



RELIGION IN PUBLIC EDUCATION

LA RELIGION DANS
L'ÉDUCATION PUBLIQUE

Edited by

GERHARD ROBBERS

To José María González del Valle

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*Proceedings of the Conference
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CONTENTS – SOMMAIRE

<i>Gerhard Robbers</i> , Preface.....	7
<i>José de Sousa e Brito</i> , General Aspects of Religion and Education in the Secular State	9
<i>David McClean</i> , Religious Dress and Symbols in Schools	17
<i>Norman Doe</i> , Religion and Public Schools in the States of the European Union – A Juridical Overview	29
<i>Stefan Hammer / Johannes Franck</i> , Religion in Public Education – Report on Austria	39
<i>Rik Torfs</i> , Religious Instruction in Public Education in Belgium	63
<i>Hristo P. Berov</i> , Religion in the Public Education System of Bulgaria	73
<i>Achilles C. Emilianides</i> , Religion in Public Education in Cyprus	87
<i>Jiří Rajmund Tretera / Záboj Horák</i> , Religion in Public Education in the Czech Republic	99
<i>Lisbet Christoffersen</i> , Religion in Public Education – Denmark	113
<i>Merilin Kiviorg</i> , Religious Education in Estonia	117
<i>Matti Kotiranta</i> , Religious Education in Finland.....	139
<i>Francis Messner</i> , Religion et éducation en France	155
<i>Hans Michael Heinig</i> , Religion in Public Education – Germany	167
<i>Nikos Ch. Maghioros</i> , Religion in Public Education – Report on Greece	195
<i>Balázs Schanda</i> , Religion in Public Education in Hungary	217

<i>Paul Colton, Religion in Public Education in Ireland</i>	227
<i>Alessandro Ferrari, La religion dans l'éducation publique – le cas italien</i>	257
<i>Ringolds Balodis, Religion in Public Education – Latvian Experience</i>	273
<i>Andrius Sprindziunas, Religion in Public Education in Lithuania</i>	295
<i>Patrick Kinsch, L'État et l'enseignement privé au Grand-Duché de Luxembourg</i>	311
<i>Philippe Poirier, La religion dans l'enseignement public au Luxembourg</i>	319
<i>Sophie van Bijsterveld, Religion in Public Education in the Netherlands</i>	363
<i>Józef Krukowski, Religion in Public Education – Poland</i>	383
<i>André Folque, Religion in Public Portuguese Education</i>	399
<i>Emanuel P. Tăvală, Religion and Public Education in Romania</i>	425
<i>Marek Šmid, Religion in Public Education – Slovakia</i>	443
<i>Blaž Ivanc, Religion in Public Education – Slovenia</i>	455
<i>Agustín Motilla, Religion in Public Education – Spain</i>	473
<i>Lars Friedner, Religion in Public Education – Sweden</i>	493
<i>David McClean, Religion in Public Education – United Kingdom</i>	503
<i>Jean Duffar, La religion dans l'éducation publique – Droit international et européen</i>	521
<i>Michał Rynkowski, Religion in European Schools</i>	567

PREFACE

The 22nd annual conference of the European Consortium for Church and State Research took place from 11 to 14 November 2010 in Trier, Germany. It was dedicated to the topic of Religion in Public Education.

The conference would not have been possible without the intense work of Ms. Claudia Lehnen, Ms. Gerhild Scholzen-Wiedmann, Ms. Dr. Angelika Günzel, Ms. Dr. Christine Schmidt-König, Mr. Oliver Windgätter, Ms. Cerin Kizhakkethottam, Mr. Moritz Reger, Ms. Maria Hermanns, Ms. Christine Brentrup, Ms. Bärbel Junk, Ms. Ingrid Kehrer, Ms. Linda Kern, Mr. Niklas Klein, Ms. Annabelle Mertes, Mr. Arash Faghih Nassiri, Ms. Aleksandra Pistalo, Mr. Robert Schiller, Ms. Jana Schollmeier, Mr. Dr. Christoph Streiß and Mr. André Woitkewitz. I do thank them all.

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Gerhard Robbers

GENERAL ASPECTS OF RELIGION AND EDUCATION IN THE SECULAR STATE

JOSÉ DE SOUSA E BRITO

1. Let us start with the secular state, since the constitutional principles of the secular state are the very matter under discussion when we want to solve today's difficult legal problems in the domain of religion and education. The secularisation of the state is the result of a long intellectual and political process that is both presupposed and implied by the Bill of Rights of Virginia of 1776, by the Constitution of the United States of 1787 and the First Amendment to the Constitution of 1791 and by the French declaration of rights of 1789. It derives from the definition of the ends of the state as purely worldly. Such ends are so enumerated in the preamble to the American Constitution: "establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty". Therefore the state has nothing to decide in matters of religion but to protect the decisions of individuals. According to the First Amendment, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The state cannot discriminate between individuals according to their religion or non-religion, but must remain neutral or impartial.

This is also the meaning of "*État laïque*" in the French constitutions of 1946 and 1958, as is clearly stated in the *travaux préparatoires*. In 1946 Robert Schumann, in the only statement before the vote, equates the principle of laicity with the doctrine of the neutrality or impartiality of the state towards all the members of the nation, as a consequence of religious liberty. Therefore, he says, it can not be conceived as a restriction.¹ This non-restrictive character is

¹ See the quotations of Schuman in Jean Morange, "Laïcité" in Denis Alland, Stéphane Rials (eds.), *Dictionnaire de la culture juridique*, Paris: Presses Universitaires de

stressed in the Constitution of 1958 by adding that the Republic “respects all beliefs”.² From the constitutional principle of laicity has to be distinguished the regulation of it in French law, which underwent many changes after the introduction in 1882 of the *école primaire publique*, which was truly *laïque* without using the word, following the many turns of the ideological conflict between the two faces of France – catholic France and the France of laicism. There is however an aspect of the regulation of the principle that has constitutional significance, even if it is not part of the Constitution strictly speaking: the preamble of the 1946 Constitution, reaffirmed by the 1958 Constitution, says that “the organisation of free and lay public instruction at all levels is a duty of the state”. The term “laicism” designates the doctrine or ideology supportive of laicity and is mainly used by the critics of such doctrine. Since the Catholic Church after Vatican II adopted the principle of state secularism or laicity, “laicism” designates a certain conception of laicity according to which religion has no access to the public realm and is relegated to the private sphere and the state – and with it public schools – should be based on reason alone, ideas that do not correspond to French law but are typical of the French republican tradition.

2. That the secular state is an essential element of the liberal or democratic constitutional state is generally agreed upon, since it is a logical consequence of religious liberty. But then the question arises as to whether the secular state for similar logical reasons is bound to depend for its own survival on the very religion that it is forbidden to protect. The question was famously raised by the German constitutionalist *Böckenförde* as a kind of dilemma: “*The liberal secular state lives from presuppositions that it cannot itself ensure*. This is the great risk it takes for the sake of freedom. As a liberal state, on

France, 2003, 915 and in *Jean Baubérot*, *Histoire de la laïcité française*, Paris: Presses Universitaires de France, 2000, 106.

2 In the words of the President of the commission of the Constitution “la laïcité... c’est... le respect de toutes les opinions et de toutes les croyances”: quoted in *Francis Messner et al.*, *Traité de droit français des religions*, Paris: Juris-Classeur, 2003, 395.

one side, it can only endure if the freedom that it warrants to its citizens does regulate itself on the internal basis of the moral substance of the individual and the homogeneity of society. On the other side, it can not try to ensure these internal regulative forces by itself, that is, by the means of legal coercion and command of authority, without giving up its liberal element and returning at the secular level to totalitarianism, out of which it went through the confessional civil wars.”³

The question raised in 1967 by *Böckenförde* was in 2004, thirty-seven years later, the subject of a widely known debate between *Habermas* and *Cardinal Ratzinger*.⁴ *Böckenförde* would return to the theme in a lecture of 2006,⁵ publishing then a correspondence with *Ratzinger* dated 2004. Let us consider the arguments of such a debate, having in view the topical triangle secular state – religion – education.

Before embarking on the discussion, it is interesting to recall how *Ratzinger* received *Böckenförde* and defined the doctrine of the Catholic Church in order to defend Christian education in state schools, the display of the crucifix in the public school and more generally the presence of religion in the public space and even the inclusion in the constitution of Europe of a reference to its Christian roots. I quote from an address delivered also in 2004 on the 60th anniversary of the Normandy invasion: “the secular state follows from a fundamental Christian decision, even if it required a long struggle to understand this in all its consequences. This secular, *laïque* state incorporates, in its essence, the balance between reason and religion, which I have tried here to present. However, it stands against laicism as an ideology, which would, as it were, construct the

3 *Ernst-Wolfgang Böckenförde*, Die Entstehung des Staates als Vorgang der Säkularisation in Säkularisation und Utopie. Erbracher Studien (Festschrift für Ernst Forsthoff), Stuttgart: Kohlhammer, 1967, 93 (my translation, original emphasis).

4 *Jürgen Habermas*, *Joseph Ratzinger*, Dialektik der Säkularisierung. Über Vernunft und Religion, Feiburg: Herder, 2005.

5 *Ernst-Wolfgang Böckenförde*, Der säkularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert, München: Carl-Friedrich von Siemens Stiftung, 2007.

state from pure reason, released from all historical roots, and which can thus recognize no moral foundations that are not discernable to reason. All that is left, in the end, is the positivism of the greatest number, and with it the abasement of right; ultimately, it is to be governed by a statistic. If the countries of the West were to commit wholly to this path, they could not indefinitely withstand the press of the ideologues and political theocrats. Even a secular state may – indeed, must – find its support in the formative roots from which it grew, it may and must acknowledge the foundational values without which, it would not have come to be, and without which, it cannot survive. Upon an abstract, a-historical reason, a state cannot endure.”⁶

3. Let us describe the common ground that unites all discussants. No liberal state – and perhaps no state at all – can survive in the long run simply on the basis of its laws and of the coercive apparatus that contributes to the efficacy of them. It needs much more common cultural elements such as language, attitudes, feelings, social morality, historical memories, participation in collective enterprises, sharing of educational practices and of beliefs and political choices, of work, games, sports, amusement and sorrow, science and art, etc., so that some sort of national identity gives enough homogeneity to the whole fabric of society to allow for social peace and for the successful functioning of democratic institutions. All that is learned during life and is considered important has to be transmitted to the new generations through education. In most European countries that homogeneity was based on the existence of one national culture in each country. After the Second World War the emigration to the richest countries and the progressive opening of frontiers generalized cultural pluralism and produced in Europe the same type of plural societies as were known for a long time in Canada or in the United States. The essential cultural homogeneity seemed particularly endangered

6 My translation from *Joseph Ratzinger*, Europa, Paulus Editora, 109, using an English translation from *Jeffrey Craig Miller*.

by the growth of Islam in many European countries. It is asked if Islam is compatible with the liberal state, and if not, what should be done.

The theory of the liberal or democratic constitutional state has been developed by *John Rawls* in order to accommodate the pluralism of value systems with public reason, as the ideal decision procedure in democratic societies. The point here is, according to *Rawls*, to argue in such a way that everyone thinks he can hope his argument will be accepted by the other citizens. This means that no appeal is made to the whole truth, but only to that part of the truth which one can hope will be recognized by any system of reasonable principles, i.e., by any philosophical, religious or ideological doctrine which is reasonable. This restriction that each citizen makes within his own truth to the part which he considers acceptable by others, results, according to *Rawls*, from the great political values of freedom and of equality and from the duty of civility. This last duty would imply a duty of arguing before the other citizens and of accepting the arguments of the others according to what I would call the constitutional consensus. Such is for *Rawls* an “overlapping consensus” which citizens reach from within their own doctrines, as far as they are reasonable, and not as a result of compromise.⁷ This is the ideal of democratic citizenship.

The overlapping consensus about constitutional essentials that both limits and supports public reason can however be reached without resorting to religious or non-religious comprehensive doctrines, departing from fundamental ideas seen as implicit in the political culture of a constitutional regime, such as the conceptions of citizens as free and equal persons, and of society as a fair system of cooperation.⁸

7 *John Rawls*, *Political Liberalism*, New York: Columbia University Press, 1993, 133–172, 235 f.

8 *John Rawls*, “The Idea of Public Reason Revisited”, *The Law of Peoples*, with: “The Idea of Public Reason Revisited”, Cambridge, Massachusetts: Harvard University Press, 1999, 143.

Finally *Rawls* emphasizes that the duty of civility of the citizens, that is fulfilled by following public reason and by doing what can be done to hold state officials and people's representatives to do it, is a moral duty and not a legal duty, because in that case it would be incompatible with freedom of speech.⁹

4. I think that *Rawls*' integration of pluralism in the conception of the democratic constitutional state is on the main successful. It shows that such a state to defend its political and legal values does not have to invent a *religion civile*, inspired by *Rousseau*, nor impose laicism as a comprehensive doctrine of reason alone through obligatory public education. Both are contradictory to its neutrality against all kinds of comprehensive doctrines. But the liberal state is not neutral in ethics. It has the duty to defend its perpetuity as a through and through ethical construction by all available means, first of all through supportive education. For that it has the willing and indispensable cooperation of most families and of religious and other ideological institutions that share an overlapping consensus about its values. Values and virtues are best defended by their constant practice. The state should therefore follow public reason in collective decision procedures at all levels of state organization. It has to care about culture in general – to do *Kulturpflege*, as *Böckenförde* says¹⁰ –, not only through education, but through investment in science and in the arts, since values are embedded in general culture. But it is not allowed to discriminate positively in favour of one religion, as the main comprehensive doctrine of its history, in the name of national cultural identity. This would directly contradict the very idea of the secular state.

5. The last point was the subject of the correspondence between *Ratzinger* and *Böckenförde* in 2004. In the public discussion about the use of the veil by state teachers, *Böckenförde* made a plea against

⁹ See *ibid.*, 136.

¹⁰ *Der säkularisierte Staat*, 31.

a general prohibition of the veil for teachers. *Ratzinger* wrote to him that in an ideologically neutral state all symbols appearing in public must not be equally treated: “a state can not cut out entirely its own roots and so to speak stand up as [a] pure state of reason that, without its own culture and its own profile, treats equally all traditions that are relevant for [its] ethos and law and evaluates equally all public manifestations of religions”. Otherwise Sunday privileges have to disappear and the legislation about marriage and family would have to give equal account of Christian and of Muslim traditions. *Böckenförde* answered that each State has its own cultural and religious roots that are reflected in its public policy. To this public policy however belongs religious liberty that includes the right of each individual to manifest his own religion in public. Religious liberty is undivided and implies public appearance of religious symbols of other religions.¹¹ *Böckenförde*’s answer rightly implies an essential difference between the two examples of *Ratzinger*: some diverse Islamic legal traditions about marriage and family offend German public policy. But equal respect for traditions of religious dress is an imposition of German public policy.

6. The last point brings us again to the quest for the common ethos that sustains the liberal state. *Böckenförde* endorses the decision of the German *Bundesverfassungsgericht* about the acquisition by the Jehovah’s Witnesses of the status of a public law corporation.¹² The legal requisite of loyalty to the state should be interpreted in view of the constitutional conception of religious freedom. The negative attitude of the Witnesses against the state as evil and the refusal of collaboration to the point of abstinence from any political election and conscientious objection to military service would not stand as an obstacle to the necessary loyalty as long as there is fidelity to law (*Gesetzestreue*). The state, says *Böckenförde*, “creates something that is common and capable of surpassing plurality and partial heteroge-

¹¹ See *ibid.*, 32–33.

¹² BVerfGE 102, 370 (19.2.2000).

neity: common life under laws that are related to freedom, whose limits have to be followed. Instead of extended recognition of value, the loyalty to law is the basis of living together. The ethos of legality (*Gesetzlichkeit*) can sustain and give stability to such a legal system.”¹³

Based on such a minimal ethical requirement of loyalty to law *Böckenförde* takes a position on the problem of European Islam. We do not know yet if fundamentalist or liberal ideas will prevail among Islamic citizens. We have grounds to assume that the Islamic communities will suffer an evolution similar to that of the Catholic Church that equally condemned religious freedom and the separation of State and Church from the French revolution until the last day of the Second Vatican Council in 1962, though nevertheless finally accepted it. However, in order to integrate in the liberal State, all that is required is *Gesetzesloyalität*, loyalty to law. But if the worst fundamentalism prevails so that even this minimum is not guaranteed, the liberal state should defend its survival by maintaining the situation for its Muslim citizens of living in the diaspora and using the politics of immigration to avoid them becoming the majority¹⁴.

I have here the same objection that *Böckenförde* had against *Ratzinger*. The Muslims have a human right not to be discriminated against.

I also think that the theory of the least common denominator is the wrong way to accommodate pluralism in the liberal, democratic constitutional state. The American experience and *Rawls* in particular have shown how it is possible to get a treasure of common values out of a pluralism of diverse systems of values.

13 Der säkularisierte Staat, 36.

14 Ibid., 38–41.

RELIGIOUS DRESS AND SYMBOLS IN SCHOOLS

INTRODUCTORY ADDRESS

DAVID MCCLEAN

INTRODUCTION

During the 1960s – I have not been able to date the events more accurately – a small group of dissident French Catholics declared one of their number Pope. The chosen Pope, or antipope, decided to visit Rome, of which he considered himself the rightful bishop. He set off, clad in the white robes of the papacy, but the Italian authorities refused him entry as his presence would be ‘an insult to the Holy Father’. It is an interesting illustration of the powerful symbolic effect of religious dress; the choice of clothes was in itself a threat. And perhaps dress is more important than a static symbol; dress is more personal and necessarily mobile.

You notice that I began with a point about the dress of the clergy. A hundred or even 50 years ago, certainly in the parts of England and Ireland that I know, the term ‘religious dress’ could only mean the distinctive dress of the Christian clergy and of members of religious orders. There was, and is, no special clothing to be worn by Christians, and the ministers of some Protestant churches will not, even in church services, wear any special clothes that might distinguish them from other Christians.

International travel and migration have made us all familiar with clothing which identifies the wearer as the follower of a particular non-Christian faith, be it Jewish, Sikh, Hindu, Buddhist or Muslim. Those faiths all have origins in what we call the Middle East or South Asia (especially the Indian peninsula). In those parts of the world, religious dress has been for centuries a normal part of any

street scene. But that was not the case in many other parts of the world such as Africa or China or Japan. Our familiarity in modern Europe with religious dress is the result of our links with, and of immigration from, particular regions of the world and that gives a sensitive political aspect to the whole issue.

It may be significant that we have also become familiar with clothes which identify other forms of allegiance. Thousands of men (and not a few women) can be seen wearing replicas of the shirts of their national or local football teams; it is a way of proclaiming your loyalty to what for some almost amounts to a belief-system. And those who wear the shirts of the rival teams can be seen as 'the enemy'. One wonders why a headscarf worn by a woman is more of an issue than a Manchester United shirt worn by a man.

Even within the Christian tradition, it has in the past been unacceptable for clergy of minority churches, rivalling the national or majority church, to be seen in public in clerical dress. In England, the Roman Catholic Relief Act 1829, which removed most of the discriminatory rules against Catholics, nonetheless provided that if any Roman Catholic priest or member of one of the Catholic religious orders should wear clerical dress in public, he could be fined £ 50. It was seldom if ever enforced, but was only repealed in 1926. In some Catholic countries, I think Spain during the Franco era is one example, it was forbidden for Anglican or Protestant clergy to wear clerical dress in public. Today, Turkey forbids clerical dress to be worn in public either by Turkish citizens or by visiting clergy; so does Mexico, except for Franciscans; so does Cuba, except (intriguingly) for the Daughters of Charity and the Papal Nuncio. But our main concern today, so far as dress is concerned, is with religious dress in the more general sense, items of clothing or jewellery which identify the faith of the wearer.

RELIGIOUS SYMBOLS IN SCHOOLS

I chose to begin with religious symbols. So far as religious symbols are concerned, the focus is on Christianity. Icons and crucifixes are the centre of whatever controversy exists. There are of course quite a few European states in which such symbols are very common, in homes as well as public buildings and schools; in others, like my own, they are much less common. I was interested to read in the *Lautsi* case (the Italian crucifix case) that under former Italian law the image of Christ was to accompany the portrait of the King. In some countries every public office has a picture of the President or monarch; in others, like the United Kingdom, that is not the case, except in embassies abroad.

It is clear from the papers prepared for this meeting that in many countries the issue of religious symbols in schools has *not* become one of any importance. This is true in many countries of Eastern Europe where such symbols become rare during the communist period, but also in, for example, Finland, Sweden and the United Kingdom.

Christian symbols in schools are readily accepted in some countries and have not been the subject of legal challenge. Ireland is one example, and the very pro-religious elements in *Bunreacht na hÉireann*, the Constitution of Ireland, may support the present position. In other countries like Cyprus, official neutrality towards religion is accompanied by actual practice in state schools which promote the Christian religion. Subject to the *Lautsi* case, the position in Italy seems rather similar, with the courts content to accept a form of official and constitutional neutrality which treats Catholicism as a cultural norm inherent in Italian society and the crucifix as a sign of self-giving love and not just as testifying to the self-giving love of Jesus Christ. As we know, the future position in Italy and elsewhere (for example Romania where there is a conflict of judicial authority and Austria where the existing mandatory placing of a crucifix is under discussion) awaits the Grand Chamber of the European Court of Human Rights. We have an account in the Spanish paper of the

different decisions in different parts of that country, with a recognition again of the place of the Catholic faith in Spanish society.

At the other extreme is France where legislation dating from 1905 forbids religious emblems in or on public buildings such as schools. Even in Alsace-Moselle, where that law does not apply, the once-common religious emblems in primary schools have tended to disappear. Obviously the debate in 1905 was not as nuanced as any debate under the ECHR, but there was a nuanced debate in the German Federal Constitutional Court in its 1995 decision. Putting the issue in the language of the ECHR that case focussed on article 9(2) and the qualification on the freedom of religion for 'the protection of the rights and freedoms *of others*', the right in that case not to be forced by mandatory school attendance to see the crucifix, a principal symbol of the Christian Faith.

I do find the notion of a negative freedom of religion, a right not to see religious things, very difficult. What about a mandatory one-way street for traffic which takes the driver past the cathedral? And can the idea be extended beyond freedom of religion to freedom of conscience: could an ardent republican object to a mandatory picture of the King in a public school class-room as his negative freedom was being interfered with?

As we know the Bavarian issue has been resolved in a sensitive way, which seems close to the Polish and Portuguese approach of (in summary) letting the parents decide. That approach works best in a country with a very clear majority opinion, but even then it does not really address the issue of principle. It does address one issue of principle, the right of parents to decide the religious education of their children, but ignores some wider State issues.

I think all that points to a real, almost political, difficulty. If a population is overwhelmingly Catholic, or Orthodox, or Christian in some form, an insistence on the right of a small minority *not* to be offended by religious symbols can lead to decisions which the public cannot accept. In other legal debates, we tend to say that law must not depart too far from public opinion or it loses respect. Does that apply here? If not, why not?

RELIGIOUS DRESS IN SCHOOLS

We need to remind ourselves of the various types of religious dress. Not all have attracted litigation; I have not come across any discussion of saffron robes as worn by some Buddhist monks or the Hare Krishnas. If we list the relevant items, we can see that only some attract controversy.

We are familiar with the skullcap (*kippah* or *yarmulke*) which some Jewish men always wear. Hasidic Jews have a stricter dress code, with dark (usually black) trousers and white shirts, black shoes and a long, black jacket.

There are differing views as to what is required of Muslim women (and it is significant that the rules apply only to women, which raises other types of issue about discrimination on grounds of gender). We can identify at least five different practices amongst Muslim women. Some, though devout, feel no obligation to wear any distinctive dress. Some, notably in Pakistan, wear a *dupatta* which is simply a scarf, not worn to cover the hair. Many wear the *hijab* or headscarf. Some wear the *jilbad* or *burka*, the loose garment covering the entire body. A few, mainly from the Wahabi school of Islam and especially in the Gulf area, use the *niqab* to cover the whole face save for the eyes. Public discussion can confuse these variants in an unhelpful way.

What is interesting is that the headscarf and the burka are prohibited in some Muslim countries. In what was once Soviet Central Asia, such dress was banned to assert the supremacy of the State over religion. In 2007, Tajikistan forbade any veiling in public places, but I am not sure what reason was given. There can be security issues, or feminist issues, or sectarian disputes within Islam: Islamic religious leaders in Egypt oppose the full-face veil as it is a Wahabi and not a Sunni practice.

Sikh men always wear the turban in public and also at meal times, but at least in England usually wear Western style clothes apart from that. Sikh women often wear the *shalwar kameez*, which is a long tunic and matching trousers, though some wear the sari as

do many Hindu women. The last of the Sikh gurus, Guru Gobind Singh, prescribed the five Ks for observant Sikhs: *kes*, long uncut hair; *kanga*, a comb; *kacha*, long undershorts; *kara*, a steel bracelet worn on the right wrist; and *kirpan*, a short sword or dagger.

The best-known issue in England was about the turban. Motorcyclists are required by law to wear crash-helmets and this was seen as conflicting with Sikh dress rules which required the turban. After quite a controversy, Parliament passed the Motor-Cycle Crash Helmets (Religious Exemption) Act 1976 which allowed Sikhs to wear the turban instead of the crash-helmet. Interestingly, a court in Ontario, Canada held in August this year that a Sikh committed an offence when he wore a turban rather than the crash-helmet required under Ontario law.

I mentioned in my paper on religion in British education the case in which a girl won the right to wear the *kara*. There have been occasional cases where schools have forbidden boys from having the *kirpan* knife and the most significant discussion was in another Canadian case, the decision of the Supreme Court of Canada in *Multani v Commission scolaire*, 2006 SCC 6. A boy was banned from school if he wore a *kirpan* knife. He was willing to have it sewn into his clothes so that it would be safe, but the school insisted on a total ban. The Supreme Court of Canada eventually set the school's decision aside. It held that the ban infringed the boy's freedom of religion under the Canadian Charter of Rights: what an individual had to show was that he sincerely believed that a certain belief or practice was required by his religion, as the boy did. So the test of what the religion required was a subjective one; I am not sure that that point has been fully explored in the European cases. Could the ban be judged to be reasonable and demonstrably justified in a free and democratic society? The school was motivated by considerations of safety, but the evidence did not support the school's argument that *kirpans* were inherently dangerous. A total prohibition against wearing a *kirpan* to school undermined the value of that religious symbol and sent students the message that some religious practices did not merit the same protection as others. On the other hand, accommodat-

ing the boy's wishes and allowing him to wear his *kirpan* under certain conditions demonstrated the importance that society attached to protecting freedom of religion and to showing respect for its minorities.

That discussion is in terms which correspond to the familiar provisions of article 9(1) of the ECHR, that everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Pausing there, I assume that 'in public or private' means 'anywhere'; there can be no special category of space not covered by that phrase. So, for example, a school must fall within art 9(1), whether it is a state school or one run by a church or religious order.

Article 9(2), as we know, provides the exceptions, which must (a) be prescribed by law (and although this has been given a wide interpretation by the European Court of Human Rights, rules in some sets of private regulations made by a school authority would not be 'law'); and (b) be necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The argument about the dangers of a *kirpan* knife, if unprotected, raises that issue.

From what I have said so far there are a number of strands in the debate: freedom of religion of course, but also secularism, *laïcité* or neutrality of the State in religious matters, women's rights, and issues of public safety.

The main debate in Europe is about Muslim women and that can involve either the simple headscarf or one or other of the whole-body coverings. So there have been moves in the French parliament to ban the face-veil in public, principally as it is seen as 'an affront to the nation's values of dignity and equality'. Some towns or *communes* in Belgium, Spain and Italy have similar bans, and national legislation is pending in Belgium. In 2008, the Danish government announced a wider ruling though one limited to judges: they could not wear head-

scarves and similar religious or political symbols – including crosses, Jewish skull caps and turbans – in courtrooms. (I do wonder just how many Sikh judges sit in Denmark). The *Land* Berlin in Germany has a similar rule applying to a wider category of public servants.

