference-2015/bosrup-and-vollmer-rights-of-children-in-an-irregular-situation.pdf>, archived at <https://perma.cc/D2QD-F6KL>.

<sup>14</sup> DEPARTMENT FOR EDUCATION, *supra* note 13.

# France

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The French Constitution enshrines the right to education for all in France. The provision that does so is found in the Preamble of the Constitution of 1946, which was incorporated by reference into the Preamble of the current French Constitution.<sup>1</sup> This provision declares that “the Nation guarantees equal access for children and adults to instruction,<sup>[2]</sup> vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State.”<sup>3</sup>

While the universal right to education did not become a constitutional provision until 1946, it has been widely accepted as a legal principle since much earlier. In 1833, the French government adopted a law requiring every town in France to open a public primary school for boys.<sup>4</sup> In 1850, towns were required to provide public primary schools for girls as well.<sup>5</sup> The most significant and famous advances, however, occurred in 1881 and 1882, when the government adopted a series of measures called the *lois Jules Ferry* (Jules Ferry Laws), named after the Minister of Education who pushed them through.<sup>6</sup> The most important of those laws was the Law of 28 March 1882, which introduced compulsory schooling for all boys and girls between the ages of six and thirteen.<sup>7</sup> This Law provided that compulsory schooling could be provided by public or private schools, by the children’s father, or by a private tutor.<sup>8</sup> Children who were homeschooled or taught by a private tutor were subject to regular exams to verify that they were in fact being educated to the legally-required standards.<sup>9</sup> The Law also provided that special measures would be taken to ensure that children who were blind or deaf would also have access

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<sup>1</sup> CONSTITUTION DU 4 OCTOBRE 1958 [CONSTITUTION OF OCTOBER 4, 1958], Preamble, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194>, archived at <https://perma.cc/9MNV-XQM6>, English translation at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html#PREAMBLE>, archived at <https://perma.cc/EE3T-RTU2>.

<sup>2</sup> In this context, the term “instruction” refers to education.

<sup>3</sup> PRÉAMBULE DE LA CONSTITUTION DU 27 OCTOBRE 1946 [PREAMBLE TO THE CONSTITUTION OF 27 OCTOBER 1946], § 13, <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Preambule-de-la-Constitution-du-27-octobre-1946>, archived at <https://perma.cc/2RKE-2GV9>, English translation available at [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/cst3.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst3.pdf), archived at <https://perma.cc/4285-DQ66>.

<sup>4</sup> Loi du 28 juin 1833 [Law of 28 June 1833]; *Tous les citoyens ont-ils droit à une éducation?* [Do All Citizens Have a Right to an Education?], VIE PUBLIQUE (website of the French Administration) (Oct. 9, 2013), <http://www.vie-publique.fr/decouverte-institutions/citoyen/citoyennete/definition/droits/tous-citoyens-ont-ils-droit-education.html>, archived at <https://perma.cc/FTZ5-2MJ7>.

<sup>5</sup> VIE PUBLIQUE, *supra* note 4.

<sup>6</sup> *Id.*

<sup>7</sup> Loi du 28 mars 1882 sur l’enseignement primaire obligatoire [Law of 28 March 1882 on Compulsory Primary Schooling], [http://classes.bnf.fr/laicite/references/loi\\_28\\_mars\\_1882.pdf](http://classes.bnf.fr/laicite/references/loi_28_mars_1882.pdf), archived at <https://perma.cc/K76E-GP7L>.

<sup>8</sup> *Id.* art. 4.

<sup>9</sup> *Id.* art. 16.

to education.<sup>10</sup> The age limit for compulsory education was raised to fourteen in 1936, and sixteen in 1959.<sup>11</sup> In 2005, the French government reinforced the right to education by adopting a law that prohibits the parents of unemancipated children from opposing their children's pursuit of further education after the age of sixteen.<sup>12</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> VIE PUBLIQUE, *supra* note 4.

<sup>12</sup> Loi n° 2005-380 du 23 avril 2005 d'orientation et de programme pour l'avenir de l'école (1) [Law No. 2005-380 of 23 April 2005 on the Orientation and Program for the Future of School (1)], art. 10, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000259787&dateTexte=&categorieLien=id>, archived at <https://perma.cc/4QAN-SH47>.

# Germany

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## I. International and Supranational Codifications

Germany is bound by several international and supranational treaties that affirm a right to education, including the International Covenant on Economic, Social and Cultural Rights;<sup>1</sup> the Convention on the Rights of the Child;<sup>2</sup> the protocol to the European Convention on Human Rights;<sup>3</sup> and the European Union (EU) Charter of Fundamental Rights.<sup>4</sup>

## II. German Law Codifications

### A. German Constitution

Article 7 of the German Basic Law,<sup>5</sup> the country's constitution, provides that the country's entire school system is under the supervision of the national government. That article has been interpreted to guarantee the school as an organized institution with a minimum duration that conveys certain learning and educational goals in a variety of subjects,<sup>6</sup> but does not guarantee an individual's right to education. When the Basic Law was adopted in 1949, it was agreed that education, although supervised by the national government, would fall within the competencies of the individual German states,<sup>7</sup> unlike under the Weimar Constitution of 1919. The Basic Law does not specify how the individual German states have to implement the responsibility of the states with regard to education.

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 13, <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, archived at <http://perma.cc/W9VZ-GPTS>.

<sup>2</sup> Convention on the Rights of the Child, art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3, <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, archived at <http://perma.cc/5DT3-2L9B>.

<sup>3</sup> Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (Protocol to the European Convention on Human Rights), art. 2, para. 1, Mar. 20, 1952, 213 U.N.T.S. 262, <http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/rms/090000168006377c>, archived at <http://perma.cc/5N4U-4QDR>.

<sup>4</sup> Charter of Fundamental Rights of the European Union art. 14, 2012 O.J. (C 326) 391, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>, archived at <http://perma.cc/G2DC-KCKH>. With the entry into force of the EU Treaty of Lisbon in December 2009, the EU Charter became legally binding on EU institutions and on national governments of the EU Member States.

<sup>5</sup> GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>, archived at <http://perma.cc/3VDB-NJW4>, unofficial English translation at [http://www.gesetze-im-internet.de/englisch\\_gg/basic\\_law\\_for\\_the\\_federal\\_republic\\_of\\_germany.pdf](http://www.gesetze-im-internet.de/englisch_gg/basic_law_for_the_federal_republic_of_germany.pdf), archived at <http://perma.cc/DEF5-A57P>.

<sup>6</sup> Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 75 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] [DECISIONS OF THE FEDERAL CONSTITUTIONAL COURT] 40, 77.

<sup>7</sup> BASIC LAW art. 30.

## B. German State Constitutions

As the Basic Law places education within the competency of the sixteen German states, the states may vary as to whether education is recognized in state constitutions. Most states have chosen to codify a right to education in their constitution; others have opted to codify it in a statute. The German State of Lower Saxony is among one of the states that has included a right to education in the constitution. Article 4, paragraph 1 of its constitution states that “each person has a right to education.”<sup>8</sup> Thuringia,<sup>9</sup> Brandenburg,<sup>10</sup> Berlin,<sup>11</sup> and Bremen<sup>12</sup> have almost identical wording in their constitutions. In Saxony, article 102, paragraph 1 of the Constitution provides that the state guarantees the right to “school education.”<sup>13</sup> In addition, article 7, paragraph 1 of the Constitution of Saxony lists the right to education as one of the state objectives.

Other German states have codified norms with a slightly different wording in their constitutions that guarantee a right to education only with regard to children or adolescents in accordance with their abilities. Article 11, paragraph 1 of the Constitution of Baden-Württemberg, for example, provides that “every young person has a right to education and training in accordance with his or her abilities without regard to origin or economic situation.”<sup>14</sup> A similar wording can be found

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<sup>8</sup> NIEDERSÄCHSISCHE VERFASSUNG [CONSTITUTION OF LOWER SAXONY], May 19, 1993, NIEDERSÄCHSISCHES GESETZ- UND VERORDNUNGSBLATT [NDS. GVBL.] [LOWER SAXONY GAZETTE OF LAWS AND ORDINANCES] 1993, at 107, as amended, <http://www.nds-voris.de/jportal/?quelle=jlink&query=Verf+ND&psml=bsvorisprod.psml&max=true&aiz=true>, archived at <http://perma.cc/HR2Y-D2YY>, English translation available at [www.landtag-niedersachsen.de/tnds/download/21561/nds\\_verfassung\\_englisch.pdf](http://www.landtag-niedersachsen.de/tnds/download/21561/nds_verfassung_englisch.pdf), archived at <http://perma.cc/45HU-Z4NQ>.

<sup>9</sup> VERFASSUNG DES FREISTAATS THÜRINGEN [CONSTITUTION OF THE FREE STATE OF THURINGIA], Oct. 25, 1993, GESETZ- UND VERORDNUNGSBLATT FÜR DEN FREISTAAT THÜRINGEN [THÜR GVBL.] [THURINGIA GAZETTE OF LAWS AND ORDINANCES] 1993, at 625, as amended, art. 20, <http://www.thueringer-landtag.de/mam/landtag/verfassung/publikationsverzeichnis.pdf>, archived at <http://perma.cc/9UHC-25S9>.

<sup>10</sup> VERFASSUNG DES LANDES BRANDENBURG [CONSTITUTION OF THE STATE OF BRANDENBURG], Aug. 20, 1992, GESETZ- UND VERORDNUNGSBLATT FÜR DAS LAND BRANDENBURG [BBG GVBL.] [BRANDENBURG GAZETTE OF LAWS AND ORDINANCES] I at 298, as amended, art. 29, <http://bravors.brandenburg.de/de/gesetze-212792>, archived at <http://perma.cc/NZW9-TGDE>, English translation available at [http://www.landtag.brandenburg.de/media\\_fast/5701/Verfassung\\_englisch.pdf](http://www.landtag.brandenburg.de/media_fast/5701/Verfassung_englisch.pdf), archived at <http://perma.cc/PYT2-ZJXP>.

<sup>11</sup> VERFASSUNG VON BERLIN [CONSTITUTION OF BERLIN], Nov. 23, 1995, GESETZ- UND VERORDNUNGSBLATT FÜR BERLIN [BLN GVBL.] [BERLIN GAZETTE OF LAWS AND ORDINANCES] at 779, as amended, art. 20, [http://www.parlament-berlin.de/C1257B55002AD428/vwContentByKey/6F3D580AFF8481A0C1257C61003313A4/\\$FILE/VvB%2022.03.16.pdf](http://www.parlament-berlin.de/C1257B55002AD428/vwContentByKey/6F3D580AFF8481A0C1257C61003313A4/$FILE/VvB%2022.03.16.pdf), archived at <http://perma.cc/W9H3-3H8H>, English translation available at <https://www.berlin.de/rbmskzl/en/the-governing-mayor/the-constitution-of-berlin>, archived at <http://perma.cc/784F-QSDC>.

<sup>12</sup> LANDESVERFASSUNG DER FREIEN HANSESTADT BREMEN [STATE CONSTITUTION OF THE FREE HANSEATIC CITY OF BREMEN], Oct. 21, 1947, GESETZBLATT DES LANDES BREMEN [BREM GBL.] [BREMEN GAZETTE OF LAWS] at 251, as amended, art. 27, [http://www.bremen.de/fastmedia/36/landesverfassung\\_bremen.pdf](http://www.bremen.de/fastmedia/36/landesverfassung_bremen.pdf), archived at <http://perma.cc/4GK5-2N8N>.

<sup>13</sup> Verfassung des Freistaates Sachsen vom 27. May 27, 1992, GESETZ- UND VERORDNUNGSBLATT FÜR DAS LAND SACHSEN [SÄCHS GVBL.] [SAXONY GAZETTE OF LAWS AND ORDINANCES] at 243, as amended, [http://www.revo.sax.sachsen.de/vorschrift\\_gesamt/3975.html](http://www.revo.sax.sachsen.de/vorschrift_gesamt/3975.html), archived at <http://perma.cc/32YX-BZSA>.

