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The Doctrine of “*in Loco Parentis*” in Anglo-Saxon Legal Systems and in the Republic of Latvia

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This publication analyses the “*in loco parentis*” doctrine of Anglo-Saxon law, which means “in place of parents”. In particular, the authors seek to reveal the content, historical aspects of this concept and its expression in the Latvian legal system. This can be applied, for example, to the duty of employees of an educational institution who are required as part of their role to exercise a duty of care, as well as to enforce discipline, as aspects of cooperation between parents and the school. The practice of the European Court of Human Rights (ECHR) in connection with the “*in loco parentis*” doctrine is highlighted. The authors conduct a study using methods of interpreting the rules of law adopted in legal science: grammatical, historical, comparative, teleological method. An educational institution as a structure authorized by the state *per se* can be viewed as having an equivalent responsibility to that of a child’s parents. That is, the school, like parents, has an obligation to take care of the child, especially in relation to the child’s psycho-emotional well-being and physical safety. So, should the school staff take care of the child the same way the parents do? In the case of the Republic of Latvia, this is most clearly reflected in the scientific knowledge of pedagogy and in the practice of daily education.

Keywords: *in loco parentis*, education law, parents’ rights and duties, liability, schooling, *parens patriae*.

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Introduction

The Latin term “*in loco parentis*” means “instead of parents”¹. That is, “*in loco*”² means “in the place of”, (instead of that – that instead)³. Thus, in understanding this concept, the term can be applied, when someone else, who is not the biological parent of the child – for example, a teacher or an educational institution – takes on the role of a parent representing the child, taking on a kind of parental responsibility. This means that the child is not formally adopted. The use of the words “*parentis loco*” is found already in Roman law. For example, in The Digest of Justinian” it is stated: “I cannot marry my sister’s great-granddaughter because, in relation to her, I occupy a parental position[...].”⁴ (in Latin: “*Sororis proneptem non poneptem non possum ucere uxorem, quoniam parentis loco ei sum*”).⁵ As you can see, the Latin words “*parentis loco*” indicate that someone takes the place of the elder or takes the parental position. In this case, marriage is impossible, since there is both a close relationship and the fact that the person is acting as a parent.⁶ One of the renown orators of ancient Rome, Marcus Fabius Quintilianus, who was the most distinguished lawyer of his time, in his book “*Institutio oratoria*” notes that the teacher should take a parental role in relation to his students, and students should love their teachers as much as they love their parents.⁷ This implies that already two millennia ago the idea was developed that not only the biological parents of the child are responsible for the upbringing and education of the child, but also other adults. For example, teachers can and should be responsible for the children entrusted to them. Taking into account the above, this article examines the extent to which the doctrine found in the Anglo-Saxon legal system of rights applies to the branches of education and parties *in loco* in the Republic of Latvia.

1. *In loco parentis* in the system of Anglo-Saxon law

In the Anglo-Saxon legal system, the term “*in loco parentis*” acquires the status of a legal precedent. This means that it begins to apply to court-protected individuals who have obtained legal status in the field of education.⁸ The term means that person or organization takes on some of the functions and responsibilities of apparent i.e., rights and duties can be delegated to either a teacher or a mentor (in British – a tutor).

¹ *Garner, B. A.* (ed.). *Black, Henry Campbell, 1860–1927. Law Dictionary*. St. Paul, MN: Thomson Reuters, 5th ed., 2016. *Stuart, S.* In *Loco Parentis in the Public Schools: Abused, Confused, and in Need of Change*. Available: https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1173&context=law_fac_pubs [last viewed 20.02.2022].

² *Latinskie juridicheskie izrechenija* [Latin legal sayings] sost. *Temnov, E. I.*, Moskva: Jurist, 1996. 398 c.

³ *Latinsko-russkij slovar' juridicheskikh terminov i vyrazhenij dlja specialistov i perevodchikov anglijskogo jazyka* [Latin-Russian dictionary of legal terms and expressions for specialists and translators of the English language]. Avt.-sost. *Gamzatov, M.* Sankt-Peterburgskij gosudarstvennyj universitet. Sankt-Peterburg: Izdatel'stvo Sankt-Peterburgskogo universiteta, 2002.

⁴ *Garner, B. A.* (ed.). *Black, Henry Campbell, 1860–1927. Law Dictionary*. St. Paul, MN: Thomson Reuters, 5th ed., 2016.

⁵ *Digesty Justiniana*. [Digests of Justinian]. Available: https://www.gumer.info/bibliotek_Buks/Pravo/digest/23 [last viewed 20.02.2022].

⁶ *Iustiniani Digesta Recognovit Theodorus Mommsen / Retractavit Paulus Krueger, Corpus Iuris Civilis, Vol. I*. Available: <https://droitromain.univ-grenoble-alpes.fr/Corpus/d-23.htm> [last viewed 20.02.2022].

⁷ *M. F. Quintilianus*. Cambridge, Massachusetts : Harvard UP1996. Vol. 1, Books 1–3. *Butler, H. E.* (Engl. transl.). XIV, 1996, 544 p. Available: https://archive.org/stream/institutioorator00quin/institutioorator00quin_djvu.txts [last viewed 20.02.2022].

⁸ *Garner, B. A.* *Black, Henry Campbell*.

Thereby, the teacher or mentor enters the parental place (*in loco parentis*). At the moment when the teacher enters the parental position (*in loco parentis*), he/she receives a certain degree of the rights and duties in the sphere of raising a child. For example, the teacher has the right and duty to keep the child away from illegal or unacceptable activities, or to punish or correct the child's behaviour. Alan F. Edwards points out that the concept of *loco parentis* in England originally developed as a principle of tort law. Thus, in this case, it indicates what constitutes an unlawful act or tort and in what situations the person taking the place of the parents should prevent any unauthorized act.