TEACHERS

In the context of the school class-room, we need to consider first the position of the teacher. There is a link here with the debate about religious symbols on the classroom wall. A crucifix on the wall seems to carry the authority of the school; a religious item in the teacher's clothing may similarly have an authority which the same item on someone else would not have. On that basis, the teacher should not wear anything indicating his or her religious (or for that matter political) views. As the French ministerial guidance put it, 'teachers because of the example they set explicitly or implicitly to their students, must avoid any philosophical, religious or political identifying marks prejudicial to the freedom of conscience of the children'.

A counter-argument would accept that what a teacher *says* must avoid propaganda or indoctrination, but assert that a teacher is entitled to express something of his or her individuality. Education includes learning to relate to other people of different backgrounds and views, and it is unnatural to suppose that a teacher is wholly neutral, with no views of his or her own. So, a woman teacher may dress in a modern or a rather old-fashioned way; a teacher may or may not wear a wedding or engagement ring; a man may have ties which express a taste in colour, design or even loyalty to a university, football club or country. Why is religion to be treated differently?

I found the Czech approach a useful way of seeing that second argument. The Czech legislation speaks of educational principles as including 'mutual reverence, respect, tolerance to different opinions, solidarity and dignity of all participants of education', and any restriction on wearing a cross, for example, would be an infringement

of the freedom of religion; and no distinction seems to be drawn between teacher and child. This emphasis on mutual tolerance was underlined by the Grand Chamber in the *Sahin* case:

‘The Court has frequently emphasised the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. It also considers that the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed, and that it requires the State to ensure mutual tolerance between opposing groups. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other’.

In many European countries, the question of religious dress on the part of teachers either does not arise or has given rise to no debate. We can exclude, of course, those situations in which a priest comes into a school as part of the programme and may wear clerical dress (though that may not involve more than a cross on the lapel or a clerical collar).

Some countries have addressed the more general question of teachers wearing religious dress, in practice the Islamic headscarf.

The German report gives a full account and critique of the case of *Fereshta Ludin*. As I understand it, the Constitutional Court held that, in the absence of any express statutory prohibition, a teacher was entitled to wear the headscarf. But it left it open to the legislatures of the various federal states to act as they wished, taking into account the likely effect on third parties and the wearer’s reasons for wishing to wear the headscarf. Again, I think that fudges the issue of principle. In the Netherlands, official guidance is that so long as a teacher is committed to working in a ‘neutral’ environment in providing public education, the wearing of a headscarf or other symbol is unproblematic.

DAVID MCCLEAN

I enjoyed, by the way, the point made in the Czech report that many non-Muslim Czech women wear a headscarf in the countryside both at work and on the festive occasions. So does Queen Elizabeth II on her days off, and unlike the case of President Obama, no-one supposes that Her Majesty is a secret Muslim.

PUPILS

There is rather more debate on the wearing of religious dress by pupils. Pupils are naturally more numerous than teachers, and there are additional factors caused by school uniforms and, on the legal plane, a right to education which might be denied were a pupil excluded for reasons of dress.

In most EU States in which the issue has arisen, pupils have been allowed to wear the headscarf and other religious items. In *Sahin*, the Grand Chamber listed Austria, Germany, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom in its comparative survey. We can probably add Ireland, though as the Irish report makes clear the issue of the *niqab*, the full face veil, would raise different issues.

France has, however, chosen to press its *laïcité* on this issue, with the law of 15 March 2004 outlawing the wearing of signs or dress overtly manifesting a religious affiliation in State schools. This covers the Islamic headscarf, the *kippa*, or a cross 'that is manifestly oversized'. I would argue that this forces *laïcité* on individuals, and must therefore infringe their freedom of religion. I would question whether a State's *laïcité* comes within article 9(2) of the ECHR so as to justify or allow that infringement.

CONCLUSIONS

There may well be special points to be made in the case of the *niqab*, the full-face veil, and security issues and women's rights issues are strongest there. There can be women's rights issues even over the headscarf: I remember some years ago advising a woman university student of mine from Indonesia who did not, when she arrived, wear the headscarf but was subject to a prolonged and distressing campaign by male Muslim students who would ring her up several times during the night to persuade her to cover her head. She eventually complied. But we are concerned with the role of the State.

I have the disadvantage of being trained in the ways of the common law. For most purposes, it is of course a huge advantage, but not when one is reading the ECHR or some other international or European documents. To my common law mind, the freedom of the individual to manifest his or her religion in public or private answers most of the questions about religious dress. Only by the odd notion of a negative right, not to face religion, can some exception be carved out; and I am unconvinced by that.

Do you agree with the notion of negative freedom of this sort? Is the French position in the law banning religious items of clothing or adornment in public schools compatible with the Convention? And the question I asked earlier, why is a Muslim woman's headscarf an issue but not an Englishman's Manchester United shirt?

I wonder if part of the answer to that last question is a rather sensitive one, which I give intending no disrespect. I guess that we associate Buddhism with safely abstract meditation; we find Hinduism colourful and cheerful; we treat Jewish practice with an embarrassed awareness of the anti-Semitism that has marked the history of many of our countries at one time or another; but we fear Islam as a threat to our security and to the Christian faith.

RELIGION AND PUBLIC SCHOOLS IN
THE STATES OF THE EUROPEAN UNION
– A JURIDICAL OVERVIEW

NORMAN DOE

The place of religion in public education is addressed in some detail in the instruments of the United Nations, the Council of Europe, and the European Union. They spell out the right of parents and guardians to the religious education of their children, the right of the State to provide in its schools neutral and objective religious education, and the duty of the State to provide for exemptions when parents (or children) do not wish to receive religious education. These represent important international standards against which national laws in Europe may be measured.¹

For the United Nations, education should “promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups” (International Covenant on Economic and Social Rights, Art. 13.1). In turn, States must respect the freedom of parents to ensure the religious and moral education of their children in conformity with their own convictions (International Covenant on Civil and Political and Rights, Art. 18.4). Thus: “Every child shall enjoy the right of access to education in the matter of religion or belief in accordance with the wishes of the parents...and shall not be compelled to receive teaching on religion or belief against [their] wishes...the best interests of the child being the guiding principle” (Declaration on the Elimination of All forms of Intolerance and Discrimination based on Religion or Belief, Art. 5). However, it is permissible to provide “instruction in subjects such as the history of religion and ethics”, “if it is given in a neutral and objective way”, and instruction in a particular religion must provide for non-

¹ See *N. Doe*, *Law and Religion in Europe* (Oxford University Press, 2011) pp. 189–197.

discriminatory exemptions or alternatives which accommodate parental wishes (General Comment No. 22 on ICCPR Art. 18, 30 July 1993; *Leirvag v Norway*, Communication No. 1155/200).

Similarly, the ECHR provides: “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 rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions” (ECHR, First Protocol, Art. 2). In turn, the Parliamentary Assembly of the Council of Europe invites States “to promote education about religions”, their values, history, and traditions, in an impartial manner in order to engender respect for different faiths.² For Strasbourg, therefore, the State may provide religious education and it has a wide margin of appreciation to do so, but at the same time it must ensure that it is delivered in “an objective, critical and pluralistic manner”. There is to be no indoctrination and parents may set up their own religious schools.³ Likewise, the European Union recognises the right of parents to ensure the education of their children in conformity with their religious and philosophical convictions (Charter of Fundamental Rights, Art. 14), and the Union recommends that the member States “ensure that religious instruction in schools respects cultural pluralism”.⁴

Nationally, all States in the European Union deal with religious education in public schools. The issues which these laws address include: whether the State must provide religious education itself or merely provide *for* religious education by others; the types or forms of religious education (e.g. Christian, denominational (or confessional), and non-denominational or general religious knowledge); the design of the curriculum; who delivers and funds the teaching (the

² Rec. 1396 (1999) adopted 27 Jan. 1999; Rec. 1720 (2005) adopted 4 Oct. 2005.

³ See e.g. *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711; *Jordebo v Sweden*, App. No. 11533/85, 6 March 1987; *Jimenez and Jimenez Merino v Spain*, App. No. 51188/99; *Valsamis v Greece* [1998] ELR 430; *Bernard & Ors v Luxembourg*, App. No. 17187/90, 75 Eur. Comm. HR Dec 7 Rep 57 (1993).

⁴ EU: General Policy Rec. No. 5, “Combating intolerance and discrimination against Muslims”, CRI, 2000, 21, 27 April 2000.

State, religious organisations or both); and arrangements for opting in to or out of religious education by parents or, depending on their age, by children themselves. Each State in Europe adopts one or other of five basic approaches to these issues: (1) compulsory Christian knowledge which the State designs, teaches and funds but from which parents or pupils may opt out; (2) compulsory denominational education which religious organisations design (perhaps in collaboration with the State) and teach but which the State funds and from which pupils may opt out; (3) opt-in denominational education which religious organisations design (perhaps in collaboration with the State) and deliver but the State funds; (4) opt-in non-denominational education which the State designs, delivers and may fund; and (5) the prohibition of religious education on the State school premises but the State makes provision for pupils to receive religious education externally.⁵

Compulsory Christian Religious Education

In the first category, public schools must provide Christian religious education, the curriculum is designed, delivered and funded by the State, and attendance is mandatory but pupils have a right to withdraw. The category is most prevalent in the state-church systems of northern Europe. “Christian knowledge” is taught in Danish primary and secondary schools where it covers the history of Christianity and the Reformation; in grammar schools the wider subject of religion is compulsory only in the last three years of study. Children may be withdrawn on a request from the parents and the child may withdraw at the age of 15; teachers can also request exemption from teaching Christianity. In Finland, compulsory religious education is broadly Christian but pupils in comprehensive and senior secondary schools may elect worldview studies or denominational education paid for by

⁵ For a helpful overview of COE countries, see *Hasan and Eylem Zengin v Turkey* [2008] ECHR, Appl. No. 1448/04.

the school and delivered on the basis of a curriculum approved by the national Board of Education.

For the United Kingdom, in state-maintained schools in England and Wales, the State must provide compulsory religious education which must “reflect the fact that the religious traditions in Great Britain are in the main Christian” whilst taking account of the teaching and practices of the other principal religions represented in Great Britain. If a parent requests a child to be “wholly or partly excused”, the child is to be so excused. Religious education must not be by means of any catechism or formulary distinctive of a particular denomination; and teachers are not to be treated less favourably as to remuneration or promotion by reason of the fact that they do or do not teach religious education. Moreover, schools must provide a daily act of collective worship “wholly or mainly of a broadly Christian character” which “reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination”; parents may withdraw children and pupils in the final two years of secondary school may do so themselves. However, the requirement that worship be mainly Christian may be disapplied.

Compulsory Denominational Education

In the second category, public schools must provide for denominational religious education, usually on the basis of a curriculum designed in partnership with the denominations concerned; it is funded by the State but delivered either by public teachers or by the denominations; pupil attendance is mandatory but there are exemptions. This model straddles both state-church and cooperation systems of religion-state relations. In Malta religious education is Catholic, and in Greece and Cyprus, Orthodox. In addition to the Maltese constitutional principle that the Catholic Church has the duty and entitlement to teach right from wrong, “Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State Schools as part of compulsory education”; the State pays for this and the Minister for Education must provide for the curriculum on the

basis of representations from the Catholic bishops, and the teachers may be required to be Catholic. However, parents may withdraw their children and pupils can opt out unilaterally at 16. In Greece and Cyprus, teaching in Orthodox Christianity must be provided by the State. Greek public education must contribute to the development of a “religious consciousness” formed by the Orthodox religion. The syllabus is approved by the Ministry of Education in consultation with the Orthodox Church; teachers are appointed and paid by the State. Pupils may be exempt from religious classes on the basis of a declaration by parents, but no declaration of their religion is required to enable this; there is also provision for daily prayer and attendance at church. Much the same applies in Cyprus.

Unlike Malta, Greece and Cyprus, in Austria, Germany and Belgium, the duty of the State to provide for religious education is not confined to instruction in the teaching of a single denomination. Under Austrian law, denominational (or confessional) religious instruction is compulsory for all pupils of a recognised church or religious community in primary schools and secondary schools. The denomination designs the syllabus and the Ministry of Education must publish it but cannot veto its content; classes are then delivered by teachers appointed by each denomination but paid and supervised by the State. Pupils under 14 may be withdrawn by parents (on written request to the head teacher in the first ten days of the school year) and pupils over 14 may withdraw themselves by written request but there are no alternative classes; no provision exists for prayers but pupils and teachers may attend school religious services organised by the denominations at the beginning and end of the year. In Germany: “Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the State’s right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction”; the state pays for it. However: “Parents and guardians shall have the right to decide whether children shall receive religious instruction”; accordingly, they may with-

draw their children until they reach 12, when the parental wish must not conflict with that of the child; at 14 the child decides. The content is decided by the denomination and if six to eight pupils of the same denomination seek *confessional education*, it must be provided as a constitutional right; for those opting out many *Länder* have introduced ethics classes. A similar system exists in Belgium with regard to the (six) recognised religious organisations.

Optional Denominational Religious Education

In the third category, public schools must provide for denominational religious education, designed, funded and delivered either by the State or by the denomination, with a right to opt in for pupils. The arrangement operates in the cooperation systems of Italy, Spain and Portugal and in many central eastern States. In Italy there must be two hours each week of state-funded Catholic religious education in play and primary schools and one hour per week in senior schools; parents must declare whether their children up to 13 will attend or not and if they decline, the children take part in other subjects or take time off school. The syllabus is jointly agreed by the Minister for Public Education and the Catholic Bishops' Conference. The teacher is chosen by the diocesan bishop who may withdraw permission if the teacher does not comply with the morals standards of the church. A denomination with an agreement (*intesa*) may assign their own teachers if the pupils, parents or the school apply for classes in a particular religion or in "the phenomenon of religion and its implications"; this is funded by the denomination. Denominations with no agreement have no such right. A similar system operates in Spain (where there are also optional classes in the history and culture of religions), with regard to teaching the Catholic religion, and the State pays for Protestant, Jewish and Islamic education designed by the denominations and delivered by their teachers if at least 10 pupils opt in – if fewer than 10 opt in, the denomination funds it. Portuguese public education must be non-confessional, but the State provides for the teaching of Catholic morals and religion (*in* school, not *by* the

school) delivered by state-funded teachers appointed as civil servants on the nomination of the Church using materials prepared by it – the pupil or parent must make an opt-in declaration. Other faith entities may deliver denominational education if 10 pupils request it or their parents declare they wish it; the entity sets the syllabus, and trains and nominates the teachers who are engaged by the State.

The countries of central and east Europe follow the pattern employed in Italy, Spain and Portugal. Lithuania is typical: public education must be secular, open, tolerant and available for all regardless of religion. However, at the request of parents (until the child is 15 when the child decides), religious instruction designed by the traditional religions must be given at public schools; it is delivered by teachers authorised by those religions but trained and paid by the State; pupils who do not opt in may take ethics classes. Denominational religious education requested parents or pupils and delivered by denominational teachers paid by the State is also provided in Poland, Hungary, Romania, and Slovakia, in relation to statutory, covenantal or registered religious denominations. Moreover, in Latvia the Christian religion must be taught in state and municipal schools to those parents who have requested it by written application if the child is under the age of 14; the curriculum is approved by the Ministry of Education and Science (it cannot include Judaism or Islam). It may be taught by teachers of the Lutheran, Catholic, Orthodox, Old believers and Baptist denominations (registered churches) if not less than 10 students in the school seek it. The teachers are selected by the religious authority and approved by the Ministry of Education and Science. It is funded by the State; ethics is offered as an alternative.

Non-Denominational Religious Education

A third approach is optional non-denominational religious education with or without State funding. Sweden has an opt-out system: the State must provide and fund education about religion; pupil attendance is mandatory but there is provision for pupils to opt out. Esto-

nia has an opt-in system: the State is under no duty to provide religious education but it must do so if at least 15 pupils so elect, in which case non-confessional religious education is delivered around a syllabus determined by the Ministry of Education – various religions are studied; in primary schools, the parents decide and in secondary schools, the pupils decide independently. Bulgarian public education must be secular, but religions may be studied in the context of compulsory lessons in ethics, history and philosophy; optional education in religion is available if there are thirteen pupils seeking it and it is taught on the basis of materials authorised by the Ministry of Education but there is no state funding for this.

The Prohibition against Religious Education

The fifth category is where the State forbids religious education on state-school premises but allows pupils to receive it elsewhere. This occurs in the separation system of France and the cooperation system of Slovenia. Except in the eastern departments, French public education is secular: primary schools must reserve a day each week for religious education outside the school (it cannot occur within the school), and Wednesdays are the norm – but “moral and civic” (rather than moral and religious) education is provided. However, in secondary schools chaplaincies may be appointed by the head teacher on the request of parents and on the nomination of a religious authority – the State has no duty to fund them and they are funded by the parents and the relevant faith community. It is unlawful to “deny to pupils who request it such individual leave of absence as may be necessary for worship or celebration of a religious festival, at least in so far as their absence is compatible with performance of the tasks entailed by their studies and with the maintenance of public order in the school”. A slightly more flexible approach is employed in Slovenia. Whilst public schools cannot provide religious education, it may be delivered on the premises in extra-curricular form by the registered religious communities if the Minister of Education so permits and there are no other “appropriate premises”. Whilst France and Slovenia are exceptional, there

is a general juridical consensus across Europe that the State should provide for religious education in public schools.

Conclusion

National laws on religion in schools reveal a high level of cooperation between EU States and religion, a general consonance between national standards and those of international law in this field, and a wide range of important principles common to the States of Europe irrespective of their particular postures to internal religion-state relations. All States recognise the value to pupils of education about religion during their time in public schooling. Parents and guardians have a right to the religious education of their children and children themselves have a right to decide on this when they reach the age of maturity. The State should provide for neutral and objective religious education. The State may provide or provide for classes in Christian knowledge, denominational (or confessional) education, or non-denominational education either in school or outside. The State may design the syllabus alone or in collaboration with religious organisations or it may allow religious organisations to design denominational education. Religious education may be delivered by State teachers or by teachers chosen by religious organisations in the case of denominational education. The State may fund religious education regardless of the way in which it is delivered. Attendance at religious education may be compulsory or optional. However, the State should provide for exemptions when parents or mature children when they so wish. Moreover, teachers should not be obliged to provide religious education against their wishes.

RELIGION IN PUBLIC EDUCATION – REPORT ON AUSTRIA

STEFAN HAMMER / JOHANNES FRANCK

I. GENERAL BACKGROUND

1. *Facts and Figures*¹

According to the last census taken in Austria in which the religious conviction of people was asked, namely in 2001, the religious composition of the population in Austria was the following: 73.66 % Roman Catholic, 4.68 % Protestant, 4.3 % Islamic, 2.17 % Orthodox, 0.29 % Jehovah's Witnesses, 0.18 % Old Catholic, 0.13 % Buddhist, 0.1 % Jewish, 0.09 % Pentecostal, 0.06 % Oriental-Orthodox. 11.99 % of the population did not belong to any denomination. Since the year 2001, the numbers have changed significantly. Whereas the number of Catholics has decreased, so that today under 70 % of the 8 million citizens of Austria are Catholics, the number of Muslims has increased to about 400,000 people, which makes Islam the second largest religious community in Austria. Furthermore, the portion without confession has also increased.

In the school year 2008/09, 1,189,586 pupils went to school, 1,077,283 to public schools and 112,303 to private schools. For approximately 1,020,000 pupils, religious instruction was a compulsory subject.

604,017 pupils attended the *Volksschule*, 332,210 the *Hauptschule*, 13,170 schools for mentally handicapped children, and 20,648 *Polytechnische Lehrgänge*. 204,787 attended a *Gymnasium*, 50,767 a secondary vocational school, and 135,750 a higher voca-

¹ All data for the school year 2008/09 is provided by Statistik Austria.

tional school. 140,373 pupils attended *Berufsschule* (for those different school types see below).

There are in total 6,221 schools in Austria, of which 5,560 are public schools and 661 private schools; this means that approximately 10 % of all schools are private schools. Out of a total of 317 denominational schools (these are 5 % of all schools and nearly 50 % of all private schools), 285 are Catholic (which is 4.6 % of all schools and 43 % of all private schools), 21 Protestant, 6 Jewish, and 5 Islamic.

Religious instruction is a compulsory subject at approximately 6,000 schools, and at 160 schools it is an optional subject. Most of the pupils are of course Roman Catholics. In the school year 2009/10, 75.14 % of all pupils attending religious instruction were Catholics. 93.32 % of Roman Catholic children did attend Catholic Religious Instruction, only 50,041 (that is 6.68 %) took the possibility of opting out. 194,620 pupils (that is 19.52 % of all pupils attending religious instruction) were members of other denominations, and 53,240 (5.34 %) did not belong to any confession. 26.19 % of those without any religious confession attended Catholic religious instruction (for this possibility see below).

At Catholic or Protestant private schools 3,194 pupils (4.52 %) have no religious confession, 66.66 % of them attend Religious Instruction, and 7,751 (10.97 %) are members of other denominations.

2. Description of the General School System

a) Constitutional and Legal Framework

Education became a public matter in Austria in the 19th century. Although schooling had already been made compulsory by the state in 1774, the (Catholic) church retained responsibility for public education until the end of the (neo-)absolutist period in the 1860s. Then the state, by assuming full responsibility for the public educational system, secularized it at the same time.² According to Article 17

² For more detail see, e.g., A. Rinnerthaler, Vom Entstehen des kirchlichen Privatschulwesens bis zu dessen Beseitigung in der NS-Zeit, in *id.* (ed.), Das kirchliche Pri-

para 5 of the Basic Law on the Fundamental Rights of Citizens (StGG), enacted in 1867³ and still in force as constitutional law, the “entire educational and schooling system” is subject to the “supreme control and supervision” of the state. However, as a corollary to the freedom of religion guaranteed in Arts 14 and 15 StGG,⁴ Art. 17 para 4 StGG provides for confessional religious instruction by the respective churches or religious communities in public schools. Also, the right to private schooling including home-schooling is guaranteed by Art. 17 para 2 and 3, but the state’s control extends to this form of private education as well.

The constitutional situation is complemented by Article 2 of the first protocol to the European Convention on Human Rights, as the whole Convention has constitutional status in Austria. The obligation of the state to respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions extends into the public school system beyond confessional religious instruction, but it does not mean that the state has the obligation to offer an education fully consistent with the religious and philosophical views of the parents.⁵ Art. 2 of the 1st protocol only requires a neutral and pluralistic educational system, free from indoctrination, and obliges the state to tolerance towards religious and philosophical views. Thus, the state’s responsibility for education and the parents’ right to an education of their children in conformity with their religious and philosophical views have to be balanced against each other.⁶

vatschulwesen – historische, pastorale, rechtliche und ökonomische Aspekte, Frankfurt 2007, p. 95 (pp. 98–108).

3 Staatsgrundgesetz vom 21. December 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder, RGBl. Nr. 142/1867.

4 The fundamental right of religious freedom is derived from three different regulations, Art. 14 StGG (1867), Art. 63 of the treaty of St. Germain after the First World War (1919), and Art. 9 ECHR (1948), which got constitutional status in 1958.

5 See ECtHR, *Kjeldsen and Others v. Denmark*, judgment of 7 December 1976, appl. no. 5920/71.

6 *H. Kalb/R. Potz/B. Schinkele*, Religionsrecht, Vienna 2003, p. 346.

Structural and substantive precepts for the public educational system have always been the subject of ideological dispute between the main political camps. This is reflected in the complex constitutional division of the relevant competences in Austria's federal system and by a sophisticated structure for the administration of public education.⁷ The main powers are with the federation, but federal legislation on schooling has been made subject to a two-thirds majority requirement in both houses of parliament. Hence, until recently, any change in legislation on school matters had to be agreed between the main political parties. In 2005, this peculiarity has been limited to questions of compulsory schooling and to state-church relations.

In 2005, the paramount objectives of state schooling have been incorporated in the constitution. Under Article 14 para 5a B-VG, democracy, humanity, solidarity, peace and justice, as well as broadmindedness and tolerance towards all people are fundamental values for schools. Under these precepts, the state has to offer the highest possible standard of education to the population, regardless of birth, social or financial background. Schools are described as institutions where young people should learn to take responsibility, based on social, religious and moral values, for themselves, others, the environment and following generations. It is explicitly highlighted that each pupil should be led to tolerance and broadmindedness towards political, religious and philosophical convictions of others. § 2 of the federal law on school organization (Schulorganisationsgesetz, SchOG),⁸ which also highlights the education of the young with respect of moral, religious and social values as objectives of public schooling, has to be interpreted in the light of the aforementioned constitutional guarantees regarding pluralism, including the parents' rights under the Convention.

7 For more detail, see *H. Kalb*, Arten von Privatschulen, deren Öffentlichkeitsrecht und die Rechtsstellung von Lehrern und Schülern, in *Rinnerthaler* (ed.) (footnote 2), p. 315 (at pp. 315–318).

8 Bundesgesetz über die Schulorganisation, BGBl. Nr. 242/1962.

b) The Make-up of the School System

In general, Austrian children from the age of 3 to 5 attend a kindergarten, but there is no legal duty to do so. Regulations on kindergartens do not fall under the jurisdiction of the federation, so that each federated entity (Land) has its own law concerning kindergartens or childcare. Nevertheless, the goals of the kindergartens are very similar in each Land,⁹ and the respective laws provide for religious confessional education as well.

The Austrian school system has to be seen as a unity (§ 3 para 1 SchOG).¹⁰ At the age of 6, every child has to attend primary school, the so-called *Volksschule*, for 4 years. With the start of secondary education, a choice has to be made between (junior) high school (*Gymnasium*) and secondary elementary school (*Hauptschule*). As the separation of pupils at this early age is increasingly being questioned, the government has decided that, starting with school year 2008/09, common secondary education for pupils at the age of 10 to 14 may be offered as a “school pilot project” (*Schulversuch*) under § 7 of the SchOG. At the moment, 320 schools in Austria make use of this new option.¹¹

After the age of 14, another separation takes place: The choice is between (secondary) high school (*Gymnasium*), secondary vocational school, or one year of “polytechnical training” (*polytechnischer Lehrgang*) followed by a vocational apprenticeship. The *Gymnasium* takes another 4 years (so 8 years in total), whereas vocational schools usually take 5 years. Both end with a final exam (*Reifeprüfung*) which entitles admission to university. During a vocational apprenticeship, the apprentices have to attend the so-called *Berufsschule* for a specific amount of weeks.

⁹ See, e.g., § 4 para 3 subpara 1 *Kinderbetreuungsgesetz* of Upper Austria (LGBL. no. 39/2007), which declares the respect for ethical and religious values as a function of kindergartens. Similar regulations are found in the laws concerning kindergartens in other federated states.

¹⁰ The SchOG regulates the Austrian school system, except agricultural and forestry schools which fall under the jurisdiction of the federated states.

¹¹ Data by the Ministry of Education (*Bundesministerium für Unterricht, Kunst und Kultur*).

The state has the duty to operate public schools of all the aforementioned types, but also private legal persons or entities may operate those schools.¹² According to the constitutional allocation of competences, state-run schools are financed either by the federation, the Länder, or by local authorities, respectively, and they are open to all children. Private schools are generally not financed by the state, and they may set certain restrictions for attendance (e.g. limiting it to members of a certain confession). If prescribed legal requirements are fulfilled, private schools can acquire public status which allows them to issue school reports legally equivalent to those of state schools of the same type.¹³ If private schools are operated by legally recognized churches and religious communities (*konfessionelle Privatschulen* – “denominational private schools”), the law presumes that they fulfil the legal requirements concerning their sustainable operation in conformity with the tasks of the public school system.¹⁴ This legal presumption does not apply to private schools run by other religious communities or any other private entities.¹⁵

The operation of private schools obviously unburdens the public budget for education, but the state may subsidise them under certain conditions. However, only denominational private schools are legally entitled to so-called “living subsidies”. This means that the teachers necessary for denominational schools to implement the legal curriculum are not employed and paid by the relevant religious community, but by the federation or the Länder, respectively. Both the teacher concerned and the governing body of the relevant church or religious community have to agree to the teacher’s appointment at the de-

12 Cf. § 4 para 1 and § 11 of the federal law on private schools (*Privatschulgesetz*), BGBl. Nr. 244/1962.

13 §§ 13 and 14 *Privatschulgesetz*.