<sup>14</sup> VERFASSUNG DES LANDES BADEN-WÜRTTEMBERG [CONSTITUTION OF THE STATE OF BADEN-WÜRTTEMBERG], Nov. 11, 1953, GESETZBLATT DES LANDES BADEN-WÜRTTEMBERG [BW GBL.] [BADEN-WÜRTTEMBERG GAZETTE

in the constitutions of North Rhine-Westphalia,<sup>15</sup> Rhineland Palatinate,<sup>16</sup> Saarland,<sup>17</sup> and Saxony-Anhalt.<sup>18</sup> Bavaria limits the right to education to residents of Bavaria.<sup>19</sup>

### C. German State Statutes

The German state of Hesse codified the right to education in its School Act.<sup>20</sup> Section 1 provides that “every young person has a right to education.” The right to “school education for everyone” is also guaranteed in the School Act of Mecklenburg-West Pomerania.<sup>21</sup> Schleswig-Holstein’s School Act states that the mission of the school is determined by the right of a young person to

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OF LAWS] at 173, as amended, <https://www.lpb-bw.de/bwverf/Landesverfassung-BW.pdf>, archived at <http://perma.cc/5PLB-XUBK>.

<sup>15</sup> VERFASSUNG FÜR DAS LAND NORDRHEIN-WESTFALEN [CONSTITUTION FOR THE STATE OF NORTH RHINE-WESTPHALIA], June 28, 1950, GESETZ- UND VERORDNUNGSBLATT FÜR DAS LAND NORDRHEIN-WESTFALEN [GV. NW.] [NORTH RHINE-WESTPHALIA GAZETTE OF LAWS AND ORDINANCES] 1950 at 127, art. 8, para. 1, [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=2320020927105939563](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=2320020927105939563), archived at <http://perma.cc/9MFD-FGJQ>, English translation available at [https://www.landtag.nrw.de/portal/WWW/GB\\_II/II.1/OeA/International/en/North\\_Rhine\\_Westphalia\\_Constitution\\_revised.jsp](https://www.landtag.nrw.de/portal/WWW/GB_II/II.1/OeA/International/en/North_Rhine_Westphalia_Constitution_revised.jsp), archived at <http://perma.cc/L9T6-8HL5>.

<sup>16</sup> VERFASSUNG FÜR RHEINLAND-PFALZ [CONSTITUTION FOR RHINELAND PALATINATE], May 18, 1947, VERORDNUNGSBLATT FÜR DAS LAND RHEINLAND-PFALZ [RP VOBL.] [RHINELAND-PALATINATE GAZETTE OF ORDINANCES] 1947 at 209, as amended, art. 31, <http://landesrecht.rlp.de/jportal/portal/t/17r0/page/bsrlpprod.psml;jsessionid=10D3E188C3257597D8C21D60DCE1D6E8.jp28?action=controls.jw.PrintOrSaveDocumentContent&case=save>, archived at <http://perma.cc/QCT9-R7EZ>.

<sup>17</sup> VERFASSUNG DES SAARLANDES [CONSTITUTION OF SAARLAND], Dec. 15, 1947, AMTSBLATT DES SAARLANDES [S AMTSBL.] [SAARLAND OFFICIAL JOURNAL] at 1077, as amended, art. 24a, [http://www.saarland.de/dokumente/thema\\_justiz/100-1.pdf](http://www.saarland.de/dokumente/thema_justiz/100-1.pdf), archived at <http://perma.cc/KU5N-9S9N>.

<sup>18</sup> VERFASSUNG DES LANDES SACHSEN-ANHALT [CONSTITUTION OF THE STATE OF SAXONY-ANHALT], July 16, 1992, GESETZ- UND VERORDNUNGSBLATT FÜR SACHSEN-ANHALT [GVBL. LSA] [SAXONY-ANHALT GAZETTE OF LAWS AND ORDINANCES] 1992 at 600, as amended, art. 25, [http://www.landesrecht.sachsen-anhalt.de/jportal/portal/t/7w4/page/bssahprod.psml;jsessionid=E6C195B2A4ACBB2394358D8280086D1E.jp21?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=jlr-VerfS\\_Trahmen&doc.part=X&doc.price=0.0#focuspoint](http://www.landesrecht.sachsen-anhalt.de/jportal/portal/t/7w4/page/bssahprod.psml;jsessionid=E6C195B2A4ACBB2394358D8280086D1E.jp21?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=jlr-VerfS_Trahmen&doc.part=X&doc.price=0.0#focuspoint), archived at <http://perma.cc/V3B3-KPTH>.

<sup>19</sup> VERFASSUNG DES FREISTAATES BAYERN [CONSTITUTION OF THE FREE STATE OF BAVARIA], Dec. 15, 1998, GESETZ- UND VERORDNUNGSBLATT FÜR DEN FREISTAAT BAYERN [BAY GVBL.] [BAVARIA GAZETTE OF LAWS AND ORDINANCES] at 991, 992, as amended, art. 128, para. 1, <http://gesetze-bayern.de/Content/Document/BayVerf/true>, archived at <http://perma.cc/Z6CB-K8WR>, English translation available at [https://www.bayern.landtag.de/fileadmin/Internet\\_Dokumente/Sonstiges\\_P/BV\\_Verfassung\\_Englisch\\_formatiert\\_14-12-16.pdf](https://www.bayern.landtag.de/fileadmin/Internet_Dokumente/Sonstiges_P/BV_Verfassung_Englisch_formatiert_14-12-16.pdf), archived at <http://perma.cc/S7Q5-J55B>.

<sup>20</sup> Hessisches Schulgesetz [Hesse School Act], June 14, 2005, GESETZ- UND VERORDNUNGSBLATT FÜR HESSEN [HE GVBL.] [HESSE GAZETTE OF LAWS AND ORDINANCES] I at 441, as amended, § 1, para. 1, [https://kultusministerium.hessen.de/sites/default/files/media/lesefassung\\_hessisches\\_schulgesetz\\_mit\\_inhaltsverzeichnis\\_stand\\_14.04.2016.pdf](https://kultusministerium.hessen.de/sites/default/files/media/lesefassung_hessisches_schulgesetz_mit_inhaltsverzeichnis_stand_14.04.2016.pdf), archived at <http://perma.cc/7GWN-H85V>.

<sup>21</sup> Schulgesetz für das Land Mecklenburg-Vorpommern [Schulgesetz - SchulG M-V] [School Act for the State of Mecklenburg-West Pomerania], Sept. 10, 2010, GESETZ- UND VERORDNUNGSBLATT FÜR MECKLENBURG-VORPOMMERN [GVOBL. M-V] [MECKLENBURG-WEST POMERANIA GAZETTE OF LAWS AND ORDINANCES] 2010 at 462, as amended, § 1, para. 1, <http://www.landesrecht-mv.de/jportal/portal/page/bsmvprod.psml?showdoccase=1&doc.id=jlr-SchulGMV2010rahmen&doc.part=X&doc.origin=bs>, archived at <http://perma.cc/G4E3-P7JW>.

receive an education and training based on his or her abilities, skills, and liking.<sup>22</sup> A similar provision can be found in the School Act of Hamburg.<sup>23</sup>

### III. Impact of the Constitutional Codification of the Right to Education

In the German states of Brandenburg and Lower Saxony, which incorporated the right to education in their constitutions, courts are occasionally called upon to decide if the right to education includes a right to attend a specific school.

A case which was decided by the Constitutional Court of the State of Brandenburg (which has jurisdiction only over cases involving interpretation of that state's constitution) involved an applicant who had just finished elementary school and received an evaluation that she was generally qualified to attend a *Gymnasium*, a high school that qualifies the student to attend university afterwards.<sup>24</sup> There are other types of high schools in Germany that end after the ninth or tenth year and therefore do not qualify the student to attend a university.

The applicant applied to two different *Gymnasiums* located in her school district. Both schools had recently reduced the number of students that they admitted. She received rejection letters from both schools. The schools argued that they had more applicants than places and determined that other students were more qualified than her. She did not apply to any other schools and was therefore assigned to attend a high school that would not have qualified her to attend a university later. The applicant sued and claimed that the rejection by the schools of her choice violated her constitutional right to education.<sup>25</sup>

The Constitutional Court of Brandenburg held that the rejection by the two schools did not violate the applicant's right to education. It elaborated that the right to education only guarantees equal access to existing schools, but does not require the schools or the state to create additional capacity or to establish a certain type of school. The Court further ruled that as long as the admission process was based on objective criteria applicable to all students, which was the case here, the right to education was not violated.<sup>26</sup>

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<sup>22</sup> Schleswig-Holsteinisches Schulgesetz [Schulgesetz – SchulG] [School Act for Schleswig-Holstein], Jan. 24, 2007, GESETZ- UND VERORDNUNGSBLATT FÜR SCHLESWIG-HOLSTEIN [GVOBL. SH] [SCHLESWIG-HOLSTEIN GAZETTE OF LAWS AND ORDINANCES] 2007 at 39, corrected at 276, as amended, § 4, para. 1, [http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/t/8a1/page/bsshoprod.psml;jsessionid=125F992468B8E00635900F6EAEF0CFBE.jp23?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=jlr-SchulGSH2007rahmen&doc.part=X&doc.price=0.0#focuspoint](http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/t/8a1/page/bsshoprod.psml;jsessionid=125F992468B8E00635900F6EAEF0CFBE.jp23?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=jlr-SchulGSH2007rahmen&doc.part=X&doc.price=0.0#focuspoint), archived at <http://perma.cc/89SG-QV5L>.

<sup>23</sup> Hamburgisches Schulgesetz [HmbSG] [School Act for Hamburg], Apr. 16, 1997, GESETZ- UND VERORDNUNGSBLATT FÜR HAMBURG [HMBGVBL.] [HAMBURG GAZETTE OF LAWS AND ORDINANCES] at 97, as amended, § 1, <http://www.hamburg.de/contentblob/1995414/data/schulgesetzdownload.pdf>, archived at <http://perma.cc/4UWV-BT2M>.

<sup>24</sup> Verfassungsgericht des Landes Brandenburg [VerfGBbg] [Constitutional Court of the State of Brandenburg], Feb. 25, 1999, Docket No. VfGBbg 41/98, [http://www.verfassungsgericht.brandenburg.de/sixcms/detail.php?id=5lbn1.c.58591.de&template=bbo\\_mandant\\_verfassungsgericht\\_d](http://www.verfassungsgericht.brandenburg.de/sixcms/detail.php?id=5lbn1.c.58591.de&template=bbo_mandant_verfassungsgericht_d), archived at <http://perma.cc/787U-AB3N>.

<sup>25</sup> *Id.* para. A.I.

<sup>26</sup> *Id.* paras. B.II.1. & 2.

In a similar case, the Administrative Court of Hannover in Lower Saxony, interpreting the Lower Saxony Constitution and a statute implementing the constitutional right to education, held that a right to attend a specific school exists if three cumulative criteria are fulfilled.<sup>27</sup> According to the Court, the right to education includes a right to attend a specific school if

- (1) the school that was picked by the parents is the only available school of that type in the school district;
- (2) the selected school has available capacity; and
- (3) there are no provisions in the education law that would prohibit the admission of the student in this particular case.<sup>28</sup>

The Administrative Court of Hannover elaborated that the capacity of a school is only exhausted if the admission of one more student would prevent the school from fulfilling its educational mandate due to a shortage of personnel or resources.<sup>29</sup> In the case under consideration, the court ruled that the fact that the number of students that the school had established as the maximum admissions number was reached was insufficient for a rejection of the plaintiff. The school would have been obligated to prove that the admission of one more student would keep it from fulfilling its educational mandate. The Court therefore ruled in favor of the plaintiff.<sup>30</sup>

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<sup>27</sup> Verwaltungsgericht Hannover [VG Hannover] [Administrative Court of Hannover], Aug. 6, 2008, Docket No. 6 B 3368/08, <http://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=MWRE080002971&st=null&showdoccase=1>, archived at <http://perma.cc/95NN-U7LM>.