In describing the operation of a general education institution⁹, an example of a prohibited activity could be the so-called bullying, mobbing between children. In this context, the question arises as to whether the learner's parents can trust the educational institution, i.e., the teachers, the management of the educational institution, and support staff that they will be able to provide a psycho-emotional and physical environment, and maintain safety and supervision of the system. The educational institution should provide both preventive and intervention measures to stop violence against children at an early stage, and prevent children from engaging in violence against each other as effectively as possible. This means providing effective support and treatment measures for both the abuser and the victim, the perpetrators and witnesses or bystanders. It is the concept of *loco parentis* that is important in this respect, because it justifies the requirement, for example, for the teacher to take action to prevent any illegal activity, such as violence. In other words, educators, managers and others acting on behalf of parents' duty to ensure that parents and learners trust them.¹⁰

It should be emphasized that, for example, one of the responsibilities of a learner is not to endanger his or her own health and safety or life¹¹, while the head of the educational institution is responsible for planning and organizing educational events dedicated to learners' safety, including violence and injury prevention.¹² It is in the doctrine of *in loco parentis* that it is emphasized that learners as minors do not have the same scope of rights as adults. Namely, it is the employees of an educational institution, such as the management and teachers who represent the state in the exercise of the state-guaranteed right to education, who act on behalf of the state and, in the performance of tasks and responsibilities delegated by the state, take the place of parents. In the United States (US), although an educational institution is a government's representative, it is implied that there is an agreement between the parents that the educational institution will protect the child from any malice or abuse.¹³

⁹ Keiss, M. In loco parentis. 08.08.2007. Available: <https://www.delfi.lv/news/versijas/marks-keiss-in-loco-parentis.d?id=18661344> [last viewed 20.02.2022].

¹⁰ Johnson, D. E. Schools We Trust? Leadership in Loco Parentis and the Failure to Protect Students from Bullying and Harassment In: Samier, E. A., Schmidt, M. (eds). Trust and Betrayal in Educational Administration and Leadership. New York, London: Routledge, 2010, p. 143.

¹¹ Izglītības likums [Education Law]. 17.11.1998. Available: <https://likumi.lv/ta/en/en/id/50759-education-law> [last viewed 20.02.2022].

¹² Kārtība, kādā nodrošināma izglītojamo drošība izglītības iestādēs un to organizētajos pasākumos [Procedures for Ensuring Safety of Educatees in Educational Institutions and at Events Organized by Them]. Cabinet of Ministers Regulation No. 1338 of 27.11.2009. Available: <https://likumi.lv/ta/en/en/id/201106-procedures-for-ensuring-safety-of-educatees-in-educational-institutions-and-at-events-organized-by-them> [last viewed 20.02.2022].

¹³ Johnson, D. E. Schools We Trust? p. 143.

New Zealand law scholars Allan Hall and Margaret Manins take a slightly different view, arguing that *in loco parentis* is considered an anachronism today.¹⁴ At the same time, it has its share of influence in non-formal and informal learning.¹⁵ In 1837, the U.S. Supreme Court of North Carolina ruled in *State v. Pendergrass* that: "... it is not easy to determine with precision the power delegated to school principals and teachers to punish (correct) pupils".¹⁶ In the context of this case, the North Carolina Supreme Court heard that a school teacher had been physically abused by a seven-year-old girl. The teacher used corporal punishment to discipline the student. This judgment argues that the right to punish a child is equivalent to that of a parent, that caution must be exercised with hasty inferences that a disproportionate sentence has been used, i.e., the physical punishment of a child in order to achieve discipline. The judge pointed out that the power of teachers is analogous to that of parents, and the authority of teachers is assessed from the point of view that the parents have delegated their powers to the teacher. Among other things, the same court stated that one of the parent's responsibilities is to teach and raise a child to become a useful and virtuous member of society, but this is not possible without the ability to command, control obedience and stubbornness, promote the love of work and prevent harmful habits. Consequently, the pupil is subject to the teacher's favour, who has some authority to make a proportionate correction of the child's behaviour, if he or she deems it necessary and fair. It was also stated by the US court: "...the teacher is the substitute of the parent; is charged in part with the performance of his duties, and in the exercise of these delegated duties, is invested with his power."¹⁷ Evidently, the court upheld in this case the use of corporal punishment for the purpose of supporting a child's upbringing. Today, of course, this judgment has only a historical significance. Namely, it reflects the values of early 19th century American society and possibly the personal prejudice of a judge.¹⁸ However, the authors of this article consider that the substantive aspect of the doctrine *in loco parentis* is revealed in this judgment. Respectively, in the field of education, the content of this concept indicates¹⁹ the powers or authority of the teacher, which are equivalent to the power of the child's parents. This leads to a conclusion that the responsibilities and rights of a teacher and parents in the upbringing and education of a child at some point overlap. In other words, they could even be identical. This raises the question of whether, for example, the duties and rights of a teacher and a parent in the field of education are really identical. Thus, an in-depth historical insight into the Anglo-Saxon legal doctrine is needed in this regard.

In 1855, an English school for orphaned children, i.e., children who had lost their fathers, chose "*In loco parentis*" as their motto. The aim of the school was to help those children whose fathers had died. In the 19th century England, the father had sole responsibility and control over the child. With the loss of the father, the child was

¹⁴ Anachronism: The erroneous attribution of events and phenomena of a historical era to another era. An outdated belief, a thing of the past. Available: <https://www.vardnica.lv/svesvardu-varidnica/a/anahronisms> [last viewed 20.02.2022].

¹⁵ Hall, A. J., Manins, M. In *Loco Parentis and the Professional Responsibilities of Teachers*. Waikato Journal of Education, 7, 2001, pp. 117–128.

¹⁶ Supreme Court of North Carolina *State v. Pendergrass* 19 N.C. 365 (N.C. 1837) Passed June 1, 1837. Available: <https://casetext.com/case/state-v-pendergrass-22> [last viewed 20.02.2022].

