

Approaches of the ECtHR and the US Supreme Court to the Conflict Between “The Best Interests of the Child and Parents’ Rights” on Home Education (Homeschooling)

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Abstract: Home education (homeschooling), a practice that has been increasingly popular especially since the Covid-19 pandemic, has recently begun to be discussed again in the academic environment. The main questions revolve around whether homeschooling is an alternative to mainstream school education; whether home education serves the child’s interests better than conventional school education; whether parents’ right to determine the education of their children can be interfered with by the state and what role the state plays in balancing parents’ rights and the children’s best interests regarding home education. This paper outlines the concept of home education and its criticism in general, and then evaluates the question of balancing parents’ rights and the best interests of the child in homeschooling, by taking into account the international instruments that protect the rights of parents and children. In this context, the Convention on the Rights of the Child, as an international human rights treaty that fully recognizes and ensures the rights of children will be looked at in terms of the best interest of the child. The European Court of Human Rights and the US Supreme Court have different approaches to home education practice. In the rest of this paper, home education case law will be analyzed from a comparative perspective. This will be done with reference to the landmark decisions of the European Court of Human Rights and the US Supreme Court in order

to understand these two judicial authorities' approaches to the conflict between the best interests of the child and parents' rights on homeschooling. In conclusion, evaluations will be provided in line with the jurisprudence of both Courts on cases regarding home education.

1. An Overview of the Concept of Homeschooling

Education provided to children in the comfort of their own homes, rather than in public or private schools, is known as homeschooling (home education). Homeschooling is most often defined as “parent-directed education.”¹ In homeschooling, parents typically educate their children themselves or employ tutors. Home education has been a common practice for families throughout history and across various cultures; however, it fell into disfavor as legislation requiring children to attend school was passed in the 19th and 20th centuries. Since then “classroom schooling” or conventional school education has been the most widely accepted form of education in modern societies.²

During the COVID-19 pandemic, when schools were temporarily closed to prevent children from contracting the virus, many families began homeschooling their children. Since the pandemic, home education has been on the rise, as distance learning became more accessible and digital learning tools became more widespread. However, this development has also given rise to the question whether homeschooling serves the best interests of the child. The fact that home education is not an alternative to face-to-face education in schools and the possible negative effects of this form of education are still being debated. Indeed, the criticisms raised against homeschooling are noteworthy and they emphasize

¹ Brian Day, “Homeschooling Associated with Beneficial Learner and Societal Outcomes but Educators Do Not Promote It,” *Peabody Journal of Education* 88, no. 3 (2013): 324; Andrew Bauld, “Considering Homeschooling? Here’s What to Know: The Flexibility of Homeschooling Makes It an Attractive Option for Some Parents,” *US News*, May 26, 2022, accessed July 18, 2024, <https://www.usnews.com/education/k12/articles/considering-homeschooling-heres-what-to-know>.

² Anna Distefano, Kjell Erik Rudestam, and Robert Silverman, eds., *Encyclopedia of Distributed Learning Archived* (Sage Publications: Thousand Oaks, 2004), 221.

that the practice of unregulated home education poses serious risks to both society and children.

Many factors influence parents' decisions to homeschool their children. Motives for homeschooling have split parents into two main groups, namely, "elective" and "second-choice" homeschoolers.³ "Elective homeschooling" is based on the belief that families choose to homeschool their children due to moral principles, religious values, faith or specific philosophies or approaches to education.⁴ In this context, religious extremism, for example, may lead some parents to keep their children away from conventional schools to prevent exposing them to ideas that contradict their beliefs. However, homeschooling may be an appealing alternative for a variety of reasons other than religious beliefs and convictions. For example, economic circumstances can have a significant impact on decision to homeschool children when parents cannot afford to live in a community where adequately equipped public schools exist.

As for the "second choice" approach, this approach offers an alternative perspective on homeschooling. Some parents decide to homeschool their children in an effort to protect them from potentially harmful situations, such as exposure to illegal substances, harassment, bullying, social pressure, and other types of social challenges that are common in public and private schools.⁵ Parents who feel they do not have a safe option for their children may consider homeschooling as an alternative.⁶ Homeschooling may also be seen as advantageous for disabled or gifted children whose parents struggle to get the education system to adapt the curriculum to their children's special needs. Parents who are financially able to homeschool may also choose to do so because they believe homeschooling is the best form of education for their children. Some parents find homeschooling

³ Chris Forlin and Dianne Chambers, "Is a Whole School Approach to Inclusion Really Meeting the Needs of All Learners? Home-schooling Parents' Perceptions," *Education Sciences* 13, no. 6 (2023): 1–12.

⁴ Paula Rothermel, "Can We Classify Motives for Home Education?," *Evaluation and Research in Education* 17, no. 2 (2005): 74–89.

⁵ Graham Badman, *Report to the Secretary of State on the Review of Elective Home Education in England* (London: The Stationary Office, 2009), 25, 32.

⁶ Sarah Parsons and Ann Lewis, "The Home-education of Children with Special Needs or Disabilities in the UK: Views of Parents from An Online Survey," *International Journal of Inclusive Education* 14, no. 1 (2009): 67–86.

a desirable option because of its flexibility, which reduces their children's exposure to stress. Finally, the rise in home education may also be a reflection or expression of public distrust in the ability and capacity of educational institutions to meet the needs of children.⁷

On the other hand, criticisms of home education focus on a variety of reasons. It is alleged that many parents choose homeschooling to distance their children from democratic values and ideas that conflict with their religious values and beliefs; that many parents support "racial segregation" and "female subservience" or question science and technology, and therefore choose home education as an ideal option for them. It is also suggested that parents who abuse and neglect their children have the option of keeping them at home without fear that their teachers will report them to child protection authorities.⁸ Numerous studies have shown that parents who abuse their children and neglect their education are more likely to use home education as a cover for their abusive behavior.⁹ Homeschooling has also been criticized because parents may not have the necessary academic skills to teach their children.

A longstanding criticism of home education is that it isolates children from society and deprives them of experiences, communication skills, and social competences that are essential for thriving in society. Children's interactions with their classmates have a significant impact on the identity-formation process;¹⁰ therefore, keeping children away from their peers may prevent them from experiencing views that differ from what they are taught at home. As a consequence of this, homeschooling may hinder children's ability to develop an identity independent from their parents.¹¹ Moreover, homeschooled children are more vulnerable to emotional and

⁷ Mitchell L. Stevens, "The Normalisation of Homeschooling in the USA," *Evaluation & Research in Education* 17, no. 2–3 (2003): 90.

⁸ Elizabeth Bartholet, "Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection," *Arizona Law Review* 62, no. 1 (2020): 1.

⁹ Rebecca Webster, "The Relationship Between Homeschooling and Child Abuse," Symposium of University Research and Creative Expression, 2013, 137, accessed July 20, 2024, <https://digitalcommons.cwu.edu/source/2013/oralpresentations/137>.

¹⁰ Emily Buss, "The Adolescent's Stake in the Allocation of Educational Control Between Parent and State," *The University of Chicago Law Review* 67, no. 4 (2000): 1234.

