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EDITORS

Vassiliki Riga
& Giorgos Simopoulos



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ΠΑΝΕΠΙΣΤΗΜΙΟ
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Contact Information

For any questions or further information about this publication, please contact: vriga@upatras.gr or gsimopoulos@unicef.org.

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Khalil Ghassan, UNICEF Representative in Greece

Kirtskhalia Eteri, Child Rights Education Specialist, on mission- UNICEF Greece CO

Pitsou Charikleia, Special Teaching Staff, University of Patras

Riga Vassiliki, Professor, University of Patras

Simopoulos Giorgos, Education Officer, UNICEF Greece

Stellakis Nektarios, Associate Professor, University of Patras

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XIV. Parental Agency and Children's Rights Education at the European Court of Human Rights. A Case-Based Inquiry into Legal Culture and Access to Justice

NATHANAILI Valbona

*Department of Pedagogy-Psychology
LOGOS University College, Tirana, Albania
valbona.nathanaili@kulogos.edu.al*

Abstract

The act of seeking judicial remedies in matters concerning education and the right to education depends on a range of factors, including cultural values, legal systems, structural conditions, and the development of parental agency. This paper explores how and why parents turn to the European Court of Human Rights (ECtHR) in response to violations of their children's rights. The paper employs a qualitative analysis of ECtHR judgments, legal frameworks, and secondary literature to examine how cultural norms, legal barriers, and structural inequalities shape parental access to supranational justice. A total of six cases were selected based on thematic relevance and legal impact. Where relevant, media coverage and public discourse are also considered as influencing factors. Focusing on the Albanian context, the case of *X and Others v. Albania* (2022), concerning the educational segregation of Roma and Egyptian children, is used as a central example. An unreported but witnessed case is also included to highlight informal routes of parental grievance expression outside the legal system. The analysis reveals that while parental engagement with the ECtHR is often hindered by limited structural conditions, cultural values and insufficient access to legal aid, it can also serve as a catalyst for legal and policy reform or as a means to challenge existing laws. The paper concludes with recommendations for improving access to justice for marginalized families, including the expansion of legal support services, targeted public awareness campaigns, and inclusive educational policy reforms.

KEYWORDS: Parental agency; Right to education; Court; Cultural values; Structural conditions

1. Introduction

For centuries, education has evolved from a privilege of the few into a universal and mandatory societal obligation, shared by both the state and educators (Zogla, 2019: 83). Today, the right to education is recognized as a fundamental human right, intrinsically linked to human dignity and social inclusion. It represents one of the clearest examples of how rights defy static boundaries, simultaneously encompassing economic, social, and cultural dimensions (Beiter, 2006: 47). Despite its formal recognition, the enforcement of the right to education often depends on access to legal remedies. In Europe, the European Court of Human Rights (ECtHR) serves as a critical supranational mechanism for addressing violations of this right. The ECtHR has played a significant role in shaping jurisprudence on children's rights and education, offering a venue for redress when domestic legal systems fail to provide adequate protection. However, access to the ECtHR is not automatic; it depends heavily on the agency of individuals - particularly parents - who are willing and able to navigate complex legal systems to seek justice on behalf of their children.

Children, as a legally and socially dependent group, are especially vulnerable to violations of their socio-economic rights. These violations affect them differently than adults, with potentially profound and long-lasting developmental consequences (Nolan, 2014: 123). Because children often lack the capacity to assert their rights independently, it is parents who typically serve as their legal advocates. The decision to pursue legal recourse - especially at the supranational level - requires both awareness and empowerment, which are not equally distributed across all families or societies.

One critical lens through which to understand these disparities is legal culture, defined as the set of attitudes, ideas, expectations, and values that individuals and communities hold regarding legal institutions and rules (Pérez-Perdomo & Friedman, 2003: 2). Like other cultural systems, legal culture can either facilitate or hinder access to justice (Adamopoulos, 2001: 28). As Merry (2006: 3) argues, for human rights to function as transformative tools, they must become embedded in the consciousness and practice of everyday people.