<sup>28</sup> *Id.* para. 18.

<sup>29</sup> *Id.* para. 21.

<sup>30</sup> *Id.* para. 29.

# Greece

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## I. Right to Education

The right to education is enshrined in article 16 of the Greek Constitution, which provides as follows:

- Art, science, research, and teaching shall be free and their development and promotion shall be an obligation of the State. Academic freedom and the freedom to teach shall not exempt anyone from his or her duty of allegiance to the Constitution.<sup>1</sup>
- Education is a basic mission of the state and has its objective development of the national, religious conscience and assisting people to become free and responsible citizens.<sup>2</sup>
- Education is mandatory for the first nine years.<sup>3</sup>
- All Greeks have the right to free education at all levels in public educational institutions. The state assists those students who excel as well those who are in financial need or in need of special protection, according to their abilities.<sup>4</sup>
- Higher education is provided by institutions that are legal entities of public law and are fully self-governed. Such institutions shall be under the supervision of the state, have the right to be assisted financially, and operate on the basis of statutorily enacted bylaws. Merging or splitting university level institutions may take place notwithstanding any contrary provisions, as the law shall provide.<sup>5</sup>

Greece is also bound by international agreements that contain the right to education and have been ratified by Greece. These include the European Convention on the Protection of Human Rights and Fundamental Freedoms,<sup>6</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>7</sup> and the Convention on the Rights of the Child.<sup>8</sup> Such agreements constitute an

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<sup>1</sup> SYNTAGMA [CONSTITUTION] art. 16, para. 1, <https://www.hellenicparliament.gr/Vouli-ton-Ellinon/To-Politevma/Syntagma/article-16>, archived at <https://perma.cc/GQS4-N4BB>.

<sup>2</sup> *Id.* art. 16, para. 2.

<sup>3</sup> *Id.* art. 16, para. 3.

<sup>4</sup> *Id.* art. 16, para. 4.

<sup>5</sup> *Id.* art. 16, para. 5.

<sup>6</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 1, art. 2, Mar. 20, 1952, as amended and supplemented by later Protocols, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), archived at <https://perma.cc/8FNW-B74W>.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights art. 13, Dec. 16, 1966, entry into force Jan. 3, 1976, 993 U.N.T.S. 3, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en), archived at <https://perma.cc/C3P9-PTTS>.

integral part of the Greek legal order and take precedence over other conflicting domestic legislation.<sup>9</sup>

## II. Implementing Legislation

The Ministry of Education, Research and Religion is responsible for the overall administration of the Greek education system.<sup>10</sup> Implementing legislation (laws, decrees, ministerial decisions, and circulars) has been adopted in order to ensure the enforcement of the right to education.

Article 16 of the Greek Constitution and implementing legislation have raised a number of legal issues, first before Greek courts and subsequently before the European Court of Human Rights (ECHR) for final adjudication. The two ECHR cases cited below deal with the rights of minorities (Roma children) to attend Greek schools:

- The case of *Sampanis v. Greece* involved Roma children who were denied access to school and were assigned to special classrooms in an annex to the main primary school buildings. The ECHR found a violation of article 14 (prohibition of discrimination) in conjunction with article 2 of Protocol No. 1 (right to education) of the European Convention, because the Greek government failed to provide schooling for the children and because it placed them in special classes due to their Roma origin.<sup>11</sup>
- The case of *Lavida and Others v. Greece* also concerned the education of Roma children who were restricted to attending a primary school in which the only students attending were Roma children.<sup>12</sup> The Court held that Greece's refusal to take any anti-segregation measures implied discrimination and a breach of the right to education.

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<sup>8</sup> Convention on the Rights of the Child art. 28, para. 1(a), Nov. 20, 1989, 1577 U.N.T.S. 3, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en), archived at <https://perma.cc/ZNC3-4MXC>.

<sup>9</sup> CONSTITUTION art. 28, para. 1.

<sup>10</sup> MINISTRY OF EDUCATION, RESEARCH AND RELIGION, <http://www.minedu.gov.gr>, archived at <https://perma.cc/CVM2-E8JV>.

<sup>11</sup> Information Note, Case of *Sampanis v. Greece*, Eur. Ct. H.R., App. No. 32526/05, June 5, 2008, <http://hudoc.echr.coe.int/eng?i=002-2052>, archived at <https://perma.cc/B7YV-4E4S>.

<sup>12</sup> *Affaire Lavida et Autres c. Grèce*, Eur. Ct. H.R., App. No. 7973/10, May 30, 2013, <http://hudoc.echr.coe.int/eng?i=001-119974> (in French), archived at <https://perma.cc/8AXW-KR8Z>.

# India

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The Constitution (Eighty-sixth Amendment) Act, 2002,<sup>1</sup> inserted article 21-A (“Right to Education”) in the Constitution of India, establishing education as a fundamental right. Article 21-A stipulates that “[t]he State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”<sup>2</sup> Education is on the Concurrent List of shared subject matter, which enables both the central government and the individual states to regulate education.<sup>3</sup> Prior to the insertion of article 21-A, the Supreme Court of India held in 1992 that the right to education was a fundamental right that flowed from article 21, concerning the right to life.<sup>4</sup> In a 2011 decision the Supreme Court stated that

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<sup>1</sup> Constitution (Eighty-sixth Amendment) Act, 2002, <http://indiacode.nic.in/coiweb/amend/amend86.htm>, archived at <https://perma.cc/EFV5-YHV6>.

<sup>2</sup> INDIA CONST. art. 21-A, <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>, archived at <https://perma.cc/K2UY-4MPY>. Note that Part IV of the Constitution establishes a number of directive principles of state policy: article 41 stipulates that “[t]he State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”; article 45 states that “[t]he State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”; article 46 states that “[t]he State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”; and article 51-A, which lists fundamental duties, stipulates that it shall be the duty of every citizen of India “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.” Note that directive principles of state policy and fundamental duties are nonjusticiable but have been used to interpret fundamental rights and also construed harmoniously with them.

<sup>3</sup> *Id.* Seventh Sched., List III–Concurrent List, “25. Education, Including Technical Education, Medical Education and Universities, Subject to the Provisions of Entries 63, 64, 65 and 66 of List I; Vocational and Technical Training of Labour.”

<sup>4</sup> The Supreme Court in the case of *Miss Mohini Jain* case held that the “ ‘Right to life’ is the compendious expression for all those rights which the Court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from [the] right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens.” *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.R. 658, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=12349>, archived at <https://perma.cc/5PXM-NYFU>. The *Mohini Jain* decision was partly upheld by the Supreme Court when it held, in *Unni Krishnan & Others v. State of A.P. and Others*, that

[t]he citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and para meters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

*Unni Krishnan & Others v. State of A.P. and Others*, (1993) 1 S.C.C. 645, <http://judis.nic.in/supremecourt/Chrsq.aspx>, archived at <https://perma.cc/ZQ9Z-B2VJ>.

the right of children to free and compulsory education has been made a fundamental right under Article 21A of the Constitution. Now every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education.<sup>5</sup>

In 2009, the Right of Children to Free and Compulsory Education (RTE) Act<sup>6</sup> was passed as enabling legislation to implement the recently added fundamental right.<sup>7</sup> Both the constitutional amendment and the Act came into force on April 1, 2010.<sup>8</sup> The Act requires that every child between the ages of six and fourteen years, including disadvantaged and low-income children, “have the right to free and compulsory education in a neighborhood school till the completion of his or her elementary education.”<sup>9</sup> The Act also has provisions for nonadmitted children to be admitted to an age-appropriate class,<sup>10</sup> and “specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.”<sup>11</sup> Moreover, under section 12(c) of the Act unaided private schools are required to reserve 25% of their seats for children belonging to scheduled castes, scheduled tribes, and low-income or other disadvantaged or weaker groups (and provide free and compulsory elementary education for them).<sup>12</sup>

A landmark 2012 decision by the Supreme Court of India upheld the constitutionality of the Act, including section 12(c), but held that the RTE Act could not require private, minority schools to fulfill the 25% quota, as this would violate the right of minority groups to establish private schools under article 30<sup>13</sup> of the Indian Constitution.<sup>14</sup> In defining the scope of article 21-A the Court held that

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<sup>5</sup> *Bachpan Bachao Andolan v. Union of India & Ors.*, Writ Petition (C) No. 51 of 2006, ¶ 67, available at [https://www.unodc.org/res/cld/case-law/ind/2011/bachpan\\_bachao\\_andolan\\_children\\_in\\_circus\\_2011\\_case\\_html/Bachpan\\_Bachao\\_Andolan\\_-\\_SC\\_Judgment\\_2011.pdf](https://www.unodc.org/res/cld/case-law/ind/2011/bachpan_bachao_andolan_children_in_circus_2011_case_html/Bachpan_Bachao_Andolan_-_SC_Judgment_2011.pdf), archived at <https://perma.cc/J38L-PYVB>.

<sup>6</sup> Right of Children to Free and Compulsory Education (RTE) Act, No. 35 of 2009, <http://indiacode.nic.in/amendmentacts2012/The%20Right%20to%20Free%20and%20Compulsory%20Education%20Act.pdf>, archived at <https://perma.cc/7822-R4VC>.

<sup>7</sup> The Right to Education in India, India: Joint Report on India – Submission by National Coalition for Education and World Vision India for Universal Periodic Review, 13th session, 2012, [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS6\\_UPR\\_IND\\_S13\\_2012\\_JointSubmission6\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS6_UPR_IND_S13_2012_JointSubmission6_E.pdf), archived at <https://perma.cc/FY4A-WK9H>.

<sup>8</sup> *Right to Education*, MINISTRY OF HUMAN RESOURCE DEVELOPMENT (MHRD), <http://mhrd.gov.in/rte>, archived at <https://perma.cc/R3C6-RWVM>.

<sup>9</sup> RTE Act § 3. “Elementary education” under the Act means education from the first grade through the eighth grade.

<sup>10</sup> *Id.* § 4.

<sup>11</sup> MHRD, *supra* note 8.

<sup>12</sup> RTE Act § 12(c).

<sup>13</sup> Article 30 of the Constitution describes a fundamental right, declaring that “[a]ll minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

<sup>14</sup> *Society for Un-aided Private Schools of Rajasthan v. Union of India & Another*, Writ Petition (C) No. 95 of 2010, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=39251>, archived at <https://perma.cc/4Y4X-FST3>. The following sources provide a useful summary of the judgment: *Supreme Court Upholds 25% Reservation in Private Schools*, PRS BLOG (Apr. 14, 2012), <http://www.prsindia.org/theprsblog/?p=1442>, archived at <https://perma.cc/>

[i]t provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. Thus, under the said Article, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under the said Article, the manner in which the said obligation will be discharged by the State has been left to the State to determine by law. Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through unaided private schools.<sup>15</sup>

The Court also held that

unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent/guardian of every child [Article 51A(k)]. The Constitution directs both burdens to achieve one end: the compulsory education of children free from the barriers of cost, parental obstruction or State inaction.<sup>16</sup>

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[XR6C-H8K3](#); *Case-Law Summary: Society for Unaided Private Schools v. India (Supreme Court of India; 2012)*, RIGHT TO EDUCATION PROJECT (July 2015), <http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/India%20Supreme%20Court%2C%20Society%20for%20Unaided%20Private%20Schools%20v%20India%2C%202012.pdf>, archived at <https://perma.cc/QBN5-LN9S>. A larger constitutional bench of the Supreme Court considered the constitutional validity of articles 21A and 15(5) the RTE Act, and held that they are valid but that minority educational institutions are exempt from providing the 25% reservation. *Pramati Educational & Cultural Trust v. Union of India*, Writ Petition (C) No. 416 of 2012, <http://supremecourtindia.nic.in/outtoday/41505.pdf>, archived at <https://perma.cc/XZ9M-2M3R>. For an overview of Supreme Court cases on the right to education see Ashley Feasley, *Recognizing Education Rights in India and the United States: All Roads Lead to the Courts?*, 26 PACE INT'L L. REV. 1 (2014), available at <http://digitalcommons.pace.edu/pilr/vol26/iss2/1>.