¹⁷ Ibid.

¹⁸ Case Briefings Law and Society. Available: <https://quizlet.com/51022729/case-briefings-law-and-society-flash-cards/> [last viewed 20.02.2022].

¹⁹ The authors define different approaches to what is called *in loco parentis*. For example, there are authors who see it as a doctrine, others – as a concept, still others – as a principle.

considered an orphan. The school adopted this motto, thus confirming its willingness to help and educate its dependents. R. M Merrick in his 2016 dissertation “Is it dead or alive? An analysis of the doctrine and policy of loco parentis at American universities” describes how since the late 1880s and early 1960s, the relationship between the college and its students has been similar to that between parents and children. Consequently, this doctrine has played an important role, at least in the US education system, especially in higher education.²⁰ He emphasizes that colleges were responsible for the safety, well-being, health and morals of students, and at the time students had the opportunity to sue on the basis of their sovereignty or other beliefs. The doctrine of *loco parentis* in its heyday was the responsibility of universities, not of general jurisdiction.²¹ Consequently, this doctrine had a very strong impact on the U.S. education system, especially at the college and university level. The ethical dimension of *loco parentis* has not lost its relevance today. That is, Alan Hall and Margaret Hanin point out that this concept remains important from an ethical point of view, as it emphasizes the duty of care. Respectively, the teacher’s professional duty is to take care of his students or those under his supervision.²² US professor Susan Stuart points out that one of the biggest anomalies in the development of law is the viability of the doctrine of *loco parentis* in educational law. She writes: “In applying this concept to public schools, most courts focus almost always on the disciplinary aspect of this principle, but not on the accompanying rights of defence.”²³ Namely, S. Stewart believes that the application of this concept is related not only to substantiating the right of schools to make decisions regarding students’ discipline issues, but also to the fact that the application of this concept emphasizes the caring aspect, that the teacher also acts as a caring parent, i.e., in the place of the parent and act as a caring parent would. She also points out that there are signs of anachronism in the application of this concept. The author refers to the above-mentioned judgment of the US Supreme Court of North Carolina in *State v. Pendergrass*²⁴, emphasizing that in this case the court recognized a great deal of discretion for teachers and that at the same time it refused to interfere in the child-family relationship.²⁵ R. M. Merrick emphasizes that *in loco parentis* is rather an evolving concept. It is the case that such an approach to this doctrine puts the institution in a difficult position, as it forces it to balance parental expectations with societal expectations based on different laws, such as freedom of expression or personal beliefs, which must not be forgotten. Although *in loco parentis* is not used directly in university or college programmes, it also plays a role in the relationship between learners and educational institutions. It also reveals a different perspective on this relationship.²⁶ It can be seen here that the application of *in loco parentis* in the Anglo-Saxon school of thought implies that teachers, as well as parents, have a legal duty to take care of the child’s well-being, but in order to do so, both the teacher and the parent need to have the appropriate authority. For example,

²⁰ Merrick, R. M. “Is it dead or alive?” An Analysis of the Doctrine and Policy of in Loco Parentis at American universities. Available: <https://www.jstor.org/stable/20403397?seq=1> [last viewed 20.02.2022].

²¹ Ibid., p. 7

²² Hall, A. J., Manins, M. In Loco Parentis, pp. 117–128.

²³ Stuart, S. In Loco Parentis.

²⁴ Supreme Court of North Carolina *State v. Pendergrass*, 19 N.C. 365 (N.C. 1837) Decided on June 1, 1837. Available: <https://casetext.com/case/state-v-pendergrass-22> [last viewed 20.02.2022].

²⁵ Stuart, S. In Loco Parentis.

²⁶ Merrick, R. M. “Is it dead or alive?”

a teacher needs to discipline students but, in order to achieve discipline, a teacher needs to be endowed with some power.

What constitutes this power and wherefrom does it derive its legitimacy? The authors of this article will try to clarify these issues below. It should be noted that the candidate for a doctorate in psychology at the University of South Africa, M. J. Van Breda,²⁷ also understands the concept *in loco parentis* as the ability of a teacher to be a parent of a pupil while they are in school. As a result, the teacher acts as the parent of the pupil, for example, to prevent absenteeism.²⁸ It is now clear that *in loco parentis* is closely linked to aspects of parenting, such as discipline and care. This means that the child's parents have the right to delegate part of their power or responsibilities and rights to an educational institution or any other legal entity that will act on behalf of the parents. Namely, John Dayton points out that under the influence of the doctrine of *loco parentis*, a school may exercise a reasonable quasi-parental authority when the child is in the care of school, but this power is exercisable on the basis of the best interests of the child. Acting *in loco parentis*, the school has a duty to supervise and protect children as a reasonable parent would in certain circumstances. The child has a duty to follow reasonable instructions from the school in the same way that they follow reasonable instructions from parents.²⁹ In the context of US college education and universities, this concept is understood as the supervision of the administration over students or young people, i.e. the university supervises its students.³⁰ That is to say, in the Anglo-Saxon legal system, *in loco parentis* in the context of education actually means that teachers must become the parents of pupils or students. As the Latvian legal scientist Kristine Jarinovska admits: “[...] In the Anglo-Saxon lands, there is a legal concept *in loco parentis* – a legal fiction, where the institution, most often the educational institution, has parental authority and disciplinary duty.”³¹ Robyn Michele Merrick, on the other hand, believes that the doctrine of *loco parentis* was widely used in disputes between students and higher education in the 1960s, leading to decades of controversy. At the same time, he points out that the phrase *in loco parentis* is not often heard, but still this doctrine is really “healthy” nowadays and strongly influences the activities of colleges and universities.³² Namely, both society and parents expect the educational institution to support the notion that there is a need for a certain parental supervision over the learners, i.e., that the educational institution will perform some kind of parental responsibilities in caring for their subordinates.³³ Briton White also points out that the history of the doctrine of *in loco parentis* in American higher education can be divided into three stages of development. The beginnings of the first stage can be found in the most influential court judgments from 1913 to the 1960s. During this period, the courts upheld a large margin of discretion for universities and colleges in their dealings with their students. The second phase begins in the 1960s and lasted until the 1980s.