Within this context, parental agency - the capacity of parents to define goals and act independently to secure their children's rights (Kabeer, 1999: 437- 438) - becomes a central concept. Whether or not parents choose to engage with formal legal systems, particularly courts like the ECtHR, is influenced by a combination of internal motivation and external cultural, legal, and structural factors. While the internal motivation is too frequently shaped by religious considerations (Marples, 2017 :151), the cultural dynamics significantly shape the exercise of this agency. In collectivist societies, for example, individuals may prioritize community harmony and family responsibility over formal legal remedies, often perceiving court action as socially disruptive (Kim, 2001). Moreover, differing conceptions of whether education is primarily a state or family obligation affect whether parents believe they are entitled - or even expected - to hold the state accountable through legal means.

These choices are further conditioned by structural inequalities. Parents from marginalized or migrant backgrounds frequently encounter diminished agency due to limited legal literacy, economic precarity, past experiences of institutional discrimination, or a general mistrust of state systems (Merry, 2006: 10-15). According to Purnell & Fenkl (2024: 19), vulnerable populations include the following: the economically disadvantaged, racial and ethnic minorities (including those of mixed race or ethnicities), the uninsured and underinsured, older adults, children, the homeless, people with human immunodeficiency virus (HIV), people who are stigmatised for whatever reason, which includes substance misuse, people with chronic health conditions and severe mental illness, rural populations, people with low acculturation and low levels of education, gender disparities, refugees and undocumented immigrants, distance to a health-care facility

and language difficulties, and an interpreter is not available.

These dynamics are vividly illustrated in the context of Albania, where access to justice remains uneven for marginalized communities, particularly Roma and Egyptian minorities. The case of *X and Others v. Albania* (2022), heard by the European Court of Human Rights, serves as a compelling example of how parental agency, legal culture, and structural exclusion intersect. The case involved allegations of educational segregation and systemic discrimination against Roma and Egyptian children, and it raises urgent questions about the accessibility and effectiveness of supranational justice mechanisms for socially excluded families. By exploring this case, the present study aims to uncover how legal mobilization occurs in response to educational rights violations—and what barriers prevent or enable parents from acting.

This paper investigates how and under what conditions parents engage the ECtHR in education-related cases concerning their children. It seeks to understand the cultural, legal, and structural dynamics that influence such engagement, focusing particularly on Albania as a case study. In doing so, it contributes to debates on access to justice and legal mobilization in child rights contexts across Europe.

2. Methodology

This study adopts a qualitative case law analysis grounded in a socio-legal approach, with a focus on parental agency in litigation before the European Court of Human Rights (ECtHR) concerning children's right to education. The aim is to understand how and why parents initiate or participate in such cases, and what factors enable or constrain their access to justice. The primary source of data is the 'Guide on the Case-Law of the European Convention on Human Rights: Rights of the Child' (ECtHR, 2025), which provides a comprehensive overview of cases where children's rights are at stake. Additional information is drawn from full ECtHR judgments available on the HUDOC database. A total of six cases, ranging from 1976 to 2024, were selected for detailed analysis. The qualitative method is particularly appropriate for capturing the interpretive and context-dependent nature of parental legal engagement.

2.1 Socio-Legal Lens

The study adopts a socio-legal perspective, treating ECtHR decisions not only as legal outcomes but as windows into broader power dynamics, including the ways families access supranational justice. Concepts such as legal consciousness (Merry, 2006), Agency (Kabeer, 1999; Sen, 1999), and legal mobilization inform the interpretive lens.

2.2 Limitations

This research does not aim to statistically generalize from all ECtHR education cases but rather to provide in-depth qualitative insights into selected examples where parental action is visible and meaningful. It acknowledges that some parents may be absent from the formal legal record due to structural exclusion, legal illiteracy, or reliance on third-party representation. To illustrate this point, one unreported case - brought to the author's attention in her capacity as an education expert - is included as a witnessed example of informal grievance resolution outside the legal system.

3. Case Selection Criteria and data

This study uses a purposive, thematic, and impact-oriented sampling approach to select key ECtHR cases related to the right to education under Article 2 of Protocol No. 1. The cases in this study were selected from the "Guide on the Case-law of the European Convention on Human Rights – Rights of the Child (European Court of Human Rights, 2025).

Cases were selected based on the following criteria:

- Child-Centered Education Claim: The case involves a substantive issue concerning children's

right to education.