<sup>15</sup> *Society for Un-aided Private Schools of Rajasthan v. Union of India & Another* ¶ 9.

<sup>16</sup> *Id.* ¶ 10.

# Israel

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The right to education in Israel is based on a statutory enactment. Israel does not have a single-document constitution. In accordance with the Harari Proposal, a Knesset (Israeli Parliament) resolution adopted on June 13, 1950, Israel's Constitution is made up of chapters, each of which constitutes a separate basic law, and all the chapters together constitute the Constitution of the state.<sup>1</sup>

Twelve basic laws have been adopted since the passage of the Harari Proposal.<sup>2</sup> The list of basic laws adopted so far does not include a special basic law on education.

One of the earliest adopted laws following the independence of the state, however, was the Compulsory Education Law, 5709-1949.<sup>3</sup> According to the Law every "child and youth" from age three to seventeen is subject to compulsory education.<sup>4</sup> Compulsory education is provided over the course of fifteen school years, three of which are at preschool for children between the ages of three and five, and the remainder for children in grades one to twelve.<sup>5</sup>

The state is responsible for the provision of free compulsory education under the conditions enumerated by the Law.<sup>6</sup> The majority of funding for education expenditures comes from the national government and local authorities.<sup>7</sup> Additional funding is provided by contributions of nonprofit organizations and private entities.<sup>8</sup>

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<sup>1</sup> *The Constitution: Harari Proposal*, THE KNESSET, [http://knesset.gov.il/description/eng/eng\\_mimshal\\_hoka.htm#4](http://knesset.gov.il/description/eng/eng_mimshal_hoka.htm#4) (last visited May 13, 2016), archived at <https://perma.cc/3JRL-NGAC>.

<sup>2</sup> *See Basic Laws*, THE KNESSET, [http://knesset.gov.il/description/eng/eng\\_mimshal\\_yesod.htm](http://knesset.gov.il/description/eng/eng_mimshal_yesod.htm) (last visited May 13, 2016), archived at <https://perma.cc/M44X-HBCS>.

<sup>3</sup> Compulsory Education Law, 5709-1949, SEFER HA-HUKIM 5709 No. 26 p. 287, *as amended*, up-to-date text available in the Nevo Legal Database, at <http://www.nevo.co.il> (by subscription), archived at <https://perma.cc/823U-VXN5>.

<sup>4</sup> *Id.* §§ 1, 2 (definition of "youth" and "child," respectively).

<sup>5</sup> *Id.* § 1 (definition of "mandatory education").

<sup>6</sup> *Id.* § 7.

<sup>7</sup> In 2011, 78% of the total expenditure on education was provided by public sources, including the central government, local authorities, and nonprofit governmental organizations. ETI VAISSBLAI, THE EDUCATION SYSTEM IN ISRAEL – CENTRAL ISSUES DISCUSSED IN THE COMMITTEE FOR EDUCATION, CULTURE AND SPORT 15 (Knesset Information and Research Center, Apr. 21, 2013), <http://www.knesset.gov.il/mmm/data/pdf/m03160.pdf>, archived at <https://perma.cc/4W7U-6YE3>.

<sup>8</sup> *Id.*

# Italy

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Italy's Political Constitution of 1948, which remains in force today, establishes the duty of parents to maintain, instruct, and educate their children, even if those children were born out of wedlock,<sup>1</sup> building on the traditional responsibility and right of the father to determine the manner in which his children were educated, a tradition codified in the Italian Civil Code of 1942.<sup>2</sup>

The Constitution also establishes the right to receive instruction at a public institution and enjoy a level of instruction adequate to each person's capacity.<sup>3</sup> In addition, the Constitution mandates compulsory primary education for the first eight years, free of tuition.<sup>4</sup> All "capable and deserving students," regardless of their financial resources, have a constitutional right to attain the highest levels of education.<sup>5</sup> To that effect, the state must establish a system of scholarships, allowances to families, and other benefits, which are to be assigned through competitive examinations.<sup>6</sup>

The Constitution additionally provides for the right of workers to training and professional advancement.<sup>7</sup> Further, disabled persons enjoy the right to receive education and vocational training,<sup>8</sup> which must be provided by entities and institutions established by the state or supported by the state.<sup>9</sup>

According to the Constitution, the state establishes the general rules for education and the functioning of state schools in the country.<sup>10</sup> Entities and individuals also have the right to establish schools and institutions of education, at no cost to the state.<sup>11</sup> In addition, the

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<sup>1</sup> COSTITUZIONE [COST.] [CONSTITUTION] art. 30 para. 1, English translation published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication, at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf), archived at <https://perma.cc/N3ZV-FRZN>.

<sup>2</sup> Anna Maria Caruso, *La Costituzione e il diritto all'educazione [The Constitution and the Right to Education]*, in FRANCESCA MAZZUCHELLI & LINO SARTORI, EMERGENZA EDUCAZIONE: COSTITUZIONE E DIRITTO FORMATIVO 20 (2009).

<sup>3</sup> COST. art. 34, para. 1.

<sup>4</sup> *Id.* art. 34, para. 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* art. 34, para. 3.

<sup>7</sup> *Id.* art. 35, para. 2.

<sup>8</sup> *Id.* art. 38, para. 3.

<sup>9</sup> *Id.* art. 38, para. 4.

<sup>10</sup> *Id.* art. 33, para. 2.

<sup>11</sup> *Id.* art. 33, para. 3.

Constitution indicates that when setting out the rights and obligations for nonstate schools that request parity, the law must “ensure that such schools enjoy full liberty and offer their pupils an education and qualifications of the same standards as those afforded to pupils in state schools.”<sup>12</sup>

The Constitution indicates that state examinations must be “prescribed for admission to and graduation from the various branches and grades of schools and for qualification to exercise a profession.”<sup>13</sup> Higher education institutions, universities, and academies have the right to “establish their own regulations within the limits laid down by the law.”<sup>14</sup>

A legislative decree provides that the right of children to be educated and the corresponding duty of the parents applies not only to Italian citizens, but also to immigrant children who are present in the national territory, independent of the legality of their presence in the country.<sup>15</sup>

According to one scholar, minors’ tribunals have recently developed the concept of the right to education of minors in the context of adoption law.<sup>16</sup> The judicial role includes the power to remove a child from its biological parents and to entrust the child to another family who would better care for the child’s education.<sup>17</sup>

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<sup>12</sup> *Id.* art. 33, para. 4.

<sup>13</sup> *Id.* art. 33, para. 5.

<sup>14</sup> *Id.* art. 33, para. 6.

<sup>15</sup> Decreto Legislativo 25 luglio 1998, n. 286, Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero [Legislative Decree No. 286 of July 25, 1998, Consolidated Text of Immigration and Provisions Regarding Foreigners] art. 38, GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA, Aug. 18, 1998, n.191, <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.data PubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&currentPage=1>, archived at <https://perma.cc/Z8CB-2H3N>.

<sup>16</sup> Caruso, *supra* note 2, at 28.

<sup>17</sup> *Id.*

# Japan

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Japan's former constitution, the Constitution of the Empire of Japan of 1889,<sup>1</sup> did not have a provision on the right to education, though there was debate on the issue when it was enacted.<sup>2</sup> The Meiji government determined that the fundamental principle on education should be provided by the Education Rescript of 1890, not by the Constitution. A new education system was established under the Rescript.<sup>3</sup>

The current Constitution of Japan of 1946 contains the following provision on the right to education:

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.<sup>4</sup>

In accordance with the spirit of the Constitution, the Basic Act on Education sets forth in more detail the aims and principles of education.<sup>5</sup> Based on the Constitution and the Basic Act on Education, the School Education Act provides that compulsory education is for nine years.<sup>6</sup> In order to guarantee the opportunity for such compulsory education and ensure adequate standards, the Basic Act on Education states that the national and local governments are responsible for implementing compulsory education through appropriate role sharing and mutual cooperation.<sup>7</sup>

No tuition fees are charged for compulsory education in schools established by the national and local governments.<sup>8</sup> In addition, the Basic Act on Education obligates the national and local governments to take measures to provide financial assistance to those who, in spite of their

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<sup>1</sup> CONSTITUTION OF THE EMPIRE OF JAPAN (1889), English translation available on the National Diet Library's website at <http://www.ndl.go.jp/constitution/e/etc/c02.html>, archived at <https://perma.cc/MDS3-7APX>.

<sup>2</sup> 二 明治憲法と教育勅語 (2 Meiji Constitution and Education Rescript), in 学制百年史 [100-Year History of the School System], MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE AND TECHNOLOGY, [http://www.mext.go.jp/b\\_menu/hakusho/html/others/detail/1317610.htm](http://www.mext.go.jp/b_menu/hakusho/html/others/detail/1317610.htm) (last visited May 18, 2016), archived at <https://perma.cc/JNL5-UBR9>.

<sup>3</sup> *Id.*

<sup>4</sup> CONSTITUTION OF JAPAN (1946), English translation available on Japanese Law Translation at <http://www.japanese-lawtranslation.go.jp/law/detail/?id=174&vm=02&re=02&new=1>, archived at <https://perma.cc/38T3-AEEF>.

<sup>5</sup> (Original) Basic Act on Education, Act No. 25 of 1947, Preamble; (New) Basic Act on Education, Act No. 120 of 2006, Preamble.

<sup>6</sup> School Education Act, Act No. 26 of 1947, amended by Act No. 50 of 2015, art. 16.

<sup>7</sup> Basic Act on Education, Act No. 120 of 2006, art. 5, para. 3.

<sup>8</sup> *Id.* art. 5, para. 4.

## Constitutional Right to an Education: Japan

abilities, encounter difficulties in receiving education for economic reasons.<sup>9</sup> The national and local governments must provide the necessary educational support to ensure that persons with disabilities receive an adequate education in accordance with their level of disability.<sup>10</sup>

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<sup>9</sup> *Id.* art. 4, para. 3.

<sup>10</sup> *Id.* art. 4, para. 2.

# Lebanon

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Article 10 of the Lebanese Constitution of 1926 guarantees freedom of education, but not a right to education.<sup>1</sup>

However, article 49 of Legislative Decree No. 134 of 1959, as amended in 2011,<sup>2</sup> provides that “[e]ducation is compulsory in the foundational stage, freely available in the public schools, and is a right of all those of education age for this stage.” The second paragraph of this article provides that “[r]egulations and conditions of this free and compulsory education shall be determined by decree adopted by the Council of Ministers.”

The Lebanese government has not yet implemented this provision of the Law. The Ministry of Education and Higher Learning has stated that it is in the preparation phase of implementing this Law.<sup>3</sup>

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<sup>1</sup> LEBANESE CONSTITUTION (May 23, 1962), *as amended*, <http://www.presidency.gov.lb/Arabic/LebaneseSystem/Documents/الدستور اللبناني.pdf> (in Arabic), archived at <https://perma.cc/GX5H-ALA9>.

<sup>2</sup> Law No. 150 of 2011, Al-Jaridah Al-Rasmiyah No. 39, Aug. 8, 2011.

<sup>3</sup> *Towards the Implementation of Compulsory Education of Children Not Attending School (Ages 6 to 15)*, CENTER FOR EDUCATIONAL RESEARCH AND DEVELOPMENT OF THE MINISTRY OF EDUCATION, <http://www.crdp.org/ar/desc-studies/19041-نحو تطبيق الزامية التعليم على الاولاد غير الملحقين بالمدرسة> (in Arabic; last visited May 11, 2016), archived at <https://perma.cc/2EFH-ZUNU>.