¹¹ Judith G. McMullen, "Behind Closed Doors: Should States Regulate Homeschooling?," *South Carolina Law Review* 54, no. 6 (2002): 75, 85.

physical abuse in their families since they lack the protection of adult supervision outside their own homes.¹²

Children who are educated in a diverse environment are forced to confront prejudices that can help enlighten them about concepts such as “democratic participation, civic responsibility and citizenship.”¹³ Depriving a child of a school experience has been seen as a rejection of children’s rights and failure to fulfill parenting duties and responsibilities.¹⁴ Horace Mann, known as the “Father of American Education,”¹⁵ has mentioned that the only way to ensure the continued existence of a democratic government is to expose children to others who are not like them.¹⁶ Similarly, in its *Board of Education v. Pico* Decision,¹⁷ the US Supreme Court has put forward that “access to ideas prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”¹⁸

2. The Issue of Balancing Parents’ Rights and the Best Interests of the Child

The legal argument used to support the practice of homeschooling is based on the idea that parents should have authority over their children’s growth, experiences, and lives. Universal Declaration of Human Rights Article 26/3 has established the right of parents to determine the education of their children. According to this article, “parents have a prior right to choose the kind of education that shall be given to their children.”¹⁹ Parents’ rights

¹² Robin L. West, “The Harms of Homeschooling,” *Philosophy & Public Policy Quarterly* 29, no. 3–4 (2009): 7, 9.

¹³ Martha Fineman and George B. Shepherd, “Homeschooling: Choosing Parental Rights Over Children’s Interests,” *University of Baltimore Law Review* 46, no. 1 (2016): 74.

¹⁴ Andrew Bainham, *Children: The Modern Law* (Bristol: Family Law, 1999), 542.

¹⁵ Barbara Finkelstein, “Perfecting Childhood: Horace Mann and the Origins of Public Education in the United States,” *Biography-An Interdisciplinary Quarterly* 13, no. 1 (1990): 7.

¹⁶ Mark Groen, “The Whig Party and the Rise of Common Schools: 1837–1854,” *American Educational History Journal* 35, no. 1–2 (2008): 251–60.

¹⁷ *Board of Education v. Pico*, 457 U.S. 853 (1982).

¹⁸ *Ibid.* at 868.

¹⁹ UN Universal Declaration of Human Rights of 10 December 1948, accessed July 20, 2024, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. The International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 13/3 and the International Covenant on Civil and Political Rights (ICCPR) Article 18/4 provides support to parents

are also enshrined in Article 5 and Article 14 of Convention on the Rights of the Child as “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”²⁰ However, this principle should be interpreted to mean that state’s obligation to recognize the rights of the parents to guide a child diminishes as the child matures, and, given the “evolving capacities of the child,” it should be recognized that parents have limited authority to decide what their children should think, feel or believe.²¹ In other words, parents’ rights are restricted by the child’s developing skills and abilities. The CRC recognizes that children’s ability to participate in decision-making processes about their own lives should increase as they grow up. This applies to education as well as other issues. Parental rights should not be seen as the “ownership rights of children as property.”²² However, as the concept of homeschooling practice developed, parental rights began to be perceived as “absolute parental control” over their children’s education.²³ In fact, “parent-led home-based education” is a term that many homeschoolers prefer to define their educational endeavors. In this approach, parents supervise and control every aspect of their children’s education.²⁴

UN Convention on the Rights of the Child (CRC), as the most universally accepted and promptly ratified international human rights instrument that fully recognizes and guarantees the rights of children, is considered to be the cornerstone of children’s rights. According to Article 29 of the Convention,

who prefer to homeschool their children for “religious reasons.” See: Michael P. Donnelly, “Religious Freedom in Education: Real Pluralism and Real Democracy Require Real Choices for Parents,” *The International Journal for Religious Freedom* 4, no. 2 (2011): 61, 65–6.

²⁰ UN Convention on the Rights of the Child of 20 November 1989, accessed July 20, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²¹ Geraldine Van Bueren, *International Law on the Rights of the Child* (Dordrecht: Martinus Nijhoff, 1998), 73, 80.

²² Jeffrey Shulman, “Meyer, Pierce and the History of the Entire Human Race: Barbarism, Social Progress, and (the Fall and Rise of) Parental Rights,” *Hastings Constitutional Law Quarterly* 43, no. 2 (2016): 343.

²³ Fineman and Shepherd, “Homeschooling: Choosing,” 65.

²⁴ *Ibid.*

the child has the right to an education that develops their talents to their fullest potential and prepares them for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indig-enous origin.²⁵

Article 13 of the Convention states that children have “the right to freedom of expression,” which includes “freedom to seek, receive and impart information and ideas of all kinds.”²⁶ Isolating children by preventing them access to information that opposes the ideas, views, and values of their parents and depriving them of developing social skills such as “tolerance” and integration into society is contrary to the provisions of Article 13 and Article 29 of the CRC.

Article 12 of the Convention recognizes the children’s right to participate in decision-making processes regarding their own lives and states that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”²⁷ In the light of this provision, children’s voices should be given more consideration when their best interests are the priority in matters such as education; however, Article 12 can be criticized for enabling parents to decide to what extent their children’s voices should be taken into account and valued, by authorizing parents to designate whether their children are mature or not, or even to silence their children’s voices.²⁸

The best interests of the child are considered the core principle of the CRC and it was added to the original version of the CRC as “(...) the best interests of the child shall be the paramount consideration.”²⁹ The argument

²⁵ United Nations, Convention on the Rights of the Child, Article 29.

²⁶ *Ibid.*, Article 13.

²⁷ *Ibid.*, Article 12.

²⁸ Noam Peleg, “A Children’s Rights Dilemma – Paternalism versus Autonomy,” in *The Rights of the Child*, ed. Rebecca Adami, Anna Kaldal and Margareta Aspán (Leiden, Boston: Brill, Nijhoff, 2023), 9.

²⁹ UN Economic and Social Council, Commission on Human Rights, Thirty-sixth Session, Item 13 of the Draft Provisional Agenda, “Question of A Convention on the Rights of the Child: Note verbale dated 5 October 1979 addressed to the Division of Human Rights

that parents are always the most qualified individuals to make decisions about their children associates parental preferences with the best interests of the children. It is accurate to say that the majority of parents are aware of their children's best interests and act in accordance with them. However, while some parents act to serve the best interest of their children, some parents are unable or unwilling to do so, for various reasons. In fact, the high rate of severe child mistreatment proves that not every parent is able or willing to prioritize the best interests of their children. Compulsory education laws are implemented because some parents are unable or reluctant to ensure that their children receive a sufficient education. Similarly, child labor laws are enforced because some parents cannot resist the temptation of the potential for higher family income.³⁰

The discussion of homeschooling is a unique opportunity for discussing the limits of the rights of parents, the best interests of the child, and also the authority of the state over the education of children.³¹ While striking a balance between the best interests of the child and parents' rights to determine the education of their children, courts consider several factors such as the child's academic requirements, their social needs and integration into society, the parents' competence and ability to provide adequate educational materials and guidance, as well as the child's wishes when the child is mature enough to express his/her preferences. The ECtHR and the US Supreme Court have different approaches to the conflict between the best interests of the child and the rights of parents in the context of home education.

by the Permanent Representation of the Polish People's Republic to the United Nations in Geneva" (E/CN.4/1349), 17 January 1980, 2.