- Type of violation. Each case corresponds to one of the following clusters: Access and exclusion; Discrimination (ethnic, disability, nationality); Curriculum and parental values; Safety and dignity (e.g., corporal punishment, abuse)
- Legal or Policy Impact: The case has contributed to systemic reform, clarified state obligations, or influenced public debate or national legislation regarding children's education.
- Visibility of Parental Agency: The case offers clear evidence of parental initiative, legal mobilization, or conflict between parental rights and state authority.

The key concepts of parental agency, structural barriers, and legal mobilization were operationalized by translating them into these specific case selection criteria. These criteria served as the analytic lens guiding both inclusion and interpretation. Table 1 synthesizes the selected cases according to three key attributes: the type of violation, the degree of parental engagement (specifically, whether the complaint was parent-initiated), and the legal or policy outcome. While the broader conceptual framework informed the full analysis, Table 1 focuses on these core variables due to their relevance in assessing procedural agency and systemic impact across diverse legal and social contexts.

Table 1. Facts, parental engagement and outcome

Type of violation	Case Study	Facts	Parental engagement: Did they initiated the complaint?	Outcome of the court / Legal or Policy Impact	Type of violation
Safeguarding the right to education: general principles and objectives	1982: Campbell and Cosans v. the United Kingdom	The use of corporal punishment as a disciplinary measure in the State schools in Scotland	Yes, two mothers; the two appellants were initially unconnected (Fancourt, 2024)	Violation / influence on national legal reforms and human rights standards in education	Safeguarding the right to education: general principles and objectives
Safeguarding the right to education: general principles and objectives / Content and quality of education - Curriculum and educational support	1976: Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark ³	The integration of sex education in the state primary schools	Yes / parents of children	No violation	Safeguarding the right to education: general principles and objectives / Content and quality of education - Curriculum and educational support
Content and quality of education - Religious symbols	2009: Dogru v. Franc	Wearing headscarf at school and refused to take it off during physical education classes	Yes / Father	No violation of right to religious freedom and right to education	Content and quality of education - Religious symbols
Discrimination of children based on immigration status	2011: Ponomaryovi v. Bulgaria	Foreign children without permanent residence need to pay secondary-school fees		Violation	Discrimination of children based on immigration status
Discrimination and access to education based on ethnic origin	2022: X and Others v. Albania	Roma children placed in separate schools without any objective and reasonable justification	Parents and NGO	Violation	Discrimination and access to education based on ethnic origin
Violence in schools and other institutions	2024: Biba v. Albania	Pupil at the private school attended by the applicant's son had injured the applicant's son by launching a catapult projectile into his eye, resulting in 90% loss of vision in that eye / violence by schoolmate	Yes / Father	Violation	Violence in schools and other institutions

³ Note: The case is available at [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-57509%22%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-57509%22%7D). (Last accessed 7.05.2025).

3.1 Albania Case

In the case studies regarding to violation of children rights to education in Albania, particular attention was paid also to both cultural and structural factors that influence whether and how parents seek legal redress for violations of their children's right to education. The analysis was guided by a dual framework that recognizes the role of cultural norms and perceptions, as well as structural vulnerabilities, in shaping access to justice. It is important to emphasize that, to date, only two education-related cases from Albania have reached the European Court of Human Rights.

- On the cultural level, three main aspects were considered.

(1) First, mistrust toward institutions was identified as a significant barrier, particularly in contexts where the legal system is perceived as corrupt, inefficient, or inaccessible. This is substantiated by empirical data from the Trust in Governance 2023 opinion poll (UNDP, 2023)⁴, which reports that only 33.4% of respondents in Albania expressed trust in the courts—a statistic that reflects the broader societal reluctance to engage with the justice system.

(2) Second, a general resistance toward authority - rooted in historical, political, or social experiences - was seen to deter individuals or groups from engaging with formal legal channels.

(3) Third, the influence of the media, including public interviews and media coverage, was noted as a cultural force that can either mobilize or suppress parental agency, depending on the framing of educational injustice and the visibility of similar cases.

- In parallel, structural factors were examined to understand the systemic constraints faced by vulnerable families.

(1) Access to legal aid emerged as a crucial determinant, as the absence of affordable legal support significantly limits the ability of marginalized parents to pursue legal claims.

(2) Geographic isolation, particularly for families living in remote or rural areas, was another barrier, making it difficult to physically access legal institutions or information.