# Mexico

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The Mexican Constitution provides that every individual has the right to receive an education.<sup>1</sup> The Mexican government must provide quality education from preschool through high school by ensuring, through appropriate oversight, that educational resources, both human and material, are utilized to obtain the maximum achievement level by students.<sup>2</sup> Attendance at these educational levels is mandatory.<sup>3</sup> Education provided by the government is free.<sup>4</sup>

The Mexican government must also foster and support higher education.<sup>5</sup> In addition, private entities may also provide educational services at all levels, provided that applicable requirements are met.<sup>6</sup>

Accordingly, Mexico's General Law on Education (GLE) indicates that all of the country's inhabitants have an equal opportunity to access the national education system, so long as applicable educational requirements are complied with.<sup>7</sup> Education authorities must take measures aimed at establishing appropriate conditions that allow every individual to have access to a quality and equal education.<sup>8</sup>

The GLE also provides that the annual amount that the Mexican government must allocate to public education may not be less than 8% of the country's GDP, of which no less than 1% must be allocated to fund scientific research and technological development in public higher education institutions.<sup>9</sup>

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<sup>1</sup> CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES] art. 3, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], Feb. 5, 1917, available as amended through January 2016 on the website of Mexico's House of Representatives, at [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_29ene16.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_29ene16.pdf), archived at <https://perma.cc/2QAY-UZUV>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* art. 3-IV.

<sup>5</sup> *Id.* art. 3-V.

<sup>6</sup> *Id.* art. 3-VI.

<sup>7</sup> Ley General de Educación [General Law of Education], *as amended*, art. 2, D.O., July 13, 1993, available as amended through December 2015 at [http://www.diputados.gob.mx/LeyesBiblio/pdf/137\\_171215.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/137_171215.pdf), archived at <https://perma.cc/UWT4-Q565>.

<sup>8</sup> *Id.* art. 32.

<sup>9</sup> *Id.* art. 25.

# New Zealand

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New Zealand does not have a stand-alone document that forms its constitution; instead, the country's constitutional arrangements are found in a range of sources, including certain statutes, court decisions, and uncodified constitutional conventions.<sup>1</sup> For example, the New Zealand Bill of Rights Act 1990 is considered constitutional in nature and gives effect, under domestic law, to the rights contained in the International Covenant on Civil and Political Rights.<sup>2</sup> It does not contain economic, social, and cultural rights, such as the right to education, which may be seen as imposing positive duties on the state.

However, the right to access free education is reflected in the Education Act 1989. Section 3 of this Act states as follows:

### **3 Right to free primary and secondary education**

Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not an international student is entitled to free enrolment and free education at any State school or partnership school kura hourua during the period beginning on the person's fifth birthday and ending on 1 January after the person's 19th birthday.<sup>3</sup>

In a 2003 case, the Court of Appeal noted that, in New Zealand, "the right or entitlement to free enrolment and free education has existed for 125 years, since the enactment of the Education Act 1877."<sup>4</sup>

A further provision, section 8, relates to special education and provides "equal rights to primary and secondary education," stating that people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at State schools as people who do not."<sup>5</sup>

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<sup>1</sup> See Kenneth Keith, *On the Constitution of New Zealand*, THE GOVERNOR GENERAL, <https://gg.govt.nz/role/constofnz/intro> (last visited May 4, 2016), archived at <https://perma.cc/VZE9-FXGQ>.

<sup>2</sup> New Zealand Bill of Rights Act 1990, <http://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>, archived at <https://perma.cc/TJ3D-PF6C>.

<sup>3</sup> Education Act 1989, s 3, <http://www.legislation.govt.nz/act/public/1989/0080/latest/whole.html>, archived at <https://perma.cc/C9JF-S8EK>.

<sup>4</sup> *Attorney-General v Daniels* [2003] NZCA 29, at ¶ 59, <http://www.nzlii.org/nz/cases/NZCA/2003/29.html>, archived at <https://perma.cc/U6QF-9PME>.

<sup>5</sup> Education Act 1989, s 8(1).

In addition, the Human Rights Act 1993 prohibits discrimination in access to educational establishments by reason of any of the prohibited grounds of discrimination in the Act, which include disability as well as sex, religious belief, race, etc.<sup>6</sup>

New Zealand has also ratified several international treaties that affirm the right of access to free education, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>7</sup> There is a “presumption that New Zealand will act in accordance with its international obligations, and that legislation will comply with those obligations.”<sup>8</sup> Where necessary, legislation is enacted to give full effect to the country’s international obligations.<sup>9</sup>

The New Zealand government, in its reporting on the country’s compliance with the ICESCR, refers to various activities and initiatives related to protecting and enhancing the right to education in New Zealand, including with respect to curriculum development, special education, and improving the educational achievements of other vulnerable groups.<sup>10</sup>

The New Zealand Human Rights Commission “first considered the extent to which the right to education was realised in New Zealand” in 2004.<sup>11</sup> It refers to international treaties in defining the core elements of the right, as well as standards developed by a United Nations Special Rapporteur for assessing the realization of the right. It notes that the right to education “is not explicitly provided for in New Zealand law,” although elements are reflected in legislation, with education policy and administrative practice further supplementing the realization of this right.<sup>12</sup>

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<sup>6</sup> Human Rights Act 1993, ss 21 & 57, <http://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html>, archived at <https://perma.cc/QEP7-V88G>.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights, arts. 13 & 14, Dec. 19, 1966, NZTS 1978, No. 18, <https://admin.treaties.mfat.govt.nz/document/td/2011>, archived at <https://perma.cc/BBC2-TDM5>.

<sup>8</sup> LEGISLATION DESIGN AND ADVISORY COMMITTEE, LAC GUIDELINES: 2014 EDITION, ch. 3, “Basic Constitutional Principles and Values of New Zealand Law” (2014), <http://www.ldac.org.nz/guidelines/lac-revised-guidelines/chapter-3>, archived at <https://perma.cc/73MH-VALU>.

<sup>9</sup> *Id.* ch. 8, “Treaties and International Obligations,” <http://www.ldac.org.nz/guidelines/lac-revised-guidelines/chapter-8>, archived at <https://perma.cc/76FX-L53L>.

<sup>10</sup> See IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURE RIGHTS, THIRD PERIODIC REPORT SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT: NEW ZEALAND 111–30 (undated), <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/international-human-rights-instruments-1/procedures-relating-to-the-core-human-rights-instruments-of-the-united-nations/documents-and-other-information-relating-to-the-core-human-rights-instruments-ratified-by-new-zealand/documents-and-other-information-relating-to-the-international-covenant-on-economic-social-and-cultural-rights/third-report/NZ-ICESCR-3rd-periodic-report-2008.pdf> (last visited May 13, 2016), archived at <https://perma.cc/HKW2-VVEF>.

<sup>11</sup> HUMAN RIGHTS COMMISSION, HUMAN RIGHTS IN NEW ZEALAND 2010, ch. 12, “Right to Education,” at 169 (2010), [https://www.hrc.co.nz/files/5114/2388/0504/HRNZ\\_10\\_Right\\_to\\_education.pdf](https://www.hrc.co.nz/files/5114/2388/0504/HRNZ_10_Right_to_education.pdf), archived at <https://perma.cc/FC8W-YDDN>.

<sup>12</sup> *Id.* at 171.

The Human Rights Commission receives a number of complaints each year related to discrimination by educational establishments or in terms of access to education.<sup>13</sup>

In terms of the justiciability of the right to education in New Zealand, the Court of Appeal, in the 2003 case referred to above (which related to special education), overturned the High Court's finding that sections 3 and 8 of the Education Act 1989 conferred an individual entitlement to education in a form that is not clearly unsuitable for the pupil and that must be regular and systematic.<sup>14</sup> The Court of Appeal found that

[a]ny requirement that the education be “regular and systematic” is met in its essence, it seems to us, by the statutory requirements including those for minimum days and hours, teacher registration and curriculum. Those and the other features of the Act mentioned above, together with the very opaqueness of the proposed standard, also appear to us to negate a judicially enforceable “not clearly unsuitable” general standard and the grave difficulty it presents for judicial supervision. . . .

. . . while there are rights under the 1989 Act that can be enforced by court process, those rights do not include generally, and abstractly, formulated rights of the kind stated by the Judge. Rather, the rights are essentially those specifically established by and under the legislation which, to recall the Judge's formulation, do in themselves provide for regularity and system and are designed to ensure appropriate quality. There is no freestanding general right, held and enforceable by each individual student under ss3 and 8, of the kind stated.<sup>15</sup>

Therefore, while the High Court found that a substantive right to education existed under the Education Act 1989, the Court of Appeal took a narrower view, interpreting the right to be procedural only.<sup>16</sup>

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<sup>13</sup> See HUMAN RIGHTS COMMISSION, ANNUAL REPORT 2014/15, at 15 (Oct. 2015), [https://www.hrc.co.nz/files/5414/4893/3995/924898ED-8C74-428A-9ACD-0196CC2125E5HRC Annual Report 2015.pdf](https://www.hrc.co.nz/files/5414/4893/3995/924898ED-8C74-428A-9ACD-0196CC2125E5HRC%20Annual%20Report%202015.pdf), archived at <https://perma.cc/WVW3-VQBX>.

<sup>14</sup> *Attorney-General v Daniels* [2003] NZCA 29, at ¶ 62 (quoting *Daniels v Attorney-General* (3 April 2002) HC AK M1516/SW99, ¶ 137).

<sup>15</sup> *Id.* at ¶¶ 82–83.

<sup>16</sup> See E.J. Ryan, *Failing the System? Enforcing the Right to Education in New Zealand*, 35 VUWLR 735, 739 (2004), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-35-2004/issue-3/ryan.pdf>, archived at <https://perma.cc/44NR-BF62>; Philippa Moran, *No Learner Left Behind: Is New Zealand Meeting Its Obligation Under Article 24 of the United Nations Convention on the Rights of Persons with Disabilities?*, PILJNZ 1, 13–15 (2014), <http://piljnz.org/wp-content/uploads/2016/01/PILJNZ-2014.pdf#page=3>, archived at <https://perma.cc/Z9LJ-SVTD>.

# Nicaragua

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The Nicaraguan Constitution guarantees the right to education,<sup>1</sup> and this constitutional right is further regulated by the General Law on Education promulgated in 2006.<sup>2</sup> Under the Constitution, the state has an unavoidable duty to provide education without exclusion, and to improve, expand, and strengthen it.<sup>3</sup>

Specifically, the Constitution provides that

- the state has a duty to educate and train, at all levels and specialties, the professional and technical personnel necessary for the development and transformation of the country;<sup>4</sup>
- access to elementary and high-school education must be free and equal to all Nicaraguans in state-run schools;<sup>5</sup>
- elementary school attendance is compulsory;<sup>6</sup>
- no one may be excluded from state schools for economic reasons;<sup>7</sup>
- the continuation of programs to eradicate illiteracy is mandatory;<sup>8</sup>
- the indigenous people and ethnic communities of Nicaragua's Caribbean Coast have the right to intercultural education in their mother tongue within their region;<sup>9</sup>
- adults have the right to be educated and develop skills through training and development programs;<sup>10</sup>

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<sup>1</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA art. 58, LA GACETA, Jan. 9, 1987, available as amended through 2014 at [http://www.asamblea.gob.ni/constitucion/Libro\\_Constitucion.pdf](http://www.asamblea.gob.ni/constitucion/Libro_Constitucion.pdf), archived at <https://perma.cc/8RVE-KMUU>.

<sup>2</sup> Ley General de Educación, Ley No. 582 of Mar. 22, 2006, LA GACETA, Aug. 3, 2006, [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/B2FBC86E5FD975420625755B00765A99?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/B2FBC86E5FD975420625755B00765A99?OpenDocument), archived at <https://perma.cc/DDG2-N82D>.

<sup>3</sup> CONSTITUCIÓN POLÍTICA arts. 105, 109.