14 §§ 11 para 2 and § 14 para 3 *Privatschulgesetz*.

15 In Austria, there are three legal categories of religious communities: 1. legally recognised churches and religious communities with public law status (this is the most privileged status); 2. religious communities with private legal personality registered as such under a special law; and 3. religious communities with private legal personality under the general law on private associations (see *B. Schinkele*, *Religious Entities as Legal Persons – Austria*, in *L. Friedner* [ed.]: *Churches and Other Religious Organisations as Legal Persons*, Leuven 2007, p. 37).

nominal school. Thus, a teacher cannot be appointed to a denominational school contrary to his or her religious or philosophical conviction, and the state cannot appoint teachers to such schools if they are not approved by the relevant religious authority. The teacher as well as the relevant religious community can revoke the appointment of the teacher. If it is not possible for the state to fill a required post by a “living subsidy”, an equivalent financial subsidy is to be granted.¹⁶

Any legal entity other than a legally recognized church or religious community is not legally entitled to state subsidies. In particular, this is true also for registered religious communities.¹⁷ They may apply for financial support, but the state is free to deny it, although such private schools disburden the state’s budget as well. This amounts to a violation of the right to non-discrimination under Art. 14 of the ECHR, read in conjunction with Art. 9 as well as Art. 2 of the 1st protocol to the Convention.¹⁸ Although a right to public subsidies for denominational schools as such cannot be deduced from the ECHR,¹⁹ the differential treatment of legally recognized churches and religious communities and other religious communities does not seem justified, especially since for the latter, a “fair opportunity” to acquire the legal status of the former is not guaranteed under Austrian law.²⁰

16 For more detail on these regulations contained in §§ 17 to 20 *Privatschulgesetz*, see *Kalb* (footnote 7), pp. 333–339. Costs other than those for personnel, especially costs for buildings, are borne by the relevant entity which runs the school.

17 See above, footnote 15.

18 Cf. also *H. Kalb* (footnote 7), pp. 328–330, and *B. Schinkele*, *Das kirchliche Privatschulwesen im österreichischen Schulsystem*, in *Rinnerthaler* (ed.) (footnote 2), p. 287 (at pp. 309–313).

19 See ECtHR, *Verein Gemeinsam Lernen vs. Austria*, 6 Sept. 1995, appl. no. 23419/94.

20 Cf. ECtHR, *Religionsgemeinschaft der Zeugen Jehovas and others v. Austria*, 31 July 2008, appl. no. 40825/98, para 92 of the judgement.

II. RELIGION AS SUBJECT OF INSTRUCTION AND ITS SUBSTITUTES

1. Confessional Religious Instruction

a) Conception and Structure

Despite the separation between state and church in Austria, religious communities are not banned from the public sphere. Rather, the state accepts religious plurality and the public activity of churches and religious communities as long as core matters of the state's sovereignty are not touched.²¹ This opens various areas of cooperation between church and state, yet any identification of the state with a certain confession must be avoided. Such a concept of "inclusive" neutrality is also relevant for the educational system, as schooling is not part of the state's core sovereignty.²² Following this point of view, the principle of separation between state and church is not violated by denominational religious instruction in public schools.

An interconfessional school system was first established in 1868, when the law concerning the relationship between church and schools (*Schule-Kirche Gesetz*²³) and a law on primary schools were enacted. As opposed to the previous predominance of the Roman Catholic Church in the educational system, each church or religious community was now allowed to organise religious instruction at public schools.²⁴ Currently, religious instruction in public schools is governed by the relevant law of 1949 (*Religionsunterrichtsgesetz – RelUG*).²⁵

21 See R. Potz, State and Church in Austria, in G. Robbers, State and Church in the European Union, Baden-Baden 1996, p. 235; G. Luf, Religionsunterricht – ein Privileg der Kirchen?, in P. Leisching/F. Pototschnig/R. Potz (ed.): Ex aequo et bono, Innsbruck 1977, p. 471. Cf. E.-W. Böckenförde, Kreuze (Kruzifixe) in Gerichtssälen? Zum Verständnis von staatlicher Selbstdarstellung und religiös weltanschaulicher Neutralität des Staates, in ZevKR 20 (1975), pp. 119–147.

22 Cf. in particular Art. 17 para 2 and 3 StGG on private schools and home-schooling.

23 Gesetz, wodurch grundsätzliche Bestimmungen zum Verhältniß der Schule zur Kirche erlassen werden, RGBl. 48/1868.

24 Kalb/Potz/Schinkele (footnote 6) p. 341.

25 Bundesgesetz betreffend den Religionsunterricht in der Schule, BGBl. Nr. 190/1949.

According to § 1 RelUG, Religious Instruction is a compulsory subject for all pupils who are members of a legally recognized church or religious community in all primary schools, *Hauptschulen* and schools for mentally handicapped people, *Polytechnische Lehrgänge*, secondary and higher vocational schools (including agricultural and forestry schools), *Berufsschulen* in the federal states Tyrol and Vorarlberg as well as *Berufsschulen* concerning agriculture and forestry in the whole Republic of Austria, academies for social work, and institutions for training of teachers. Except for the federal states Tyrol and Vorarlberg, religious instruction at *Berufsschulen* is just an optional subject (§ 1 para 3 RelUG). This means that pupils have to declare at the beginning of the school year, if they want to attend religious instruction. Marks of optional subjects have no influence on the school report.

These regulations apply to public schools and private schools with public status. Thus, religious instruction has to be provided for all legally recognized churches or religious communities also at private schools with public status, even if the relevant school has a religious or philosophical orientation which runs contrary to that. This becomes particularly striking if the school is operated by a registered religious community which is itself not a “legally recognized” one. This curious effect is alleviated by the freedom of the school operator to set up certain conditions for pupils to attend the school (e.g. adhering to a certain confession).

Religious instruction is related to the fundamental right of both individual and collective religious freedom and to the parents’ right to education in Art. 2 1st protocol ECHR. However, under Art. 17 para 4 StGG and § 1 RelUG, religious instruction in public schools is limited to legally recognized churches and religious communities. In particular, the fact that the newly created group of registered religious communities are thus excluded once again raises doubts as to the justification of this differential treatment.²⁶ For pupils adhering to the relevant

26 Cf. *Kalb/Potz/Schinkele* (footnote 6) pp. 352 sq; *B. Schinkele*, Religionsunterricht – Privileg der Kirchen und Religionsgesellschaften?, in *A. Rinnerthaler* (ed.), *Historische und rechtliche Aspekte des Religionsunterrichts*, Frankfurt 2004, p. 191.

recognized church or religious community, the relevant religious instruction is compulsory, but opting out is possible. The annual school reports must contain a note on whether or not the pupil in question adheres to a religious denomination and if yes, to which one.²⁷

The relevant legally recognized church or religious community is responsible for the organisation, implementation and control of religious education in schools, but the state has the right to supervise it by public control institutions (school inspectors) in organisational and school disciplinary matters. According to § 2 RelUG, the state may determine and change the amount of weekly lessons in religious instruction only after hearing the affected confessions. The churches and religious communities have to formulate a curriculum for each level of education considering the amount of weekly lessons. The curriculum has to be sent to the minister for education who has to publish it. This has only declaratory significance, as state approval is not required.²⁸ Material used in religious instruction is selected by the relevant church or religious community, the only restriction they have to obey is that the contents of school books must not be contrary to the principles of civic education. As such the material does not require approval by the State, a refusal by the relevant religious community to abide by these precepts could ultimately entail as a consequence that its privileged status as a legally recognized religious community is put into question.²⁹ Recent problems with some of the material used in Islamic religious instruction could be settled, as the Islamic Religious Community undertook a thorough revision of the material and eliminated the problematic contents. School books for religious education are included in the federal school book programme and are thus financed by the state.

As the substance of confessional religious instruction as such is an internal matter of the relevant church or religious community, the state cannot demand to include information on other religions in religious

27 § 3 para 2 of the Decree on School Reports (Zeugnisformularverordnung) BGBl. 415/1989.

28 Potz (footnote 21), p. 244.

29 Cf. Schinkele (footnote 26), pp. 204–205.

instruction. On the other hand, it cannot prohibit cooperation between different churches on interconfessional religious instruction. The state must not constrain ecumenical activities of churches. Three Protestant churches³⁰ – the Lutheran Church, the Reformed Church, and the Methodist Church – as well as the different Orthodox churches cooperate to offer a common religious instruction to pupils of their confession. In principle, however, the State does not allow members of one legally recognised church or religious community to attend religious instruction of another confession.³¹ Yet in case the two religious communities involved would agree to such a switch, this prohibition raises doubts with regard to the constitutional guarantees of religious freedom.

Pupils without confession or those who are members of registered religious communities are allowed to attend confessional religious instruction of a legally recognized church or religious community. They have to apply for this, and the relevant teacher for religious instruction has to agree to that. For these pupils, religious instruction is an optional subject, which is listed as such in the school reports. Under certain conditions it is also possible for pupils who are not members of the relevant confession to choose religious instruction as a subject at the final exams.³²

With regard to the Roman Catholic Church, the general regime for confessional religious instruction is complemented by specific regulations. In 1933, in the times of “political catholicism”, the Austrian government and the Holy See signed a concordat which remained in force after the Second World War and is still partly relevant today. The part on schooling, however, was replaced in 1962, when a new treaty between the Republic of Austria and the Holy See concerning school education³³ was concluded. § 1 of the treaty pro-

30 Übereinkommen zum Religionsunterricht zwischen der Methodistenkirche und den Evangelischen Kirchen A.u.H.B. in Österreich, GZ 11.690/13-KAc/03.

31 Cf. GZ BMBWK-10.014/2-III/3/2007, Rundschreiben Nr. 9/2006.

32 Durchführungserlass BMUKK GZ 10.014/2-III/3/2007.

33 Vertrag vom 9. Juli 1962, BGBl. Nr. 273, zwischen dem Heiligen Stuhl und der Republik Österreich zur Regelung von mit dem Schulwesen zusammenhängenden Fragen (School Treaty).

vides that the Catholic Church has the right to give religious instruction to all Catholic pupils at public schools. The amount of lessons, generally two hours per week, should stay the same as in 1962. If the state wants to reduce the number of lessons, it has to negotiate with the Holy See to find an amicable solution. The treaty defines religious instruction as a compulsory subject for all Catholic pupils at all public schools, but opting out is not longer excluded as it had been under the 1933 concordat. Although the church is responsible for religious instruction, it is controlled by the public school authorities, but the church has the right to appoint persons (school supervisors) who control religious education in schools and are paid by the state.

Compared with the general power of the state to change weekly lessons for confessional instruction, the respective guarantee for the Catholic Church could be seen as an unjustified privilege. Under the principle of equal treatment, the amount of weekly lessons offered by the state should be the same for all legally recognized churches and religious communities. Thus, the Catholic Church would have to agree to a reduction of weekly lessons before it may become effective for other churches and religious communities under § 2 para 2 RelUG. This understanding is also consistent with § 1 para 2 III *Protestantengesetz* (law on the Protestant Church),³⁴ which is understood in the sense that all acts of legislation and administration concerning the Protestant churches must not be less favourable than those regarding any other legally recognized churches and religious communities (“Most favourable” principle).

If less than half of the pupils of a class attend religious instruction of one confession, it is possible to put them together with pupils of the same confession of other classes or schools, as long as this is justifiable in terms of school organisation and confessional education (§ 7a para 1 RelUG) in order to avoid a reduction of weekly lessons. The law stipulates reductions of the amount of weekly lessons depending on the number of pupils who attend religious instruction of

34 Bundesgesetz vom 6. Juli 1961 über äußere Rechtsverhältnisse der evangelischen Kirche, BGBl. Nr. 182/1961.

the relevant confession. If the number of pupils is less than three, the State does not provide for religious instruction at all. However, the relevant religious community can make up for these reductions by substituting the expenses for the teachers, so that religious instruction can be offered to the extent normally provided for.

b) Teachers of Confessional Education

Teachers for confessional instruction at public schools are either employed by the state or appointed by a legally recognized church or religious community (§ 3 RelUG). Upon application by the latter, the relevant authority (federation or Land) determines the number of posts for state employed teachers. Although teachers employed by the confessions have no employment relation to a public entity, they are also paid by the federation or the Länder, respectively (§ 6 RelUG).

Teachers of either category have to follow the curriculum designed by the relevant church or religious community as well as the precepts and directives of the confession in question, as far as the substance of their teaching is concerned. Apart from that, all teachers for confessional instruction are subject to the general regulations of school law. The church or religious community appoints inspectors for the direct control of religious instruction. A certain number of these inspectors are paid by the state, although there is no relationship of employment to any public administration entity. The number of relevant posts is determined by the government on application by the relevant religious community (§ 7c RelUG).

Teachers employed by a legally recognized church or religious community are subject to the disciplinary power of their church or religious community only. The public school administration cannot inflict disciplinary measures on them. The Constitutional Court has ruled that such teachers are subject to the substantive disciplinary rules of the school laws, but public school administration can only report violations of those duties to the confessional school authori-

ties.³⁵ Disciplinary sanctions are at the discretion of the relevant church or religious community and follow their internal law. Public school authorities could only ban a teacher from classes, if the general order at school cannot be maintained otherwise.

According to § 4 para 2 RelUG, persons may be employed by the state as teachers for confessional education only if they have been declared competent and authorized by the relevant church or religious community (*missio canonica* with respect to the Catholic Church). Withholding or withdrawing confessional authorization is a matter of self-determination of the relevant religious community which is covered by the fundamental right to (collective) freedom of religion. Only if a withdrawal of authorization by the confessional authority is arbitrary or *contra bonos mores* may the labour courts exert control. In case of a (valid) withdrawal, the person concerned may not serve as confessional teacher any more.³⁶ According to § 7b RelUG, these rules on the requirement of confessional authorization also apply to teachers of religious instruction in private schools (whether they have public status or not).

2. Ethics

Confessional religious instruction is compulsory for all pupils adhering to a legally recognized church or religious community. If they opt out, there is no compulsory substitute. However, since the school year 1997/98 a pilot project at some schools provides for ethics as an alternative subject which is compulsory for pupils who do not attend confessional religious instruction. At the moment, 194 schools in Austria take part in this pilot project, and about 15,000 pupils attend ethics.³⁷ The response is predominantly positive; initial fears that the alternative subject could harm traditional religious instruction by

35 VfSlg. 2507/1953.

36 Cf. G. Huber, *Der Religionslehrer im Spannungsfeld zwischen kirchlichem und staatlichem Recht*, Linz 1994.

37 Datas by the Ministry of Education (Bundesministerium für Unterricht, Kunst und Kultur).

increasing the number of pupils choosing to opt out have not proved justified.³⁸ However, due to restraints on public budgets, it is not planned to expand the pilot project to more schools. Hence, it is not very likely that in the near future ethics will be established as a compulsory substitute for religious instruction in every school.

At present, teachers for religious instruction are also teachers for ethics, as they are regarded as qualified because of their theological studies. This might appear to be problematic because of the allegiance of those teachers to their own church or religious community. If ethics were to be established as a compulsory substitute to religious education in the whole country, the training for ethics teachers would have to be made independent from a particular church or religious community.

3. Instruction about Religions; Religion within the Framework of Classes

Education about religions besides or instead of confessional religious instruction is not explicitly envisaged under Austrian law. Yet it may figure among the topics of other subjects, such as history or geography. The relevant materials may be in contrast with the religious and philosophical views of pupils. Of course, teachers also have their own religious and philosophical convictions, and in principle, they are free to express them on the basis of their respective fundamental rights, as long as the objectives of public education are not affected. This can also lead to a tension between the fundamental freedoms of teachers on the one side and the states' neutrality towards religions as well as the parents' right according to Art. 2 1st protocol ECHR on the other side.

³⁸ See *A. Bucher*, Ethikunterricht in Österreich: noch einiges unklar, in *Rinnerthaler* (ed.) (footnote 26), p. 297 at pp. 306; *id.*, Ethikunterricht in Österreich. Bericht der wissenschaftlichen Evaluation der Schulversuche "Ethikunterricht", Innsbruck 2001, pp. 171–174.

As the European Court of Human Rights has ruled in the *Kjeldsen* Case,³⁹ subjects in public schools may include direct or indirect religious aspects as long as they are taught in an objective, critical and pluralistic way. This is in accordance with the aims of schooling mentioned in Art. 14 para 5a B-VG. It allows, e.g., for lessons about the history of religions or philosophical models in history or philosophy classes. Parents do not have the right to change the curriculum so that it fits their convictions. It can be inferred from another judgement concerning the freedom of expression of a teacher that this freedom may be restricted if the teacher seeks to indoctrinate pupils.⁴⁰ Consequently, confessional religious topics pertain to the subject of confessional religious instruction, and if a teacher of another subject abuses his position by imposing his or her religious or philosophical views, measures can be taken.

III. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. Religious Symbols at Schools

Under § 2b para 1 RelUG, a cross has to be installed in all classrooms of public schools or private schools with public status where the majority of pupils are Christians. According to point 2.b) of the Protocol the School Treaty, any changes of this regulation require the consent of the Holy See. Similar provisions apply to public kindergartens.

In Austria, the judgement of the ECtHR in the case of *Lautsi v. Italy* (3.11.2009, appl. No. 30814/06) has triggered an intense discussion on the constitutionality of these regulations. Some parents and private institutions have brought the issue before the courts, the cases are still pending. Although the *Lautsi* judgement does not take into consideration the concept of inclusive neutrality relevant for

39 See above footnote 5.

40 ECtHR, *Vogt v. Germany*, judgment of 29 September 1995, appl. No. 17851/91.

some central European countries including Austria, it gives rise to reflection on some problematic aspects.

Following the concept of inclusive neutrality, religious symbols in schools seem admissible as long as they do not amount to an indoctrination of pupils. With respect to the right of freedom of religion, however, a tension between the positive and negative dimension of this fundamental right can be perceived. From the perspective of positive religious freedom, religious symbols at schools can be interpreted as beneficial for pupils adhering to the relevant religion, as well as recognition of their parents' right under Art. 2 1st Protocol ECHR, that their religious convictions be respected in the public education of their children.⁴¹ For pupils not adhering to the relevant religion, the mere presence of a religious symbol in the classroom generally represents only a very marginal interference into their negative freedom of religion. In specific cases which might occur, a solution balancing positive and negative freedom of religion would have to be found.⁴²

However, from the fundamental rights perspective just outlined, the legal privilege for the Christian cross is hard to justify. The frequent claim, according to which the cross is a cultural symbol, cannot take away its religious meaning which calls for equal treatment under Article 14 in conjunction with Art. 9 of the ECHR. Thus, regarding the positive dimension of religious freedom, there are no reasons why adherents of other religions should not equally enjoy the benefit from symbols of their own religion in the classroom. On the contrary: The acceptance of other religious symbols in classrooms would support tolerance which figures among the main constitutional objectives for public education. Moreover, a plurality of religious symbols in the classroom would also reduce their susceptibility of interfering with the negative religious freedom of pupils who do not adhere to any of the religions represented, as none of these symbols would be in a dominant position. As a token of “inclusive neutral-

41 *H. Kalb/R. Potz/B. Schinkele*, Das Kreuz in Klassenzimmer und Gerichtssaal, Freistadt 1992, p. 67.

42 *Kalb/Potz/Schinkele* (footnote 6), p. 374.

ity”, a religious symbol at public schools must nevertheless remain within the limits of religious neutrality as such, and any exclusivity is hard to distinguish from an identification of the state with the religion in question.⁴³

The majority criterion adopted by Austrian legislation seems problematic as well. First of all, it seems generally inappropriate in matters of fundamental rights, and with respect to religious symbols, it is not suitable to relieve tensions between the positive and negative dimensions of religious freedom. In addition, the majority criterion applies to the number of Christian pupils at the whole school and not in the particular classes. Even if only a minority or none of the pupils of a class are Christians, a cross has to be fixed in the classroom, as long as the majority of pupils at the school are Christians. If there are no Christian pupils in the class, a cross cannot be seen as a benefit for any of them, and it becomes more likely that the latent interference with the negative religious freedom of non-Christians materializes, as it cannot be outweighed anymore against any of the pupils’ positive religious freedom.

Opening the existing regulations to other religious symbols would not require the consent of the Holy See, as the guarantee for the Christian cross would remain untouched.

2. *Religious Garments*

Encouraged by the legislation against religious garments in some European countries, right wing parties have recently tried to start a discussion about headscarves in public places in Austria. Yet this has not become a big issue. There is a rather broad consensus that headscarves and other religious garments fall within the ambit of the fundamental right of religious freedom and are therefore protected by Art. 14 StGG and Art. 9 ECHR.

⁴³ It is revealing that § 19 para 3 of the Burgenland law on kindergartens (*Kinderbildungs- und -betreuungsgesetz*, LGBl. no. 7/2009) counts the cross among the “state symbols” which have to be mounted in the educational workspace, along with the federal and provincial coats of arms and the portrait of the Federal President.

Thus, in principle, teachers may wear an Islamic headscarf in school, but it is also possible for the school authority to forbid this, if it is used in an indoctrinating or provocative way. So far, there has not been any case in which a teacher was reprimanded because of his or her religious garment. As to the pupils, the headmaster forbade a Muslim girl to wear a headscarf at a secondary school in Linz, Upper Austria. However, the educational authority regarded that as a violation of religious freedom and lifted the ban. The minister of education clarified in a general order,⁴⁴ that wearing headscarves by Muslim women and girls is based on a religious precept and is therefore part of the individual's religious freedom, which is protected by Art. 14 StGG and Art. 9 ECHR. The laws on school education do not in any way restrict these constitutional guarantees, so that any ban of headscarves from schools would be contrary to the law.

3. The Possibility of a Benediction of School Buildings

As public schools are operated by the state, the principle of neutrality towards all churches and religious communities as well as philosophical views must be respected. A benediction of public buildings would be a violation of this principle, as the state would thereby identify with one specific religion. Private schools are not bound by this neutrality principle. Therefore, a benediction of private school buildings poses no problem.

4. Religious Activities

According to § 2a RelUG, teachers and pupils are free to attend religious school services organized by legally recognized churches or religious communities for special occasions such as the beginning and the end of the school year. The same goes for religious exercises or other religious events organized in connection with religious in-

⁴⁴ Decree of 23.6.2004, Zl. 20.501/3-III/3/2004.

struction.⁴⁵ Neither pupils nor teachers have the obligation to join these religious activities, but § 2a para 2 RelUG states that children who want to participate in religious exercises or events are released from classes “to the extent granted so far.” This wording reflects a similar provision in the School Treaty with the Holy See and intends to extend this “privilege” to all legally recognized churches and communities for reasons of equal treatment. Thus, in the end, any cutback of this generalized regulation would again presuppose the consent of the Catholic Church.

Religious occasions which do not relate to the activities of legally recognized churches or religious communities at school may count as significant reasons for which individual pupils can apply for authorization to take leave (cf. § 45 para 4 SchUG).

For many years, prayers at school were mandatory according to a ministerial order dating from 1946.⁴⁶ Since it has been repealed in 1993, there seems to be no more room for school prayers beyond § 2a RelUG.

IV. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

1. Religious Holidays

The federal law on schooling time (*Schulzeitgesetz*)⁴⁷ provides for a number of religious holidays for different confessions in public schools and private schools with public status. According to § 2 para 4 SchZG, schools are closed on Sundays and public holidays. Most public holidays mentioned in the law about holidays (*Feiertagsruhegesetz*)⁴⁸ are Catholic feast days, e.g. All Saints’ Day,

45 See also the last sentence in § 46 para 2 of the Law on School Instruction (*Schulunterrichtsgesetz*), BGBl. Nr. 472/1986.

46 Zl. 21054/III-10/46.

47 Bundesgesetz über die Unterrichtszeit an den im Schulorganisationsgesetz geregelten Schularten, BGBl. Nr. 77/1985.

48 Feiertagsruhegesetz, BGBl. Nr. 153/1957.

Ascension Day, Corpus Christi. In addition to these days, All Souls' Day and the feast of the patron of the particular Land are days off school. Likewise, the days around Christmas (from Dec. 24th until Jan. 6th), around Easter (from Saturday before Palm Sunday until Tuesday after Easter Sunday) and around Pentecost (from Saturday until Tuesday) are holidays.

Besides these general regulations related to Catholic feasts, there are some extensions for pupils of other confessions in § 13 para 1 and 2 SchZG. Only pupils who are members of the Lutheran and Reformed protestant church do not have to attend school on Reformation Day (Oct. 31st). Jewish children can stay at home on the two first and the two last days of Pesah, on the two days of Schavuot, on the two days of the New Year's feast, on Yom Kippur as well as the two first and the two last days of the Feast of Tabernacles.

For children whose religion does not allow them to go to school or to do certain activities on Saturdays, § 13 para 3 SchZG provides an exception. The headmaster has to release them from school on these days. However, the degree to which this release has to be granted is determined by the ministry of education on application by the legally recognized churches and religious communities, or, with respect to other religious communities, by the pupils' parents. In the latter case, the parents have to substantiate that this corresponds to a general requirement of their religion.

Based on this regulation, an order of the ministry of education provides that parents of Jewish pupils and Seventh-Day-Adventists can demand from the headmaster to release their children from school attendance on Saturdays.⁴⁹ Likewise, such release has to be granted to Muslim pupils with regard to Id-al-Fitr at the end of Ramadan and to Id-al-Adha,⁵⁰ as well as to Orthodox pupils with regard to Christian feasts according to the Orthodox calendar.⁵¹

49 Durchführungserlass zum Religionsunterricht (Decree on Implementation of Religious Instruction) BMUKK-10.014/2-III/3/2007.

50 BMUKK-21.001/001-III/3/2009.

51 BMUKK-21.001/0004-III/3/2010.

Pupils who did not participate in classes because of religious holidays have to catch up with what has been missed on their own. Teachers do not have to consider missing knowledge caused by school absence at religious holidays in their grading (§ 13 para 5 SchZG).

2. Opting out of Religious Instruction

Although § 1 RelUG defines confessional religious instruction as a compulsory subject during the whole school career, opting out is guaranteed. It would be a violation of religious freedom, if pupils had no opportunity to opt out of a denominational subject.⁵² Therefore § 1 para 2 RelUG allows pupils over the age of 14 to declare in written form that they do not want to attend confessional instruction. For pupils under 14 years, parents can do this for their children. As long as the parents are married, both of them have to agree that the child shall no longer attend religious education in school (§ 2 para 2 of the law on religious education of children⁵³).

The written declaration has to be sent to the headmaster of the school during the first five days of the school year.⁵⁴ The headmaster has to inform the relevant teacher. The declaration can only be made for the entire school year. If a pupil does not start school at the beginning of the school year, the deadline ends ten days after the start. In case of a change of school during a school year, a declaration applies automatically to the new school, but opting out just for the remaining school year at the new school is not allowed⁵⁵. The only case in which it is possible to stop attending religious instruction during the school year is when the pupil leaves the church.⁵⁶

As there is no alternative subject for pupils who do not attend religious instruction, pupils who are not members of a legally recog-

52 See ECtHR, *Bernard vs. Luxembourg*, judgement of 8 September 1993, appl. no. 17187/90.

53 Bundesgesetz über die religiöse Kindererziehung 1985, BGBl Nr. 155/1985.

54 Rundschreiben 2006/9, GZ 10.014/0001-III/3/200612.

55 See Durchführungserlass zum Religionsunterricht BMUKK-10.014/2-III/3/2004.

56 Cf. S. Schima, Die wichtigsten religionsrechtlichen Regelungen des Bundesrechts und des Landesrechts, Jahrgang 2006, in öarr 2008, 127.

nized church or religious community as well as pupils who opted out of confessional instruction have more spare time than others. Of course this is a reason for many pupils to opt out of confessional instruction. However, if ethics is offered as an alternative compulsory subject, this effect decreases significantly.⁵⁷

3. Opting out of Other Subjects

Apart from confessional instruction, no subject may be opted out. Neither biology nor other natural science subjects nor instruction in gymnastics can be avoided by pupils because of a conflicting religious or philosophical conviction. This does not violate Art. 2 1st protocol ECHR as long as no religious or philosophical indoctrination takes place. Parents do not have the right to demand changes in the curriculum according to their religious or philosophical views. In the last resort, they can opt for home-schooling.