³⁰ Anne C. Dailey and Laura A. Rosenbury, "The New Parental Rights," *Duke Law Journal* 71, no. 1 (2021): 98.

³¹ Rob Reich, "Testing the Boundaries of Parental Authority over Education: The Case of Homeschooling," in *Moral and Political Education*, eds. Stephen Macedo and Yael Tamir (New York: NYU Press, 2001), 275, 280–1.

3. The European Court of Human Rights (ECtHR) Approach to the Conflict between the Best Interests of the Child and Parents' Rights on Home Education (Homeschooling)

The European Convention on Human Rights contains two provisions regarding parents' rights in education. According to Article 8 of the Convention, "Everyone has the right to respect for his private and family life." This right also includes the duty and responsibility of the parents to provide their children with an education in accordance with their beliefs. Article 2 of the First Protocol to the Convention states that

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.³²

It is alleged that parents' preference to educate their children, and therefore, parents' decision to homeschool their children, is included in the scope of Article 8 and Article 2 of the First Protocol to the Convention.³³

The ECtHR has given a broad interpretation for "philosophical convictions," and it is similar to the term "belief" in Article 9 of the Convention which protects "freedom of thought, conscience and religion"³⁴ and stands for the "views that attain a certain level of cogency, seriousness, cohesion, and importance."³⁵

The ECtHR has ruled on cases regarding home education. In this context, although the ECtHR has rejected the complaint regarding the refusal of parents to homeschool their children as "manifestly ill-founded" and

³² Article 2 of the First Protocol: Right to Education (20 March 1952), accessed August 2, 2024, <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-2-first-protocol-right-education>.

³³ Joke Spering, "Home Education and the European Convention on Human Rights," in *International Perspectives on Home Education*, ed. Paula Rothermel (London: Palgrave Macmillan, 2015), 180.

³⁴ The Council of Europe, European Convention of Human Rights, accessed August 2, 2024, https://70.coe.int/pdf/convention_eng.pdf.

³⁵ ECtHR Judgment of 23 March 1983, Case Campbell and Cosans v. the United Kingdom, application no. 7511/76, 7743/76, § 36, hudoc.int; ECtHR Judgment of 18 December 1996, Case Valsamis v. Greece, application no. 21787/93, § 25, hudoc.int.

has found the application inadmissible,³⁶ the case of *Konrad and Others v. Germany*³⁷ is noteworthy since it has concluded that the absolute ban on homeschooling issued to fulfill compulsory education legislation did not mean that the state had violated parents' rights. In this case, the applicant parents who were affiliated with a conservative Christian group, refused to send their children to public or private schools due to concerns about sex education, the presentation of fairy tales in the classroom, and the rise in physical and emotional bullying among students. They homeschooled their children themselves, following the curriculum of an institution that lacked state recognition as a "private school" but specialized in helping conservative Christian parents with this task. The parents submitted a petition on behalf of their children to be excused from compulsory primary school attendance³⁸ based on their religious beliefs; however, their request was rejected by the school authorities, and German administrative courts upheld the rejection. After the German Constitutional Court had decided that the parents' right to educate their children and their freedom of religion were not violated by the administrative courts and had refused to admit the constitutional complaint, the parents applied to the ECtHR and complained under Article 8 "Right to respect for private and family life," Article 9 "Freedom of thought, conscience and religion" of the Convention and Article 2 of the First Protocol to the Convention that they were not allowed to homeschool their children in accordance with their religious beliefs and values.³⁹

Upon the applicant parents' allegation that their right to educate their children at home in accordance with their religious beliefs, protected by Article 2 of the First Protocol, was violated by not allowing them to homeschool their children, the ECtHR emphasized that since the first sentence of Article 2 of the First Protocol dominates the entire clause, it was necessary to read the Protocol's first sentence, which guarantees everyone's right to education, and the second sentence "together." According to the Court, the parents' right to "respect for their religious and philosophical beliefs"

³⁶ ECtHR Judgment of 11 September 2006, Case *Konrad and Others v. Germany*, application no. 35504/03, Section "The Law", § 20, hudoc.int.

³⁷ *Ibid.*

³⁸ *Ibid.*, Section "The Facts/The Circumstances of the Case," § 1-4.

³⁹ *Ibid.*, Section "Complaints."

was also embedded in the right to education. Therefore, “respect” only applied to beliefs or convictions that did not interfere with the child’s right to education.⁴⁰ This interpretation has implied that parents could not deprive their children of their right to education on the grounds of their own convictions.

The German Federal Constitutional Court emphasized the significance of integrating minorities into society in order to prevent the emergence of “parallel societies” built on different beliefs.⁴¹ The ECtHR found this approach consistent with its own precedent on “pluralism in democracy”⁴² and upheld Germany’s ban on home education, despite the right of parents to determine the education of their children, on the grounds that it would lead to the creation of parallel societies and hinder the ability of minorities to integrate.⁴³

The ECtHR found that the German courts had reasoned their rulings thoroughly and had highlighted that the acquisition of academic knowledge was not the only significant purpose of primary school education.⁴⁴ According to the German courts, society was represented by schools and it was in the best interest of children to attend school. Integration into society and acquisition of new skills were equally essential purposes of primary school education; however, these purposes could not be achieved in the same way by homeschooling, even if it granted children an opportunity to learn at the same level as they would in primary schools. The ECtHR concluded that this assumption was not inaccurate and that it was within the states’ margin of appreciation to formulate and interpret standards regarding their education systems.⁴⁵

The German Administrative Court had put forward that the state’s duty and responsibility to provide education would also promote the interests of children and contribute to the protection of their personal rights.

⁴⁰ Ibid., Section “The Law,” § 4.

⁴¹ Ibid., Section “The Facts/The Circumstances of the Case,” § 9.

⁴² See: ECtHR Judgment of 13 February 2003, Case *Refah Partisi (the Welfare Party) and Others v. Turkey*, applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 89, hudoc.int.

⁴³ ECtHR Judgment of 11 September 2006, Case *Konrad and Others v. Germany*, application no. 35504/03, Section “The Law,” § 7, hudoc.int.

⁴⁴ Ibid..

⁴⁵ Ibid., Section “The Facts/The Circumstances of the Case,” § 7.

According to the Court, children did not have the maturity to comprehend the ramifications of their parents' decision to homeschool. It was therefore unlikely that they could make a decision in their best interests. The Administrative Court had emphasized that the parents' right to educate their children was not violated since they could homeschool their children after school and on the weekends.⁴⁶ After stating that it agreed with the assessment of the Administrative Court,⁴⁷ the ECtHR stressed that compulsory attendance at primary school did not deprive the applicant parents of their ability to fulfill their role as educators or to guide their children in a path consistent with their beliefs⁴⁸ and that the applicant parents were able to educate their children at home on weekends and after school. Therefore, parents' right to educate their children in accordance with their religious beliefs was not disproportionately interfered with.⁴⁹

The ECtHR determined that any interference with the applicants' rights under Article 8 "Right to respect for private and family life," Article 9 "Freedom of thought, conscience and religion" of the Convention would be justified under Article 8/2 and 9/2 accordingly, as they were required by law and necessary in a democratic society.⁵⁰

In response to the allegations made by the applicant parents that certain families were treated differently in that their children were excused from attending school, in violation of Article 14 "Prohibition of discrimination" of the Convention, the ECtHR noted that the Court had observed that the applicant children were treated differently from other children who were excused from attending school; however this exemption was granted because the circumstances of the other children were considered exceptional and the "exemption from compulsory school attendance in exceptional circumstances" such as situations where children were physically incapable of attending school or where parents had to leave the country for

⁴⁶ Ibid., § 6.