<sup>4</sup> *Id.* art. 119.

<sup>5</sup> *Id.* art. 121.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* art. 122.

<sup>9</sup> *Id.* art. 121.

<sup>10</sup> *Id.* art. 122.

- universities and centers of superior technical education must be financed by the state and must receive an annual contribution of 6% of the country's general budget, with the possibility of additional allocations for extraordinary expenses;<sup>11</sup>
- academic freedom is guaranteed;<sup>12</sup>
- universities and centers of superior technical education enjoy academic, financial, and administrative autonomy;<sup>13</sup>
- the right to establish private educational services is guaranteed;<sup>14</sup> and
- private religious centers of education have the right to teach religion as an extracurricular matter.<sup>15</sup>

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<sup>11</sup> *Id.* art. 125.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* art. 105.

<sup>15</sup> *Id.* art. 124.

# Russian Federation

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## I. Historical Background

The right to free education was traditionally included in the Constitution of Russia or that of its predecessor, the Soviet Union. The first Russian Constitution of 1918 stated that “providing access to knowledge and full, free, and general education” for the Russian people is a goal of the state.<sup>1</sup> The full constitutional right to education was for the first time pronounced by the Soviet Constitution of 1936. It declared that “Soviet citizens have the right to education, which, according to the Constitution, would be secured by guaranteeing obligatory elementary education[;] free education, including higher education[;] a system of state-issued stipends for the majority of students[;] opportunity to study in one’s native language[;] and free vocational training of workers.”<sup>2</sup> However, including this right in the Constitution and granting everyone the right to education did not prevent the creation of numerous statutory restrictions on people’s right to education. For example, only people under thirty-five years of age were allowed to enroll full time in colleges and universities. In addition, the government established quotas granting priority admission to universities to individuals who had at least two years’ experience working in factories and agricultural cooperatives, restricting admission to those who did not have such experience. Because of mandatory residence registration, individuals could not select the educational institution they preferred to attend and were required to study at an institution designated for their residency area.<sup>3</sup>

Another restriction associated with the government-granted right to full and free high education was the requirement for graduates to work for at least three years in the field of their profession at a government-designated employment place in an area with a shortage of specialists. This practice was abolished after the dissolution of the Soviet Union, but a bill introducing mandatory employment for those graduates who received government scholarships during their university studies is under consideration in the Russian legislature.<sup>4</sup>

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\* Library of Congress Foreign Law Consultant Nerses Isajanyan contributed to this report.

<sup>1</sup> CONSTITUTION OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC art. 17, approved by the Fifth All-Russian Congress of Soviets, July 10, 1918, available at <http://www.hist.msu.ru/ER/Etext/cnst1918.htm> (translation by author), archived at <https://perma.cc/DFS5-QQU5>.

<sup>2</sup> SOVIET UNION CONSTITUTION art. 121, approved by the Eighth Extraordinary Congress of Soviets, Dec. 5, 1936, available at [http://constitution.garant.ru/history/ussr-rsfsr/1936/red\\_1936/3958676/chapter/10/#block\\_1010](http://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936/3958676/chapter/10/#block_1010), archived at <https://perma.cc/VCN7-HH8T>.

<sup>3</sup> Evgenia Volokhova, *Right to Education in Russian History*, PRAVOVEDENIE No. 3, at 255 (2002), available at <http://law.edu.ru/article/article.asp?articleID=180828> (in Russian), archived at <https://perma.cc/DQ9T-DS5T>.

<sup>4</sup> Marina Petrova, *Is Introducing Mandatory Employment a Necessity or a Legislative Exercise*, LAW IN RUSSIA (July 16, 2014), <http://www.lawinrussia.ru/node/299890> (in Russian), archived at <https://perma.cc/K3C8-4QFY>.

## II. Constitutional Right to Education and Implementing Legislation

Article 43 of the Russian Constitution provides for the right to education as follows:

1. Everyone shall have the right to education.
2. General access and free pre-school, secondary and secondary vocational education in State and municipal educational institutions and enterprises shall be guaranteed.
3. Everyone shall have the right to receive on a competitive basis free higher education in State and municipal educational institutions and enterprises.
4. Basic general education shall be compulsory. Parents or guardians shall ensure that children receive a basic general education.
5. The Russian Federation shall establish federal State educational standards and shall support various forms of education and self-education.<sup>5</sup>

The right to education is further detailed in the Federal Law on Education,<sup>6</sup> which guarantees the accessibility of free preschool, primary, basic, and secondary general education; secondary vocational education; and, on a competitive basis, higher education, with some restrictions.

Education is not only the constitutional right of a Russian citizen, but also a constitutional obligation. The Federal Law on Education established that education through grade nine of a secondary school is a requirement for everyone younger than the age of fifteen unless this educational level was reached earlier. In some special cases (e.g., deviant behavior, imprisonment, sickness) this age can be extended by the authorities upon request from the parents or guardians. Free high school education is guaranteed for everyone under eighteen years of age.<sup>7</sup> Provision of education is a parental duty. The Law states that parents or guardians are obliged to ensure that their children receive mandatory general education and provides for measures that would stop parents or guardians from obstructing their children's education.<sup>8</sup>

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<sup>5</sup> KONSTITUTSIA ROSSIISKOI FEDERATSII [CONSTITUTION OF THE RUSSIAN FEDERATION], Dec. 12, 1993, available on the website of the President of the Russian Federation, at <http://constitution.kremlin.ru> (in Russian), archived at <https://perma.cc/P4VT-BVCP>, English translation available on the website of the Ministry of Foreign Affairs of the Russian Federation at <http://archive.mid.ru/ns-osndoc.nsf/8f29680344080938432569ea00361529/d0bd6a5ba542c949c32575dd004009ee?OpenDocument>, archived at <https://perma-archives.org/warc/U27E-YVJ5/http://archive.mid.ru/ns-osndoc.nsf/8f29680344080938432569ea00361529/d0bd6a5ba542c949c32575dd004009ee?OpenDocument>.

<sup>6</sup> Federalnii Zakon ob Obrazovanii v Rossiiskoi Federatsii [Federal Law on Education in the Russian Federation] No. 273-FZ, Dec. 29, 2012, SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [OFFICIAL GAZETTE OF THE RUSSIAN FEDERATION] Dec. 31, 2012, No. 53 (part 1), item 7598, available on the website of the Ministry of Education and Science of the Russian Federation at <http://xn--80abucjiibhv9a.xn--p1ai/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D1%8B/2974>, archived at <https://perma.cc/T6QG-NAN2>.

<sup>7</sup> *Id.* art. 61.

<sup>8</sup> *Id.* art. 44.

The federal government is responsible, among other things, for implementing educational strategic planning; implementing government-approved national educational programs and standards in all types of educational institutions through federal, provincial, and local departments of education; monitoring and regulating the educational system; and assessing the quality of education and professional accreditation.<sup>9</sup>

Federal and municipal funding of education is mandated by law, which guarantees the implementation of the constitutional right to education. The Federal Law on Education states that educational institutions are to be funded through funds appropriated under norms established by the government.<sup>10</sup> These norms provide for budgets at all levels of government to maintain dedicated funding for educational programs and institutions in the amount of no less than 10% of the national GDP, with at least 3% of the federal budget to be spent on higher professional education.<sup>11</sup> Russian commentators note that despite these legal provisions, acute underfunding of education at the federal and municipal levels severely affects its quality.<sup>12</sup>

### III. Restrictions on the Right to Education

While Russian legislation implementing the constitutional right to education does not contain any discriminatory provisions, and the Federal Law on Education guarantees access to education to all Russian nationals, regardless of their race, ethnicity, gender, language, religion, place of birth or residence, political views, party affiliation, age, health, income, social status, or criminal record,<sup>13</sup> Russian scholars maintain that, in reality, discrimination in the field of education still exists. They attribute this discrimination to the lack of equal opportunities in access to education in different regions, differences between schools in urban and rural areas, the unequal quality of education because of a lack of teachers in select areas, differences in teachers' qualifications, and deficiencies in supplying schools with equipment and technology.<sup>14</sup>

Another controversial issue related to the implementation of the constitutional right to education is associated with the right to receive general education in one's native language or to choose the language of education within the options offered by the educational system. While the government is required to provide teachers and opportunities for learning in the languages of the minorities living in Russia,<sup>15</sup> this right can be exercised in less than 5% of all schools in the country, mainly because of the lack of teachers and teaching materials.<sup>16</sup>

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<sup>9</sup> *Id.* art. 89(2), ¶¶ (2)–(4), (6)–(7).

<sup>10</sup> *Id.* art. 99.

<sup>11</sup> KOMMENTARII K KONSTITUTSII ROSSIISKOI FEDERATSII [COMMENTARIES ON THE RUSSIAN FEDERATION CONSTITUTION] (Elena Barkhatova ed., 2013), *bibliographic information at* <https://lcn.loc.gov/2013360592>.

<sup>12</sup> KOMMENTARII K KONSTITUTSII ROSSIISKOI FEDERATSII [COMMENTARIES ON THE RUSSIAN FEDERATION CONSTITUTION] (Yuri Kudriavtsev ed., 1996), *bibliographic information at* <https://lcn.loc.gov/97150674>.

<sup>13</sup> Federal Law on Education art. 5.

<sup>14</sup> KOMMENTARII (Kudriavtsev ed.), *supra* note 12.

<sup>15</sup> Federal Law on Education art. 14.

<sup>16</sup> KOMMENTARII (Kudriavtsev ed.), *supra* note 12.

The Constitutional Court of the Russian Federation has ruled twice on implementing the constitutional right to education and the constitutionality of provisions established by the Federal Law on Education. Once, the Court was asked to review the existing rule, which allows Russian citizens to receive budget-funded undergraduate education only if they have not earned the same undergraduate degree previously. Also, the government limits the number of people who can be admitted to free programs at state universities, establishing annual quotas of eight hundred students per ten thousand people aged seventeen to thirty.<sup>17</sup> The constitutionality of restricting the right to free higher education only to first-time students under this quota was upheld.<sup>18</sup>

Another case assessed whether access to preschool institutions is guaranteed as a constitutional right. Commenting on article 43 of the Constitution, the Constitutional Court noted that ensuring everyone's right to free education is an important function of the Russian Federation as a social state. With respect to preschool education, this right implies the obligation of the state and municipalities to maintain a sufficient number of preschool educational institutions and, where necessary, to increase their number to ensure access to preschool education, irrespective of where a child lives.<sup>19</sup>

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<sup>17</sup> Federal Law on Education art. 100.

<sup>18</sup> Decision of the Constitutional Court of the Russian Federation, Oct. 5, 2001, No. 187-O, available on the website of the Constitutional Court of the Russian Federation at <http://doc.ksrf.ru/decision/KSRFDecision32133.pdf> (in Russian), archived at <https://perma.cc/8TAW-5MQ4>.

<sup>19</sup> Decision of the Constitutional Court of the Russian Federation No. 5-P of May 15, 2006, SZ RF, 2006, No. 22, Item 2375, available at <http://doc.ksrf.ru/decision/KSRFDecision19697.pdf> (in Russian), archived at <https://perma.cc/8SFN-5UQ4>.

# South Africa

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The right to education is enshrined in the Bill of Rights chapter of the South African Constitution, which states that

1. Everyone has the right
  - a. to a basic education, including adult basic education; and
  - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
  - a. equity;
  - b. practicability; and
  - c. the need to redress the results of past racially discriminatory laws and practices.