²⁷ Van Breda, M. J. Guidelines for empowering secondary school educators, *in loco parentis*, in addressing truancy among early adolescent learners. University of South Africa. Theses, 2006, pp. 285.

²⁸ *Ibid.*, p. 284.

²⁹ Dayton, J. *Education Law: Principles, policies, and Practice*. Wisdom Builders Press, 2012, pp. 465.

³⁰ White, B. Student Rights: From *In Loco Parentis* to *Sine Parentibus* and Back Again? Understanding the Family Educational Rights and Privacy Act in Higher Education, 2007. *BYU Educ. & L.J.* 321, 2007. Available: <https://digitalcommons.law.byu.edu/elj/vol2007/iss2/6> [last viewed 20.02.2022].

³¹ Jarinovska, K. Ne vien uzdrošināšanās, bet arī centība un paklausība ir tikumi [Not Only Courage, but also Diligence and Obedience are Virtues]. Available: <https://lvportals.lv/viedokli/259980-kristine-jarinovska-ne-vien-uzdrosinasanas-bet-ari-centiba-un-paklausiba-ir-tikumi-2013> [last viewed 20.02.2022].

³² Merrick, R. M. “Is it dead or alive?”

³³ White, B. Student Rights.

This time was full of unrest and litigation, which ended in a change *in loco parentis*. The third stage began in the 1980s and continues to this day. This is characterized by changing legal precedents regarding rights of parents and learners.

2. The case law of the European Court of Human Rights – the concepts of *in loco parentis* and *parens patriae*

The doctrine of *loco parentis* also had an impact on the case law of the European Court of Human Rights (ECtHR), allowing the authors to identify some aspects of the doctrine of *loco parentis* and *parens patriae*. For example, the 1993 judgment in *Costello-Roberts v. The United Kingdom*.³⁴ The essence of this case was, as follows. In 1985, a pupil who was seven years old entered a private school in England. After a while, the school principal used corporal punishment as a method of discipline. The child's mother brought an action before the ECtHR alleging that the school head's actions against her son violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits torture or cruel, degrading treatment or punishment, and Article 8 of the ECHR, which respects privacy and an important part of which is the right to physical integrity. In the present case, the ECtHR concluded that there had been no violation of the ECHR. One of the arguments in this case is that the teacher has the right to punish the pupil because he is *in loco parentis*. Namely, the teacher is authorized to act on behalf of the parents, which means that corporal punishment may also be applied. Although the ECtHR did not find violations of Articles 3 and 8 of the ECHR, at the same time, the ECtHR stated for the first time that the state could be held liable for violations of ECHR norms found in the private sphere.³⁵ This precedent took place in a private school and not in a public school. The ECtHR emphasized that the state must be responsible. In reaching this conclusion, the ECtHR paid particular attention to the educational context of the dispute, recalling the state's obligation to guarantee the child the right to education under Article 2 of Protocol No. 1 to the ECHR, which sets out the right to education.³⁶ The ECtHR in its judgment pointed out that the United Kingdom had acceded to the UN Convention on the Rights of the Child.³⁷ This means that a country which has ratified the ECHR, including the United Kingdom, has an obligation to comply with the Convention on the Rights of the Child. It is necessary to address in detail this judgment of the ECtHR, because the principle *in loco parentis* cannot be considered in isolation from the specific situation and cannot be directly translated. Respectively, it follows that it is not enough for the state to create an education system and declare the right to education, but the state has an obligation to take responsibility for not violating either national or

³⁴ Case of *Costello Roberts v. the United Kingdom*, App. No(s). 13134/87. Available: <https://hudoc.echr.coe.int/eng?i=001-57804> [last viewed 20.02.2022].

³⁵ *Kilkelly, U.* The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child. *Human Rights Quarterly* Johns Hopkins University Press, Vol. 23, No. 2, May 2001, pp. 308–326.

³⁶ *Ibid.*, p. 316

³⁷ "...that a school's disciplinary system falls within the ambit of the right to education has also been recognised, more recently, in Article 28 of the United Nations Convention on the Rights of the Child of 20 November 1989 which entered into force on 2 September 1990 and was ratified by the United Kingdom on 16 December 1991. This Article, in the context of the right of the child to education, provides as follows..." From: Case of *Costello Roberts v. The United Kingdom*, App. No(s). 13134/87. Available: <https://hudoc.echr.coe.int/eng?i=001-57804> [last viewed 20.02.2022].

international law, for example, under the pretext that the state does not interfere in private law transactions.