⁴⁷ Ibid., Section "The Law," § 5.

⁴⁸ Ibid., § 8; also see: ECtHR Judgment of 18 December 1996, Case *Efstratiou v. Greece*, application no. 24095/94, § 32, hudoc.int.

⁴⁹ ECtHR Judgment of 11 September 2006, Case *Konrad and Others v. Germany*, application no. 35504/03, Section "The Law," § 8, hudoc.int.

⁵⁰ Ibid., § 12.

work, was based on the German School Act.⁵¹ Therefore, the ECtHR determined that the alleged distinction could not be regarded as discrimination and that it justified a “difference in treatment.”⁵² Finally, the ECtHR rejected the application as “manifestly ill-founded” and declared it inadmissible.⁵³

In establishing its jurisprudence on Article 2 of the First Protocol, the ECtHR has made an effort to strike a balance between three contradicting interests which are the child’s right to education, the parents’ right to influence their children’s education, and the state’s objective of ensuring “pluralism” in education.⁵⁴ The ECtHR held that pluralism is essential for maintaining a “democratic society” as defined by the European Convention of Human Rights⁵⁵ and that the state has the responsibility to regulate education in accordance with Article 2, as well as to ensure pluralism.⁵⁶ The Court added that this role does not preclude a state from enacting laws requiring compulsory education. All that the ECtHR required was that such education be provided in a pluralistic and impartial manner.⁵⁷

*Wunderlich v. Germany*⁵⁸ is a landmark ECtHR case on home education. This remarkable case concerned the revocation of certain parental rights of the applicant parents and the removal of their children from their house for several weeks due to the parents’ persistent refusal to send their children to school.⁵⁹

In 2005, the applicant parents refused to enroll their eldest daughter in school and were therefore charged with administrative fines for breaching the rules on compulsory school attendance. They paid the fines; however, they still chose not to send her to school. The family lived abroad for two years between 2008 and 2011 and when they finally moved back to Germany

⁵¹ *Ibid.*, § 18.

⁵² *Ibid.*

⁵³ *Ibid.*, § 20.

⁵⁴ *Ibid.*, § 3.

⁵⁵ *Ibid.*, at 6.

⁵⁶ *Ibid.*, at 6–7.

⁵⁷ *Ibid.*, § 7; ECtHR Judgment of 13 September 2011, *Case Dojan and Others v. Germany*, applications nos. 319/08, 2455/08, 7908/10, 8152/10 and 8155/10, Section “The Law,” § 12, [hudoc.int](#).

⁵⁸ ECtHR Judgment of 24 June 2019, *Case Wunderlich v. Germany*, application no. 18925/15, [hudoc.int](#).

⁵⁹ *Ibid.*, § 10–15.

in 2011, they refused to enroll their four children in any school. In 2012, the Education Authority of the State informed the court that the applicant parents were intentionally and continuously refusing to enroll all of their children in school and were putting the children's best interests at risk by raising them in a "parallel world."⁶⁰ The Family Court removed the applicant parents' rights "to determine the children's place of residence" and to decide on school-related issues, such as where they would go to school, and assigned these rights to the "Youth Office."⁶¹ The Family Court determined that the parents' failure to enroll their children in school prevented them from developing social skills such as "tolerance" and integration into society.⁶² In 2013, the applicant parents' appeal to the Family Court was rejected by the Court of Appeal on the grounds that the interests of the children were in tangible danger since the education provided by their parents could not be seen as compensation for their absence from school.⁶³ The applicant parents' attempt to submit a constitutional complaint against the court's decision was rejected by the German Constitutional Court.⁶⁴

In 2013, the children were removed from their parents' house and transferred to a "children's home."⁶⁵ After the assessments had been completed within a few months and the consent of the applicant parents had been obtained for their children to attend school, the children were sent back home.⁶⁶ In 2004, after one year of school attendance, the applicant parents removed their children from school and the Education Authority of the State initiated the legal procedure once again.⁶⁷ However, in August 2014, the Court of Appeal returned the right to determine the place of residence of their children to the applicant parents.⁶⁸ The decision was based on the fact that the circumstances had changed since the previous decision. According to the Court of Appeal, earlier concerns about physical mistreatment had turned out to be unproven and the evaluation had

⁶⁰ Ibid., § 10.

⁶¹ Ibid., § 12.

⁶² Ibid.

⁶³ Ibid., § 15.

⁶⁴ Ibid., § 16.

⁶⁵ Ibid., § 19.

⁶⁶ Ibid., § 20–21.

⁶⁷ Ibid., § 22.

⁶⁸ Ibid., § 22–23.

concluded that the children were not prevented from attending school by force and that the children's academic knowledge level was "not alarming." As a result, the Court of Appeal determined that the permanent removal of the children, although considered the only means to ensure their school attendance, was no longer proportionate as it would have a worse impact on the children than home education. On the other hand, the Court stressed that its decision should not be interpreted as an approval of homeschooling.⁶⁹

The parents applied to the ECtHR, claiming that the state authorities had violated their "right to respect for private and family life" protected under Article 8 of the Convention by depriving them of their right to determine "the children's place of residence," by giving the aforementioned rights to the youth office, by forcibly removing their children from their homes and by keeping them in an orphanage for weeks.⁷⁰

The ban on homeschooling in Germany⁷¹ was described as the "underlying issue"; however, applicants' objections to this rule were deemed

⁶⁹ Ibid., § 23.

⁷⁰ Ibid., § 46; ECtHR Judgment of 13 July 2000, Case Elsholz v. Germany, application no. 25735/94, § 48, 50, hudoc.int; ECtHR Judgment of 10 May 2001, Case T.P. and K.M. v. the United Kingdom, application no. 28945/95, § 70, hudoc.int; ECtHR Judgment of 5 December 2002, Case Hoppe v. Germany, application no. 28422/95, § 48, 49, hudoc.int; ECtHR Judgment of 22 March 2018, Case Wetjen and Others v. Germany, application no. 68125/14, 72204/14, § 68, hudoc.int.