The only legitimate reason not to attend instruction in gymnastics is that of health problems. In Vienna, however, Muslim girls have the possibility to attend swimming lessons in a certain indoor swimming pool (“Jörgerbad”) which is closed for male visitors once a week. This swimming lesson is accepted as a swimming lesson of the school.

4. Religiously Motivated Home-Schooling

The school laws in Austria offer the possibility for parents to educate their children by themselves at home without attending school (home-schooling). This is laid down basically in Art. 17 para 3 StGG and in detail in § 11 para 2–4 Schulpflichtgesetz (SchPflG – Law on Compulsory Schooling).⁵⁸

Art. 17 para 3 StGG excludes any kind of governmental influence on private, non-school-organized, instruction at home. The freedom of home-schooling is granted at every theoretical field of

⁵⁷ See above footnote 38.

⁵⁸ Bundesgesetz über die Schulpflicht, BGBl. Nr. 76/1985.

knowledge.⁵⁹ Likewise, any qualification requirements by the state are excluded.⁶⁰ But this does not mean that compulsory education can be avoided by home-schooling. Only the framework of home instruction is free of public influence. According to § 11 SchPflG, the requirement of compulsory schooling can be fulfilled by home-schooling only if the latter has the same quality as the instruction offered at public schools.

Before the beginning of the school year parents have to announce to the district school board (*Bezirksschulrat*) that they want to educate their child by themselves. Within four weeks, the *Bezirksschulrat* is authorized to forbid instruction at home if it is most likely that the required equality of home-schooling to public schooling is not given. The success of home schooling has to be proven annually by taking an examination at a corresponding public school, to see if the goals of compulsory schooling have been reached.

It is not possible to indicate the extent of religious motivation within the total amount of home-schooling cases, because parents do not have to give any reasons for their decision to instruct their child at home.

The number of pupils who do not attend public schools is not registered nationwide. According to a survey conducted by the federal ministry of education among the federal education authorities for the school year 2008/09,⁶¹ 1,415 children were instructed at home, which is approximately 0.17 per cent of all children between the age of 6 and 14.⁶²

59 Decision of the Constitutional Court VfSlg. 4990/1965.

60 VfSlg. 2670/1954.

61 Report by the minister of education to Parliament (Anfragebeantwortung, 2995/AB XXIV.GP).

62 All data by Statistik Austria.

RELIGIOUS INSTRUCTION IN PUBLIC EDUCATION IN BELGIUM

RIK TORFS

I. DESCRIPTION AND HISTORY

In Belgium, public education is statistically less important than Catholic education. Almost 60 % of secondary school pupils attend classes in Catholic schools. In Flanders, the situation is even more prevalent with 75 % of pupils making that choice. The reason for this phenomenon is a mix of tradition and standards in terms of quality.

As far as Catholic schools are concerned, Catholic religious instruction is always given. However, several years ago, some debate took place on this issue. In fact, why not offer Islam classes for Muslim pupils? This question has been asked as some devoted Muslims felt more comfortable in Catholic schools than in public education. Some experiments were allowed in certain dioceses, including the diocese of Hasselt. Nevertheless, under the influence of the previous archbishop of Malines, Godfried Danneels, who left office in 2010, the experiments were discontinued.

Obviously, religious instruction in public education is an entirely different matter. Public education in Belgium is organised in various ways. It can be offered by the three communities (French, German or Dutch), or by provinces, local villages and towns. But then again, what are the concrete obligations of public schools with regard to religion?

Serious questions concerning schools and their neutral character have emerged twice in Belgian history. A first confrontation took place in 1878–1879, and a second one followed in 1954–1959. During the latter conflict, two groups found themselves opposed to each other. Liberals and socialists defended public education, whereas

perhaps unsurprisingly Catholics propagated free, almost exclusively Catholic education.

A long and demanding conflict ultimately led to the so called *pacte scolaire* of 1958, a compromise typical for 20th century Belgium, always in search of pacification. The *pacte scolaire* accepted equality between public and free schools with regard to subsidies and salaries of personnel. A compromise was also reached with regard to the construction of school buildings.

II. THE *PACTE SCOLAIRE* AND ITS CONSEQUENCES

The *pacte scolaire* was introduced by a law of 29 May 1959. This law has been modified several times since, yet it remains the cornerstone of the ideological and religious equilibrium in public education in Belgium. Article 8, regarding religious classes, and article 9, concerning teachers and inspection, are of utmost importance. I shall not analyse article 9 in detail, but shall concentrate on article 8.

Article 8 starts with the announcement of a basic principle. In public education, two hours of religious or ethical instruction have to be scheduled every week. The concrete choice is left the pupils or their parents. By religious instruction, the legislator means instruction in a religion (Catholicism, Protestantism, Judaism, Islam, Orthodoxy and Anglicanism) as well as ethics inspired by this religion. By teaching of ethics is meant teaching of non-confessional ethical principles.

Clearly, the choice between religions in which pupils can be instructed is not without limits. Six religions are mentioned explicitly. These six happen to be the so-called 'recognised religions'.

Notwithstanding the fact that religious liberty is guaranteed for any religious group, recognised or not, recognition entails, according to article 181 of the Belgian constitution, the payment of salaries and pensions of religious ministers by the state. Yet, other advantages are also granted, including the monopoly of recognised religions with regard to religious instruction in public education. Currently six re-

ligions are officially recognised. First of all, there is the Catholic Church, which is recognised by tradition and whose organisation serves as an implicit model for the system as a whole. The recognition of Anglicans, Protestants and Jews also dates from the independence of Belgium in 1830, yet has been formally established by the law of 4 March 1870. Islam has been recognised by the law of 19 July 1974. Finally, Orthodoxy obtained its recognition by the law of 17 April 1985.

III. BELGIUM AS A FEDERAL STATE

Starting from 1970, Belgium was transformed gradually, through various revisions of the constitution, into a federal state. One of the effects of this process happened to be the *communautarisation* of education through the revision of the constitution on 15 July 1988. As a result of this, linguistic communities organise their own education. This evolution led to some concerns with regard to the equilibrium as established by the *pacte scolaire*. In Flanders, Catholic education is extremely powerful. Hence non-Catholics, especially non-believers, feared marginalisation. The opposite was true in Wallonia, where the *Parti Socialiste* is extremely powerful. However, problems have been solved by including the main ideas of the law of 29 May 1959 in the current article 24 of the constitution guaranteeing freedom of education. This article is conceived as follows:

§ 1. Education is free; any preventative measure is forbidden; the repression of offences is only governed by law or decree.

The community offers free choice to parents.

The community organises neutral education. Neutrality implies notably the respect of the philosophical, ideological or religious conceptions of parents and pupils.

The schools organised by the public authorities offer, until the end of obligatory schooling, the choice between the teaching of one of the recognised religions and non-denominational moral teaching.

§ 2. If a community, in its capacity as an organising authority, wishes to delegate competency to one or several autonomous bodies, it can only do so by decree adopted by a two-third majority vote.

§ 3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of obligatory schooling.

All pupils of school age have the right to moral or religious education at the community's expense.

§ 4. All pupils or students, parents, teaching staff or institutions are equal before the law or decree. The law and decree take into account objective differences, notably the characteristics of each organising authority that justify appropriate treatment.

§ 5. The organisation, the recognition and the subsidising of education by the community are regulated by law or decree.

Article 24 can be considered as the beginning of a new era. Not only is it very sensitive to non-discrimination on an ideological or religious basis, but it also puts an end to widespread uniformity as a guiding principle with regard to religious education in Belgium. Certainly, article 24 guarantees the safeguarding of some important principles. Yet, the concrete organisation is entirely left to the competency of the communities. The same is true for possible administrative consequences of decisions issued by the Council of State – the latter, however, remaining Unitarian. But then, uniformity with regard to case law does not necessarily lead to uniformity with regard to administrative measures. Yet another important consequence should not be overlooked. Today, the *pacte scolaire* can be modified by a decree of a community. Consequently, the uniformity of the formerly national legislation will slowly evaporate. As a matter of fact, it has already done so to a large extent.

IV. PRACTICAL PROBLEMS

The choice as foreseen by article 24 of the constitution did not lead, for a long time, to many conflicts. However, this equilibrium was broken by a decision issued by the council of State on 14 May 1985. Saskia Sluijs was a girl not interested in the message of the recognised religions but was not an atheist. Consequently she was not prepared to attend classes of religious instruction organised by one of the recognised religious groups. Yet, classes in ethics were also a problem to her, as these ethical classes were explicitly non-confessional. Her problem made clear that the existing legislation did not have a solution for religiously inspired people not belonging to recognised groups and not wanting to be confronted with non-confessional humanism as a possible alternative. Moreover, a detailed examination of the non-confessional classes revealed the non-neutral character of the latter. The council of state decided that Saskia Sluijs had the right to be instructed in a more neutral ethical programme as has been confirmed by two circular letters of 26 July 1985 and 15 September 1988.

A second decision by the council of state was taken on 10 July 1990 in the Vermeersch case. Vermeersch was a Jehovah Witness confronted with the same difficulty as Saskia Sluijs – this time from an openly denominational perspective.

Another problem emerges with regard to religious instruction in public education. What happens with pupils (or their parents) refusing to attend any of the classes offered? Can they be dispensed from attending them? Here, a clear evolution can be identified. In Flanders, the minister of education offered a dispensation if the request was duly motivated. Yet the fact that the question had to be asked of the minister was seen as a considerable hurdle. A circular letter of 8 July 1992 was the beginning of a new era. It allowed school directors to grant the dispensation themselves. No intervention by the minister is needed any longer. This evolution shows a paradigm shift. The first concern of the authorities is no longer the guarantee of a free choice between instruction in various religions and philoso-

phies. Today priority is given to the individual conscience of pupils and parents. Rather than the organisation, the individual comes to the fore.

A further issue concerns the designation of teachers of religion. Indeed, at what level is responsibility for the appointment of teachers fixed? Here, the influence of the ongoing regionalization and *communautarisation* of Belgium is clearly present. The recognition of a religion as a recognised religion remains a privilege of the federal government. In that regard, communities are bound by this federal decision. Yet, the authorities accepted as representatives of the recognised religions by the federal government are not necessarily the authorities accepted by the various ministers of the regions and communities. In other words, it is possible that the federal minister of justice recognises as interlocutor of, for instance, the Protestant churches, someone other than that recognised by the Flemish minister of education does. In this regard, a decision by the then court of arbitration (today: constitutional court) of 4 March 1993 is relevant. The underlying difficulty is the following. The Catholic Church, the implicit model for the recognised religions system in Belgium, is very hierarchically structured. The pope appoints the bishops, the bishops indicate ministers of religion or teachers offering religious instruction. Both federal and other authorities stick to this simple model. Until now, nobody thinks of recognising any other entity than the bishops or their representatives as interlocutors of the Catholic Church. This is not necessarily the case for other religious groups. Islam has a more horizontal structure. Various groups exist side by side and each one represents trends or tendencies belonging to their religious tradition. Protestants find themselves in a similar situation. As theologians will confirm, there is no all-encompassing Protestant church. Lutherans, Calvinists, Evangelicals, Pentecostals, Baptists, etc., all fit in one way or another into the Protestant tradition. Yet, the Belgian government only recognises one Protestant church – which is no more than an external structure in which various groups collaborate with one sole purpose: being an interlocutor to the state. In case of disagreement, it is very possible that a federal minister

follows different pieces of advice or opinions than those followed by a regional one.

The authorities of the various religious groups are also responsible for the approval of the teachers, and for inspection, controlling the programme, and personnel. This situation leads to a dual relationship: with regard to discipline and the functioning of teachers in the framework of the school, the headmaster is responsible. Yet, with regard to the content of the classes, the religious or non-confessional entities are in charge. This double relationship leads to sometimes unexpected consequences. In the event that a teacher in religion loses the confidence of his hierarchical religious authority, public schools are obliged to dismiss him, at least as a teacher of religion. This leads to the somewhat awkward situation that the school is financially responsible for a decision taken by a religious entity that they do not control. This principle has already been established by a decision by the Council of State of 29 April 1975, the Van Grembergen case. Later, decisions of 22 February 1984 (Petit) and 20 December 1985 (Van Peteghem) confirmed this approach. Of course, the school can also dismiss the teacher, for instance on disciplinary grounds. In that case, the agreement of the religious authorities is not required.

A point of concern is also the dress code. Here, religious classes are different from the dress code required by the school as a whole. Even if a headscarf is not allowed during regular classes, an exception is made for religion, as religious instruction is offered under the control of religious authorities. Decisions with regard to the headscarf in general are taken by the headmaster of the school. Yet, more general decisions are becoming increasingly common, with a one town policy in Ghent (more favourable to the headscarf) and another in Antwerp (the opposite). On 8 November 2010, the *Comité de pilotage* of the *Assises de l'Interculturalité* organised by the federal government proposed to allow the headscarf from the fourth year of secondary school onwards, and not earlier. Yet, the outcome of this recommendation remains doubtful, as education is a matter for the communities.

V. CONTENT OF RELIGIOUS INSTRUCTION

More so than in the past, the content of religious classes – which is determined by religious authorities – is the subject of public debate. Catholic schools in Flanders follow a programme which is not so much based on cognitive knowledge as on experience. The teacher of religious education has a triple function. First, he is supposed to be a *witness*. This means that he himself should be one of the faithful. He includes his personal life experience in his teaching. Many teachers perceive this approach as an intrusion into their personal lives, especially when they grow older. It is very possible that in a later stage of their lives, their religious fervour evaporates somewhat. Moreover, their personal situation, including married life, may be less flourishing than at the beginning of their careers. Unlike the situation before the law of 3 July 1978, religious teachers with a stable appointment will normally not be dismissed for difficulties in their personal and marital situations. However, the idea of compulsory witnessing in one's personal life is seen by many as burdensome and problematic.

Secondly, the teacher should be a *specialist*. Here, his role mirrors the traditional role of other teachers offering instruction at school. This aspect of religious instruction is hardly seen as problematic.

Thirdly, the teacher should also act as a *moderator* in discussions and debates concerning religion and conceptions of life. The cognitive role of the teacher is overshadowed by his role as a catalyst of various opinions and sensitivities coming from the pupils.

VI. FUTURE PERSPECTIVES

Current programmes of Catholic instruction lead to a cognitive deficit. Increasing numbers of people insist on organising a class dealing both with comparative religions and concepts of life, instead of, or in addition to, the programmes offered today. The second option particularly would necessitate a revision of article 24 of the constitution,

the latter requiring special majorities. Yet, the demand illustrates some important changes in Belgian society over the last few decades.

First, the traditional clashes between Catholics and non-believers are not as vigorous as they used to be in the days of the *pacte scolaire*. Secondly, the lack of cognitive knowledge of European culture and tradition, largely coloured by its religious sources, is increasingly experienced as problematic and leading to intolerance vis-à-vis other cultures. Thirdly, the rapid decline of official Catholicism offers a perspective for change. Indeed, the year 2010 turned out to be especially dramatic for the previously very powerful Catholic Church. A high number of sexual abuse cases, including acts committed by the bishop of Bruges, Roger Vangheluwe, combined with the appointment of the conservative and controversial André Léonard as archbishop of Malines-Bruxelles, led to endless difficulties which could qualify as some form of implosion. No doubt that this evolution will, in the long run, also have an influence on the legal position of Catholicism and of religions in general. In the future, it will certainly also affect the position of religious instruction in public education.

RELIGION IN THE PUBLIC EDUCATION SYSTEM OF BULGARIA

HRISTO P. BEROV

I. INTRODUCTION

At the very beginning of this report it should be noted that the primary theme of this paper has not been a focus of nearly any Bulgarian juridical¹ research for many decades. Religion as a regular subject of the Bulgarian public school system was obligatory and taught until the end of World War II.² During the Communist regime 1944–1989 the entire educational system was synchronized with so-called *dialectic materialism* – Marxism and Leninism. Shortly before the Fall of the Berlin Wall and the start of the political changes in Bulgaria (1988–89) there had been an “*illegal*” initiative for the restoration of religious education in public schools led by the so-called *Independent Committee for the Protection of Religious Rights, Freedom of Conscience and Spiritual Values*, which has not been recognized by the Synod of the Bulgarian Orthodox Church,³ and subject to very strong Communist influence. In the period of the transition from a Communist regime towards a democratic rule of law in Bulgaria there was no public discussion until 2008 when the first⁴ of two ideas for introducing religious education as a regular subject in Bulgarian public schools was published. This (also known as the Baka-

1 Some legal issues are considered in the most extensive theological and pedagogical dissertation about Bulgarian religious education to date: *B. Andonov*, *Der Religionsunterricht in Bulgarien* (= *Religionspädagogische Perspektiven* Bd. 36 – hrsg. v. R. Kollmann), Essen 2000.

2 A critical appraisal of the position before World War II is found in *II. Спирова*, *Три съвременни мита за религиозното образование* (on internet: <http://is.gd/gNCMZ>).

3 See *Хр. Събев*, *Светлина за България*, Абагар 1994, с. 180–181 (Прил. № 1).

4 Концепция за въвеждане на учебен предмет Религия в българското училище.

lov concept) was drafted by ten academic professors and considered the actual situation in Bulgarian schools, proposing that the subject should give a general overview of good morals and religion without going deeply into religious lifestyles. The method of teaching according to this idea had to be secular (not denominational). As a reply to the Bakalov idea, the Synod of the BOC also published a proposal,⁵ which foresees the introduction of a confessionally dependent religious education, based on splitting classes into three groups – the Orthodox confession, Muslims and atheists (who should learn just Ethics). Neither proposal led to the introduction by the government of legislation about religion in public schools. Some clerical and lay activists who support the second idea organized a procession after the opening of the school year 2010/11 in Sofia in which 10,000 individuals from all across Bulgaria took part. They submitted a petition to the Parliament and government for the introduction of obligatory regular religious education in Bulgarian public schools. This question still remains open.

The actual situation with religion being a discipline in public schools in Bulgaria is a result of the introduction in 1997/98 of the *freely* selectable subject “Religion” and during 2002/03 the impliedly *obligatory* selectable subject “Religion”. According to Art 15 of the Law for the Degree of Education, the General Education Minimum and the Education Plan,⁶ there are three types of subject: compulsory, obligatory selectable and freely selectable. For selectable religious education there is no precise statistical research but the percentage of interested students is relatively low⁷ – for Orthodox religious education 2.44 %; for Islam 0.4 %.

5 Концепция на Св. Синод на БПЦ относно статута на предмета "Религия" в българското общообразователно училище.

6 Law for the Degree of Education, the General Education Minimum and the Education Plan, prom. SG. (=State Gazette) 67/27 Jul 1999, last amend. SG. 74/15 Sep 2009.

7 The former minister of education provided the following information in 2009 – 3,391 students from about 820,000 children in the Bulgarian public educational system study Islam. That is about 0.4 % or 4 per 1,000. See (on the internet) <http://is.gd/gNBUD>; Actually – 2010/11 – information from the Ministry of Education is that about 20,000 students attend the Orthodox-Christian selectable religious education and about 3,000

The Bulgarian term “public education”⁸ refers mainly to public schools but it may also apply to private schools,⁹ graduation from which is or should be recognized by the state according to its legislation. Under the common legal definition of education in Bulgaria, it is understood that the school system for children and youth between 6–7 and 18 years is divided into primary and secondary education. Furthermore, public education is also meant to encompass kindergartens,¹⁰ but not universities which attract their students mostly after the age of 18. Universities have much more autonomy in their academic and scientific work and are the subject of another special legal regulation.¹¹

II. GENERAL BACKGROUND

1. Facts and Figures

Demography

According to the last census from 2001,¹² Eastern Orthodox Christianity is statistically the largest religious confession in Bulgaria with 6,552,751 faithful or 82.6 % of the population. Over the last century

students have chosen Islam. See: Разпространената информация за 20,000 ученици, изучаващи СИП ислям, е невярна (on the internet: <http://is.gd/gNEhL>).

8 Държавно образование [darzhavno obrazovanie].

9 Частно образование [chastno obrazovanie]. The difference between public and private education in Bulgaria is *in fact* the source of funding.

10 Детски градини [detski gradini].

11 Закон за висшето образование [Zakon za vissheto obrazovanie] – Law for Higher Education, Prom. SG 112/27 Dec 1995, last amend. SG 63/13 Aug 2010. It stipulates the structure, the functions, the management and the funding of higher education in the Republic of Bulgaria (Art 1).

12 See: Law for Taking the Census of the Population, the Housing Fund and the Farms in the Republic of Bulgaria in 2001, prom. SG. 16/25 Feb 2000. The next census in Bulgaria is to be upheld in 2011 as in all countries of the European Union, see: Law for Taking the Census of the Population, the Housing Fund in the Republic of Bulgaria in 2011, prom. SG. 39/26 May 2009. For some religious problems concerning the census and the law see: *Хр. Беров*, Има ли въобще атеисти в България и колко са те? – <http://is.gd/gNGmk>; *Хр. Беров*, Статистика за вероизповеданието в предстоящото преброяване, Православие.bg (IX. 2010) – also on <http://is.gd/gNH4i>.

the proportion of persons belonging to the Eastern Orthodox Church has changed little – between 80.7 % in 1900 and 85.7 % in 1992. At the same time, the self-determination of people who recognize themselves as Orthodox Christians is very problematic in certain respects as a result of the transition from communism to democracy.¹³

The second largest religious community in Bulgaria, but much smaller, is the Muslim population – 966,978, or 12.2 % of all who live in Bulgaria. The percentage who declared themselves Muslim was higher in the early 20th century, when 17.2 % of the total population was Muslims. With the increasing population in the country the proportion of Muslims began to decrease, reaching its lowest level in the census from 2001. So the number of Muslims has dropped to 143,317 (12.9 %). The reduction in the numbers of Muslims is statistically to be established as with those who identified themselves as Sunnites (112,801 people or 11.0 % fewer) and with those who identified themselves as Shiites (30,516 or 36.5 % fewer).

The third largest religious community in 2001 was Christians belonging to Catholicism. At the time of the census 43,811 declared themselves Catholics (0.6 %). Their number was about 10,000 more in 1992, and throughout the 20th century, their numbers moved between 32,000 and 53,000 followers.

Unlike the Catholics, whose numbers have decreased over the past eight years, the number of persons who identified themselves as Protestants has increased. Their number at the beginning of the last century was only 4,524 (or 0.1 %). It almost doubled in 1934 to 8,371, but their total share remained the same – 0.1 %. At the end of the year 1992, 21,878 persons (0.3 %) declared themselves Protestant. Over the past eight years since the last census their number has

13 After the long period of Communism in Bulgaria during which there was a serious deficit of religious freedom we could claim that most of the self-determined Orthodox faithful have just a very vague idea about religion at all. Their self-determination is rooted much more in their Bulgarian origin – which at the same time is a serious counterpoint of Christian creed teachings. So that we could hereby just briefly conclude that the situation in Bulgaria with the Orthodox confession of faith (and not only it) is to be compared to the statement of the Belarus President Lukashenko who saw himself as an Orthodox atheist.

already doubled (up to 42,308) and it can be argued that in the early part of the 21st century the numbers of Protestants in Bulgaria may have exceeded the Catholic numbers.

The number of persons belonging to the Armenian Gregorian religion in Bulgaria is based on the number of people who identify themselves as Armenians. At the beginning of the 21st century this religious community had 6,500, 6,350 of whom were ethnic Armenians. However, 3,821 Armenians have indicated that they belong to the Eastern Orthodox religion. The highest share of persons of that denomination was declared in the census of 1926 – 0.5 %.

Private and Public Schools

During the period of the Communist regime in Bulgaria there were no legal possibilities for establishing any private (confessional) schools. The educational system was totally subjected to a state monopoly. The two exceptions were first the only Bulgarian seminary to train priests (in Cherepish) and secondly the so-called Spiritual academy in Sofia (the Faculty of Theology) stood officially under the so-called *observation* of the Holy Synod of the Bulgarian Orthodox Church (BOC) but were *in fact* very strictly controlled by the state – the Ministry of Education – as well as the Committee for the Affairs of the Bulgarian Orthodox Church and Cults.

After the political changes of 1989 the system slowly liberalized so that different sorts of non-state schools emerged. The legal stipulations concerning private schools are found in the Law on public education.¹⁴ According to Art 10 para 1 of this law kindergartens and schools shall be state, municipal or private. The main difference between private schools and state and municipal schools is the way they are funded. Otherwise the teaching programmes of both types of

¹⁴ Закон за народната просвета – Law for the public education prom. SG. 86/18 Oct 1991, last amend. SG. 74/15 Sep 2009.

school are mostly identical because of the permissive system to establish a private school under this law.¹⁵

At the same time private schools do not include confessional schools which, in our opinion, are also *private* in the sense of non-public according to the Law on Public Education. At the same time provision is made for the latter in a special law on confessions of faith, which could mean that the Ministry of Education considers them as not a part of the public system.¹⁶ Art 30 para 1 of the law foresees that the confessions of faith, registered under this law, can open health, social and educational establishments. At the same time para 2 of the same Article stipulates strictly that health, social and educational establishments of the confessions of faith shall be created under and act according to state legislation. This regulation seems to contradict the reasoning of the Bulgarian Ministry of Education which does not consider the schools of the confessions of faith to be private in the same way as other registered private schools according to the Law on public education. In this manner the generally very small number of confessional schools,¹⁷ being private according to the *criterion* of funding, stay somehow outside of the public educational system in Bulgaria.

15 For instance under Art 11 (amend. SG 36/98) para 1 private schools are those kindergartens and schools opened or transformed upon a request by Bulgarian individuals and corporate bodies and are not maintained out of the state budget. para 2 (amend. – SG 74/09, in force from 15.09.2009): persons under para 1 shall present to the Ministry of Education, Youth and Science such documents as are required by regulations for implementation of the law.

16 Закон за вероизповеданията – Law on the confessions of faith, prom. SG. 120/29 Dec 2002, last amend. SG. 74/15.09.2009.

17 There are two Orthodox secondary school seminaries and a so-called state Hebrew secondary school – <http://www.hebrewschool-bg.org> – this is a state school teaching Hebrew as a foreign language and culture and is in close contact to a Jewish foundation – Louder); there are also three Islamic secondary schools. There is also a Catholic kindergarten in Plovdiv – founded on the initiative of a nun. Private High Schools, which do not belong to a certain state University, include the following confessional education institutions:

Reformed Presbyterian College and Seminary; High Evangelical Theological Institute; Theological College of the Adventists (<http://sdabg-college.org/>); Higher Islamic Institute <http://www.islamicinstitute-bg.org>; There are three Orthodox Faculties of Theology and one Chair of Orthodox Theology, which belong to state Universities and not to the Synod of BOC. The Islamic Institute is also seeking High School status.

Actually there are no reliable official statistics on the number of private and public schools in Bulgaria. The register lists of the Ministry of Education¹⁸ give just a short survey on private educational institutions; for instance in Sofia (the biggest city) there are 111 private, both primary and secondary, non-confessional schools.

General Characteristics of the Bulgarian School System

The main legal framework for the education system of Bulgaria is found in the Law for Public Education. According to this, state and municipal schools are generally free of charge. Public school education is compulsory up to 16 years of age. It starts at 7 years of age, reached in the year of starting the first school grade. At the age of 6, children whose mental and physical development so permits, by discretion of their parents or their guardians, can start their first school year. Each citizen can exercise his right to education in a school of their own choice and of a type that accords with his personal preferences and abilities.

The latter is consistent with the Constitution, Art 37 para 1, which stipulates that freedom of conscience and thought and the choice of religion or of religious or atheistic views shall be inviolable and that the State shall assist in the maintenance of tolerance and respect between the adherents of different denominations, and between believers and non-believers. At the same time Art 5 of the Law on Public Education prescribes that education shall be secular. Moreover the Law on the Confessions of Faith does not allow a Confession to establish a primary school (Art. 33 para 3). The registered religions can open secondary general education schools under the conditions provided in the Law on Public Education for Private Schools.¹⁹ In general – according to the Law on the Confessions of Faith – the registered religions can open confessional spiritual schools for their ritual needs in compliance with the Law on Public Education and with the permission

18 http://www.minedu.government.bg/left_menu/registers/.