In this case, the judges of the ECtHR – R. Ryssdal, Thór Vilhjálmsson, F. Matscher, L. Wildhaber – expressed their separate thoughts. In particular, the judges stated that they agreed that the United Kingdom was responsible for complying with the provisions of the ECHR with regard to the application of disciplinary sanctions in private schools. They emphasized the need for Britain to control private schools in order to protect the rights enshrined in the ECHR. Judges pointed out that, for example, the state cannot leave prisons under the control of the private sphere, thus allowing corporal punishment in them, thereby promoting lawlessness. The same would be true of private schools, if they were managed in a similar way. That would be a violation of the human rights guaranteed by the ECHR. Otherwise, it is considered that the ECHR is not applicable as such to all private law relationships. The question arises as to whether private schools must respect the guarantees laid down in the ECHR, in particular Articles 3 and 8 of the ECHR. It is this statement that is noteworthy. Namely, Judges R. Ryssdal, Thór Vilhjálmsson, F. Matscher, L. Wildhaber emphasized: "...a spanking on the spur of the moment might have been permissible, but in our view, the official and formalised nature of the punishment meted out, without adequate consent of the mother, was degrading to the applicant and violated Article 3."³⁸ We might add that the child's rights under Article 3 are not diminished by balancing them against the mother's rights. The parents of the boarders in Barnstaple were not adequately informed that corporal punishment was used in order to maintain discipline."³⁹ It can therefore be concluded that *in loco parentis* (in place of parents) is not an argument that human rights are being violated. In other words, the school head cannot claim that the school is a body governed by private law and is not directly covered by the guarantees of ECHR law. Just as the state oversees prisons, so the state must take responsibility for what happens in educational institutions. It would be absurd, for example, for children's rights to education and privacy to be violated on the grounds that the child is a subordinate of a private school or that the state should not interfere in private law transactions. It would be just as absurd if, for example, prisoners had a wider range of rights than children. In the opinion of the authors, the opinion expressed by the judges of the ECtHR stating that the methods of disciplining the child and even corporal punishment should receive the consent of the child's parents deserves attention. This aspect must be assessed in the light of the extent of parental rights and responsibilities. It follows from the above that the opinion of parents is important but, in the opinion of the authors, such an argument that parental punishment should be coordinated with parents is indeed an anachronism from a modern point of view. In this regard, it is emphasized that parents need to know what is happening to their child at school, i.e., the teacher or school head needs to be informed about what has happened at school, what decisions are being made about the child, etc.

A similar situation was assessed in 1978. Namely, the ECtHR decision in *Tyrer v. The United Kingdom*. In the context of this case, the ECtHR assessed and accordingly found a violation of Article 3 of the ECHR. It was concluded from the circumstances of the case that the United Kingdom had violated Article 3 of the ECHR by considering a situation in which the police used beatings as a punishment. The beating was given

³⁸ The Case of *Costello Roberts v. The United Kingdom*, App. No(s). 13134/87. Available: <https://hudoc.echr.coe.int/eng?i=001-57804> [last viewed 20.02.2022].

³⁹ *Ibid.*

to a 15-year-old who brought beer to school. After another student told the school management about the incident, the teenager, along with three other schoolmates, took revenge on the student. A British court ruled that corporal punishment was applicable, which at the time was one of the most legitimate forms of punishment in the country. Without going into all the legal nuances of this case, it should be noted that in this case, too, one of the judges of the ECtHR expressed the opinion that the state, to some extent, becomes *in loco parentis* when implementing institutionalised sanctions.⁴⁰

From the point of view of such a judge, it could be presumed that, if for some reason a parent is unable or unwilling to perform his or her duties, the state performs them on his or her behalf. This approach is very much in line with the so-called “*parens patriae*” doctrine, which in Latin means “father of the country” or “parent of one’s country”.⁴¹ The doctrine of *parens patriae* is also widely used in the Anglo-Saxon legal system, but its origins can be traced back to ancient Sparta and Rome. In ancient Rome, only the father of the child had absolute control over the child, but over time, both the father’s and the state’s power over the child diminished. *Parens patriae* has historically meant the so-called “royal prerogative”. It should be noted briefly that this concept implies that, for example, the court may decide on custody, maintenance, etc., regardless of the parents’ views. Namely, the state has the right to stand up for those who are unable to take care of themselves, especially children, the elderly, the disabled, the mentally ill, in short, the state is like a “caring father” who takes care of the weakest members of society, including children. The court, on the other hand, directly represents the state. However, over time, the absolute power of the state or the father over the child weakens, i.e., within the framework of this doctrine, the state becomes more of a protector who also takes care to protect the child from the child’s parents, if necessary.⁴² Thus, the state performs activities similar to those of parents but, according to the legal scholar George B. Curtis, using the doctrine of *parens patriae* without precaution, the state can easily become a tyrant from a parent.⁴³ It should be noted that the *parens patriae* doctrine allows for a situation where the state may intervene in exceptional cases, for example, to provide medical care to a child who is ill, in a situation where the child’s parents have not been vaccinated for religious or other reasons. Namely, the state has the right to intervene and provide the necessary assistance to save the child’s life.⁴⁴ This doctrine is also closely related to the institutionalization of children. Namely, as early as the 19th century, a U.S. court in Pennsylvania ruled that the institutionalisation of children of concern is permissible precisely because the child’s natural parents are incomparable in terms of educational tasks or unworthy of being involved in the child’s upbringing, and are therefore substitutable for *parens patriae*, which would mean that the public has a primary interest over its members, i.e., that it is in the public interest for its members to receive a proper education and a good upbringing.⁴⁵

⁴⁰ Case of Tyrer v. The United Kingdom, App. No(s). 5856/72. Available: <https://hudoc.echr.coe.int/eng?i=001-57587> [last viewed 20.02.2022].

⁴¹ Smiltēna, A. *Parens patriae* doktrīna – valsts intervence bērnu labākajās interesēs [The Doctrine of *Parens Patriae* – State Intervention in the Best Interests of the Child]. *Jurista Vārds*, 30.03.2021.

⁴² Dayton, J. *Education Law*, p. 465.

⁴³ Curtis, G. B. The Checkered Career of *Parens Patriae*: The State as Parent or Tyrant? 25 *DePaul L. Rev.* 895, 1976. Available: <http://via.library.depaul.edu/law-review/vol25/iss4/5> [last viewed 20.02.2022].

⁴⁴ Dayton, J. *Education Law*, p. 465.

⁴⁵ Curtis, G. B. *The Checkered Career of Parens Patriae*.