⁷¹ The recognition and regulation of home education varies throughout European countries. While some countries accept and permit home education without constraints, some countries such as Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Germany, Greece, Lithuania, Montenegro, North Macedonia, San Marino, Sweden and Turkey ban home education and consider it illegal. See: European Commission, "Home Education Policies in Europe Primary and Lower Secondary Education," Luxembourg 2018, accessed August 10, 2024, <https://eurydice.eacea.ec.europa.eu/publications/home-education-policies-europe-primary-and-lower-secondary-education>; Jaida Stewart, "Homeschool Laws in Europe by Countries," Progressive Schooling, accessed August 10, 2024, <https://progressiveschooling.com/homeschool-laws-in-europe-by-countries/>. As an example, in Germany, the Netherlands, Spain and Sweden attendance in schools is required by law. See: Daniel Monk, "Regulating Home Education: Negotiating Standards, Anomalies, and Rights," *Child and Family Law Quarterly* 21, no. 2 (2009): 155–84. On the other hand, in the UK, France, Austria, Belgium, Estonia, Italy, Norway, Portugal, Luxembourg, Switzerland, Denmark, Finland and Ireland home education is recognized as legal. Some European countries consider home education legal only in specific cases. For example, in Romania home education is considered legal only when a child is disabled or has special needs that make him/

“inadmissible” based on *Konrad and Others v. Germany* case.⁷² The ECtHR examined the question of whether the measures taken to deprive the parents of some of their rights and to place the children in a children’s home⁷³ were proportionate. The Court found that the administrative fines previously imposed on the parents did not deter the applicant parents from refusing to enroll their children in school and concluded that the decisions of the German Courts were proportionate and acceptable given the facts of the current case.⁷⁴ The ECtHR noted that the children were returned to their parents following the completion of the children’s academic evaluation and the applicant parents’ agreement to enroll their children in school. Therefore, the removal of the children was not carried out in a severe or unusual manner and it did not last longer than was necessary to ensure the best interests of the children.⁷⁵

The ECtHR found that the measures of the authorities were taken with the “legitimate aim of protecting the best interests of the children”⁷⁶ and served the purpose of “protecting health or moral and rights and freedoms of others.”⁷⁷ Regarding the issue of whether the measures were “necessary in a democratic society” and “relevant and sufficient,” the Court emphasized that Article 8 required a fair balance between the interests of the child and those of the parents. In striking such a balance, special consideration had to be given to the best interests of the child, which, depending on their “nature and seriousness,” could take priority over those of the parents.⁷⁸ The Court held that a wide margin of appreciation should be granted, recognizing the necessity of “taking a child into care”⁷⁹ and factors such as

her incapable of going to a traditional school and when a qualified and licensed teacher supervises the child. See: European Commission, “Home Education”; Stewart, “Homeschool Laws.”

⁷² ECtHR Judgment of 24 June 2019, Case *Wunderlich v. Germany*, application no. 18925/15, § 42, hudoc.int.

⁷³ *Ibid.*, § 54.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, § 55.

⁷⁶ *Ibid.*, § 40.

⁷⁷ *Ibid.*, § 45.

⁷⁸ *Ibid.*, § 46.

⁷⁹ ECtHR Judgment of 24 June 2019, Case *Wunderlich v. Germany*, application no. 18925/15, hudoc.int., § 47; also see: ECtHR Judgment of 27 April 2000, Case *K. and T. v. Finland*, application no. 25702/94, § 155, hudoc.int.

“traditions relating to the role of the family and to State intervention in family affairs”; yet, in all cases, it was crucial to consider the best interest of the child.⁸⁰ The ECtHR mentioned that the potential for harm to the children served as a justification for the German authorities’ decision to suspend the parents’ rights.⁸¹ The ECtHR relied on the earlier *Konrad and Others v. Germany* case, in which “avoiding the emergence of parallel societies” and “the importance of pluralism for democracy” were established as “legitimate aims” within the State’s margin of appreciation in relation to education systems.⁸² Finally, the ECtHR concluded that there were relevant and sufficient grounds for both “social isolation” and “integration into society” concerns.⁸³

As to the claim of the applicant parents that the children’s learning assessments had proved that they had an adequate level of academic and social competence, as well as a close bond with their parents, the ECtHR found that they had not been given access to this information when the Youth Welfare Office and the courts decided on the temporary deprivation of parental rights and the placement of the children in a child care facility.⁸⁴ On the contrary, the courts reasonably presumed that the children had no contact with anyone other than their parents and that there was a risk to their physical and mental well-being based on the applicant father’s statement that “the children are the property of their parents.”⁸⁵ The ECtHR added that the state authorities had a duty and responsibility to protect children and they could not be held accountable if it was later found that legitimate concerns for the child’s safety in relation to his/her family members were misinformed.⁸⁶ The ECtHR stated that the lack of this information was due

⁸⁰ ECtHR Judgment of 24 June 2019, *Case Wunderlich v. Germany*, application no. 18925/15, hudoc.int, § 47; also see: ECtHR Judgment of 10 July 2022, *Case Kutzner v. Germany*, application no. 46544/99, § 66, hudoc.int.

⁸¹ ECtHR Judgment of 24 June 2019, *Case Wunderlich v. Germany*, application no. 18925/15, hudoc.int., § 49.

⁸² *Ibid.*, § 50.

⁸³ *Ibid.*, § 51.

⁸⁴ *Ibid.*, § 52.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*; also see: ECtHR Judgment of 30 September 2008, *Case R.K. and A.K. v. the United Kingdom*, application no. 38000/05, § 36, hudoc.int.

to the applicant parents' refusal to have their children's education level assessed prior to their removal.

Finally, the ECtHR concluded that the best interests of the children and the interests of the applicant parents were proportionately balanced by the German authorities within the margin of appreciation granted to them,⁸⁷ and ruled that Article 8 of the Convention was not violated.⁸⁸

In the light of the ECtHR's approach based on its jurisprudence regarding Article 8 of the Convention, the Court takes into account both the government's assessment of necessity and its assessment of the best interests of the child.⁸⁹ The ECtHR must establish two requirements to determine that Article 8 is violated: (a) "government interference" in private or family life, and (b) that the interference is not "necessary in a democratic society" for a particular interest or not "in accordance with the law."⁹⁰ Under ECtHR's jurisprudence "necessity" corresponds to "a pressing social need and, in particular, (...) it is proportionate to the legitimate aim pursued."⁹¹ The ECtHR allows a wide margin of appreciation for the actions of the state, believing that the state is best qualified to judge social needs.⁹²

4. The US Supreme Court's Approach to the Conflict Between the Best Interests of the Child and Parents' Rights on Home Education (Homeschooling)

The US Supreme Court has held that although education is an important function of the state, the right to education is not among the other fundamental rights which are "explicitly" guaranteed by the US Constitution⁹³ and has avoided establishing a federal right to education under the Fourteenth

⁸⁷ ECtHR Judgment of 24 June 2019, Case Wunderlich v. Germany, application no. 18925/15, hudoc.int., § 57.

⁸⁸ Ibid., § 58.

⁸⁹ Ibid., § 47.

⁹⁰ Ibid., § 43–44.

⁹¹ ECtHR Judgment of 24 March 1988, Case Olsson v. Sweden (no. 1), application no. 10465/83, § 67, hudoc.int.

⁹² ECtHR Judgment of 24 June 2019, Case Wunderlich v. Germany, application no. 18925/15, § 47, hudoc.int.

⁹³ San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) at 35.