19 See part II, 1, b) Public and private schools – in this text.

of the Minister of Education, Youth and Science so that the education received at confessional schools can be equivalent to the secular state schools in compliance with the Law on Public Education; nevertheless they have to strictly follow state requirements.²⁰ Confessional schools also have to take into consideration Art 7 para 5 of the Law on the Confessions of Faith, which says that the religious communities and institutions cannot include in their activity minor persons except within the explicit consent of their parents or guardians; under-age persons can be included in the activities of religious communities and institutions unless their parents or guardians refuse.

In sum, the Bulgarian educational system remains principally a secular one (*ex lege*) with the exception of confessional private (but only) secondary schools. Till now there are only spiritual secondary schools for the formation of clergy (two Orthodox seminaries and three Islamic secondary schools). Currently, there are no confessional secondary general education schools in Bulgaria.

2. Religion as a Subject of Instruction and Its Substitutes

As already mentioned the only possible teaching of religion at the moment in the public schools of Bulgaria is under a scheme introduced in 1997/98 of the *freely* selectable subject “Religion” and in 2002/03 the impliedly *obligatory* selectable subject “Religion”.²¹ Because of institutional problems and a general lack of theologically qualified religion teachers the plans for these instructions may vary.

At the same time, outside the state school system, some religious communities – mostly small but well organized parishes – organize Sunday schools or religious holiday schools, and holiday excursions to religious monuments, monasteries etc.

20 For instance the Law on the Confessions of Faith – Art 33 para 4: admission to the schools of para 1, 2 and 3 shall take place with a written application from the parents or guardians, unless the student has turned 18.

Art 33 para 5: educational establishments of the registered religions can not hinder the conceding of the obligatory degrees of state education, provided in the Constitution and in the law.

21 See the first part of this text – Introduction.

Religion, but not in the sense of confessional teaching, is also taught in public schools within the framework of classes in Ethics, Literature, History, Philosophy, and perhaps also the Arts. All these lessons are somehow connected with religion; at the same time they are taught secularly and are not to be combined with any detailed confessional instruction.

III. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. Religion within the Framework of Working Conditions at School

The ECHR case *Ivanova v. Bulgaria*²² is one of the seven²³ ECHR judgments against Bulgaria under Art 9 of the European Convention for Human Rights. The case deals particularly with staff at Bulgarian schools who do not belong to the so-called “traditional” religious or atheistic majorities. As the ECHR stated in its judgment, the dismissal of Ivanova from the secondary school, where she worked, was connected with her membership of “Word of Life”. Currently, there are no other publicly-known issues on the matter in Bulgaria.

Religious Symbols in School

Religious symbols in public schools belong to the larger theme of religious symbols in the secular state. The problem of religious symbols in a secular state has not been deeply discussed in Bulgaria until now. In fact on the state coat of arms²⁴ there are all together eight crosses, but these simply act as a state symbol within a historical background without having any strict religious meaning; the same is true also for the three crowns on the coat of arms of a parliamentary

22 *Ivanova v. Bulgaria* – Judgment no. 52435/99.

23 All Bulgarian judgments on Art 9 ECHR: 14134/02; 52435/99; 32438/96; 39015/97; 30985/96; 39023/97; 412/03 together with 35677/04.

24 Law on Coat of Arms (Aug 1998): Art 2 para 1 (extract): “... Above the shield there shall be a big crown which originally were the crowns of Bulgarian kings of the second Bulgarian state with five crosses and another cross over the crown...”.

republic. In a sense some of these state symbols have no meaning for the majority of Bulgarians. But questions persist – e.g. why the Ministry of Education as a state organ of a secular state should stamp official documents for public schools within a secular educational system with Christian symbols. So it can be said that Bulgarian public schools are generally not free of at least crosses.

Related to religious symbols are for instance Islamic head-scarves. These are not explicitly forbidden by law, but they are not generally allowed in schools where Muslims are a minority. There are some cases on the wearing of head-scarves in photographs used for the purpose of ID cards; head-scarves in public school were the subject of a case from 2006 decided by the Anti-discrimination Commission at the Parliament in Sofia; but the case did not reach the Supreme administrative court. The Anti-discrimination Commission fined all participants in this case – the school director, the representatives of the municipality and the two schoolgirls as well who were not found as discriminated against. After the decision of the Commission, both of the school-girls wanted to continue with individual lessons according to a programme for private schools. The decision reached the absurd conclusion that all participants discriminated against each other.

The Orthodox benediction of school buildings, which is sometimes seen especially at the openings of the school year, has a much more decorative and ceremonial function than a purely religious and spiritual meaning. There was no public discussion and no juridical case on it.

IV. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

1. Religious Holidays

National holidays are valid also for the education system in Bulgaria. Public holidays in Bulgaria are stipulated and enumerated²⁵ by Art 154 para 1 of the Labour Code.²⁶ Among the nine national holidays, two are religious,²⁷ and two historically have a religious background but are now used by the state more or less as its symbols. It is possible in law to take days off for religious reasons on the basis of Art 173 of the Labour Code,²⁸ if the faithful belongs to a religion other than the Orthodox-Christianity, which is also relevant for public schools. In sum the Bulgarian government generally respects the religious holidays of the Bulgarian Orthodox Church, although separated from the state, and at the same time enables observance of other religious groups which seek these for their followers – as long as these do not exceed the number of the Orthodox holidays.

25 Art 154 para 1 of the Labour Code: January 1 – New Year; March 3 – the Day of the Liberation of Bulgaria from Ottoman Domination – the National Day; May 1 – the Day of Labour and International Workers' Solidarity; May 6 – St. George's – the Day of Valour – the Bulgarian Armed Forces Day; May 24 – the Day of Bulgarian Education and Culture and of Slavonic Letters; September 6 – Unification Day; September 22 – Bulgaria's Independence Day; November 1 – the Day of the Leaders of the Bulgarian National Revival – a legal holiday for all educational establishments; December 24 – Christmas Eve; December 25 and 26 – Christmas; Good Friday, Holy Saturday and Easter – Sunday and Monday on which it is celebrated in the respective year.

26 Кодекс на труда – Labour Code, prom. SG. 26/1 Apr 1986 and SG. 27/4 Apr 1986, last amend. SG. 15/23 Feb 2010.

27 Good Friday has been an official state holiday in Bulgaria since February 2010.

28 Art. 173 para 2 of the Labour Code says that in the case of employees who confess a creed other than the Eastern Orthodox Christianity, the employer shall permit them to use, by their own choice, a part of their annual paid leave, or grant them an unpaid leave on the days of the respective religious holidays, but not more than the number of days for the Eastern Orthodox Christian holidays under Article 154 of the Labour Code. Para 3 of the same Article provides that the days for the religious holidays of the confessions of faith, other than the Eastern Orthodox Christianity shall be specified by the Council of Ministers upon the proposal of the official leadership of the relevant religious community.

Nevertheless, since 2008 there is a practice of the Ministry of Education that a large part of the diploma/final examinations at secondary schools are organized to take place on Sunday mornings.²⁹ About 72,000 students and many teachers have been engaged with this issue for the last three years, but there is no general public discussion on the matter, although Sundays are regular days off under Art 153 para 1 of the Labour Code. Indeed, the problem in Bulgaria about working on holidays has not been discussed in Bulgarian jurisprudence.

2. Opting out of School Subjects for Religious Reasons

As a matter of fact, in Bulgaria, there are no publicly known cases for opting out of any school subjects in public schools for religious reasons – such as religious instruction or instruction about religions, physical education (e.g. coeducational swimming instruction for Muslim girls) or biology (e.g. due to believing in creationism). The question about opting out of school subjects for religious reasons is a matter of a higher sensitivity in a religious sense and this is lacking among the majority of the Bulgarian students.

3. Religiously Motivated Home-Schooling

Bulgarian law does not explicitly allow home-schooling. It does not prohibit it explicitly either. In post-communist Bulgarian society there are certain prejudices against home-schooling. The issue falls between two constitutional stipulations (Art 47 and Art 53).

The aspect of home-schooling in Bulgaria that is religiously motivated moves between the state bureaucracy and the striving for a non-state defined education programme. However, there is already a small and very engaged Bulgarian but not officially registered home-schooling Christian community;³⁰ it consists of about 60 families.³¹

29 See: *H. Berov*, Das bulgarische Bildungsministerium gegen die Christen – 2008 <http://is.gd/gRQ0e>; also about 2010 – <http://is.gd/gRR3y>.

30 See for instance: <http://goo.gl/cNMkJ>.

To date there have been no publicly-known juridical cases connected with religious based home-schooling but as a matter of fact it is a topic of discussion in some Bulgarian circles.³²

V. CONCLUSIONS

Currently education on religion at Bulgarian public schools is taught as a result of schemes introduced in 1997/98 (the freely selectable subject of “Religion”) and during 2002/03 (the impliedly obligatory selectable subject of “Religion”). Student interest is relatively low – for Orthodox religious education 2.44 %; for Islam 0.4 %. The Bulgarian educational system remains principally secular. Exceptions are the confessional private secondary schools – which till now are only spiritual secondary schools: 2 Orthodox Seminaries and 3 Islamic secondary schools. To date, there are no confessional secondary *general* education schools.

Religion, but not in the sense of confessional teaching, is taught in public schools in Bulgaria within classes on Ethics, Literature, History, Philosophy and Arts – but these are taught secularly – i.e. not to be combined with any confessional instruction.

The Synod of the Bulgarian Orthodox Church has recently proposed the restoration of religious education as an obligatory regular subject in Bulgarian public schools. These efforts are aimed more towards the government and legislature and not towards convincing young people in the benefits of learning religion. Public discussion on this issue is vague and undeveloped, as well as other aspects concerning religion in public schools.

31 Private information.

32 See for instance: <http://www.center-religiousfreedom.com/bg/art.php?id=76>.

RELIGION IN PUBLIC EDUCATION IN CYPRUS

ACHILLES C. EMILIANIDES

1. General Background

There are four levels of pre-higher education in Cyprus, namely pre-primary, primary, lower secondary and higher secondary schools. Pre-primary schools are usually private and attendance is not compulsory; pupils between 3–5 years of age may attend pre-primary schools. Attendance in primary schools is compulsory for all five-year-olds. Primary education lasts for six years, leading to a Leaving Certificate. Public general secondary education also lasts for six years; it is divided, however, in two three-year cycles. Pupils between 12–15 years of age have to attend Gymnasiums which offer lower secondary education; attendance is compulsory. Pupils over 15 years of age may choose to follow higher secondary education in Lyceums; higher secondary education is not compulsory. In parallel to Lyceums, there is also a vocational and technical stream.

In terms of quality of education, state schools are generally considered as equivalent to (or better than) private sector institutions; thus, state schools are attended by the great majority of pupils. However, there are several private schools which are also attended by students, both for primary and secondary education purposes; the language of instruction in private schools is not Greek but, usually, English. It should be noted that while a high-school leaving certificate is mandatory for admission to the University of Cyprus and Greek universities, high school grades are completely ignored; admission is determined on the basis of scores at centrally-administered university entrance examinations, which largely ignore the high school grades that all university candidates are required to take. Such entrance examinations are largely based upon the curriculum taught in public schools and are conducted in Greek; consequently, it is

considered that only graduates of public schools of secondary education may be competitive for entry to the University of Cyprus or Greek universities. If a student attends a private school, this essentially means that he will have to study at one of the three private Cypriot universities (University of Nicosia, European University and Frederick University) or universities in England or other countries besides Greece.

Lyceums were restructured following the school year 2000–2001 and now the restructured *Eniaio Lykeio* offers more variety and flexibility in the choice of studies, whereas previously each student had to choose a selected stream (e.g. emphasis on classical courses, or science courses). The *Eniaio Lykeio* focuses upon general education in a manner similar to that which occurs in both primary and lower secondary education.

The Orthodox Church of Cyprus showed a considerable interest in education during the Turkish and British rule of Cyprus; the Church considered that education was closely related to religion and the maintenance of the Greek Orthodox character of the island under foreign rule.¹ Education in Cyprus remained closely connected with religion in the early years following independence; education was one of the areas within the competences of the Greek and Turkish Communal Chamber respectively and thus, while Turkish education was pre-dominantly associated with the Islamic religion, Greek education was connected to the Orthodox Christian religion. In addition, the three religious groups of the Republic were assisted in maintaining their own religious education.

Consequently, Orthodox religion was an integral part of the curriculum, and no person of another religion could teach at a Greek elementary school. Most schools were established by the Church, which donated great amounts of money in order to support the proper functioning of primary and secondary schools. During the British rule, Archbishop *Makarios III* established the Educational Council of

¹ See *P. Persianis*, *Church and State in Cyprus Education* (Nicosia, 1978).

the Ethnarchy, which coordinated the educational activities of the Greek schools.

Undoubtedly, the influence of the Orthodox Church in the curriculum has lessened since independence; non-Orthodox or atheists may well be appointed as teachers in Cypriot schools, while the Orthodox religion is no longer considered, as it used to be, an integral part of the curriculum. In view of the fact that the Church no longer felt that Cyprus's identity was threatened because of foreign rule, the Republic followed international standards with respect to providing secular education. Consequently, education in state schools has been completely secularised, with the exception of religious education. However, the Church still maintains a limited role with respect to educational activities, since school festivities often relate to Christianity, such as the celebration of Easter or Christmas. In addition, students collectively go to church with their school three or four times a year, in order to participate in school worship. Furthermore, the first class of the day usually begins with a collective prayer.

2. Religiously Motivated Behaviour in Public Schools

2.1. Education and Religion

Article 20 of the Constitution provides that every person has the right to receive, and every person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic, constitutional order, public safety, public order, public health, public morals, the standard and quality of education or protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions. Similarly, Article 2 of the First Protocol of the European Convention on Human Rights provides that no person shall be denied the right to education and that in the exercise of any functions which it assumes in relation to education and teaching, the

State shall respect the right of parents to ensure such education and teaching as is in conformity with their own religious and philosophical convictions. The stipulation that the parents have the right to secure for their children the education which conforms to their religious convictions aims at safeguarding the possibility of pluralism in education. The State is forbidden to pursue an aim of indoctrination which might be considered as not respecting the parents' religious convictions.²

Despite this declared neutrality towards religion, state schools often engage in practices which promote the Orthodox Christian religion. Benedictions of school buildings are considered as a tradition, and the first class of the school day normally begins with a collective prayer. Similarly, collective prayers may be held at major school events. The walls of public schools may well contain religious symbols, such as the crucifix, or icons of Jesus Christ. Furthermore, twice or three times a year all students attend collectively religious services in the nearest Orthodox Church.

2.2. *The Doctrinal Character of Religious Education*

Religious lessons given in primary and secondary schools follow the doctrine of the Eastern Orthodox Church. In secondary education, the courses are given by graduates of university schools of divinity, while in primary education they are given by the class teacher. Attendance is compulsory for Orthodox pupils; atheists or members of other religions, however, may be excused. In the 1996 Curriculum of the Ministry of Education and Culture, the subject of religious education is under the title 'Christian Orthodox Education' and it is provided that the aim of the lesson is to enable the students to realise that they are members of the Christian Orthodox Church, to learn the fundamental truths of Christianity and to experience a loving relationship with God. According to the Curriculum, pupils should be assisted to understand the

² *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Judgment of 7 December 1976; (1979–1980) 1 EHRR 711, *Valsamis v. Greece*, Judgment of 18 December 1996; (1997) 24 EHRR 294.

presence of God throughout history and the apocalypse of God as an answer to the fundamental questions of human existence; they should experience the figure and teachings of Jesus Christ and experience the Christian way of love towards all people, regardless of colour, religion and race.

It is further provided that pupils ought to be introduced to the basic aspects of other religions and develop a critical attitude towards them, so as to become able to understand and respect the religious beliefs of others. Orthodox education should provide pupils, according to the Curriculum, with the skills to appreciate the meaning of Orthodox ethics, traditions and prayer, and the beneficial influence of the Church on the development and progress of civilisation. In addition, Orthodox education should develop an understanding of the collective worship of the Church, encourage students to participate in such worship, and teach them to respect the value and importance of the various ecclesiastical monuments. It should also promote each individual's responsibilities for the continuation of the Orthodox faith and way of life.³

Some of the textbooks used in Cypriot schools are edited by the Ministry of Education of Cyprus, while some others are edited by the Ministry of Education of Greece. The aims of religious education in the Greek curriculum are nearly identical to the aims of religious education in the Cypriot curriculum, namely to teach the pupils the Christian Orthodox way of life, tradition and values, to develop their religious identity and to enrich their relationship with God. In addition Orthodox education in Greece aims to teach children the meaning, the symbols and tradition of the Orthodox faith, the meaning of the Gospels and the moral and spiritual values of Orthodox Christianity.

Religious education textbooks are written by committees appointed by the Government of Cyprus, or Greece respectively. Cypriot textbooks are edited by the Ministry of Education and Culture

3 *Ministry of Education*, The National Curriculum of Cyprus (Nicosia, 1996, in Greek): 128 (in Greek). See also *M. Krasia*, 'Religious Education in Cyprus', available in www.mmiweb.org.uk/eftre/reeurope/cyprus_re.doc, November 2008.

and distributed to every pupil in public schools free of charge. Teachers of theology in public schools are required to teach the content of such textbooks in order to promote the aims of the Curriculum; certain teachers of theology are even members of the clergy. Textbooks include topics from the Bible, both Old and New Testaments, the history of the Orthodox Church, the lives of the Saints, hymnography and hagiography, as well as moral teachings.⁴

There is no possibility of religious education for members of other religions in public schools, with the exception of Maronites and Turkish Cypriots; the religious instruction of Maronite children who attend public schools is taught by Maronite priests who receive a monthly salary from the state. Similarly, where there is an adequate number, Turkish Cypriot pupils may be religiously educated in their mother language and in their own religion, even in Greek-speaking schools. The fact that the State cannot offer religious education consistent with every single individual religion or creed is not of course surprising; the great majority of pupils in each non-Turkish public school adhere to the Orthodox Christian religion and thus it would be practically unfeasible for the State to provide religious education which would meet the demands of all parents. This is why the State has opted to assist children belonging to religious groups to attend private schools of their choice, if they so desire, and further why non-Orthodox Christians pupils may request to be exempted from religious education, including collective worship.

2.3. Objections and Considerations on Reform

Objections might be raised with respect to the doctrinal character of religious education in Cyprus; undoubtedly, religious education in Cypriot schools does not provide an objective study of the various religions and creeds, but rather consists of a purely doctrinal presentation from the point of view of the Orthodox Church. This becomes

⁴ See also *A. Tapakis*, *Religious Education in Primary and Pre-Primary Schools. A Guidebook for Primary and Pre-Primary School Teachers* (Nicosia: Holy Monastery of Kykkos, 2003, in Greek).

obvious not only from merely reading the purposes of the curriculum of the Ministry of Education and Culture of the Republic of Cyprus, but also from the everyday manner in which religious education is carried out in Greek-speaking primary or secondary schools. In addition, collective worship only takes place in Orthodox Christian churches and collective prayer is based on the Orthodox tradition, while school religious festivities follow the Orthodox tradition. It could be argued that substituting this doctrinal character of religious education with lessons of neutral religiosity, or neutral religiosity in addition to doctrinal education, could be more education-friendly towards non-Orthodox pupils – and it would promote pluralism.

It could be further argued that religion is a private matter and as such it is not appropriate within a state-funded public school; there is no doubt that such an educational reform would definitely be strictly opposed by the Church. Actual criticism of the content of religious education has been rather rare until now, a situation which could be explained by the fact that the State assists pupils belonging to religious groups to attend private schools of their choice, by covering all fees and expenses of such students, and by the fact that non-Orthodox Christian pupils had until recently been few in Greek-speaking primary and secondary schools.

In order to avoid the possibility of discrimination there are two possible ways of reforming the system: either religious education could consist of neutral religiosity instead of doctrinal education, or, if the doctrinal character of religious education is to be retained, students could be asked to opt for religious education as a non-compulsory course; the latter option would have the advantage of allowing parents to ensure that their children receive religious education according to their own religion, while at the same time avoiding, or at least restricting, circumstances of indirect discrimination on grounds of religion. A solution should in principle achieve a balance between the will of the majority to have a religious education of its choice on the one hand, and the right of the minority not to be embarrassed on the other.

2.4. Teachers of Religious Education

At the University of Cyprus, as well as at private universities in Cyprus, there is no School of Divinity. Those who wish to study theology resort primarily to Greece or to other countries where Orthodox theological academies enjoy the status of a university college. A person may become a teacher of religious education (called a teacher of theology) in secondary education, only so long as s/he has graduated from a theological academy of a Greek university, or from an equivalent Greek Orthodox theological school. In the case of *Stavrou* the applicant was a teacher of religious education in the private school of the American Academy of Larnaca;⁵ the applicant was a Greek Orthodox Christian, holding a Bachelor's degree in religious studies from the University of Lancaster. The Consulting Committee for Education had concluded that the applicant did not possess the necessary legal requirements for being a teacher of theology. While the case of the applicant was pending before the Supreme Court, the Ministry of Education decided that graduates of non-Orthodox universities may also teach in private schools, so long as they are Orthodox Christians and the teaching is in Greek.

What counts as service for a teacher of theology was examined in the case of *Ioannou*.⁶ According to Regulation 3 § 1 (f) (i) of the Regulations of 1997 regarding Educational Officers (Determining Recognised Service for the Purpose of Appointment, Promotion and Remuneration), educational service also includes service in the respective Offices of Religious Elucidation of the Archdiocese or the Metropolises, 'so long as it contains the element of guidance and teaching'. The applicant had been a teacher of theology in secondary education since 2002; however, from 1989 until 2000 he had been working in the Office of Religious Elucidation of the Metropolis of Paphos. The applicant requested that the Educational Service Committee rec-

5 *Stavrou v. The Republic* [1996] 3 CLR 2796 (in Greek).

6 *Ioannou v. The Republic*, App. 1131/2002, Decision of the Supreme Court of Cyprus of 12 May 2004 (in Greek).

ognises his prior service to the aforementioned Office of the Metropolis of Paphos.

The Education Service Committee decided that such a service was in general of an administrative character; however, it considered that his service as a teacher at Sunday schools, which had been confirmed by the local ecclesiastical committees, could be recognised as prior educational service. The Supreme Court held that the decision of the Educational Service Committee was flawed; not only teaching at Sunday schools, but also preparing prospective young couples for marriage, delivering religious speeches, providing guidance to the youth in order to join the church's activities and solve their various problems, were all activities containing the necessary element of guidance and teaching provided for in the Regulations of 1997. Therefore, prior service for the purpose of the Regulations of 1997 is not restricted to teaching theology.

2.5. The Debate about Confessionals in Public Schools

In 2003 the Metropolitan of Limassol, *Athanasios*, proposed to the Ministry of Education and Culture to establish confessionals in public schools situated in the district of Limassol. According to the Metropolitan's proposal, such confessionals would function on a purely optional basis and would only serve the needs of those pupils who wanted to confess to a religious minister of the Orthodox Church. The proposal of the Metropolitan of Limassol enjoyed the support of a unanimous Holy Synod, but was rejected by the Ministry of Education and Culture, which considered that a reform of the current system was not necessary. Currently the decision as to whether there is a need for a confessional in a school is a matter which should be decided by each particular school, following consultation with parents, teachers and governmental authorities.

The proposal of the Metropolitan of Limassol was harshly criticised by certain politicians and educators who argued that it would promote the establishment of the Orthodox Christian religion in public schools and would be contrary to the principle of religious free-

dom. The Metropolitan of Limassol clarified that he would not insist on the implementation of his proposal, although he considered that the reactions were unjustified, since confessions have always taken place in schools in a non-uniform manner; he further clarified that his proposal only aimed at a uniform approach with respect to confessions, in order to facilitate those students who wanted to confess to a religious minister.

3. *Opting out*

Parents (or lawful guardians as the case may be) have the right to request in writing that their children be exempted from religious education if they are not Orthodox Christians. In the case of *Arvanitakis*, the school had refused to exempt from religious education pupils who were Jehovah's Witnesses.⁷ The applicants had stressed that in the textbooks used in the classes, Jehovah's Witnesses are referred to as an anti-Christian and anti-social sect and are generally presented in a negative manner; however, their arguments were rejected by the school, which declared that attendance at all classes is obligatory for all students irrespective of their religion. The Supreme Court had no difficulty in holding that the school had exercised its competences in an unlawful manner.

However, exempting only pupils who do not belong to the Orthodox Church might present certain problems; parents who belong to the Orthodox Christian religion might not wish for their children to receive doctrinal religious education. Furthermore, atheists, or non-Orthodox, might not wish to declare their religious beliefs to the school authorities in order to be exempted from religious education. Similarly to the principle that religion should not be referred to in public documents, because it might lead to indirect discrimination on grounds of religion, revealing one's religious beliefs for the purpose of exempting one from religious education might, in a predominantly Orthodox society, also lead to discrimination; the exercise of the right

⁷ *Arvanitakis v. The Republic* [1994] 3 CLR 859 (in Greek).

to opt out of religious activities might entail significant discomfort or embarrassment for the students, or entrench religious differences at an early stage of the students' lives.

There is no possibility of opting out of biology for believing in Creationism or Intelligent Design. The issue of a potential opting out of physical education, e.g. for Muslim girls, has never arisen. There is no possibility to take days off for religious holidays.

4. Religious Schools

The right of religious groups to set up and operate their own schools is safeguarded, and such schools are financially assisted by the State.⁸ It could be well argued that there is a continuous effort to maintain the special characteristics of the various religious communities with regard to education.⁹ In principle financial assistance is provided to the three religious groups of the island; religions and creeds, other than the five major religions of the island, may set up and operate their own schools if they so wish, but will not be financially assisted by the State. The Orthodox Church and the other Christian creeds operate Sunday schools, without State intervention; the right to operate Sunday schools, or provide private religious education in houses or other establishments is allowed for all religions and creeds.

The hieratic school '*Apostolos Vanavas*', bearing the name of the founder of the Orthodox Church of Cyprus, operates in Nicosia, under the supervision of the Holy Synod, as a dependence of the Monastery of Kykkos. The school was founded in 1949 and currently

8 See Second Report submitted by Cyprus pursuant to article 25, para 1 of the Framework Convention for the Protection of National Minorities, 27 October 2006, para 28ff. For the period before 1974 see *C. Tornaritis*, Promotion and Protection of Human Rights of National, Ethnic and Other Religious Minorities in the Republic of Cyprus, (Nicosia, 1974): 7.

9 See *Haji Roussos*, 'Memorandum of the Cyprus Maronite Community to the House of Representatives' (Nicosia, June 1997, *S. Beraud*, 'The Latins: A Small Community of Cyprus', paper given at the 1st Cultural Meeting of the Maronites, Armenians and Latins (Nicosia, 20 October 2000, in Greek).

offers two distinct levels of courses for persons who seek to become priests. The lower level of courses is designated for graduates of elementary schools, gymnasiums, or technical schools, while the higher level is designated for graduates of lyceums. Graduates of the lower level of courses may, however, proceed to the higher level. Pupils are enabled to become acquainted with the main aspects of the Orthodox Christian teaching and the various ecclesiastical ceremonies, while also acquiring general knowledge which is deemed to be necessary for carrying out their duties. The school also functions as a boarding house for those pupils who wish to stay there during their courses. All expenses of the school are covered by the Monastery of Kykkos.¹⁰

10 See *C. Kokkinofas*, 'The Hieratical School of Apostolos Varnavas and the Education of the Cyprus Clergy' (in Greek), available in <http://www.churchofcyprus.org.cy/apvarnavassxoli.shtml>, November 2008.