(3) Economic vulnerability- often intersecting with other forms of disadvantage - was found to hinder the capacity to engage in long and resource-intensive legal procedures.

This combined framework informed the selection of cases and provided a lens through which to interpret variations in parental agency and engagement with the European Court of Human Rights. Cultural and structural factors that influenced parental engagement in the selected Albanian cases are summarized in Table 2. This table provides a comparative overview of how social trust, legal access, geographic location, and economic conditions intersected with parents' decisions to pursue or avoid legal action.

⁴ Note: Please consult this document, available at <https://www.undp.org/albania/press-releases/presentation-trust-governance-2023-opinion-poll-findings> (Last accessed 7.05.2025).



Table 2. Cultural and structural factors

Case Study from Albania	Cultural Factors	Structural Factors
2022: X and Others v. Albania	Roma families marginalized, low institutional trust; Resistance toward authority - rooted in historical and social experiences - was seen to deter individuals from engaging with formal legal channels; collective society. Media coverage: low	Legal factors: High barrier; The case was initiated from European Roma Rights Center; ⁵ a civil society actor; State failed to prevent segregation Geographic isolation: The Roma families live in Korça, in a remote area Economic vulnerability: support minimal
2024: Biba v. Albania	low institutional trust; N/A Media coverage: low	Legal factors: Low barrier; Geographic isolation: No, the family live in Tirana Economic vulnerability: No, the child was enrolled in a private school.

4. Discussion

The selected cases illustrate diverse expressions of parental agency within the European Court of Human Rights (ECtHR) in relation to the right to education. The methodological framework - anchored in both legal criteria and socio-cultural context - reveals how parents’ capacity to initiate or support legal claims is closely tied to broader structural and cultural conditions. Across all selected cases, parental involvement was a consistent feature, either as individual applicants or through representation by civil society actors. Notably, in cases like Campbell and Cosans v. the United Kingdom and Kjeldsen, Busk Madsen and Pedersen v. Denmark, parents proactively challenged national education policies they believed violated their children’s rights. Even where the Court found no violation (e.g., in Kjeldsen and Dogru), the presence of active parental claims underscores the perceived legitimacy of formal legal recourse in those national settings.

In contrast, the Albanian case studies (X and Others v. Albania and Biba v. Albania) bring to light the ways in which structural vulnerabilities and cultural barriers influence parental access to justice. As shown in Table 2, cultural and structural conditions varied significantly between the two Albanian case studies. In X and Others, Roma parents were supported by the European Roma Rights Center (ERRC), highlighting how legal mobilization often depends on the intervention of NGOs in marginalized communities. The case also underscores how low institutional trust, collective cultural dynamics, and economic vulnerability hinder direct legal engagement. Additionally, limited media visibility may have contributed to weak public awareness and minimal pressure for systemic reform, despite the Court’s finding of a violation. Conversely, in Biba v. Albania, the parent - residing in the capital and with greater access to legal resources - was able to initiate a case independently. The relatively lower structural barriers in this instance (e.g., no economic vulnerability or geographic isolation) may explain the successful legal claim, though media engagement remained minimal, limiting broader public impact.

These findings reinforce the significance of contextual factors in shaping parental engagement with the ECtHR. While the legal framework of the Court allows for individual applications on behalf of children, the actual exercise of this right is uneven - contingent upon social capital, legal literacy, and institutional accessibility. The inclusion of empirical data, such as the Trust in Governance 2023 report indicating that only 33.4% of Albanians trust the courts, provides further evidence of cultural hesitation and perceived ineffectiveness of legal avenues in

5 Note: The case is available at <https://www.errc.org/cikk.php?cikk=5149> (Last accessed 7.05.2025).

certain national contexts.

4.1 Silenced by the System: A Case Known but Not Reported

To highlight the practical barriers parents, face when trying to seek legal redress, I include here a case, although it was never formally reported to the courts.

Albania has many television channels, and most of them are owned by some of the country’s most powerful businessmen. People often debate their quality, but one cannot ignore the fact that these media have helped create some excellent journalists and strong TV programs. One of them is “Fiks Fare” Program. In English, we might call it “Fair and Square” or “Exactly – no more, no less”. It’s a satirical and investigative program that shows social injustices, corruption, and problems in the system — including in the education system. One of those cases was brought to me for advice. Although this case was never submitted to the Albanian judiciary or the ECtHR, I was directly consulted by “Fiks Fare” as an expert in education policy. As a result, I served as a witness to the procedural shortcomings described - particularly the school’s failure to provide timely and lawful communication with the family.