Amendment.⁹⁴ The Court has not formulated a constitutional right to homeschooling, nor has it decided a case directly focusing on homeschooling; however, in its landmark decisions of *Meyer v. Nebraska*⁹⁵ and *Pierce v. Society of the Sisters*,⁹⁶ the Court has established parents' right to determine the education of their children and has clarified that these rights were limited by the state's right to enact "reasonable" regulations to assure a sufficient education.⁹⁷

Meyer v. Nebraska case is noteworthy since it is the first time that the US Supreme Court has established that parents have the right to determine their children's education. According to the Court, it was "the natural duty of the parent to give his children education suitable to their station in life."⁹⁸ This case concerned a child who was illegally taught the German language at school.⁹⁹ Under a Nebraska law at the time, teachers could only teach English in schools while foreign languages could not be taught until after the eighth grade.¹⁰⁰ Those who disobeyed the aforementioned law were fined.¹⁰¹ Robert Meyer, who was a teacher at a religious school in Nebraska, was convicted of teaching German language to a 10-year-old child in violation of the Nebraska Law.¹⁰² The conviction was upheld by the Supreme Court of Nebraska.¹⁰³ However, The US Supreme Court overturned the decision and stated that the Nebraska Law in question had violated the liberty interests guaranteed under Due Process Clause of the Fourteenth Amendment¹⁰⁴ on the grounds that the Law was "unreasonable, arbitrary

⁹⁴ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Amback v. Norwick*, 441 U.S. 68 (1979); *Plyler v. Doe*, 457 U.S. 202 (1982).

⁹⁵ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁹⁶ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁹⁷ Bartholet, "Homeschooling: Parent Rights," 27.

⁹⁸ *Meyer v. Nebraska* at 400.

⁹⁹ *Ibid.* at 396.

¹⁰⁰ *Ibid.* at 397.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* at 396.

¹⁰³ *Ibid.* at 397.

¹⁰⁴ *Ibid.* at 399–403. States are prohibited by the Fourteenth Amendment from enacting laws that restrict "liberty interests" when those laws are not reasonably related to a legitimate state interest.

and, therefore, unconstitutional.”¹⁰⁵ The US Supreme Court determined that the word “liberty” in the Fourteenth Amendment had a broader scope than “freedom from bodily restraint”¹⁰⁶ and that Robert Meyer’s right to teach, as well as the parents’ right to determine their children’s education, including “the language in which their child was taught”¹⁰⁷ were within the rights protected under the Fourteenth Amendment¹⁰⁸ and for this reason, the state had to respect the “natural duty of the parent to give his children education.”¹⁰⁹

Two years after the Meyer v. Nebraska judgement, in Pierce v. Society of the Sisters case,¹¹⁰ the US Supreme Court repeated its ruling in Meyer case, invalidating an Oregon Act that mandated all children to attend public school. Pierce v. Society of the Sisters case concerned a religious school’s challenge to an Oregon Act that required all children between the ages of 8 and 16 to attend public school.¹¹¹ According to this Act, parents who sent their children to a “private school” were subject to administrative fines and even imprisonment. A business organization in Oregon called “the Society of Sisters” which established and operated religious schools, provided education, and supported orphans, claimed that the Oregon Act violated parents’ right to send their children to a school where they would get religious education. The US District Court for the District of Oregon ruled that the aforementioned Oregon Act violated the Due Process Clause of the Fourteenth Amendment, and the US Supreme Court affirmed the decision, overturning the Compulsory Education Act on the grounds that it “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”¹¹² The US Supreme Court held that although states were entitled to control and regulate their schools, to set criteria for both teachers and students, and to

¹⁰⁵ Ibid. at 403; James W. Tobak and Perry A. Zirkel, “Home Instruction: An Analysis of the Statutes and Case Law,” *University of Dayton Law Review* 8, no. 1 (1982): 15.

¹⁰⁶ Meyer v. Nebraska at 399.

¹⁰⁷ Ralph D. Mawdsley, “The Changing Face of Parents’ Rights,” *Brigham Young University Education and Law Journal*, no. 1 (2003): 168.

¹⁰⁸ Meyer v. Nebraska at 400.

¹⁰⁹ Ibid. at 400.

¹¹⁰ Pierce v. Society of Sisters, 268 U.S. 510 (1925).

¹¹¹ Ibid. at 510/2.

¹¹² Ibid. at 534.

mandate all children of a certain age to attend school, they could not compel children to attend “public schools” and the government could not prohibit parents from choosing a religious school for their children unless there was proof that such a school was unfit to provide an education.¹¹³ The US Supreme Court declared that “rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State”¹¹⁴ and that the “fundamental theory of liberty” which the US Constitution was based upon, would be violated by any interference by the state to “standardize its children by forcing them to accept instruction from public teachers only.”¹¹⁵

In *Pierce v. Society of the Sisters* decision, the US Supreme Court has held that parents’ right to determine their children’s education includes their right to choose private schools that they believe to be in the best interest of their child.¹¹⁶

In both *Meyer v. Nebraska* and *Pierce v. Society of the Sisters* cases, the US Supreme Court has ruled that it was unconstitutional under the “Due Process Clause of the Fourteenth Amendment” to interfere with a parent’s right to direct his or her children’s education.¹¹⁷ The US Supreme Court’s precedent on regulating homeschooling is based on two main principles: the Court has established that parents have the right to determine

¹¹³ Ibid.

¹¹⁴ Ibid. at 535.

¹¹⁵ Ibid.

¹¹⁶ Mawdsley, “The Changing Face,” 173.

¹¹⁷ In the US Constitution, there are two Due Process Clauses. The first one is seen in the Fifth Amendment as “No person shall be (...) deprived of life, liberty, or property, without due process of law”; the second Due Process Clause is seen in the Fourteenth Amendment as “No State shall make or enforce any law which shall (...) deprive any person of life, liberty, or property, without due process of law.” The Due Process Clause of the Fifth Amendment is very similar to that of the Fourteenth Amendment’s; however, the Fifth Amendment is applied solely against the federal government. The “substantive due process” has been considered as one of the most contentious areas of the US Supreme Court jurisdiction since the Court finds itself competent to apply the Due Process Clause of the Fourteenth Amendment to prohibit specific practices. For instance, the US Supreme Court has decided that rights that are not explicitly stated in the Constitution are protected by the Due Process Clause. See: National Constitution Center, “The Fourteenth Amendment Due Process Clause,” accessed August 17, 2024, <https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/701>.

their children's education and reinforced this right when combined with the freedom of religion.¹¹⁸

In 1972, the US Supreme Court, in its landmark *Wisconsin v. Yoder* case, overturned a state law that required compulsory attendance at public schools on the grounds of “freedom of religion.”¹¹⁹ Due process and freedom of religion are two key constitutional provisions for which homeschooling freedom advocates have sought constitutional protection and the Court has upheld this claim. Parents' right to determine their children's education has been the foundation of the legislation supporting home education. The *Wisconsin v. Yoder* case is the only case in which the US Supreme Court has ever issued a decision regarding home education. In this case, Jonas Yoder along with two other parents who were members of the Conservative Amish Community were fined for infringing Wisconsin Law which mandated public school attendance for all children until the age of sixteen by refusing to send their children to public or private schools once they completed the eighth grade, asserting that high school education was against their religious convictions.¹²⁰ The parents claimed that this law had violated their rights protected under the First and the Fourteenth Amendments since they believed that “children's attendance at high school, public or private, was contrary to the Amish religion and way of life.”¹²¹ While the Wisconsin Circuit Court found that the state law was “reasonable and constitutional,” the Supreme Court of Wisconsin ruled that it had violated the “free exercise of religion clause” under the First Amendment of the US Constitution.¹²² The case was appealed to the US Supreme Court, which ruled that the Amish community's religious convictions and their way of life had been “inseparable and interdependent” and had not been “altered in fundamentals for centuries.”¹²³ The US Supreme Court added that high school education would disrupt Amish children's religious

¹¹⁸ Chad Olsen, “Constitutionality of Home Education: How the Supreme Court and American History Endorse Parental Choice,” *Brigham Young University Education and Law Journal*, no. 2 (2009): 411.