This right to education, because it resides in the Bill of Rights chapter of the Constitution, may be restricted only “in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”<sup>1</sup>

The country’s Parliament has sought to define the term “basic education” and the responsibility of the state in its realization. It did this by enacting the South African Schools Act in 1996 mandating schooling for all children until they reach age fifteen or the ninth grade, whichever comes first.<sup>2</sup> The Act also requires provincial governments to ensure that there are “enough school places.”<sup>3</sup> In addition, it requires the state to adequately fund public schools so that all children can realize their right to basic education, stating

[t]he State must fund *public schools* from public revenue on an equitable basis in order to ensure the proper exercise of the rights of *learners* to education and the redress of past inequalities in education provision.<sup>4</sup>

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<sup>1</sup> S. AFR. CONST., 1996, § 36, <http://www.gov.za/sites/www.gov.za/files/images/a108-96.pdf>, archived at <https://perma.cc/BXV2-8PUV>.

<sup>2</sup> South African Schools Act 84 of 1996, § 3(1), 12 BUTTERWORTHS STATUTES OF SOUTH AFRICA (updated through 2015), available on the Gauteng Department of Education website at <https://www.gdeadmissions.gov.za/Content/Files/SchoolsAct.pdf>, archived at <https://perma.cc/SAU8-8RWF>; SANDRA LIEBENBERG, SOCIO-ECONOMIC RIGHTS: ADJUDICATION UNDER A TRANSFORMATIVE CONSTITUTION 243 (2010).

<sup>3</sup> South African Schools Act § 3(3).

<sup>4</sup> *Id.* § 34(1) (emphasis in original).

South African courts have also addressed the issue. For instance, in 2011, the Constitutional Court described the nature and importance of the right to basic education in light of the right to higher education, stating

[it is important, for the purpose of this judgment, to understand the nature of the right to “a basic education” under section 29(1)(a) [of the Constitution]. Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be “progressively realised” within “available resources” subject to “reasonable legislative measures”. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application which is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. This right is therefore distinct from the right to “further education” provided for in section 29(1)(b). The state is, in terms of that right, obliged, through reasonable measures, to make further education “progressively available and accessible.”<sup>5</sup>

In a 2014 decision, the Eastern Cape Local Division of the South African High Court noted that the “state’s obligation to provide basic education as guaranteed by the Constitution is not confined to making places available at schools. It necessarily requires the provision of a range of educational resources: – schools, classrooms, teachers, teaching materials and appropriate facilities for learners.”<sup>6</sup> In a 2012 decision, the North Gauteng High Court held that

the provision of learner support material in the form of text books, as may be prescribed is an essential component of the right to basic education and its provision is inextricably linked to the fulfilment of the right. In fact, it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of text books. . . . [The respondent’s] failure to provide text books, somewhat midway through the academic year would prima facie constitute a violation of the right to basic education.<sup>7</sup>

The South African Supreme Court of Appeals concurred with the High Court in a 2015 decision.<sup>8</sup>

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<sup>5</sup> *Governing Body of the Juma Masjid Primary School & Others v. Essay N.O. and Others* [2011] ZACC 13, para. 37 (citations in original omitted), available on the Southern African Legal Information Institute (SAFLII) at <http://www.saflii.org/za/cases/ZACC/2011/13.html>, archived at <https://perma.cc/WNC8-AW86>.

<sup>6</sup> *Madzodzo and Others v. Minister of Basic Education and Others* 2014 (3) SA 441, para. 20 (ECM), available at <http://www.saflii.org/za/cases/ZAECMHC/2014/5.html>, archived at <https://perma.cc/D4YR-SYMY>.

<sup>7</sup> *Section 27 and Others v. Minister of Education and Another* 2013 (2) SA 40, para. 25 (GNP), available at <http://www.saflii.org/za/cases/ZAGPPHC/2012/114.html>, archived at <https://perma.cc/JJT6-T62C>.

<sup>8</sup> *Minister of Basic Education v. Basic Education for All* [2016] 1 All SA 369, para. 46 (SCA), available at <http://www.saflii.org/za/cases/ZASCA/2015/198.html>, archived at <https://perma.cc/84D9-AQT3>.

# Sweden

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## I. Constitutional Right to Publicly Funded Education

In 1976 a goal-setting provision (*målsättningsparagraf*) was included in the Swedish Constitution, declaring the purpose of state power.<sup>1</sup> However, it is not legally binding.<sup>2</sup> The text reads as follows:

Public power shall be exercised with respect for the equal rights of all people, and for the individual's right to freedom and dignity. The individual's economic and cultural well-being shall be the fundamental goal of public activity. Especially, the public power should ensure the right to work, housing, and education, and work towards social welfare and safety, and for good health conditions.<sup>3</sup>

In 1994 (entered into force January 1, 1995), a specific right to free education was included in the Swedish Constitution, providing that “children who are subject to compulsory school attendance (*skolplikt*) have the right to a basic education free of charge in public schools. The public shall also ensure that higher education is available.”<sup>4</sup> Thus, the Constitution provides that higher education must be available, but unlike basic education (elementary through high school), there is no constitutional mandate that it be free.<sup>5</sup> In 2010 Swedish universities began charging tuition for non-EU citizens.<sup>6</sup> Following a debate on the amount charged for international tuition, the Minister for Higher Education has declared that an investigation into the calculation of international tuition will commence in the fall of 2016.<sup>7</sup>

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<sup>1</sup> 1 ch. 2 § REGERINGSFORMEN [RF] [CONSTITUTION] (Svensk författningssamling [SFS] 1974: 152), as in force in 1976, *as amended by* LAG OM ÄNDRING I REGERINGSFORMEN [ACT ON AMENDING THE CONSTITUTION] (SFS 1976:871).

<sup>2</sup> *See* Johan Hirschfeldt, *1.1 Regeringsformen*, in 1 KARNOVS LOVKOMMENTAR (2015/16), comment 5, at 3.

<sup>3</sup> 1 ch. 2 § RF (all translations by author).

<sup>4</sup> 2 ch. 18 § RF *as amended* through Amending Act SFS 1994:1468.

<sup>5</sup> 2 ch. 18§ RF, *as amended*.

<sup>6</sup> LAG OM ÄNDRING I HÖGSKOLELAGEN (SFS 1992:1434) [ACT AMENDING UNIVERSITY ACT (SFS 1992:1434)] (SFS 2010:298), <http://www.notisum.se/rnp/sls/sfs/20100298.pdf>, archived at <https://perma.cc/3HXR-UY9Z>.

<sup>7</sup> Emelie Rosén, “*Studieavgifterna behöver granskas*”, SVERIGESRADIO (May, 10, 2016), <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6429400>, archived at <https://perma.cc/8QRY-MQ9L>. For rules governing the tuition charged, see Förordning om anmälningsavgift och studieavgift vid universitet och högskolor [Regulation on and Tuition at Universities and Colleges] (SFS 2010:543), <https://www.notisum.se/rnp/sls/lag/20100543.htm>, archived at <https://perma.cc/2892-LS8S>.

## II. Right to Education

The right to education in Sweden was first introduced as a mandate on local priests to teach their congregations (both girls and boys) how to read in 1688.<sup>8</sup> A public and compulsory school system (*Folkskola*) for children was established through legislation in 1842.<sup>9</sup> Local parishes were given some autonomy as to when to enroll children, but at the latest children were to enroll prior to their ninth birthday.<sup>10</sup> The law further mandated that poor children were to receive funds (for clothes) from the parish to enable them to attend school.<sup>11</sup> No tuition was charged. A mandate for all children to attend classes at the *Folkskola* level was established in 1882.<sup>12</sup> This mandate included children ages seven to fourteen.<sup>13</sup>

Over time the school system changed, and today it is made up of a nine-year compulsory, basic education (*grundskola*) followed by three years of high school (*gymnasieskola*), which is elective. Today there is a mandate to attend school (*skolplikt*) that is in force for grades one through nine (ages seven to sixteen).<sup>14</sup> Once enrolled in high school (grades ten through twelve), attendance is mandated by law as well.<sup>15</sup> High school is tuition free by law,<sup>16</sup> and students attending high school receive a study allowance of approximately SEK 1,050 (about US\$130) per month.<sup>17</sup> The national government provides a child benefit of equal amounts to the parents of children from the time they are born to age sixteen.<sup>18</sup> The study allowance (unlike the child benefit) can be withdrawn if the child does not attend school.<sup>19</sup> Free school is provided to all children in Sweden, regardless of their legal status.<sup>20</sup> However, undocumented children are not subject to the compulsory requirement of attending school.<sup>21</sup>

<sup>8</sup> KYRKOLAG [CHURCH ACT] (SFS 1686:903), entered into force in 1688.

<sup>9</sup> LAG OM FOLKUNDERVISNING I RIKET [ACT ON PUBLIC EDUCATION IN THE KINGDOM] (SFS 1842:19).

<sup>10</sup> *Id.* 8 § 1 para.

<sup>11</sup> *Id.* 8 § 4 st.

<sup>12</sup> 6 ch. 37 § FOLKSKOLESTADGAN (SFS 1882:2).

<sup>13</sup> *Id.* 6 ch. 35 §.

<sup>14</sup> 7 ch. 2 § SKOLLAG [EDUCATION ACT] (SFS 2010:800), <https://www.notisum.se/rnp/sls/lag/20100800.htm>, archived at <https://perma.cc/E5KF-PKR9>.

<sup>15</sup> *Id.* 15 ch. 16 §.

<sup>16</sup> *Id.* 15 ch. 17 §.

<sup>17</sup> 2 ch. 7 § STUDIESTÖDSLÄG [STUDY SUPPORT ACT] (SFS 1999:1395), [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/studiestodslag-19991395\\_sfs-1999-1395](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/studiestodslag-19991395_sfs-1999-1395), archived at <https://perma.cc/HE65-ME95>.

<sup>18</sup> 5 ch. 3–4 §§ SOCIALFÖRSÄKRINGSBALK [SOCIAL INSURANCE CODE] (SFS 2010:110), [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110), archived at <https://perma.cc/XQ4U-6HGP>.

<sup>19</sup> *See* 2 ch. 6 § STUDIESTÖDSLÄG.

<sup>20</sup> *Papperslösa barn i skolan*, SKOLVERKET (Sept. 1, 2015), <http://www.skolverket.se/regelverk/mer-om-skolans-ansvar/papperslosa-barn-1.205221>, archived at <https://perma.cc/F89M-XM3H>.

<sup>21</sup> *Id.*

### III. Correlation Between Rights and Access to Education

For Sweden, there appears to be no correlation between the right-to-education provision added to the Constitution in 1976 and the actual observance of basic educational rights (for those aged seven to sixteen).<sup>22</sup> Basic schooling has historically been high. Already in 1868, 97.5% of all Swedish children received some education.<sup>23</sup> By 1935, 72% of children living in towns had at least seven years of schooling.<sup>24</sup> Moreover, there appears to be no clear correlation between the adoption of a constitutional right and the quality of education received, as Sweden has fallen in the Programme for International Student Assessment (PISA) rankings in recent years.<sup>25</sup>

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<sup>22</sup> Statistics for lowest level of education of the population based on age and country of birth (inside/outside of Sweden) are available on the Statistics Sweden website: Utbildningsnivå för befolkningen efter inrikes/utrikes född, kön och åldersgrupp 2015, SCB, <http://www.scb.se/sv/Hitta-statistik/Statistik-efter-amne/Utbildning-och-forskning/Befolkningens-utbildning/Befolkningens-utbildning/#>, archived at <https://perma.cc/CQC7-DBRF>.

<sup>23</sup> *Elever i obligatoriska skolor 1847-1962* [Pupils in Compulsory Schools in Sweden 1847–1962], STATISTISKA CENTRALBYRÅN, Nr. 1974:5 (Nov. 1974) at 42.