In general, the doctrine of both *parens patriae* and *in loco parentis* includes an aspect of caring, as they both emphasize the need to care for the child in the same way as a caring parent, whether the child's natural parents or the state. Two judgments of the ECtHR, *Scozzari and Giunta v. Italy*, deserve attention in this regard.⁴⁶ ("the Scozzari case") and *O'Keeffe v. Ireland* ("the O'Keeffe case").⁴⁷ In the *Scozzari* case, the ECtHR found that in September 1997 two of the applicants' children, one born in 1987 and the other in 1994, had been placed in a childcare centre following the judgment of an Italian court. Sometime later, the national court learned that two of the leaders of the childcare centre, the head and co-founder of the centre, had previously been convicted of sexual abuse of children in their care. According to the applicant, her son was a victim of sexual abuse by a paedophile social worker while the boy was in the centre. The ECtHR stated in its judgment that there had been a violation of Article 8 of the ECHR, as both employees of the childcare centre were involved in "very active" direct contact with both children. Although the ECtHR was not asked to comment on the childcare centre or the quality of the overall care, nor was it necessary for the ECtHR to take part in the debate between supporters and opponents of the childcare centre, both childcare leaders were convicted and childcare cannot be considered insignificant. Respectively, it was necessary to analyse in detail the specific situation of the children complained about in the applicant's national court. Judge B. Zupančič, on the other hand, expressed some views in this case. He emphasized that, in the *Scozzari* case, it was clear that the state had to balance its decision to interfere in family life with its *parens patriae* responsibility. According to him, the door of the court should be wide open, especially in cases concerning family law.⁴⁸ In the *O'Keeffe* case⁴⁹, the ECtHR also stated that regardless of how education is organized or who is responsible for the day-to-day running of the school, the state has a duty to protect the child from cruel treatment at school. It follows that the doctrines of *in loco parentis* and *parens patriae* are somewhat similar, because the essence of both is the care of the child.

3. Latvian context and *in loco parentis*

In loco parentis attracts attention in connection with the Latvian educational context. The opinion of the authors holds that it is worth noting that there are parallels between the situation in the United States and Latvia in the sense of this doctrine. For example, in Latvia in 2013, in a general education school, it was found that several fifth-graders (aged around 11–12) attacked a first-grader (aged around 7–8) and he suffered a severe beating. This incident raised reflections on whether the legal framework is effective and whether the public, including the parents of the learners can trust the state or state power, and, finally, the educational institution.⁵⁰ One of the authors of the article also gave his opinion on this case – Dr. iur. J. I. Mihailovs. In particular, he pointed out that the legislation and mechanisms in force in 2015

⁴⁶ Case of *Scozzari and Giunta v. Italy*. App. No(s). 39221/98; 41963/98. Available: <https://hudoc.echr.coe.int/eng?i=001-58752> [last viewed 20.02.2022].

⁴⁷ *O'Keeffe v. Ireland*. App. No(s). 35810/09 Available: <https://hudoc.echr.coe.int/eng?i=001-140235> [last viewed 20.02.2022].

⁴⁸ *Scozzari and Giunta v. Italy*. App. No(s). 39221/98; 41963/98 Available: <https://hudoc.echr.coe.int/eng?i=001-58752> [last viewed 20.02.2022].

⁴⁹ *O'Keeffe v. Ireland*. App. No(s). 35810/09 Available: <https://hudoc.echr.coe.int/eng?i=001-140235> [last viewed 20.02.2022].

⁵⁰ *Gailite, D.* Piekāst likumu [To hell with the law]. *Jurista Vārds*, Nr. 22 (773), 04.06.2013.

were incomplete. They are complicated because, when applying them, the heads of an educational institution need legal knowledge, other competencies, as well as the fact that the following: health or life, does not fully achieve its purpose and is transparent in the search for new ways (including pedagogical and legal ones) to ensure the safety of learners and to prevent disciplinary breaches in the educational institution.⁵¹ Also in 2013, the competent authority for the protection of children's rights – the State Inspectorate for the Protection of the Rights of the Child – indicated that the educational institution, in cooperation with other institutions, failed to find suitable solutions to prevent learners from ending violence against other learners and therefore an improvement in the legal framework was required.⁵² Such an approach refers, *inter alia*, to administrative legal procedures in relation to the parents of the child or learner. At the same time, I. J. Mihailovs expressed the opinion that a more effective way of disciplining a child, including cessation of violent behaviour, would be a contractual relationship. In his view, the promotion of a contract for the education of a child in an educational institution would achieve an objective which the state seeks or does not seek to achieve by administrative legal means.⁵³ Respectively, the agreement would address various administrative and civil law issues between the educational institution and the learner's parents / adult learner. In this context, it should be noted that the situation in Latvian educational institutions has not improved, which is also the basis for reducing the spread of bullying in the educational environment.⁵⁴ Namely, these aspects deserve a separate study. Thus, it can be concluded that, in the Latvian legal system, there are administrative methods in the legal relationship between parents and the educational institution, i.e. cooperation between the learner's parents and the educational institution in preventing child abuse is in the institution's competence to act, where it does not develop or proves to be ineffective, or it is necessary to immediately stop the violent behaviour of a particular learner – involving other competent institutions. However, the introduction of other methods of reducing violence is still at the stage of development and requires further discussion. Another study should be devoted to their review. Latvian pedagogical scientist Professor Dita Nīmante, describing the work and responsibilities of a teacher, points out: “a teacher in an educational institution conditionally takes the place of parents (in loco parentis) and assumes the functions related to supporting the child's behaviour, correction, improvement of social skills”⁵⁵, recognizing at the same time that, of course, a teacher cannot take on full parenthood or take a place of

⁵¹ Mihailovs, I. J. Līgums par bērna izglītošanu izglītības iestādē un disciplīnas pārkāpumu novēršana [Agreement on the Education of a Child in an Educational Institution and Prevention of Violation of Discipline]. Socrates RSU Elektroniskais juridisko zinātnisko rakstu žurnāls, Nr. 1(1), 2015. Available: <https://dspace.rsu.lv/jspui/bitstream/> [last viewed 20.02.2022].