¹¹⁹ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

¹²⁰ *Ibid.* at 205–208.

¹²¹ *Ibid.* at 209.

¹²² *Ibid.* at 213, 218.

¹²³ *Ibid.* at 215–217.

growth and their integration into the Amish way of life by exposing them to ideas and values that were against what they believed by stating “the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life mandated by the Amish religion.”¹²⁴ According to the US Supreme Court, another year or two of high school would not provide the benefits of public education that the state used to support the law.¹²⁵ The Court argued that forcing Amish children to attend public or private schools after the eighth grade would compel them “either to abandon their belief or to emigrate to another and more tolerant region.”¹²⁶ Ultimately, the US Supreme Court ruled that states could not compel children to attend school if doing so violated the parents’ right to “direct the religious upbringing of their children” protected under the First Amendment and that the exercise of a religious conviction was infringed by the State of Wisconsin’s interference. Therefore, the application of Wisconsin’s Compulsory School Attendance Law to Amish parents violated the “free exercise of religion clause” under the First Amendment.¹²⁷

The US Supreme Court has asserted that the state’s interest in education is not independent of a “balancing process” when it conflicts with fundamental rights, such as those guaranteed under the First Amendment.¹²⁸

The decision in the *Wisconsin v. Yoder* case has prioritized freedom of religion over the interests of the states and has established the precedent that parents have the authority to educate their children outside of traditional schools. The ruling has been used to justify allowing individuals to receive education outside of conventional schools, including at home. Following the *Wisconsin v. Yoder* decision, proponents of homeschooling have begun to use this case as the legal ground to legitimize withdrawing their children from the conventional school system.

Wisconsin State and the Amish parents had different interpretations of what was in the best interest of the children. According to the State, the best interest of the child required that children be sent to public and private schools until the completion of the eighth grade for the “preparation of

¹²⁴ Ibid. at 217.

¹²⁵ Ibid. at 224–225.

¹²⁶ Ibid. at 218.

¹²⁷ Ibid. at 218, 234.

¹²⁸ Ibid. at 214.

the child for life in modern society as the majority live.¹²⁹ On the other hand, the Amish parents believed that it was in the best interest of their children to provide “continuing informal vocational education designed to prepare their children for life in the rural Amish community”¹³⁰ in accordance with their religious convictions, which required them to withdraw their children from public and private schools. However; the US Supreme Court has been criticized for deciding the case based merely on the rights of the Amish parents and disregarding the rights of the Amish children, especially their “right to an open future”¹³¹ which is seen as closely related to the “autonomy rights” of the future individual that the child will become.¹³²

Justice Douglas has clearly stated in his dissenting opinion that

if a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today (...). It is the student’s judgment, not his parents’, that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny.¹³³

In line with Justice Douglas’s approach, Justice White has put forward in his concurring opinion that

it is possible that most Amish children will wish to continue living the rural life of their parents (...). Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations, formal training will be necessary.¹³⁴

In this regard, it can be argued that the parents’ behavior violates the children’s “right to an open future” since it may deprive them of some of the options they might have when they become adults.¹³⁵ It can also be argued that in the *Wisconsin v. Yoder* case the US Supreme Court has not

¹²⁹ Ibid. at 222.

¹³⁰ Ibid. at Syllabus.

¹³¹ Joel Feinberg, “The Child’s Right to an Open Future,” in Feinberg, *Freedom and Fulfillment: Philosophical Essays* (Princeton University Press, 1992), 76–8.

¹³² Ibid., 77–8.

¹³³ *Wisconsin v. Yoder*, 406 U.S. 205 (1972) at 245.

¹³⁴ Ibid. at 240.

¹³⁵ Feinberg, “The Child’s Right,” 77–8.

fully recognized that children have fundamental constitutional rights separate from those of their parents.

5. Conclusion

The ECtHR's and the US Supreme Court's approaches to home education differ due to their different interpretations of parents' rights to influence the education of their children, the child's right to education, and the role of the state in public education. The US Supreme Court appears to have a more liberal approach to homeschooling, emphasizing parental rights and freedom of religion in its rulings. The US Supreme Court believes that parents are the best judges of what is in the best interest of their children¹³⁶ and generally favors allowing parents to educate their children in line with their values,¹³⁷ whether through public schools, private schools¹³⁸ or homeschooling.¹³⁹ This emphasis on individual rights mirrors the American legal heritage that highly esteems family autonomy and limited government interference.¹⁴⁰ The US Supreme Court has held that state intervention in education and family matters should be kept to a minimum and that individual liberties such as parental rights and freedom of religion should take priority over state-imposed universal education goals.¹⁴¹

On the other hand, the ECtHR stresses the role of the state in providing children with an education that is consistent with democratic values, social inclusion, and collective welfare. It is based on the idea that education benefits not only the child but also the community by encouraging social integration and discouraging social isolation.¹⁴² The ECtHR essentially

¹³⁶ Parham v. J.R., 442 U.S. 584 (1979) at 602–604.

¹³⁷ Meyer v. Nebraska, 262 U.S. 390 (1923) at 400; Luke Julian, “Parents Versus Parens Patriae: The Troubling Legality of Germany’s Homeschool Ban and a Textual Basis for Its Removal,” *Emory International Law Review* 36, no. 1 (2022): 233.

¹³⁸ *Ibid.*, 218; Pierce v. Society of Sisters, 268 U.S. 510 (1925).

¹³⁹ Eugene Volokh, “Homeschooling: Constitutional Right to Home-School?,” Reason Foundation, October 23, 2018, accessed August 27, 2024, <https://reason.com/volokh/2018/10/23/constitutional-right-to-home-school/>.

¹⁴⁰ Wisconsin v. Yoder, 406 U.S. 205 (1972) at 232.

¹⁴¹ *Ibid.* at 214, 215.

¹⁴² ECtHR Judgment of 7 December 1976, Case Kjeldsen, Busk Madsen And Pedersen V. Denmark, applications nos. 5095/71, 5920/72, 5926/72, § 50, 53, hudoc.int; ECtHR Judgment of 18 March 2011, Case Lautsi and Others v. Italy, application no. 30814/06, at Concurring

strikes a balance between parental rights, children's rights, and the state's obligation to provide education; however, states have the authority to control or even ban homeschooling when there are legitimate grounds to do so. For instance, in *Konrad and Others v. Germany* case, the ECtHR upheld Germany's ban on homeschooling and confirmed the state's obligation to ensure the social integration of children and protect pluralism.¹⁴³ The ECtHR grants states a significant discretion of "margin of appreciation" in education matters. This can be understood to mean that states can more easily impose restrictions on home education by emphasizing the best interests of the child as well as social values such as social cohesion and the role of the public education system in pluralistic democracies.¹⁴⁴ The ECtHR has held that pluralism is essential to maintaining a "democratic society" as defined by the European Convention on Human Rights. All that the ECtHR requires is that education be provided in a pluralistic and impartial manner. Education is considered by the European states as a way to expose children to a variety of social values and experiences. Therefore, policies and regulations that prioritize the social interests and participation of children as democratic citizens in pluralistic societies, are supported by the ECtHR decisions.