<sup>24</sup> *Id.*

<sup>25</sup> PISA results declined to 478 raw points (ranking ranges 35–40) in 2012, OECD, PISA 2012 RESULTS IN FOCUS: WHAT 15-YEAR-OLDS KNOW AND WHAT THEY CAN DO WITH WHAT THEY KNOW 5 (2014), <http://www.oecd.org/pisa/keyfindings/pisa-2012-results-overview.pdf>, archived at <https://perma.cc/JT7L-39XR>, compared to 516 raw points in 2000, OECD, LITERACY SKILLS FOR THE WORLD OF TOMORROW: FURTHER RESULTS FROM PISA 2000, at 76 (2003), [http://www.oecd-ilibrary.org/literacy-skills-for-the-world-of-tomorrow\\_5lmqcr2k2mnx.pdf;jsessionid=2dvkf15w510b6.x-oecd-live-02?contentType=%2fns%2fOECDBook%2c%2fns%2fBook&itemId=%2fcontent%2fbook%2f9789264102873-en&mimeType=application%2fpdf&containerItemId=%2fcontent%2fserial%2f19963777&accessItemIds=](http://www.oecd-ilibrary.org/literacy-skills-for-the-world-of-tomorrow_5lmqcr2k2mnx.pdf;jsessionid=2dvkf15w510b6.x-oecd-live-02?contentType=%2fns%2fOECDBook%2c%2fns%2fBook&itemId=%2fcontent%2fbook%2f9789264102873-en&mimeType=application%2fpdf&containerItemId=%2fcontent%2fserial%2f19963777&accessItemIds=), archived at <https://perma.cc/72QJ-W54P>.

# Turkey

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## I. Constitutional Provision on Right to Education

Article 42 of the Constitution of the Republic of Turkey provides for the right to education.<sup>1</sup> It states that “[n]o one shall be deprived of the right of education” and that “[t]he scope of the right to education shall be defined and regulated by law.”<sup>2</sup> However, it declares, “[t]he freedom of education does not relieve the individual from loyalty to the Constitution.”<sup>3</sup>

Article 42 also calls for education to be “based on contemporary scientific and educational principles, under the supervision and control of the State” and disallows the establishment of educational institutions that contravene these principles.<sup>4</sup> Primary education, compulsory for all citizens of both sexes, is to be free of charge in state schools.<sup>5</sup> Private primary and secondary schools are to operate by principles regulated by law in keeping with the standards of the state schools.<sup>6</sup> The Constitution further states, “the state will provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education” and will adopt measures of rehabilitation for persons in need of special education.<sup>7</sup> The only activities to be pursued at educational institutions are training, education, research, and study—activities that “shall not be obstructed in any way.”<sup>8</sup> Finally, article 42 states that only the Turkish language will be taught to Turkish citizens at institutions of education; the foreign

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<sup>1</sup> CONSTITUTION OF THE REPUBLIC OF TURKEY, [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf), archived at <https://perma.cc/LH4J-D4RF>; TÜRKİYE CUMHURİYETİ ANAYASASI, Law No. 2709 (Oct. 18, 1982, issued Nov. 9, 1982, as amended), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2709.pdf>, archived at <https://perma.cc/T8YZ-VWPP>.

<sup>2</sup> *Id.* art. 42 ¶¶ 1 & 2.

<sup>3</sup> *Id.* art. 42 ¶ 4.

<sup>4</sup> *Id.* art. 42 ¶ 3.

<sup>5</sup> *Id.* art. 42 ¶ 5.

<sup>6</sup> *Id.* art. 42 ¶ 6. A paragraph had been added after this provision in 2008 to the effect that the law is clearly written so that no one can be deprived without any reason from exercising their right to higher education, and that the boundaries of the exercise of that right are determined by law. For the text of the amending law, see Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinde Değişiklik Yapılmasına dair Kanun [Law on Amendments to Some Articles of the Constitution of the Republic of Turkey], Law No. 5735 (Feb. 9, 2008), RESMİ GAZETE, No. 26796 (Feb. 23, 2008), <http://www.resmigazete.gov.tr/eskiler/2008/02/20080223-1.htm>, archived at <https://perma.cc/R7LA-4BNK>. However, the insertion of the paragraph was annulled by the Constitutional Court. Constitutional Court Decision, Basis No. E.2008/16, Decision No. 2008/116 (June 5, 2008), RESMİ GAZETE, No. 27032 (Oct. 22, 2008), <http://www.resmigazete.gov.tr/eskiler/2008/10/20081022-15.htm>, archived at <https://perma.cc/4EEW-H9P6>; see also Yaniv Roznai & Serkan Yolcu, *An Unconstitutional Constitutional Amendment—The Turkish Perspective: A Comment on the Turkish Constitutional Court’s Headscarf Decision*, 10(1) INT’L J. CONST. L. 175–207 (2012), <http://icon.oxfordjournals.org/content/10/1/175.full.pdf+html>, archived at <https://perma.cc/WPN4-6J7Q>.

<sup>7</sup> CONSTITUTION OF THE REPUBLIC OF TURKEY art. 42 ¶ 7.

<sup>8</sup> *Id.* art. 42 ¶ 8.

languages to be taught in educational institutions and the rules for education in a foreign language will be determined by law, but the provisions of international treaties are reserved.<sup>9</sup>

Article 24, paragraph 4, of the Turkish Constitution also states,

[r]eligious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.<sup>10</sup>

## II. Constitutional Court Decisions Related to the Right to Education

The Constitutional Court (Anayasa Mahkemesi) is a separate institution from the Supreme Court (Yargıtay), which is the highest court of appeal for civil and criminal cases and does not address constitutional issues. The Constitutional Court has rendered a number of decisions that involve the right to education guaranteed under article 42 of the Constitution.

In a July 13, 2015, ruling, the Court found that certain rules in the Law on Private Teaching Institutions were contrary to article 42 of the Constitution (and also articles 13, on restriction of fundamental rights and freedoms, and 48, on freedom of enterprise) and decided to annul them.<sup>11</sup> The relevant rules excluded private tutoring centers from “private educational institutions” and provided that the activities of extant tutoring centers and study centers that did not transform themselves would be permitted to continue only until September 1, 2015.

The Court noted in its decision that the exclusion of private tutoring centers from the education system, without providing for alternative out-of-school opportunities to meet the need for exam preparation for secondary school and higher education, was “a disproportionate restriction of the right to education and learning.”<sup>12</sup> It added that the private centers had developed as a result of the system of education and exams and had a legal status granted by the state, and that seeking to close them, rather than taking steps to combat their drawbacks, by imposing a complete ban on them by means of the rules in dispute eliminated the possibility for individuals to receive

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<sup>9</sup> *Id.* art. 42 ¶ 9.

<sup>10</sup> *Id.* art. 24 ¶ 4.

<sup>11</sup> See Press Release, Constitutional Court of the Republic of Turkey, Plenary Assembly No. 5/15, Concerning the Judgment on Exclusion of Private Tutoring Centres from the Scope of Private Teaching Institutions (July 24, 2015), <http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleasesofJudgments/detail/10.html>, archived at <https://perma.cc/E5HB-74J2> (citing Özel Öğretim Kurumları Kanunu [Law on Private Teaching Institutions], Law No. 5580 (Feb. 8, 2007, as last amended effective July 24, 2015), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5580.pdf>, archived at <https://perma.cc/9RBJ-E2HF>); see also *Top Court Says Law Banning Tutoring Centers Violates Right to Education, Private Enterprise*, HÜRRIYET DAILY NEWS (July 24, 2015), <http://www.hurriyetdailynews.com/top-court-says-law-banning-tutoring-centers-violates-right-to-education-private-enterprise.aspx?pageID=238&nID=85879&NewsCatID=509>, archived at <https://perma.cc/5VB3-JNAR>.

<sup>12</sup> Press Release, *supra* note 11.

educational support from out-of-school private institutions within the scope of exam preparation and therefore violated the right to education and learning.<sup>13</sup>

On April 28, 2011, the Court ruled that provision 54g of Law No. 2547 on Higher Education, which stated “[t]hose who are expelled from higher education institutions for disciplinary reasons cannot be accepted to any higher education institution again,” imposing a permanent ban on enrollment in any university, was unconstitutional.<sup>14</sup> The Court stated that it “violates the essence of the right to education and imposes a disproportionate sanction,” and therefore unanimously decided to annul the contested provision.<sup>15</sup>

In a 1998 decision, in connection with compulsory education under article 42, the Court found that “compulsory and continuous education for 8 years . . . is not contrary to the Constitution,” and “[t]he state may determine 8 or more years continuous education as compulsory. The taxes imposed in order to meet the expenses of this kind of education were also constitutional.”<sup>16</sup> Therefore, a 1997 law amending the Law on Primary Education in connection with the length of education in certain religious schools did not contravene article 42.<sup>17</sup> The main opposition party had brought an action before the Court to annul the amending law, the party’s main objection to it being that its adoption would preclude students from being educated in “Prayer Leader Preacher High Schools” (*Ymam Hatip Liseleri*). These schools are a special type of high school, under state control and supervision, with an education period of seven years, that make it possible for the graduates to become prayer leaders or preachers and also to continue on to university education in different fields.<sup>18</sup> The challenged amending law provided for four years of education in these schools after eight years of continuous primary school education; articles 1 and 5 provided for education in primary schools to be for eight years continuously.<sup>19</sup>

The Court stated that education is compulsory according to article 42 of the Constitution, to be implemented under the state’s control and supervision, and that whether it is continuous or not is

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<sup>13</sup> *Id.*

<sup>14</sup> *TUR-2011-2-006*, COUNCIL OF EUROPE, [http://codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/tur/tur-2011-2-006?f=templates\\$fn=document-frameset.htm&sq=%5Bbrank%3A%5Bsum%3A%5Bstem%3AK.2011%2F69%5D%5D%5D&x=server\\$3.0&vid=](http://codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/tur/tur-2011-2-006?f=templates$fn=document-frameset.htm&sq=%5Bbrank%3A%5Bsum%3A%5Bstem%3AK.2011%2F69%5D%5D%5D&x=server$3.0&vid=), archived at <https://perma.cc/TNM5-VHAB>; Yükseköğretim Kanunu [Law on Higher Education], Law No. 2547 (Nov. 4, 1981, as last amended Feb. 26, 2016), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2547.pdf>, archived at <https://perma.cc/UL84-WCFU>.

<sup>15</sup> *Id.*

<sup>16</sup> *TUR-2001-1-001*, COUNCIL OF EUROPE, [http://codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/tur/tur-2001-1-001?f=templates\\$fn=document-frameset.htm&sq=%5Bbrank%3A%5Bsum%3A%5Bstem%3AK.1998.52%5D%5D%5D&x=server\\$3.0&vid=](http://codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/tur/tur-2001-1-001?f=templates$fn=document-frameset.htm&sq=%5Bbrank%3A%5Bsum%3A%5Bstem%3AK.1998.52%5D%5D%5D&x=server$3.0&vid=), archived at <https://perma.cc/2UVY-JA9A>.

<sup>17</sup> *Id.*; İlköğretim ve Eğitim Kanunu, Milli Eğitim Temel Kanunu, Çiraklık ve Meslek Eğitimi Kanunu, Milli Eğitim Bakanlığının Teşkilat ve Görevleri Hakkında Kanun ile 24.3.1988 Tarihli ve 3418 Sayılı Kanunda Değişiklik Yapılması ve Bazı Kağıt ve İşlemlerden Eğitime Katkı Payı Alınması Hakkında Kanun [the amending law], Law No. 4306 (Aug. 16, 1997), <http://mevzuat.meb.gov.tr/html/126.html>, archived at <https://perma.cc/S5BC-G3PQ>; İlköğretim ve Eğitim Kanunu [Law on Primary Education] (Jan. 5, 1961, as last amended effective May 3, 2013), <http://www.mevzuat.gov.tr/MevzuatMetin/1.4.222.pdf>, archived at <https://perma.cc/AKV5-HTW6>.

<sup>18</sup> *TUR-2001-1-001*, *supra* note 16.

<sup>19</sup> *Id.*

up to the lawmakers. To realize education at the highest level, the Court added, the state has the obligation to take the necessary measures based on its revenues; it is in this connection that lawmakers may determine a period of eight years or longer for continuous education. Thus, the Court found that the challenged provisions were not contrary to article 42.<sup>20</sup>

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<sup>20</sup> *Id.*