⁵² Ministru kabineta noteikumu projekta “Grozījumi Ministru kabineta 2009. gada 24. novembra noteikumos Nr. 1338 “Kārtība, kādā nodrošināma izglītojamo drošība izglītības iestādēs un to organizētajos pasākumos” sākotnējās ietekmes novērtējuma ziņojums (anotācija) [Preliminary Impact Assessment Report of the Draft Cabinet Regulation “Amendments to Cabinet Regulation No. 1338 of 24 November 2009” Procedures for Ensuring the Safety of Learners in Educational Institutions and Events Organized by Them” (annotation)]. Available: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40258146&mode=mk&date=2013-05-21> [last viewed 20.02.2022].

⁵³ Mihailovs, I. J. Līgums par bērna izglītošanu.

⁵⁴ Konceptuālais ziņojums “Par nīrgāšanās izplatības mazināšanu izglītības vidē”. [Conceptual report “On reducing the spread of bullying in the educational environment”]. Available: <https://www.vm.gov.lv/lv/jaunums/publiskai-apspriesanai-lidz-13augustam-nodots-konceptualais-zinojums-par-nirgasanas-izplatibas-mazinasanu-izglitibas-vide> [last viewed 20.02.2022].

⁵⁵ Nīmante, D. Klasvadība. Rokasgrāmata skolotājiem [Class management. A guide for teachers]. Rīga: Zvaigzne ABC, 2008, 27. lpp.

the parent (*in loco parentis*), although a teacher can still do a great deal.”⁵⁶ Clearly, the Anglo-Saxon doctrine “*in loco parentis*” can also be applied in principle within the framework of the Romano-Germanic legal system, i.e., in the context of Latvian educational law.

Summary

The doctrine of *in loco parentis* is understood in two respects. Namely, this concept applies to the legal liability of a person or institution from the moment it exercises parental rights and obligations. For example, the educational institution acts in such a way as to protect its subordinate – children, pupils, students, etc. – acting in their best interests. The second aspect, on the other hand, means that non-biological parent substitutes for biological parents have the same rights and obligations as biological parents in a given situation, subject to delegation or authorization. In addition, the doctrine of *in loco parentis* allows an educator or other employee of an educational institution to understand their activities and their scope by interpreting the duties set out in law or in the job description to act in the best interests of the child, even if they do not become adopters or “parents”. At the same time, it should be noted that, for example, a boarding school or foster parents take on the status of *in loco parentis*, i.e., taking the place of the parents, by assuming parental rights and responsibilities. As already mentioned, this doctrine is widely applied in the Anglo-Saxon legal system, describing a certain scope of rights and obligations assigned to persons who are not the child’s biological parents. In the case of an educational establishment as a public authority, responsibilities which are *per se* equivalent to parental responsibility are delegated to it. The school thus has a duty to care for the child, in particular, his or her psycho-emotional well-being and physical safety, as it would be done by caring parents. In the case of the Republic of Latvia, this finding is most clearly reflected in the scientific findings of pedagogy and daily educational practice.

Sources

Bibliography

1. Garner, B. A., (ed.). Black, Henry Campbell, 1860–1927. Law Dictionary. St. Paul, MN: Thomson Reuters, 5th ed., 2016, 890 pages.
2. Case briefings “Law and Society”. Available: <https://quizlet.com/51022729/case-briefings-law-and-society-flash-cards/> [last viewed 20.02.2022].
3. Curtis, G. B. The Checkered Career of Prens Patriae: The State as Parent or Tyrant? 25 DePaul L. Rev. 895, 1976. Available: <http://via.library.depaul.edu/law-review/vol25/iss4/5> [last viewed 20.02.2022].
4. Dayton, J. Education Law: Principles, Policies, and Practice. Wisdom Builders Press, 2012.
5. Gailite, D. Piekāst likumu [To hell with the law]. Jurista Vārds Nr. 22 (773), 04.06.2013.
6. Hall, A. J., Manins, M. In Loco Parentis and the Professional Responsibilities of Teachers. Waikato Journal of Education, 7, 2001, pp. 117–128.
7. Jarinovska K. Ne vien uzdrošināšanās, bet arī centība un paklausība ir tikumi [Not Only Daring, but Also Diligence and Obedience are Virtues]. Available: <https://lvportals.lv/viedokli/259980-kristine-jarinovska-ne-vien-uzdrosinasanas-bet-ari-centiba-un-paklausiba-ir-tikumi-2013> [last viewed 20.02.2022].
8. Johnson, D. E. Schools We Trust? Leadership in Loco Parentis and the Failure to Protect Students from Bullying and Harassment. In: Samier, E. A., Schmidt, M. (eds). Trust and Betrayal in Educational Administration and Leadership. New York, London: Routledge, 2010, p. 143.

⁵⁶ Nimante, D. Klasvadība. Rokasgrāmata skolotājiem [Class management. A guide for teachers]. Rīga: Zvaigzne ABC, 2008, 29. lpp.