In cases related to home education, the ECtHR analyses whether the child's right to education and social development may be impeded by restrictions on home education. States are recognized by the ECtHR as the ultimate protectors of the children's right to education, ensuring their autonomous development and exposure to views and ideas outside their family environments. This gives states greater flexibility to restrict home education in favor of public education that fosters democratic values and social integration.

The ECtHR is of the opinion that society is represented by schools and that it is in the best interest of children to attend school. Academic knowledge is not the only significant purpose of primary school education and integration into society and learning new skills are equally essential

Opinion Of Judge Rozakis Joined By Judge Vajić (iii); ECtHR Judgment of 29 June 2007, *Case Folgerø and Others v. Norway*, application no. 15472/02, §15, hudoc.int.

¹⁴³ ECtHR Judgment of 11 September 2006, *Case Konrad and Others v. Germany*, application no. 35504/03, Section "The Law", § 7, hudoc.int.

¹⁴⁴ *Ibid.* at "The Law", § 7, 12.

purposes of school education; however, these purposes cannot be achieved in the same way by home education, even if it provides children with the same level of learning as in primary schools. The ECtHR has determined that parents cannot refuse their children's right to education due to their own convictions and has upheld Germany's ban on home education, despite parents' right to determine their children's education on the grounds that it would lead to the creation of parallel societies and hinder the ability of minorities to integrate.¹⁴⁵ According to the ECtHR, refusing to send children to school means putting the best interests of the children at risk by bringing them up in a "parallel society."

The United Nations Convention on the Rights of the Child (CRC) is given considerable significance in the ECtHR's rulings on home education; however, the United States has not ratified and not recognized the CRC so far.¹⁴⁶ The main argument used by individuals against international human rights treaties is that their ratification and recognition could threaten fundamental rights enshrined in the US Constitution and jeopardize the US legal system¹⁴⁷ and that these treaties could restrict the rights of the American citizens.¹⁴⁸ In parallel to this approach, the US policymakers have seen the CRC as a treaty conflicting with "parents' rights" and "privacy rights." In their view, the ratification of the CRC could enable the UN to decide what is in the best interest of the American children. They also argued that the CRC could intrude on family privacy, especially the parents' rights to educate their children.¹⁴⁹ The US Supreme Court, in *Meyer v. Nebraska* and *Pierce v. Society of the Sisters* cases, has established that parents have

¹⁴⁵ Ibid. at "The Law," § 7.

¹⁴⁶ As the most universally accepted and promptly ratified international human rights instrument, CRC has been ratified by 197 countries so far; however, only Somalia and the United States have not ratified this treaty. See: Congressional Research Service, "The United Nations Convention on the Rights of the Child," July 27, 2015, 1, accessed August 28, 2024, <https://crsreports.congress.gov/product/pdf/R/R40484/25#:~:text=Opponents%20argue%20that%20ratification%20would,educate%20or%20discipline%20their%20children>.

¹⁴⁷ Natalie Hevener Kaufman, *Human Rights Treaties and The Senate: A History of Opposition* (Chapel Hill: The University of North Carolina Press, 1990), 149–50.

¹⁴⁸ Ann Elizabeth Mayer, "Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution be an Obstacle to Human Rights?," *Hastings Constitutional Law Quarterly* 23, no. 3 (1996): 748–9, *supra* note 22.

¹⁴⁹ Congressional Research Service, "The United Nations Convention on the Rights of the Child," 7–9.

the right to determine their children's education, stating that the word "liberty" in the Fourteenth Amendment of the US Constitution has a broader scope than "freedom from bodily restraint"¹⁵⁰ and that the parents' right to determine their children's education falls within the rights protected under the Fourteenth Amendment and for this reason states have to respect the "natural duty of the parent to give his children education."¹⁵¹ On the other hand, like any other category of rights, parental rights are limited. In this regard, states may interfere with parents' rights to educate their children if there is substantial evidence or indication of child abuse or neglect.

The ECtHR's approach that refusing to exempt a child from compulsory school attendance does not violate a parent's right to bring up their child in line with their religious convictions stands in stark contrast to that of the US Supreme Court. In fact, the US Supreme Court has ruled in its case law that interference with a parent's right to decide on their children's education is unconstitutional under the Due Process Clause of the Fourteenth Amendment. The US Supreme Court's precedent on the regulation of homeschooling rests on two main pillars, where the Court has established that parents have the right to determine the education of their children and has reinforced this right by linking it to freedom of religion. The US Supreme Court, in its landmark *Wisconsin v. Yoder* case, has overturned a state law requiring compulsory attendance in public schools on the grounds of "freedom of religion." Due process and freedom of religion are the two key constitutional provisions for which homeschooling freedom advocates have sought constitutional protection, and the Court has upheld this claim. The US Supreme Court has ruled that states cannot compel children to attend school if it violates the parents' right to "direct the religious upbringing of their children" protected under the First Amendment. The decision in the *Wisconsin v. Yoder* case has given priority to freedom of religion over states' interests and has also established the precedent that parents have the authority to educate their children outside of public and private schools. This case has been used to justify allowing individuals to be educated outside conventional schools, such as at home; however, the US Supreme Court in this case, has given weight to the rights of the parents

¹⁵⁰ *Meyer v. Nebraska* at 399.

¹⁵¹ *Ibid.* at 400.

and disregarded children's rights, in particular their "right to an open future." The US Supreme Court's approach to prioritizing parental rights over the best interests of the child in educational matters has led to parents being seen as the main decision-makers regarding their children's education. In other words, children's autonomy in education is largely defined through the lens of parental preferences.

In *Pierce v. Society of the Sisters* judgement, the US Supreme Court has determined that "children were not mere creatures of the state."¹⁵² However, this evaluation should not be interpreted to mean that children are solely the property of their parents. It is essential to remember that every individual, regardless of age, has human rights. The conception that children are "mini human beings with mini human rights,"¹⁵³ implying that children either do not have rights at all or have limited rights, is incompatible with contemporary human rights discourse. In this regard, the interpretation of children as independent beings with independent rights should be adopted by the judicial authorities. Children are more prone to mistreatment such as neglect and abuse due to their vulnerability. Therefore, granting significant authority to parents who have dominant power over their powerless children may create danger when the children are homeschooled.

Academic knowledge or compatibility is not the only purpose of school education. School education is a powerful instrument to introduce children to fundamental values and concepts such as democracy, equality, tolerance, diversity, and human rights and to guide them to be righteous and responsible citizens of a democratic society. In light of these facts, the approach that home education can be an alternative to mainstream school education appears rather unconvincing.

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¹⁵² *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) at 535.

¹⁵³ Benyam Dawit Mezmur, "Based Solely on Their Date of Birth? Rethinking Age Discrimination Against Children Under the Convention on the Rights of the Child," *Harvard Human Rights Journal* 36, no. 2 (2023): 261.

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