RELIGION IN PUBLIC EDUCATION IN THE CZECH REPUBLIC

JIŘÍ RAJMUND TRETERA / ZÁBOJ HORÁK

I. GENERAL BACKGROUND

1. Facts and Figures

Demography

The Czech Republic has 10,526,685 inhabitants (30 September 2010).¹

There is no official State information on the members of religious communities (denominations). According to the Constitution the membership of religious communities in the Czech Republic is governed by their own statutes, which are set up independently of State authorities.²

The only survey we can use for approximate numbers is a questionnaire of the Czech Statistical Office, the last one from the year 2001. It should be emphasized that it contains the data which were collected anonymously and is more or less only an opinion poll. Some churches, which collect membership data in their own registers, publish other (usually higher) numbers.

According to this survey about 59 % inhabitants answered they do not belong to any religious community, 8.8 % inhabitants used the right to give no response, and 32.2 % professed their adherence to some religious community.

The data in relation to 21 main traditional religious communities, which are registered by the State with “special rights”, is as follows:

1 Source: Czech Statistical Office.

2 Article 16 Section 2 of the Charter of Fundamental Rights and Liberties, No. 2/1993 Coll.

Roman Catholic Church	2,740,780
Evangelical Church of Czech Brethren	117,212
Czechoslovak Hussite Church	99,103
Evangelical Churches A. C. (three Churches together)	34,317
Religious Society of Jehovah's Witnesses	23,162
Eastern Orthodox Church in the Czech Lands and Slovakia	22,968
Church of Brethren (Congregationalists)	9,931
Church of the Seventh-Day Adventists	9,757
Greek Catholics	7,675
Christian Congregations	6,927
Apostolic Church (Pentecostal Church)	4,565
Union of Baptists	3,622
Unity of Brethren (Moravian Brethren)	3,426
Methodist Church	2,694
Old Catholic Church	1,605
Federation of Jewish Communities in the Czech Republic	1,515
Church of Jesus Christ of the Latter-Day Saints	1,366
New Apostolic Church	449
Religious Society of Unitarians	302
Imprecisely indicated church, or other church	200,716

Numbers of Public, Private and Church Schools in the Czech Republic (2009)

The Czech Statistical Office and The Institute for Information on Education have published data concerning the number of all recognized public, church and private schools in the territory of the Czech Republic.

Kindergartens: 4,807, among them: public 4,702, private 82, church 25.

Primary schools: 4,133, among them: public 4,025, private 68, church 40.

Secondary schools: 1,432, among them: public 1,069, private 327, church 36.

Conservatoires: 18, among them: public 13, private 3, church 2.

High special schools: 184, among them: public 123, private 49, church 13.

Both private and church schools have been newly established since 1990. For 40 years, under the communist totalitarian regime, neither category existed.³

Numbers of Church Schools in the Czech Republic According to the Denominations:

Number of church schools altogether: 116.

They were founded by the institutions of, respectively:

Catholic Church: 80,

Evangelical Church of Czech Brethren: 16,

Unity of Brethren: 5,

Czechoslovak Hussite Church: 4,

Silesian Evangelical Church AC: 3,

Jews: 3,

Seventh-Day Adventists: 2,

Church of Brethren: 1,

Apostolic Church: 1,

Baptists: 1.

Some statistics show higher figures. The reason for this is that they count both schools and school facilities. School facilities include pupil homes, pedagogical and psychological centres, and recreational centres for children and youth.

³ See *Horák, Zábaj*. Obnovení církevních škol v českých zemích v letech 1990–1991 (The Reinstitution of Church Schools in the Czech Lands in 1990–1991), In *Revue církevního práva/Church Law Review*, No. 40-2/08, Church Law Society, Prague, 2008, pp. 94–114.

Description of the General School System

a) Sources of Law

The general school system in the Czech Republic is based on

1. **the Constitution of the Czech Republic** (Act No. 1/1993 Coll.), incl. **the Charter of Fundamental Rights and Liberties** (Federal Act No. 23/1991 Coll., republished under No. 2/1993 Coll.),
2. **the international agreements**, adopted by the Czech Republic, above all:
 - the International Covenant on Civil and Political Rights (1966),
 - the International Covenant on Economic, Social and Cultural Rights (1966),
 - the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), as amended by Additional Protocols,
 - the Convention on the Rights of the Child (1989), and
3. the School Act⁴ and other Acts of the Czech Parliament on school affairs,
4. supplementary regulations under the above Acts issued by the Ministry of Education, Youth and Sports.

b) School Levels

Beneath the university level, the Czech system of public education consists of these levels:

1. **pre-school education** for children from 3 to 6 years: kindergartens, not compulsory;
2. **primary education** – 9 classes, compulsory for children from 6 to 15 years, which consists of 2 stages: first stage, classes 1–5, second stage, classes 6–9;
 - a. basic school: classes 1–9;

⁴ The School Act, which is in force today, has No. 561/2004 Coll.

- b. basic school: classes 1–5, & classes 1–4 at grammar school (with 8 year programme);
 - c. basic school: classes 1–7, and classes 1–2 at grammar school (with 6 year programme);
3. **secondary education**, after finishing primary education, not compulsory:
- a. educational programme lasting for one or two years, completed by examination;
 - b. educational programme lasting for two or three years, completed by a certificate of apprenticeship;
 - c. educational programme lasting for four years, completed by “A” level examination:
 - classes 5–8 at grammar school (with 8 year programme);
 - classes 3–6 at grammar school (with 6 year programme);
 - industrial schools; schools of commerce; social and juridical schools; health schools; all these schools have 4 year program (for pupils usually from 15 to 19 years) and completed by “A” level examination;
4. **high special education**, after “A” level examination: different types of special schools, with educational programmes from three to three-and-half years, completed with the DiS (specialist diploma);
5. **academies of music**, after finishing primary education, combining levels under 3 and 4 – these have several different programmes from four to eight years.

c) Founders of Schools and their Funding

As to founders of schools in the Czech Republic, we can identify the following categories:

- 1. schools established by **public authorities**, i.e.:
 - a. by municipalities, or
 - b. by unions of municipalities, or

- c. by regional authorities, or
 - d. by the State (exceptionally), i.e. by the Ministry of Education, Youth and Sports, Ministry of Defence, Ministry of the Interior, Ministry of Justice, or Ministry of Foreign Affairs;
2. schools established by **religious communities**, which have obtained “the special right to create church schools” according to the Act on Churches No. 3/2002 Coll. (now 21 religious communities), and their units with legal personality (national centres, dioceses, monasteries or priories, or parishes),
3. schools established by an **individual** or by a **legal entity** of private law; such individual or legal entity can be of a religious type (e.g. registered religious communities, which have not yet acquired “the special right to create church schools”); even non-religious entities can establish a school with some religious programmes.

Schools are recorded in the School Register of the Ministry of Education, Youth and Sports. Only kindergartens and school facilities (e.g. pupil homes) are recorded in the registers of regional authorities.

Schools in category 1 are funded from public sources. Schools established by religious communities are funded by the Ministry of Education, Youth and Sports, and partly by the religious entity which founded them. Schools established by an individual or by a legal entity of private law are funded partly from public sources, partly by their founders or from school fees.

2. Religion as Subject of Instruction and Its Substitutes

Religious Instruction (Confessional Teaching)

Religious instruction in State schools is a duty set down by the Charter of Fundamental Rights and Liberties. According to Article 16

Section 3 religious instruction at State schools should be set down by an Act.

School Act No. 561/2004 Coll. regulates religious instruction at schools established by public authorities in its Art 15. Religious communities, which obtained “the special right to provide religious teaching” according to the Act on Churches No. 3/2002 Coll. (now 21 religious communities), have the right to organize religious classes as a non-obligatory subject at all public schools. The school opens the religious class if at least 7 pupils (resp. their parents) apply for this. Different religious communities may conclude a written agreement at a particular school that they will teach religion jointly.

Teachers of religion need to be authorised by the religious community (or by a group of religious communities), but they are employees of the particular school, which pays them. All pupils may attend religious instruction classes, even if they are not members of that religious community (or some community from the group of religious communities), which organizes particular religious instruction classes. Religious communities support this practice because of ecumenical co-operation and common needs. Non-denominational students may also take religious instruction organized by any religious community or group of religious communities.

The disadvantage of this system is that in public schools there is no alternative subject and therefore religious education is usually taught on the only free half-day in a week, i.e. in most of schools on Wednesday afternoons.

Religious education is usually voluntary at church schools, too, but an alternative subject – ethics – is provided. This seems to be a better model and should be adopted by public schools. During recent years some church schools have changed their programmes somewhat by making religious education a compulsory subject, and parents sign their consent to enable their children to participate in this.

Private schools have an absolutely free choice to provide obligatory or voluntary religious education in one or more confessions. They may even exclude religious education entirely.

Religious instruction at schools is informative and usually based on the scheme set down by the relevant religious authorities. Rather different is religious training organized by religious communities in their own spaces. This runs parallel and has a confessional content.

Instruction about Religions

Instruction about religions is not part of the general educational programme for primary and secondary schools published by the Ministry of Education, Youth and Sports, but some topics are obligatory parts of other classes, e.g. Human Being and Society.

Our hope is that instruction about religions will be introduced into the general educational programme published by the Ministry of Education, Youth and Sports, not least because there are many graduate specialists in this subject from Czech Universities, above all from Faculties of Philosophy.

Note: at one diocesan grammar school (in Western Bohemia) religious instruction was replaced by obligatory instruction about religions. The reason: according to the common understanding about 80 % of pupils at this school are undenominational.

Ethics

According to the general educational programme published by the Ministry of Education, Youth and Sports, from 1 September 2010, ethics will be introduced as a supplementary subject for all primary schools. The director of school may choose whether ethics will be either obligatory or an alternative subject at the school. The director decides whether ethics will be taught as a separate subject or else spread amongst other subjects.

Some ethical topics have for many years been taught within the framework of other subjects in primary and secondary schools.

Ethics has also been an alternative subject to religious instruction at many church secondary schools.

Religion within the Framework of Classes in Literature, History, Philosophy, Arts, and Language Classes

Information about different religions is frequently found in textbooks on literature, history, philosophy, arts and languages. Teachers in these classes may supplement this information from their own sources, or with help of other teachers, including teachers of religion. School directors are responsible for the objectivity of all information.

The quantity of the information given depends on the general educational programme published by the Ministry of Education, Youth and Sports, and on school educational programmes published by every school director.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

Religion within the Framework of Working Conditions of Teachers and Other Staff

Among the principles of education, which are found in the School Act No. 561/2004 Coll. mentions, are a mutual reverence, respect, tolerance to different opinions, solidarity and the dignity of all participants of education (Art. 2, sec. 1, lit. c).

There is no restriction on teachers and school staff in relation to their religious adherence in all schools, including church schools. They can be members of any religious community or be undenominational or change these positions, as is secured in the Charter of Fundamental Rights and Liberties secures (Art. 15, sec. 1).

Directors of church schools are appointed by the church founder. They are usually members of the same religious community as the founder, but such membership is not a pre-condition for appointment. Teachers and staff are appointed without regard to their religious affiliation. Nobody has the right to ask questions about the teacher's religion.

Religious Symbols at School

Citizens and other inhabitants are free to wear religious symbols in public places. This includes public schools. This applies to pupils, teachers and other staff. There is no official restriction in this regard, and such a restriction should be considered as contrary to religious freedom, which is secured by the Constitution. On the other hand, it is to be emphasized, that inhabitants of the Republic usually do not wear such symbols often or provocatively. There is a tradition to be civil in this regard originating in pre-communist times.

Some pupils, teachers and staff wear small crosses on their necks as a matter of course, in public and at school. This is not necessarily an expression of faith but a matter of individual choice. Such symbols sometimes function as decorative, above all when they are golden. Even wearing a golden Star of David may not express adherence to Judaism but it often combines decoration and sympathy to Jews who suffered so much during the Second World War. The Czech Protestants or Hussites or their sympathizers wear a small golden calix as a decoration, but not too often. To wear large crosses or other symbols around the neck might be considered somewhat comical.

Crucifixes are not used in the classrooms of public schools established by municipalities or regional authorities or the State. For a long time there has been no institutional use of crucifixes in public facilities and it is probably the case that such use would not be revived today. The only exception is the use of crucifixes in some areas in Catholic theological faculties, church schools, charities, and in a very reserved form in church hospitals.

Religious Garments

There is no prohibition on wearing a religious garment at schools, but it is not usual to do so.

Even the Czech Conference of Catholic Bishops recommends the clergy to wear ecclesiastical clothes or collared shirts only to such

events when this is considered socially reasonable – the decision is that of the individual cleric.

Religious sisters and monks may use habits without restriction in all public places, including schools. This sight was rather novel after 1989 but was accepted by the public with understanding on the basis of memories of their suffering during the 40 years of the communist totalitarian regime, and in expectation of their help to rebuild a free democracy.

As to the scarves of Muslim women, it is not clear how these differ from the common usage of scarves worn by Czech women in the countryside. Many Czech women in the countryside wear scarves not only during work, but also on festive occasions (e.g. to the church or to school ceremonies involving their children).

Because of the relatively small number of Muslim inhabitants in the Czech Republic (3,699 persons in 2001), and the moderate approach of their leaders, the wearing of scarves causes no problems or conflicts.

There is no experience with the wearing of *burqas* at public schools. According to our understanding it could cause some problems as it might be considered as extremism and contrary to our domestic cultural tradition.

According to common understanding, there are two tendencies in Czech society which appear to be inconsistent, but which nevertheless can be considered to complement each other. On one hand, the majority in Czech society are agnostic. But on the other hand society is liberal above all as to the external appearance of a person. As long as nobody wears something extreme (from the perspective of native culture), people can wear what they want.

The Possibility of a Benediction of School Buildings

There is no prohibition against asking for a benediction of school buildings. It all depends on the wishes of the school director. These ceremonies are not celebrated very often, but they do occur. Directors and their assistants are usually non-believers, but they may de-

sire to have their schools blessed – something is deep in their subconscious. Perhaps this has roots in a common religious sense. In some cases it may even border on paganism. Catholic and Orthodox bishops and priests perform this ceremony with pleasure, if requested.

The custom to ask for different benedictions is wide-spread in the Czech Republic in recent years. Many people (not only believers) ask for their cars, houses, and even power-stations and the harnesses of police horses, to be blessed.

Special Issues

Religiously motivated behaviour of pupils, teachers and staff in schools, such as prayers, is possible by an action of voluntary groups out of lessons (during breaks, or after lessons). Nobody can be forced to participate in them.

In some church schools the first daily lesson begins with prayer, but nobody is obliged to say them aloud. Religious services are not part of schooling. Chaplains working at church schools may organize worship outside the usual time of lessons.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Religious Holidays: Possibility of and Conditions for Taking off the Relevant Days

All Saturdays and Sundays during the year are free.

Some Christian holidays are free days according to the civil calendar, as a part of our national cultural heritage. Christmas Holidays last for three days now, from 24 till 26 December, and Easter Monday is also a civil holiday.

According to an order of the Ministry of Education, Youth and Sports, published under No. 16/2005 Coll., the school vacations are longer: the schools Christmas vacations last from 23 December to

2 January, and Easter vacations are Maundy Thursday, Good Friday and Easter Monday. This order binds all schools.

No provision exists for pupils to take other religious holidays at public schools. However, the school director can for relevant reasons give to all pupils up to 5 days of free time. Among “relevant reasons” can be religious holidays.

Church schools usually have additional religious holidays taken in accordance with the church customs of the founder. This applies to all pupils. At Jewish schools, for example, all pupils (not only Jewish ones) have vacations also during Jewish holidays.

Opting out of Religious Instruction

Religious instruction is a voluntary subject. Nobody has a duty to attend it. But admission to it at the beginning of every school year then obliges a pupil to attend. Exceptions are possible for important reasons.

Opting out of Physical Education for Religious Reasons

There is no special provision for this. According to the School Act the school director may release pupils from physical education not only on medical grounds, but also for “other relevant reasons”. So this could be used for religious reasons.

No cases of this sort have been decided by the school administration. Nothing is known as to whether there are problems with coeducational swimming instruction for Muslim girls. As mentioned above, the number of Muslims in the Czech Republic is quite small.

Opting out of Biology

No cases of this sort have been decided by the school administration. According to our understanding, believing in creationism probably could not be considered as a relevant reason for opting out of biology at Czech schools.

Religiously Motivated Home-Schooling

The School Act No. 561/2004 Coll. admits home-schooling for individual pupils at first stage of primary school (5 classes). The permission is given by the director of the primary school, to which a pupil was allotted (in connection with the pupil's communal domicile). Such a pupil takes examinations every half year at this school.

The conditions for such permission are: 1. relevant reasons, 2. sufficient conditions, above all material and health, 3. the teacher providing home-schooling is educated at least to secondary level with "A" levels, 4. convenient school-books and text-books are available.

The School Act does not mention religious motivation as to home-schooling, but it is possible this motivation can be acknowledged by a competent school director as a "relevant reason" to give his permission for home-schooling in each individual case.

RELIGION IN PUBLIC EDUCATION – DENMARK

LISBET CHRISTOFFERSEN

I. GENERAL BACKGROUND

1. Facts and Figures

The Danish constitution imposes an obligation on parents to ensure the education of their children between the ages of 7 and 16, whereas there is no formal obligation to attend school. Parents may choose between the public school system, the so-called the *Folkeskole* (*Volksschule*, people's school – the same word as in people's church or parliament) or a very broad system of free schools (*Freie Schulen, friskoler*), funded by the state to the tune of around 90 %. Most of the free schools are based on a common idea whether it be broadly Christian (*grundtvigian*), Catholic, Jewish, or Muslim. There are also socialist free schools, schools for the German minority and a group of traditional private schools more oriented towards better discipline or a better grading for the pupils. 13.4 % of pupils (approximately 90,000) attend free schools, of which there are about 500. A greater part of the pupils only go to the free schools for parts of the period of schooling, a great number only for one year of free boarding school.

575,000 Danish children go to around 1,700 municipality-driven public schools which are subject to state legislation and supervision and which are also subject to a significant degree of influence from parents boards. They start at the age of 6 in a pre-schooling year, followed by 9 years in a common and undivided school system. There are 25–28 pupils in each class mainly organised on the basis of geographical criteria.

2. *Religion as a Subject of Instruction and Its Substitutes*

The aim of the public school system is among others to make the pupils familiar with Danish culture and history, give them knowledge about other countries and cultures, and prepare them for a society characterised by freedom and popular democracy. The School must therefore work in an atmosphere of spiritual (or intellectual) freedom, equality in value and democracy.

All pupils have lessons on *Christendom* (orally translated: knowledge on Christianity) at all levels of the school system (from 1st to 9th grade) except, as it is stated in the law, the year which is used for preparation for confirmation. Preparation for confirmation is delivered by the church minister in the local church, but within the hours of the school day – the scheme of the school day in the 7th or 8th grade is organised in such a way as to give two hours off on one or two mornings a week to go to confirmation preparation.

It is the school board and/or the municipality board which decides how many hours a week is to be devoted to each topic – and this includes classes on *Christendom* – whereas the government department for education decides the framework for the topics, that is, which areas should be covered within each school topic and which goals should be reached by the pupils at each level.

The goal of lessons in *Christendom* is to acquire knowledge in order to understand the religious dimensions of humanity and what impact religiosity might have on the approach of individual human beings to life and their relation with other human beings. The central field of knowledge is Christianity (historically and currently). The pupils must know the biblical narratives and their impact on the value foundations of our culture. Moreover, the pupils must also gain knowledge about non-Christian religions and life styles. The teaching shall give the students a foundation for personal decision-making and for responsibility in a democratic society through the encounter with different types of questions and answers about the life in both Christianity and other religions and beliefs.

The teaching of *Christendom* was explicitly made non-confessional in the 1970s. It is a normal school topic and the teachers learn the topic as part of their normal training.

The Lutheran People's Church has established a programme for collaboration with local schools so that pupils can follow courses (for example) about Easter – these are established in collaboration between school and church. Sometimes, school pupils also visit synagogues and mosques.

Danish church hymns are part of curriculum for music and Danish literature in the same way that for example the Reformation is part of the curriculum in history and Lars von Trier's films in the arts.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

There are no religious symbols in public schools, apart from the flag (*Dannebrog*) which itself carries a cross! But there are traditions related especially to Christmas and some schools still have a Christmas service in December. Very few schools still start the morning with a hymn or with a Danish song on for example history or nature which may have a minor religious dimension. Even fewer schools also include a prayer which was until now supported by the government.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Even though the topic *Christendom* is seen as non-confessional and a normal school topic, there is a system of opting out which is decided upon by the government (that is, on the level of the state). Parents who want their children to opt out may be exercised by the non-confessional character of the topic and the fact that there are no classes to opt into instead of *Christendom*. If the parents nevertheless

want an opt-out, that can only be granted from the beginning of a school year and only if the parents accept the obligation to teach their children the school topic themselves – the obligation is to get taught, not to go to school.

There are pupils who wish to opt out of e.g. gymnastics etc. for religious reasons, but most families in this position send their children to free schools. We do not have students opting out of public school with regard to creationism, but there is debate on this – however, once again, such children go to free schools. Very few (among them the former government minister of education) are educated at home, that is however a *grundtvigian* freedom rather than religiously motivated.

The Norwegian *Folgerø* case has stimulated some debate, especially with regard to collaboration with the church on religious matters, but so far the current system has prevailed.

RELIGIOUS EDUCATION IN ESTONIA

MERILIN KIVIORG

I. GENERAL BACKGROUND

1.1. Facts and Figures

Total Population	approximately 1.3 million
Estonians	67.9 %
Russians	25.6 %
Ukrainians	2.1 %
Byelorussians	1.3 %
Finns	0.9 %
Other nationalities	2.2 %

Estonia could be said to be one of the least religious countries in Europe. According to the last population census from the year 2000, only approximately 29 % of the adult population, (those aged 15 and above, total questioned 1,121,582) considered themselves adherent to any particular creed. Of this figure, about 13.6 % declared themselves to be Lutherans. The majority of Lutherans are ethnic Estonians. The second largest religious tradition in Estonia is that of the Orthodox Church. Of the 29 % of the population following any creed, 12.8 % considered themselves as Orthodox. However, some new data suggests that the Orthodox community may have grown in numbers and become a fraction bigger than the historically dominant Lutheran church.¹ The Orthodox community in Estonia is divided (also ethnically) between the Estonian Apostolic Orthodox Church and the Estonian Orthodox Church of Moscow Patriarchate. Most

¹ Information about current membership of religious organizations is based on data from the Ministry of Internal Affairs. Ministry of Internal Affairs <http://www.siseministerium.ee/37356>, 27 October 2009.

Orthodox believers belong to the latter church. All other Christian and non-Christian religious communities have adherents of approximately 2.6 % of the adult population (15 and above).² The largest religious communities among those are Roman Catholics, Old Believers, the Baptists, Pentecostals, and Jehovah's Witnesses. Considering the above figures the percentage of atheists is surprisingly low – approximately 6 %.

There is a small Muslim community in Estonia. Muslims have lived on the Estonian territory since approximately the eighteenth century. The majority of Muslims are ethnic Tatars. They have integrated well into Estonian society and there is no reason to associate them with radical Islam. So far there has been only a limited number of new arrivals. They are from different regions globally, and do not form any significant ethnic religious communities. *Linnas* has pointed out that Islam in Estonia is liberal and has lost many of its specific features. She also notes that Estonian society is tolerant of Muslims which she attributes to the traditionally indifferent attitude of Estonians to religious matters in general.³

The Estonian indigenous religious tradition is represented by the House of Taara and Native Religions. One way or the other some practices of the indigenous religious tradition are popular and important for many in Estonia.

Some statistical surveys have shown relative coolness to institutional forms of religion and indicate that religion is both an individual and private matter in Estonia ('believing without belonging').⁴ These surveys also give one confidence in saying that the majority of the Estonian population is not hostile to religion.⁵

2 Statistical Office of Estonia, '2000 Population and Housing Census: Education. Religion' (Tallinn, Statistical Office 2002), 40.

3 *R. Linnas*, 'Islam Eestis' [Islam in Estonia], in *Mitut usku Eesti*, ed. *L. Altnurme* (Tartu: Tartu Ülikooli Kirjastus, 2004), 65.

4 See e.g. European Commission, 'Special Eurobarometer: Social Values, Science and Technology' (2005), 11.

5 The new comprehensive census of the Estonian population, which will also ask questions about religious affiliation, will take place in 2011. Statistics Estonia, www.stat.ee/39106, 25 April 2010.

1.2. Historical Background of Religious Education

Religious education (hereinafter RE) has been one of the most contested issues regarding religion in Estonia today, and in fact, throughout its history as an independent State (1918–1940 and 1991–present). To understand the controversies as they exist today it is important to take a brief look at the history of religious education in Estonia. This is also important because when Estonia regained independence in the early 1990s and started to re-build its legal order on the principle of restitution, it needed to look back at the legal framework of 1918–1940, while acknowledging new circumstances and developments in European legal order and thinking.

Firstly some historical points of reference are necessary.⁶ After the conquest of Estonian territory by crusaders in the thirteenth century, cultural life in Estonia was divided along national and social lines.⁷ Although the Baltic Germans were *Kulturträger* in one sense their culture remained foreign to Estonians.⁸ The Catholic Church – the one local institution that might have formed a bridge between the two worlds – was not very successful in this regard.⁹ The monastic orders (such as Dominicans, Cistercians, Franciscans and the Order of St. Brigitta), were only a fraction closer to the local people. As a result, pagan beliefs remained strong, and Christian beliefs were slow to take root in Estonia. Culture in the Estonian language continued to be popular, as did the oral tradition. Although reforms were discussed to strengthen the influence of the Church and some recommendations were made by the Livonian Church, no significant results were achieved before the upheaval occasioned by *Martin*

6 For a more detailed account of religion in Estonia see e.g. *M. Kiviorg*, 'Law and Religion in Estonia', *International Encyclopaedia of Laws, Religion Law* (Kluwer Law International, forthcoming 2011) and for developments in religious education see *M. Kiviorg*, 'Estonia' in *J. de Groof and G. Lauwers (ed.) Religion, Beliefs, Philosophical Convictions: From Passive Toleration to Active Appreciation of Diversity (7–9.12.2010 Bruges Conference Proceedings, forthcoming 2011)*.

7 In fact, significant changes in this came only after abolishing serfdom in 1816–1819.

8 *T. Raun*, *Estonia and Estonians*, 2nd ed. (Stanford: Hoover Institution Press, 2001), 23.

9 *Ibid.*

Luther.¹⁰ *Raun* points out that, educational institutions in medieval times were those associated with the Church and monasteries. Instruction took place in German, and only a few Estonians were able to participate.¹¹

In the seventeenth century, when Estonia came under the sovereignty of Sweden, a systematic reorganisation of social and religious life under the Lutheran Church began, and the Catholic Church was practically expelled from Estonia.¹² Under Swedish rule from the middle of the seventeenth century to the beginning of the eighteenth century, the Lutheran Church enjoyed the position of being the State Church. One of the cornerstones of the Lutheran paradigm was the idea that people should be taught to read in order that they were able to read the Bible. To some extent one can say that the network of public schools that began to develop at the end of the 17th century was somehow an offshoot of the Lutheran Church – being to some degree an expansion of the confirmation school, where religious education had a central role.¹³

After the incorporation of Estonia into the Russian empire at the beginning of the eighteenth century (as a result of the Great Northern War), the Lutheran Church preserved its key position in developing schools and organising religious education. Translated biblical texts remained an important source for Estonians to learn to read and write. For example, at the end of the nineteenth century (during the Russification period) religious education was the only subject which was allowed to be taught in Estonian. This remained the case even at the beginning of the twentieth century.

10 *Ibid.*, 24.

11 *Ibid.*, 24. As to actual Christianisation of Estonian people, the Moravian Brethren movement played a significant role in this.

12 For a more detailed history of religions in Estonia see Encyclopaedia Estonica, 'Culture', 'Religion', www.estonica.org, 1. April 2008.

13 *F. Kozyrev, O. Schihalejev*, 'Religious Education in Estonia and Russia: Resemblances and Differences' in *Encountering Religious Pluralism in School and Society: A Qualitative Study of Teenage Perspectives in Europe*, ed. *T. Knauth et al.* (Münster: Waxmann 2008), 310.