9. Keiss, M. In Loco Parentis. 08.08.2007. Available: <https://www.delfi.lv/news/versijas/marks-keiss-in-loco-parentis.d?id=18661344> [last viewed 20.02.2022].
10. Kilkelly, U. The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child. Human Rights Quarterly Johns Hopkins University Press, Vol. 23, No. 2, May 2001, pp. 308–326.
11. Konceptuālais ziņojums "Par nīrgāšanās izplatības mazināšanu izglītības vidē" [Conceptual report "Reducing Prevalence of Mockery in the Educational Environment"]. Available: <https://www.vm.gov.lv/lv/jaunums/publiskai-apsriesanai-lidz-13augustam-nodots-konceptualais-zinojums-par-nirgasanas-izplatibas-mazinasanu-izglitibas-vide> [last viewed 20.02.2022].
12. Merrick, R. M. "Is it dead or alive?" An Analysis of the Doctrine and Policy of in Loco Parentis at American universities. Available: <https://www.jstor.org/stable/20403397?seq=1> [last viewed 20.02.2022].
13. Mihailovs, I. J. Līgums par bērna izglītošanu izglītības iestādē un disciplīnas pārkāpumu novēršana [Agreement on the Education of a Child in an Educational Institution and Prevention of Violation of Discipline]. Socrates RSU Elektroniskais juridisko zinātnisko rakstu žurnāls Nr. 1(1), 2015. Available: <https://dspace.rsu.lv/jspui/bitstream/> [last viewed 20.02.2022].
14. Nimante, D. Klasvadība. Rokasgrāmata skolotājiem [Class management. A Guide for Teachers]. Rīga: Zvaigzne ABC, 2008.
15. Smiltēna, A. Parens patriae doktrīna – valsts intervence bērna labākajās interesēs [The Doctrine of Parens Patriae – State Intervention in the Best Interests of the Child. Jurista Vārds, 30.03.2021.
16. Stuart, S. In Loco Parentis in the Public Schools: Abused, Confused and in Need of Change University of Cincinnati Law Review, Forthcoming; Valparaiso University Legal Studies Research Paper No. 10–03, February 5, 2010. Available: https://scholar.valpo.edu/law_fac_pubs/174/ [last viewed 20.02.2022].
17. M. F. Quintilianus. Cambridge, Massachusetts: Harvard UP1996. Vol. 1: Books 1–3, Butler, H. E. (Engl. transl.), XIV, 1996. Available: https://archive.org/stream/institutioorator00quin/institutioorator00quin_djvu.txts [last viewed 20.02.2022].
18. Van Breda, M. J. Guidelines for Empowering Secondary School Educators, in Loco Parentis, in Addressing Truancy Among Early Adolescent Learners. University of South Africa. Theses, 2006, 285 pp.
19. White, B. Student Rights: From In Loco Parentis to Sine Parentibus and Back Again? Understanding the Family Educational Rights and Privacy Act in Higher Education. BYU Educ. & L.J. 321, 2007. Available: <https://digitalcommons.law.byu.edu/elj/vol2007/iss2/6> [last viewed 20.02.2022].
20. Latinskā juridiskā izteiksmē [Latin legal sayings] sast. E. I. Temnov. Moskva : Jurist, 1996, 398 s.
21. Latinsko-russkij slovar' juridicheskikh terminov i vyrazhenij dlja specialistov i perevodchikov anglijskogo jazyka [Latin-Russian dictionary of legal terms and expressions for specialists and translators of the English language]. Gamzatov, M. (Avt.-sost.). Sankt-Peterburgskij gosudarstvennyj universitet. Sankt-Peterburg : Izdatel'stvo Sankt-Peterburgskogo universiteta, 2002, 505 s.

Normative acts

1. Bērnu tiesību konvencija: Apvienoto Nāciju Organizācijas konvencija [Convention on the Rights of the Child]. Available: <https://likumi.lv/legislation/lv/lv/treaties/id/1150> [last viewed 20.02.2022].
2. Izglītības likums [Education Law]. 17.11.1998. Available: <https://likumi.lv/ta/en/en/id/50759-education-law> [last viewed 20.02.2022].
3. Iustiniani Digesta Recognovit Theodorus Mommsen / Retractavit Paulus Krueger. Corpus Iuris Civilis, Vol. I. Available: <https://droitromain.univ-grenoble-alpes.fr/Corpus/d-23.htm> [last viewed 20.02.2022].
4. Kārtība, kādā nodrošināma izglītojamo drošība izglītības iestādēs un to organizētajos pasākumos: Ministru kabineta 24.11.2009. noteikumi Nr. 1338 [Procedures for Ensuring Safety of Educatees in Educational Institutions and at Events Organized by Them]. 27.11.2009. Available: <https://likumi.lv/ta/en/en/id/201106-procedures-for-ensuring-safety-of-educatees-in-educational-institutions-and-at-events-organized-by-them> [last viewed 20.02.2022].
5. Ministru kabineta noteikumu projekta "Grozījumi Ministru kabineta 2009. gada 24. novembra noteikumos Nr.1338 "Kārtība, kādā nodrošināma izglītojamo drošība izglītības iestādēs un to organizētajos pasākumos"" sākotnējās ietekmes novērtējuma ziņojums (anotācija) [Preliminary Impact Assessment Report of the Draft Cabinet Regulation "Amendments to Cabinet Regulation No. 1338 of 24 November 2009 "Procedures for Ensuring the Safety of Learners in Educational

Institutions and Events Organized by Them” (annotation)]. Available: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40258146&mode=mk&date=2013-05-21> [last viewed 20.02.2022].

6. Digesty Justiniana [Digests of Justinian]. Available: https://www.gumer.info/bibliotek_Buks/Pravo/digest/23. [last viewed 20.02.2022].

Case law

1. Supreme Court of North Carolina State v. Pendergrass 19 N.C. 365 (N.C. 1837) Decided Jun 1, 1837. Available: <https://casetext.com/case/state-v-pendergrass-22> [last viewed 20.02.2022].

The European Court of Human Rights

1. Case of Costello Roberts v. The United Kingdom, App. No(s). 13134/87. Available: <https://hudoc.echr.coe.int/eng?i=001-57804> [last viewed 20.02.2022].
2. Case of Tyrer v. the United Kingdom App. No(s). 5856/72. Available: <https://hudoc.echr.coe.int/eng?i=001-57587> [last viewed 20.02.2022].
3. Case of Scozzari and Giunta v. Italy. App. No(s). 39221/98; 41963/98. Available: <https://hudoc.echr.coe.int/eng?i=001-58752> [last viewed 20.02.2022].
4. Case of O’Keeffe v. Ireland App. No(s). 35810/09 Available: <https://hudoc.echr.coe.int/eng?i=001-140235> [last viewed 20.02.2022].

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