A mother from a small town in Albania asked help from the program after her son failed the subject of history during the regular academic year and was required to retake the exam in the autumn session - which he also failed. What made the case particularly troubling was not just the academic failure, but the complete lack of transparency and fairness from the school. According to the mother, neither she nor her son was ever formally informed by the history teacher and the class teacher that he was at risk of failing. The family came from a town, where everyone knows everyone. The mother claimed that the teacher responsible for the subject had never informed her or her son that he was failing history. More than that, the entire communication between the mother and the school was conducted in violation of the law and school regulations. She had received no formal notification from the school. According to the law, the school should have informed the parent at least one month before the end of the academic year. Instead, the school sent a notification in autumn - just one day before the exam. As a result, the boy failed again and lost the school year. What followed was a discouraging cycle of inaction. The mother approached the school administration, then the local educational directorate, but in both instances, she was met with institutional silence or evasion. No clear procedures were offered, no hearing was held, and no effort was made to provide the right, despite the legal violations.

The end of the story is even more sad. The son repeated the same academic year, but in another school. The mother never brought the case before any court. Instead, she chooses to have a solution for her case to a television investigative program.

5. Conclusions

The analysis suggests that parental agency in education-related litigation is not solely a matter of rights awareness or grievance, but is deeply embedded in the socio-legal environment. Structural constraints - such as lack of legal aid, economic hardship, and geographic remoteness - intersect with cultural dispositions toward authority and trust in institutions, shaping whether and how parents act to defend their children’s educational rights.

The role of the European Court of Human Rights (ECtHR) must be reaffirmed not only as a legal mechanism of last resort, but as a vital instrument for protecting and evolving children’s rights across Europe. Beyond addressing violations of children’s rights that parents believe have occurred, the Court has issued decisions that have profoundly influenced national education systems and contributed to the development of broader human rights standards. These landmark or jurisprudentially significant cases mark turning points in the evolving relationship between parents, schools, and the state. A key example is the Campbell and Cosans v. the United

Kingdom (1982) case, in which the Court ruled against the use of corporal punishment in schools. This decision not only responded to the claims of two mothers but also triggered national legal reforms and reinforced protections for children within educational institutions. British Parliament outlawed corporal punishment in school in 1987 (Doepke et al, 2019: 279). Such cases exemplify how parental agency, when channelled through the ECtHR, can challenge state authority and set powerful precedents that reshape institutional practices and clarify the scope of children's rights. It is therefore essential to ensure that access to the ECtHR remains meaningful and equitable, particularly for vulnerable groups whose voices might otherwise remain unheard.

For countries like Albania, where systemic challenges persist - particularly regarding the protection of vulnerable groups such as Roma children - ECtHR jurisprudence plays a crucial role in setting legal and moral benchmarks. Case like *X and Others v. Albania* (2022) demonstrates how parental agency, when supported by legal advocacy and NGO engagement, can expose systemic exclusion and catalyse debate around state responsibilities. Notably, despite numerous documented and anecdotal violations in the education sector reported in media, only two education-related cases from Albania have thus far been brought before the European Court of Human Rights. This extremely limited number highlights the significant barriers - legal, cultural, economic, and institutional - that continue to prevent families from accessing supranational justice. This limited caseload also reveals the risk of systemic violations remaining unchallenged, especially in the absence of institutional trust, media coverage, or affordable legal support. In contrast, one documented but unreported case - shared with the author in her role as an education expert - illustrates how families may seek redress outside formal channels, such as via investigative media programs. Although this path may provide public visibility, it leaves legal violations unaddressed and allows schools to remain unaccountable under national or international law.

These cases reaffirm the need to make the ECtHR not only symbolically but practically accessible. Ensuring that it functions as a true guarantor of children's rights requires investment in legal aid, proactive outreach to marginalized communities, and the dismantling of cultural barriers to justice. Only through such measures can the transformative potential of parental agency be realized - not just in courtrooms, but in classrooms, communities, and systems across Europe.

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