At the beginning of the twentieth century, however, religious education had started to run into trouble. This was due to a combination of complex factors, including socio-political ones. As pointed out by *Valk*, the method of teaching focused on memorising biblical texts, and whether a student actually understood what he/she read was significantly less important.¹⁴ All school activity was supervised by the Church. No pedagogical preparation was required from supervisors (visitors). This was an increased source of tension between conservative supervisors and progressive teachers. Secularisation and political turbulence at the time also exacerbated the crisis in religious education.¹⁵ By 1917 opinions were polarised, with some calling for abolition of religious education from schools completely and others for the continuation of religious education. Two important congresses were held to tackle the crisis of religious education (1st and 2nd Congress on Education (*Rahvahariduse Kongress*)).¹⁶ Debates did not end there. Another congress in 1917, organised by leftist movements in Estonia, called for immediate abolition of religious education from schools.¹⁷ In the following years there was chaos in religious education. Some schools provided it, some not. The chaos was largely the result of power struggles and struggles to establish independent statehood at the same time.

The Estonian Republic was proclaimed on 24 February 1918. The Transitional Government (*Eesti Ajutine Valitsus*) adopted the ideas expressed by the 2nd Congress on Education held in the previous year. The government passed a regulation on 21 November 1918, which stated that religious education at schools was voluntary. Neither teachers nor students could be forced to teach or study it, respectively. It further stated that if parents wanted their children to attend religious education, it could be made obligatory for those students.¹⁸

14 *P. Valk*, *Ühest heledast laigust Eesti kooli ajaloos* (Tallinn: Logos 1997).

15 *Ibid.* 18.

16 *Kasvatus ja Haridus* 3/4 (1917): 122–128; *Kasvatus* 4 (1917): 209.

17 *Eesti Tööline* [Estonian Worker] 13 January 1918.

18 *RT* 1918, 5.

The first Estonian Constitution was adopted in 1920. The Constitution set forth the principle of separation of State and Religion ('*Riik ja Usk*' – as different from the formulation of 'State and Church'). Article 11 of the Constitution stated that there is no State religion.¹⁹ Following the ideas enshrined in the constitution, the Law on Public Primary Schools, which was adopted by Parliament on 7 May 1920, abolished religious education in primary schools.²⁰ The same principle was followed in the Law on Public Gymnasiums, which was adopted on 7 December 1922 (the law was superseded by the referendum in 1923, however, and never came into force).²¹ There were heated public debates taking place before and after the laws were passed (historical records reveal colourful public debates, quite unusual for the generally reserved and mild tempered Estonians). There were accusations made that Parliament did not take into account the views of the majority of the population. This led to a referendum in 1923. However, even before the referendum religious education could still take place at schools provided that the parents or students themselves wanted it, it did not exceed two hours and did not interrupt the curriculum (meaning it needed to take place after the normal school day). At schools where most of the students took religious education classes there was flexibility in the latter requirement. In gymnasiums religious education was still a voluntary subject as set out by the Estonian Transitional Government in 1918.

The referendum on religious education took place on 17–19 February 1923.²² It was the first referendum in the history of the independent Estonian Republic. 66 % of the voting population participated in the referendum.²³ 71.9 % voted for state financed religious education as a voluntary topic in all schools. After the referen-

19 RT 1920, 113/114, 243.

20 RT 1920, 75/76, 208.

21 RT 1922, 155/156, 91.

22 Riigikogu juhatuse otsus rahvaalgatamise korras esitatud algkooli seaduse muutmise seaduseelnõu, mis Riigikogu poolt 19. detsembril s.a. tagasi lükatud rahvahääletusele panemise kohta, RT I 1923, 1/2, 23. detsembrist 1922.a.

23 RT I 1923, 35, 36.

dum previously adopted laws for primary schools²⁴ and gymnasia²⁵ were amended. From then on religious education was voluntary for students and teachers, but compulsory for schools. After the referendum the debates over religious education calmed down and no significant changes took place until 1940. However, extensive effort was put into developing the up-to-date curriculum and textbooks.

To sum up, during the first independence period (1918–1940), Estonia was one of the first countries where a model of non-confessional religious education was introduced. The subject included learning about different world religions. A clear distinction was made between religious education at schools and religious instruction in churches. Nevertheless, as *Schihalejev* highlights, the major content was Christianity with emphasis on moral development and cultural heritage. Bible stories were presented from a non-confessional perspective, which was an attempt to do justice to different denominations.²⁶ The basis of non-confessional religious education was Christianity. This can be seen as justified at the time considering the church membership and cultural heritage of the Christian Church in Estonia. Most of the population (ca 78 %) belonged to the Estonian Evangelical Lutheran Church.²⁷ The second largest Church was the Estonian Apostolic-Orthodox Church (according to the 1934 census approximately 19 % belonged to the latter church).²⁸ Although secularisation of Estonian society was in progress, rural areas were still strongly community oriented, with the Church playing a significant role.²⁹

24 RT I 1923, 35, 36.

25 RT I 1923, 97/98, 77.

26 O. *Schihalejev*, *Estonian Young People, Religion and Religious Diversity: Personal Views and the Role of the School* (Tartu: University of Tartu Press 2009), 42.

27 According to the national census 1934, there were 874,026 Evangelical Lutherans in Estonia of a total population of 1,126,413. Estonian Institute, www.einst.ee/society/Soreligion.htm, 2 February 2000; See also Statistical Office of Estonia, '2000 Population and Housing Census: Education. Religion' (Tallinn, Statistical Office 2002), 17.

28 Riigi Statistika Keskbüroo, 'Rahvastiku koostis ja korteriolud: I III 1934 rahvaloenduse andmed' (Tallinn: Riigi trükikoda, 1935), Vihik II.

29 Statistical Office of Estonia, '2000 Population and Housing Census: Education. Religion' (Tallinn, Statistical Office 2002), 17.

In classes where students had the same religious background, the confessional element was allowed to be brought in. In multi-religious schools the grouping of students according to their confession was allowed.³⁰ As about 86.3 % of students were taking religious education classes, the school prayer was introduced again. Some incidents were reported where students who did not take religious education classes were still required to be present at school prayers. This was considered to be against the freedom of religion or belief of students.³¹

When the Soviet Union occupied Estonia in 1940, religious education was banned in schools. All forms of religious studies at schools were suppressed and courses of scientific atheism were introduced instead.³² After regaining independence, in the early 1990s, discussions about religious education started once again, and at present the form and content of religious education is still hotly disputed in the media and in academic/educational circles. It is accurate to say that many aspects of religious education are still unresolved. There are several background factors which seem to influence the debate. The absence of experience (for some 50 years) in receiving or providing religious education in Estonia, due to the Soviet occupation, is probably one of the most important factors. However, the relatively low religiosity of the Estonian population plays a significant role as well. Before returning to the debate over religious education, some information may be useful as to the structure of the school system and the legal framework for religious education.

II. DESCRIPTION OF THE GENERAL SCHOOL SYSTEM

The Estonian school system consists mainly of state and municipal schools. Thus, the primary place for religious education is in public

30 Haridusministeeriumi ringkirjad (Tallinn 1932): 79–80.

31 P. Valk, *Ühest heledast laigust Eesti kooli ajaloos* (Tallinn: Logos 1997), 38–39.

32 O. Schihalejev, 'Meeting Diversity: Students' Perspectives in Estonia' in *Encountering Religious Pluralism in School and Society: A Qualitative Study of Teenage Perspectives in Europe*, ed. T. Knauth et al. (Münster: Waxmann 2008), 248.

schools. Religious education in Estonia is a voluntary, non-confessional (non-denominational) subject. As to the typology of RE, it is intended to be a mix of teaching about religions and ethics.³³ The type of religious education reflects Estonian constitutional principles of neutrality/separation of the State and Church ('There is no State Church', Art. 40 Estonian Constitution³⁴), non-discrimination and freedom of religion and belief. The teachers of religious studies are paid from the state or municipal budget. The teachers of religious studies have to have both theological and pedagogical preparation (there are some exceptions). Confessional religious education is provided for children by Sunday schools and church schools operated by congregations. Religious organisations can set up private educational institutions.

Compulsory school attendance begins when a child reaches the age of seven. Basic education school is divided into three stages of study: stage I – grades 1–3 (7–10 year olds), stage II – grades 4–6 (10–13 year olds) and III – grades 7–9 (13–16 year olds). After basic school students may attend upper secondary school (gymnasium), a secondary vocational school or enter a profession. Only basic school is compulsory.

As to religious education classes, parents decide about the participation of their children in religious study lessons at basic school. Parents have to give their consent for children younger than 15 years. At the gymnasium level (upper secondary school), students decide this independently. This is different from the regulation of religious

33 According to the classification provided by *C. Evans*, it can be argued that the RE in Estonia fits most comfortably within the category of 'plural religious education', that is students learn about the basic practices, beliefs, rituals etc of a variety of religions. They are presented with information about these religious traditions but are not taught that any of them are (un)true. The instruction also extends to philosophies and beliefs of a non-religious nature. *C. Evans*, 'Religious Education in Public Schools: An International Human Rights Perspective' HRLR 8 (2008) 461. Religion in Estonian schools is also taught within other subjects, for example, art, history and literature (*Evans* calls it 'incidental RE') to the extent necessary to understand certain topics or visual art.

34 RT I 1992, 26, 349.

education in 1923–1940. According to the law, at that time parents' consent was necessary until adulthood (18 years of age).

In 2006–2007 there were about 50 schools, out of a total of 601, teaching a subject related to religion, mostly for a year or two for 7–10 year old students or a year in upper secondary school (16–19 year old students).³⁵ In 2009 of 575³⁶ basic education or upper secondary schools, 47 provided religious education and 84 provided related or some alternative subjects to religious education.³⁷ It has been exceptional for schools to offer systematic religious education classes in all grades. Students who have chosen such classes normally have an extra lesson at the end of the school day. As a rule, there has been no alternative subject to religious education (for example, ethics) for pupils who do not attend religious studies lessons. Some schools have religious education as a compulsory subject, calling it the “choice of the school” and terming it religious studies, history of religions, or cultural studies.³⁸ Although essentials of the compulsory school system are regulated centrally, schools have had relative freedom to develop their own profiles and curriculum within the given framework. However, indoctrination or teaching into religion in public schools would not just be unacceptable under the Estonian Constitutional framework, but would most likely also trigger a social outcry.

III. CURRENT LEGAL FRAMEWORK

There is no explicit mention of religious education in the Constitution. Article 37 of the Estonian Constitution creates the basis for the

35 Currently there are 575 schools. Ministry of Education, www.hm.ee, 1 May 2010. Exact data about religious education provided by schools is rather sketchy to say the least.

36 Haridus- ja Teadusministeerium, www.hm.ee, 24 June 2010.

37 Interview with *Ms. Kristel Vahter* from Ministry of Education and Research, 22 June 2010.

38 *O. Schihalejev*, ‘Dialogue in Religious Education Lessons – Possibilities and Hindrances in the Estonian Context’, *British Journal of Religious Education* 31, no. 3 (2009): 280.

entire school system, but does not specifically mention religious education.³⁹ According to the Estonian Constitution provision of education is supervised by the State.

There is no specific law solely on religious education. In addition to the Constitution, Article 2 of the Education Act (**EA**, *Haridusseadus*) sets general objectives and levels of education, stating *inter alia* that: the fundamental principles of education are based on the recognition of universal and national values, of the individual and of freedom of religion and conscience.⁴⁰

The laws specifically relevant to RE, are the EA and The Act of Basic Schools and Gymnasiums (**BSG**, *Põhikooli- ja gümnaasiumiseadus*).⁴¹ The laws affecting RE have been changed recently. Until 1 September 2010, Article 4 (4) of the EA set forth that the study and teaching of religion in general education schools is voluntary and non-confessional.⁴² The BSG set forth that religious education is compulsory for the school if at least fifteen pupils wish it to be taught.⁴³ Article 3 (4) of this Act also specified that religious education is non-confessional and voluntary.⁴⁴ There was no unified curriculum provided by the State, however, there were guidelines.

39 Article 37 of the Estonian Constitution:

(1) Everyone has the right to education. Education is compulsory for school-aged children to the extent specified by law, and shall be free of charge in state and local government general education schools.

(2) In order to make education accessible, the state and local government shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained pursuant to law.

(3) Parents shall have the final decision in the choice of education for their children.

(4) Everyone has the right to receive education in Estonia. The language of instruction in national minority educational institutions shall be chosen by the educational institution.

(5) The provision of education shall be supervised by the State.

40 RT I 1992, 12, 192; RT I 2010, 41, 240 (last amended).

41 RT I 1993, 63, 892; RT I 2008, 18, 125; Art 3 (4).

42 RT I 1992, 12, 192; RT I 2007, 12, 66.

43 This provision was introduced in 1999. Before the adoption of this provision it was likely that schools just did not provide religious education even if there were pupils who wished to be taught. The reasons for this varied (financial, lack of human resources, overloaded curriculum etc.).

44 RT I 1999, 24, 358.

The new BSG, adopted on 9 June 2010, took effect on 1 September 2010. There are many aspects to this new law which are unclear and need to be tried out in practice. It is also likely that some further amendments to the law are needed.⁴⁵

The new BSG⁴⁶ introduced a few changes to the school system in Estonia generally. As to the RE, the above mentioned provisions in the EA and BSG have been removed. The new BSG mentions RE as one of the voluntary subjects (Art 15 (4)). Although schools have relative freedom to provide and design their voluntary courses, the courses on RE have to follow the State provided syllabus (Art 15 (4)).⁴⁷ This is a result of intensive debates on RE which were held after the end of the Soviet occupation in 1991, and it seems to be an attempt to unify and establish control over the content of religious education nationally. There is another change relating to RE: in gymnasiums (upper secondary schools) depending on the modules the student chooses RE may become compulsory once chosen. Although, the regulation entered into force on 1 September 2010, the latter provision does not necessarily take effect in all schools until 1 September 2013 (BSG, Art 89 (1)). According to Art 17 (4) of the BSG, the school may also take into account (accept) that a student takes classes in another school (basic or upper secondary), provided there is an agreement between his parents and the school's director. This provision may become relevant as regards RE, for example, in the case of a student who wishes to take confessional RE in a denominational basic or upper secondary school. However, implications of this provision are not clear.

45 There was surprisingly little debate regarding the RE considering furious debates held in the past 18 years. See XI Riigikogu Stenogramm, V Istungjark, 25.03.2009; XI Riigikogu Stenogramm, VI Istungjark, 25.11.2009; XI Riigikogu Stenogramm, VII Istungjark, 02.06.2010; XI Riigikogu Stenogramm, VII Istungjark, 09.06.2010. Available at www.riigikogu.ee, 1 December 2010.

46 RT I 2010, 41, 240 (entered into force 01.09.2010, some provisions, however, enter into force at a later date).

47 On January 2010 the Ministry of Education and Research adopted two regulations about the new syllabus for basic schools (RT I 2010, 6, 22) and for gymnasiums (RT I 2010, 6, 21).

The requirement that the school has to provide RE if at least fifteen pupils wish it to be taught is now set forth in Art 11 (3.7) of the National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*) adopted by the Ministry of Education and Research in January 2010.⁴⁸ This provision is absent in the National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*) adopted by the Ministry of Education and Research on January 2010.⁴⁹ It is not entirely clear whether a Basic school still has an obligation to provide RE if 15 students wish to be taught. All in all, there are many discrepancies in the new BSG and between the BSG and governmental regulations. The regulations providing the National Curriculum were adopted before the new BSG was adopted. The BSG and the regulations still need to be synchronized/harmonized. The matter is also complicated by the fact that both the law and regulations take effect gradually over the three year period.

Home schooling is allowed in accordance with the regulations adopted by the Ministry of Education (§ 8 (3) Education Act). According to the current regulation a parent can apply for home schooling.⁵⁰ The decision is made by the relevant school council. The parent is responsible for managing and financing the home schooling. He or she is also responsible for the quality and results of teaching. In regard to the syllabus, individual work plans and grading of home schooling is conducted in co-operation with the relevant school. There is no requirement for a parent to specify what the reasons for opting for home schooling are. Thus, it is possible that some parents opt for home schooling on religious grounds. There is no information available in this regard. The emphasis seems to be on the quality of home schooling, which can be assured in co-operation with the relevant school and according to the individual work plan and obligatory syllabus. There have been no known cases in practice indicating a conflict of interest in this regard.

48 RT I 2010, 6, 21.

49 RT I 2010, 6, 22.

50 RTL 2008, 3, 27.

There are also no known cases of school students (or their parents) trying to opt out from, for example, obligatory biology or physical education classes on religious grounds. It is difficult to speculate what the interpretation of the law would be in these cases. Estonia does not consider itself a country of immigration. The social fact is that it is not yet facing any of the challenges related to the growing Muslim communities experienced in other European countries. As regards believers in creationism, no issues have been raised so far.

As to religious symbols at school, there have been no known cases of conflict of interests/rights. There is very little socio-political debate going on in this regard. Religious symbols like crucifixes have not been displayed in public schools, at least since 1940. As to other symbols, as mentioned above, Estonia does not have significant immigration from any countries, including countries with a Muslim population. There are no rules prohibiting the wearing of religious garb in state schools. This tolerance is perhaps a reaction to Soviet times when all schoolchildren were obliged to wear school uniforms. However, both state schools and private schools have the right to establish internal rules of the school (BSG, Art 68). Today many private schools require school uniforms and so far this requirement has not been disputed. There are also no rules prohibiting the wearing of religious garb by teachers, and no reports of any difficulties at this time. It is simply speculative at the moment as to how the Estonian legislature or courts would react if someone (e.g. parents) disputed the wearing of religious garb in state schools either by students or by teachers. The ideal may be to teach children to respect differences and bring them up in an atmosphere of mutual respect.

There are no known cases of conflict as to opting out for religious holidays and law does not specifically regulate the matter. However, students may be absent from school for well grounded reasons. It is hard to speculate at the moment as to what the legal solution would be in cases of conflict regarding a student or a teacher taking days off in order to celebrate religious holiday in accordance with their faith.

Benediction of schools or school buildings is a quite common practice. There are a couple of reports of school children being forced to participate in services at the beginning of the school year. Generally, the way to solve possible conflicts has been to follow the principle of voluntary participation.

IV. CURRENT DEBATE

Unlike other countries with non-confessional models of religious education, in Estonia religious education is an elective, not a required course. There have been debates to re-organise voluntary religious education into compulsory education. One of the concerns opposing the reorganisation goes back to some negative experiences from the first days of religious education in state schools after regaining independence. When schools became open to religious education, many eager people without pedagogical experience and professional skills rushed to teach it. Sometimes religious education turned into confessional instruction in schools.⁵¹ The lack of an adequate number of teachers with sufficient professional and pedagogical preparation to communicate this subject is acute even today. There was also a lack of adequate course materials for non-confessional religious education. The first textbooks and handbook for teachers were translated from Finnish. In basic education schools they introduced Bible stories and were generally meant for students from a Christian background. In upper secondary schools (gymnasiums) world religions, church history, dogma and bible studies were addressed. The recommended text on didactics of religious education was also more suitable for confessional religious education. How-

⁵¹ P. Valk, Development of the Status of Religious Education in Estonian Schools. European and Local Perspectives, Conference on Law, Religion and Democratic Society, Estonia, University of Tartu (1999). Conference materials are available at the University of Tartu Faculty of Law Chair of Public International Law and EC Law.

ever, gradually adequate materials provided by Estonian authors have emerged.⁵²

Amongst opponents of compulsory religious education the major concern has been that it could turn into promotion of one brand of religion – Christianity. There has also been a concern that teachers of religious education have a mostly Christian background, and thus cannot deliver instruction in the subject objectively. These concerns are very similar to those expressed in the 1920s and thus cannot be completely attributed to Soviet propaganda during the 50 years of occupation. It also needs to be noted that some proponents of compulsory religious education, including churches, have considered it to be necessary to have an emphasis on Christian religion considering the cultural background of the country. This has been seen as problematic. The major concern has been the protection of freedom of religion or belief of students and parents, both non-believers and non-Christians. These concerns also seem to relate to rather controversial attempts to re-build national identity after the occupation. Strong political/governmental favouritism of traditional religions has added an extra dimension to this debate.

In 2001 representatives of non-Christian religions⁵³ formed an informal body called the Roundtable of Religious Associations, as a reaction to the proposal to make religious education compulsory in State schools.⁵⁴ They criticized the draft curriculum as biased and Christianity centric. In his 2003 report the Chancellor of Justice expressed the opinion that the State does not have to guarantee absolutely equal presentation of world religions in the curriculum. He stated that it is justified to include Christianity in the curriculum because of the cultural and historic background of Estonia. But he

52 *O. Schihalejev*, *Estonian Young People, Religion and Religious Diversity: Personal Views and the Role of the School* (Tartu, Tartu University Press 2009), 50.

53 The Taara and Earth believers, the Baha'i Congregation, local branch of the ISKON, two Buddhist congregations, the Jewish Organizations and the Estonian Islamic Congregation.

54 *T. Vakker/P. Rohtmets*, *Estonia: Relations between Christian and Non-Christian Religious Organizations and the State of Religious Freedom, Religion, State/Society* 36, no. 1 (2008): 50–51.

also pointed out that presentation of Christianity should not become the prevailing subject in the curriculum. He warned that the majority of qualified teachers are of Christian background and this can offset the balance. He also emphasised that compulsory religious education would be possible only if the State guarantees a balanced representation of world religions.⁵⁵ Concerns about compulsory religious education have also been expressed by many leading writers, actors and columnists, whose opinion matters and influences the public debate.⁵⁶

As a reaction to new proposals and debate in 2008, the President of the Estonian Academy of Science expressed his opinion at the general meeting of the academy that religious education should be voluntary in upper secondary schools and should not be allowed in basic school at all. He expressed the concern that children at that age are not sufficiently protected from the possibility that non-confessional religious education turns into confessional instruction. He also expressed the view that introducing religions within history classes is sufficient. Elaborating his argument further expressing the view that teaching about religions has to be contextual, meaning it should be taught in the context of history and society. Placing teaching about religions outside an historical context is, in his view, a gross methodological mistake.⁵⁷

The idea that religion can be sufficiently covered within other disciplines, such as history and arts, has been held by many in the academic and educational community. The drawback to this idea is that those subjects are already overloaded and teachers may not be sufficiently qualified to talk about religions, so that what may theoretically be a good idea may not necessarily be good in practice.

55 Õiguskantsleri 2003.-2004. aasta tegevuse ülevaade, Tallinn, 2004, 169. Available at <http://www.oiguskantsler.ee>.

56 See e.g. A. Kivirähk, 'Majamaniakind ja usundiopetus' [House-maniacs and Religious Education], *Ärileht*, 4 November 2006.

57 R. Villem, Speech at the General Assembly of the Estonian Academy of Science (10.12.2008), <http://www.akadeemia.ee/repository/File/TEGEVUS/ETTEKANDED/RV%2010.12.08.PDF>, 1 May 2010.

To summarize the debate, there is some agreement as to the need to teach students about religions. However, there are different opinions as to how religious education should be taught. As shown above, views vary regarding the age at which religion needs to be introduced in schools and by whom it needs to be taught. There are also some additional practical and broader structural problems which relate to the school curriculum and teaching methods as a whole. According to some estimations the curriculum is generally overloaded. It is also fact oriented, leaving little time for students to develop discussion skills and form their own opinion. As the curriculum is overloaded, non-confessional religious education is often pushed to the fringe of the school day. Although reforming the educational system in Estonia has been slowly moving from a teacher-centred to a student-centred approach, the reform is still in progress. Regarding religious education specifically, the major concern has been its content and purpose. Concerns have been expressed as to how to strike a balance between Christianity and other world views.

However, as noted above, there are some new developments, which may indicate that agreement on these issues is a fraction closer. As religious education is a voluntary subject, for a long time there have only been guidelines as to how it should be conducted. In January 2010 the Ministry of Education and Research adopted two regulations about the new syllabus for basic schools⁵⁸ and for gymnasiums.⁵⁹ These regulations entered into force on 1 September 2010. According to these regulations, schools still have relative freedom to put together their own syllabus. However, the regulations specify that the syllabus for religious education needs to follow the syllabus provided by the Ministry of Education. This seems to be an attempt to unify and establish control over the content of religious education nationally.

The model syllabus for religious education adopted by the Ministry of Education seems to have grappled with some of the concerns

58 RT I 2010, 6, 22.

59 RT I 2010, 6, 21.

expressed in previous debates. However, it remains to be seen whether this syllabus is convincing enough to pave the way for compulsory religious education at all school levels. It also needs to be seen how it will work out in practice.

The model syllabus seems to be a mix of learning about religions and ethics (broadly defined). The aim is to give a non-confessional overview of world religions and to help students to understand the impact of different religions in world culture, and most importantly, to prepare them for life in a pluralistic and multicultural world. Not only are religious world views covered, but also non-religious views. Topics such as secularisation and the relationship between science and religion are also included. The syllabus seems to be aimed at teaching into tolerance. It is intended to develop religious literacy and readiness for dialogue by introducing different world religions/views. An interesting aspect is that it encourages students' abilities to recognize and understand religious discrimination and analyze both positive and problematic religious manifestation in context. Discussions are also held about existential questions. There are obviously differences in methods of teaching and learning according to the age of students.

The preambles of both the basic school and upper secondary school syllabus emphasize that religious education is founded on the UN Declaration of Human Rights. Religious education is a precondition for protection of freedom of religion or belief. The aim of religious education is to provide knowledge about religion in order to help students understand the world, its culture and the role of the religious dimension in human life. It also emphasises the importance of learning about local religions and cultural heritage. An important aim of religious education is to support pupils' moral development and special attention must be paid to the problems of pupils' everyday life and their questions. The syllabus seems to take into account

some of the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools adopted by OSCE/ODIHR in 2007.⁶⁰

Thus, there is a strong emphasis on learning how to navigate in a multi-religious world, while remaining open-minded and critical at the same time. Dialogue and respect seem to be the keywords which characterise both the curriculum of basic schools and gymnasiums. As to the methods of teaching, there seems to be a strong emphasis on a student-centred approach. All in all it seems to be a rather convincing syllabus, which should satisfy people from various belief backgrounds. However, it is rather ambitious and it needs to be seen how it will work in practice. Ideally individual failures should not hinder religious education as such again, especially taking into account that education is the key to the eradication of many problems related to religion.

V. RELIGIOUS SCHOOLS

Religious organizations can set up private educational institutions with curricula and diplomas recognized by the secular state. The Private Schools Act (**PSA**, *Erakooliseadus*) regulates the establishment of private educational institutions at all school levels (pre-school, basic, secondary, vocational and higher education).⁶¹ These private schools need to obtain a licence from the Ministry of Education and Research (PSA, Art 5 (1)). As noted above, according to the Estonian Constitution (Art 37), provision of education is supervised by the State. Sunday or Bible schools run by churches and congregations do not need the licence. The licence is issued for a certain period of time for up to five years (PSA, § 5 (2¹)). It is also important in order to apply for funding and projects financed by the State or municipal government. Only a

60 Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools (Warsaw: OSCE 2007).

61 RT I 1998, 57, 859; RT I 2010, 41, 240 (last amended).

few religious organisations have established schools⁶² in accordance with the Private Schools Act.

Private schools have relative freedom as regards curriculum, ethos and admissions. The manager of a private school approves the curriculum. The curriculum is entered into the Estonian Education Information System upon the issuing of a licence (PSA, § 11 (2)).

According to the amendments applicable from 1 September 2010, Art 11 (5) of the PSA explicitly sets forth that it is allowed to provide confessional religious education in private educational institutions (previously there was no explicit mentioning of this).⁶³ This is a general provision which applies to all private schools not just confessional ones. The PSA further states that the confessional RE is voluntary. Thus, one can discern from this that there is no legal obligation to provide confessional RE and even in confessional schools, which provide State-licensed basic or upper secondary education, confessional RE must be voluntary. There is no provision as to the number of students needed for this kind of course. The confessional RE is provided according to the conditions and rules established by the school.

Private educational institutions when providing State licensed/state supervised basic or upper secondary education have to follow the standards set in the National Curriculum for Basic Schools⁶⁴ or Gymnasiums.⁶⁵ The National Curriculum applies to all schools regardless of their legal status (public or private), if specific laws do not provide different regulation (for example, PSA). This means that according to the new law and regulations private educational institutions may be also required to provide non-confessional voluntary RE to their students as set forth in the BSG and in the National Curriculum. This can be seen as justified considering the need

62 Private schools can be established *inter alia* by non-profit organisations (PSA, Art 2¹), including religious associations.

63 This provision was included by the new BSG which amended several paragraphs of the PSA (See Art 105 of the BSG).

64 National Curriculum for Basic Schools (*Põhikooli riiklik õppekava*), RT I 2010, 6, 22.

65 National Curriculum for Gymnasiums (*Gümnaasiumi riiklik õppekava*), RT I 2010, 6, 21.

MERILIN KIVIORG

to prepare students for a multi-religious/cultural society with an emphasis on respect and dialogue.

CONCLUSION

It seems that different factions of Estonian society have reached some level of agreement, that good general education also includes knowledge about religions. More importantly there seems to be some agreement as to the proportions and methods of teaching about religions and ethics. However, the implementation of the new BSG and National Curriculum is a complex process. There are many aspects to this new law which are unclear and need to be tested in practice.

RELIGIOUS EDUCATION IN FINLAND

MATTI KOTIRANTA

I. GENERAL BACKGROUND

Demography

Finland has 5,351,427 inhabitants (2009), of which about 888,323, nearly 17 per cent (16.6 %), are under the age of 14.¹

Population		5, 351,427
Religious Adherence	Lutheran 79.7 %	4,449,516
	The Greek Orthodox 1.1 %	58,445
	The Finnish Free Church	14,233
	Roman Catholics	9,672
	Adventist Churches	3,751
	Baptist congregations	2,382
	Methodist Churches	1,279
	Anglican Church in Finland	100

There are 22 different Islamic communities in Finland and they have an estimated 30,000 followers of Islam. Jehovah's Witness have 19,200 members, while the number of Mormons in Finland is 3,300. Jewish people constitute a community with 1200 members. In addition, some 13 % of Finnish population (700,000) is not affiliated to religious groups.²

1 http://www.stat.fi/til/vaerak/2009/vaerak_2009_2010-03-19_tau_003_fi.html.

2 *Kääriäinen/Niemelä/Ketola* 2005.

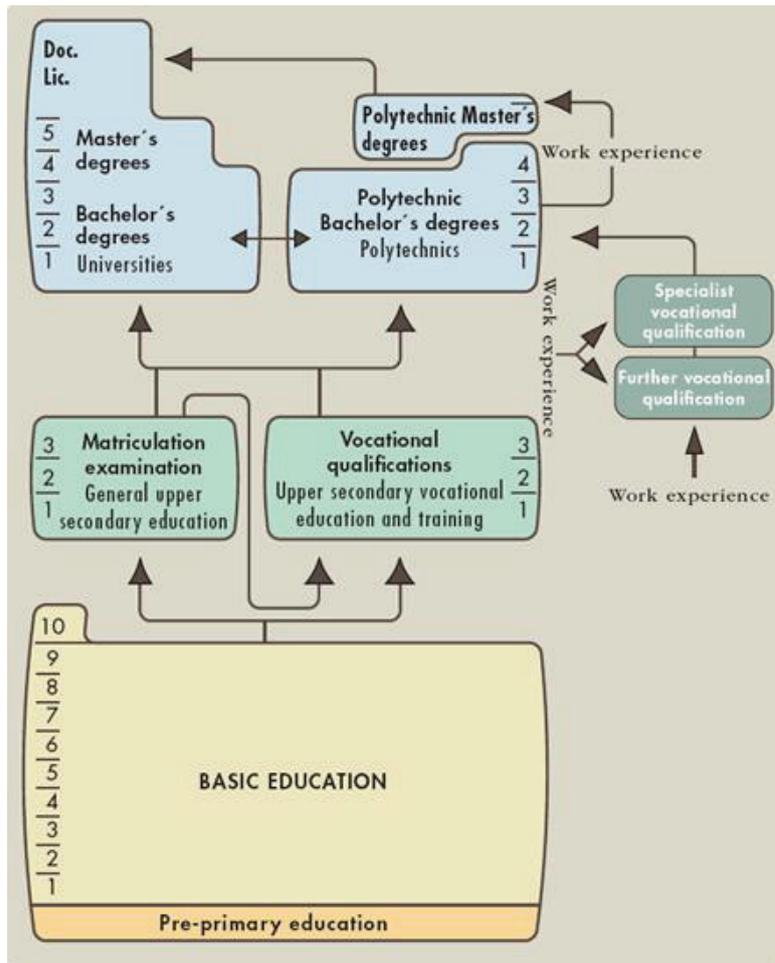
1.1. Education – Facts and Figures

In Finland, the basic right to education and culture *is recorded in the Constitution of Finland*.³ Public authorities must secure equal opportunities for every resident in Finland (not just Finnish citizens) to obtain education including following compulsory education and to develop themselves, irrespective of domicile, sex, economic situation or linguistic and cultural background.⁴ *Legislation provides for compulsory education and the right to free pre-primary and basic education*. Secondly, public authorities are also obliged to guarantee everyone an equal opportunity to obtain other education besides basic education according to their abilities and special needs, and to develop themselves without being prevented by economic hardship. Most other forms of qualifying education are also free of charge for the students, including postgraduate education at universities.

3 The Constitution of Finland, § 16 and § 17. See: <http://www.eduskunta.fi>. => In English/The Constitution of Finland.

4 In addition, the public authorities are obliged to provide for the educational needs of the Finnish and Swedish-speaking population according to the same criteria. Approximately 5.5 % of the population have Swedish as their mother tongue. Both language groups have the right to education in their own mother tongue. Regulations on the language of instruction are stipulated in legislation concerning different levels of education. The entirely Swedish-speaking Province of Åland has its own educational legislation. [Http://www.oph.fi/english/education/overview_of_the_education_system](http://www.oph.fi/english/education/overview_of_the_education_system).

Education Structure



(Source: http://www.oph.fi/english/education/overview_of_the_education_system)

Pre-primary education (Pre-school education) is provided in schools and day care centres. Pre-school education starts a year before children go to comprehensive school. The aim of pre-school education is to improve children's capacity and skills for school and learning. Participation in pre-school education is the child's right.

In 2009, pre-primary education [ISCED 0] was given to 12,580 children in conjunction with schools and 44,405 children in day care centres (total 56,989). This accounts for 99.4 % of the entire age group.

Participation in pre-primary education in 2005–2009.⁵

	2005	2006	2007	2008	2009
Pre-primary education in conjunction with schools	12,276	12,970	12,250	12,434	12,580
Pre-primary education in conjunction with day-care	42,943	43,090	44,061	43,499	44,405
Total	55,219	56,060	56,111	55,933	56,985
Participation in pre-primary education as percentage of 6 year-olds	95.2	97.9	99.8	99.5	99.4

In addition to local authority and state-owned educational institutions, pre-primary education may also be offered by private basic education providers.

Religious and ethical teaching is a statutory part of day care. In order to enable the participation of as many children as possible, religious education is broadly Christian in scope. As the variety of children's nationalities and cultures increases, there are more and more children in day care whose religious and cultural background differs from the Finnish tradition. This creates further challenges for religious education in day care.

Basic education *encompasses nine years* and caters for all those between 7 and 16 years. Schools do not select their students but

⁵ Sources: WERA Information Services, Finnish National Board of Education.

every student can go to the school of his or her own school district. Students are neither channelled to different schools nor streamed. Children start compulsory school at the age of 7. It is also possible to start school one year earlier or later based on medical psychologist or physician's statement.

After complementing basic education, a young person can continue studying or enter working life. If those who have completed basic education feel that their skills are not quite up to the standard required by further education, they can supplement their knowledge and improve on the school-leaving certificate marks by enrolling in **additional voluntary education in the so-called 10th grade**.

The government contributes to the financing of all schools. Nine years of basic education can be continued in two major ways either in **Upper secondary vocational education** and training or in **Upper secondary education**. Both vocational and upper secondary studies make it possible to continue one's studies in the polytechnic school or at the university.

In the Finnish educational system, religious education is given at two levels: in the basic education (grades 1–9) and in upper secondary school (years I–III), which follows basic education.⁶ In the upper secondary school there are three obligatory courses in religious education. A pupil can choose more courses if he or she so wishes. There are at least two extra courses available: world religions and religion in Finland. Upper secondary school leads to matriculation. Alternatively the basic education can be followed at vocational school. However, *there is no Religious education in vocational schools*.

There are only a few private schools in Finland. Compared with the total number of schools, the proportion of licensed private schools is small. Usually these schools are not based on religion or supported by religion. Licenses have also been granted for a few comprehensive schools which are based on religious confessions. The English school in Helsinki is a Catholic foundation. There are

6 Jakku-Sihvonen/Niemi 2006.

fewer than fifteen Christian schools and two other faith-related schools. For Children attending these schools the teaching and educational equipment are free of charge. There are no statistics of the number of religious pre-schools.

A major objective of Finnish education policy is to achieve as high a level of education and competence as possible for the whole population. The Finnish National Board of Education has expressed as its objective in the following way:

One of the basic principles behind the Finnish education policy has been to offer post-compulsory education to full age groups. In international terms, a high percentage of each age group goes on to upper secondary education when they leave comprehensive school: more than 90 % of those completing basic education continue their studies in general upper secondary schools or vocational upper secondary education and training. Issues of educational equality are among the key topics in the new Development Plan for Education and Research for 2007–2012. Its objectives include raising the level of [the] education of the population. The aim is that 92.5 % of the age group 25–34-years-olds will by 2015 pass an examination at upper secondary or tertiary level.⁷

1.2. Religion as a Subject of Instruction and Its Substitutes

Religious Education in the School System

Religious education has a very long tradition in the Finnish education system.⁸ *At the moment Religious education is a compulsory school subject* both in Finnish comprehensive schools (7–16 years) and in senior/upper secondary schools (16–18/19 years).⁹ In the literature, the current Religious education solution in Finland has been considered “weak confessional”. *Pupils study Religious education*

7 http://www.oph.fi/english/education/overview_of_the_education_system/historical%20overview.

8 Cf. *ibid.*

9 According to the Basic Education Act (628/1998), all children permanently residing in Finland are subject to compulsory education. Compulsory education starts in the year when a child becomes seven years of age and ends when the syllabus of basic education has been completed or 10 years after the beginning of compulsory education.

according to their own religious tradition. Because of this Religious education includes contents based on the respective traditions but does not include the elements of religious practice.¹⁰

In a nutshell the purpose of Religious education is described as follows:

The main purpose of religious education is to offer stimuli for the construction and development of students' own religious view on life by teaching them about their own religion, life and thinking of various religions, and by giving students the readiness to understand different world views. Therefore Religious education as a subject gives an opportunity to study and discuss major questions in religion and life. And students in all Religious education at school are respected as independent and truth-seeking individuals.¹¹

As quoted above, in RE the religious dimension of life comes under examination from the standpoint of the pupil's own growth as a broader social phenomenon. Religion is understood as a cultural factor in Finnish culture. Instruction in religion emphasizes the religious knowledge and readiness to encounter new religions and worldviews. In primary education the objectives of the instruction are to: 1) familiarize the pupil with his or her own religion, 2) familiarize the pupil with the Finnish spiritual tradition, 3) introduce the pupil to other religions, 4) help the pupil to understand the cultural and human significance of religions and 5) educate the pupil in ethical living and help him or her understand the ethical dimension of religion.¹²

Religious education is delivered in the religion of the majority. Because the majority of Finns are members of the Evangelical Lutheran Church of Finland, in practice the instruction in Religious education is given mostly according to the Lutheran majority. Religious education of other religious denominations will be organised if three conditions are met. Firstly, the denomination must be a registered religious community in Finland. Secondly, the denomination

¹⁰ *Ubani* 2007, 21; *Räsänen/Ubani* 2009, 58.

¹¹ <http://www.suol.fi>

¹² *Luodeslampi* 2007, 67.

must have a curriculum (so-called National Framework Curricula) approved by the National Board of Education. The system is not automatic, since some Christian minority groups are participating in Lutheran religious education lessons. And, thirdly, instruction is implemented if there is a minimum of three pupils in one municipality, who belong to the community and who will take part in this instruction. If religious education for their own religion or denomination is available, the pupil has no right to opt out of it. The status of Orthodox instruction differs from other religious minorities. If there is a minimum of three Orthodox children in municipality schools instruction is automatically provided and a parental request is not needed.

At the moment, National Framework Curricula are written for Lutheran, Orthodox, Catholic, Islamic, Adventist, Buddhism, Good's people (Protestant society), Free Church, Krishna-Society (IS-CON), Anthropological Society and Bahai's instruction. All of them are labelled Religious education but the official prefix expresses which curriculum is in use. Because Religious education is related to one's own religion every version of religious education has its own name, for example Catholic Religious education. *Pupils who do not belong to any religious community are taught Ethics. There is an alternative subject called "Life Questions and Ethics".* The National Board of Education has established its own general aims and principles for that subject. In Finland, the concept "exempted from Religious education" is no longer in use.

Over the past 30 years the interpretation of the term "confessional" has been problematic in Finland since its meaning changes when connected to religion. The previous law established freedom *from* religion. In contrast, the current law creates a positive right: freedom *for* religion. Within the Religious education curriculum the confessional and denominational concepts were ambiguous and caused problems under the old legislation. The new legislation helped to clarify good practice.¹³

¹³ Seppo 2003; Luodestampi 2007, 66.

The concept of “according to one’s religion” is new, a product of the new Act of Religious Freedom 2003. Religious education was defined as denominational. However, during the last two decades the Finnish Lutheran denominational Religious education has been understood as non-confessional in a spiritual or religious sense. The term confessional underlines the content of education.

The introduction of a new law on religious freedom in Finland in 2003 meant above all the removal of certain restrictions, which has to-date ensured that no cases of infringement of the First Supplementary Protocol to the European Convention on Human Rights (§ 2),¹⁴ with respect to education in accordance with one’s religion and convictions, have yet been brought before the Supreme Court. The new law differs in many respects from its predecessor, passed in 1922.¹⁵ The new law, and the consequent changes to the compulsory education law and the law on upper secondary schools,¹⁶ mean a consider-

14 Article 2 provides for the right not to be denied an education and the right for parents to have their children educated in accordance with their religious and other views.

15 It is very similar in structure, however, being divided into four main sections, the first containing provisions of a general nature, mostly connected with the individual’s freedom of religion and the use to be made of it, the second dealing with registered religious communities, their purpose, foundation procedures and forms and conditions of activity, the third containing regulations for application of the law on public assembly to the practice of religion and setting out sanctions for infringements of the law on requiring communication of data on the membership of religious communities to the authorities, and the fourth containing details of when and how the law should come into force and transition regulations.

16 § 13 of the law on compulsory education and § 9 of the law on upper secondary schools contain both old and new provisions on the rights of individuals and certain groups to receive instruction in their own religion or philosophy of life. As heretofore, the institution responsible for arranging compulsory education is obliged to ensure that those belonging to the majority religious group receive appropriate instruction. A new feature, however, is the provision that pupils or students who do not belong to any religious community shall attend classes in the majority religion only if they so desire, as indicated by their parents in the case of compulsory schooling or the students themselves at the upper secondary school.

Teaching in their own religion shall also be guaranteed to minority groups of at least three pupils belonging to either the Evangelical Lutheran Church or the Orthodox Church, while corresponding teaching shall be arranged for groups of at least three pupils belonging to some other religious group only on application from a parent or guardian or from the students themselves at the upper secondary school. The upper secondary school legislation grants students entering that level of schooling the right

able strengthening of the position of the teaching of religion in schools and a clarification of its nature and purposes. This is very clearly reflected not only in the laws themselves but also in the statement issued by the Parliamentary Education Committee and the report of the Constitutional Committee. It may be concluded from these and from the discussions held in Parliament that a very large majority of representatives were extremely favourably disposed towards pupils receiving teaching in their own religion.¹⁷

In the first place the right to instruction in religion or the philosophy of life had been clearly defined in the Constitution, so that the receiving of such instruction could be seen to be in agreement with the Constitution. Secondly, a distinction was made between instruction in one's own religion and religious observance as referred to in the Constitution. Those who emphasized the nature of religious instruction as a form of religious observance during the preparation of the new law were of the opinion that teaching of this kind should be made optional, with the alternative of teaching in the philosophy of life, or even that it should be replaced by a form of teaching on the world's religions that would be common to everyone. The minimum requirement was the right to opt out if the teaching contained events or rituals of a kind that could be regarded as religious observances.¹⁸

Parliament nevertheless established firmly that *religious instruction should not be equated with religious observance* and quashed all interpretations to that effect. This also brought years of wrangling on the subject to an end and removed the uncertainty experienced on this point in schools. It is important that no one among those obliged to attend classes in religious instruction should be able to demand exemption on the grounds of it taking on the nature of religious observance.¹⁹

to choose between religious instruction or teaching in the philosophy of life. *Seppo* 2003, 183.

17 *Seppo* 2003, 182–183.

18 *Seppo* 2003, 183.

19 *Seppo* 2003, 183.

Parliament also laid down that all syllabuses should be examined upon the new law coming into force to ensure that they met the requirement for instruction in the pupils' own religion in an impartial manner, and also to ensure that the religion and philosophy of life syllabuses for the upper secondary school contained "the foundations of the major religions of the world to the extent required for a good general education". This latter aim has now clearly been taken into account, at least as far as instruction in the majority religion is concerned.²⁰

The new law is also clearer than its predecessor from a material point of view, in that it transfers the regulations applying to individual detailed issues from the law on religious freedom to the relevant points in the general legislation.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

Working Conditions, Religious Symbols, Religious Garments

In Finland, there are no religious aspects to working conditions for teachers or other staff in public schools. The question of benediction of public school buildings has never been discussed. Nor is there currently any discussion in Finland concerning religious symbols (e.g. crucifixes), praying or religious services in public schools. The only public debate concerning crucifixes was briefly discussed by the Finnish media in November 2009, when The European Court of Human Rights ruled against the use of crucifixes in classrooms in Italy. The ruling marked the end of an eight-year battle by a Finnish-born mother, *Soile Lautsi*. She took her case to court after failing to get crucifixes removed from the school at which her two children were being taught at a town in north-east Italy. *Lautsi* appealed to Strasbourg in 2006 when her case was thrown out by Italy's constitutional court.

²⁰ *Seppo* 2003, 183.

The question of religious garments has not been discussed by the Finnish National Board of Education. The Board has not given official instructions for schools. In Finland there is no law or regulation, which forbids wearing religious garments (e.g. a scarf). Nor is there any legislation which gives permission to wear a scarf. Until now there has been no case at the local or upper courts concerning wearing of scarves or *burqa* (i.e. a black, all-covering garment with headscarf) in the basic education or in the upper secondary schools.

In Finland citizens are free to wear religious symbols (e.g. crucifixes or scarves) in public places. There are two exceptions to this rule. The first comes from safety regulations. The labour law obliges employers and employees to follow safety instructions. It is possible for instance, that it is not allowed to wear a scarf, if a person is working with machinery and this may be injurious to health. The second exception considers hurting one's religious feelings. The current penal provisions no longer protect God's honour, but rather religious convictions and feelings and religious peace. Religious peace means religious order, related to the general category "law and order". This means for instance that a person is not allowed to be dressed in an insulting way, which openly affronts the religious conviction of another.

Teachers

Teacher training in Finland is provided in universities. Religious education is given by two types of teachers: classroom teachers and subject teachers. The classroom teachers have completed a five-year M.Ed degree. The training includes the minimum of 2 credits in religious education. The classroom teachers are qualified to teach all subjects at grades 1–6 in basic education, including religious education. The age of their students ranges from 7 to 13 years.

The subject teachers are qualified to teach basic education in grades 7–9 and in upper secondary school (years I–III). The age of their students varies between 13–18 years. In principle, the requirement for a Religious education subject teacher is a master's degree in

Theology. The subject teachers major in Systematic Theology, Church History, Bible Studies, Practical Theology, or in Comparative Religion. The Religious education teachers are of exactly the same status as the teachers of other school subjects. In other words, they are not employees of the Church or of an equivalent institution but are employed and qualified by the state. The majority of Religious education teachers are not ordained priests.²¹

The teacher training for subject teachers is 60 credits and lasts for one year. In contrast to many European systems, the training is given by a Department of Applied Sciences of Education and not by the Faculty of Theology. It includes studies such as Educational Philosophy, Psychology of Learning, Special Education, Didactics in Religious education and three teacher practices. The teacher training is popular among theology students. For instance, at the University of Helsinki only one third of the participants in the teacher training entrance examination are accepted onto this course.²²

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS, CURRENT DEVELOPMENTS AND CHALLENGES

There are, in Finland, no general provisions that give a pupil the right to be off school on religious holidays. The working year of the schools is normally divided into an autumn and a spring semester, allowing holidays for Christmas and New Year. Within the semesters, the Finnish National Board of Education decides on holidays, normally including Easter holidays. On the other hand, the parents of a pupil have the facility in the primary and secondary school of taking the child out of school for some days per year. The permission for exemption is granted by the school's head teacher.

21 Excellent national data on Religious education in the Finnish education system is available in *Räsänen/Ubani* 2009. This analyses Finnish data concerning empirical results on educational goals, pedagogical methods used and on orientation to religion, values, politics and institutions. See especially *ibid*, 61–67.

22 *Räsänen/Ubani* 2009, 59.

The current Finnish Religious education situation is recently established. In the 2000's Finnish teacher training has been reformed. As a result, research-based teacher training has been accepted as the guiding principle in Finland. Research-based teacher training consists of gaining a profound knowledge of a subject of study and the promoting the internalization of a research-oriented attitude towards teaching.²³ In practice this means that there is no possibility for opting out of Biology (e.g. due to believing in creationism).

Also new national curricula (covering 11 different religions) were published in 2004 and schools have made their syllabus on the basis of these. Parliament has made a clear decision about Religious education. There was a political idea to unite all forms of Religious education into a single subject. Parliament voted on the matter and the result was 75 % against a single Religious education model and in favour of "one's own religion" model. The new Act on Religious Freedom 2003 is made in positive terms. It creates the situation where everyone has the right to religion and not only to opt out.²⁴

In the future the development of multicultural Religious education could be remarkable in Finland. Now there are multi-faith schools in the largest cities, especially in areas of the capital, Helsinki. If this leads to more religions that have their own Religious education curricula then the cost providing Religious education will rise. As educationalist *Juha Luodeslampi* has emphasized, this might increase the pressure for integrated Religious education, but at the moment Parliament's opinion is clear. The right to 'one's own religion' has been affirmed in the recent debate and the cost implications are not the major consideration in determining that approach.²⁵ In a way, the system and its specific features will be subject to discussion. Changing ideas on education and religious pluralism as well as state intervention will all have an impact on the future education system of Finland.

23 See closer *Jakku-Sihvonen/Niemi* 2006.

24 See above notes 16–20 (*Seppo* 2003, 182–183); *Luodeslampi* 2007, 66.

25 *Luodeslampi* 2007, 69.

References

- The Constitution of Finland. See: <http://www.eduskunta.fi> => In English/The Constitution of Finland.
- Jakku-Sihvonen, Ritva/Niemi, Hannele.* 2006. Research-based teacher education in Finland: – Reflections by Finnish teacher educators. Research in educational sciences; 25. Finnish Educational Research Association. Turku.
- Kääriäinen Kimmo/Niemelä Kati/Ketola Kimmo.* 2005. Religion in Finland: decline, change and transformation of Finnish religiosity. Publication of the Research Institute of the Lutheran Church in Finland. Tampere.
- Luodeslampi, Juha.* 2007. Religious education in Finland. – Religious Education in Europe. Situation and current trends in school. IKO Publishing House. Oslo, Norway. Pp., 65–69.
- Räsänen, Antti/Ubani, Martin.* 2009. Finland: the Finnish RE teacher – a modern traditionalist. – How Teachers in Europe Teach Religion. an International Empirical Study in 16 Countries edited by *Hans-Georg Ziebertz and Ulrich Riegel.* Pp., 57–67.
- Seppo, Juha.* 2003. Uskonnonvapaus 2000-luvun Suomessa. Helsinki. [Religious Freedom in Finland].
- Ubani, Martin.* 2007. Young, gifted and spiritual: the case of Finnish sixth-grade pupils. Research report/University of Helsinki, Department of Applied Sciences of Education.

WERA Information Services. Finnish National Board of Education.

Internet-sources

<http://www.oph.fi>

http://www.oph.fi/english/education/overview_of_the_education_system

http://www.stat.fi/til/vaerak/2009/vaerak_2009_2010-03-19_tau_003_fi.html

<http://www.suol.fi>

RELIGION ET ÉDUCATION EN FRANCE

FRANCIS MESSNER

Le principe constitutionnel de laïcité n'a pas pour effet d'interdire toute activité religieuse dans les établissements d'enseignement. Au contraire, le cadre juridique organisant le système éducatif français (1) garantit par le biais de divers instruments la liberté d'instruction religieuse (2) tout en réglementant de manière très stricte les comportements et les expressions religieuses dans le cadre des établissements et des activités scolaires (3).

1. LE SYSTÈME ÉDUCATIF FRANÇAIS

En France, si l'on se réfère aux statistiques disponibles auprès du ministère de l'Éducation nationale pour 2008–2009, 11 938 311 élèves étaient inscrits dans les écoles (enseignement primaire), les collèges et les lycées publics et privés.

L'enseignement élémentaire, obligatoire pour tous les enfants à partir de 6 ans, regroupe 6 643 592 élèves. L'enseignement secondaire comporte les collèges et les lycées. Les collèges (3 189 763 élèves) accueillent les enfants issus de l'enseignement élémentaire. Les lycées d'enseignement général et technologique dont le diplôme, le baccalauréat permet de poursuivre des études dans l'enseignement supérieur scolarisent 1 446 866 lycéens. Enfin, les lycées professionnels préparent à l'exercice d'un métier (703 090 élèves). Par ailleurs, l'enseignement préélémentaire, plus connu sous le nom d'école maternelle, est facultatif. Il s'adresse aux enfants, âgés de 2 à 6 ans, mais ceux de 2 ans ne sont admis que dans la limite des places disponibles (près de 26,1 % des enfants de 2 ans sont inscrits à l'école maternelle). À partir de 3 ans, tous les enfants sont désormais accueillis.

La répartition du nombre d'élèves entre les établissements publics et les établissements privés repose sur un pacte implicite, environ 80 % sont scolarisés dans les premiers et 20 % dans les seconds. La rupture de cet équilibre pourrait entraîner des tensions d'importance au sein de la société française. En 2008–2009, 9 957 811 élèves étaient scolarisés dans 57 845 établissements publics alors que 2 025 500 élèves suivaient les cours dans 8902 établissements privés.

Conformément à l'article L 131-2 du Code de l'éducation, l'instruction obligatoire peut également être donnée dans les familles par les parents ou par l'un d'entre eux, ou par toute personne de leur choix. Quelques milliers de familles assurent directement l'instruction de leurs enfants. Cet enseignement est soumis à un contrôle annuel renforcé aux fins de vérifier si les élèves ont un niveau équivalent aux élèves scolarisés¹. La Mission interministérielle de vigilance et de lutte contre les dérives sectaires dénonce régulièrement dans ses rapports les risques potentiels encourus par les enfants scolarisés par des familles dont les parents sont membres d'un groupement susceptible d'engendrer des dérives sectaires.

2. L'ENSEIGNEMENT DE LA RELIGION ET DU FAIT RELIGIEUX

Selon des statistiques fournies par l'Église catholique, 80 % des enfants des écoles primaires publiques étaient catéchisés en 1950 alors qu'ils ne sont que 30 % en 2007. La part des élèves en aumônerie catholique d'enseignement public, qui sont au nombre de 3442 pour 5803 établissements du second degré, est très faible. Seuls 4,8 % des collégiens et 1,4 % des lycéens participent aux activités d'aumônerie². Dans les trois départements de l'Est (Haut-Rhin, Bas-Rhin et Moselle), près de 80 pour cent des élèves du premier degré suivent l'enseignement religieux, 40 pour cent dans les collèges et environ 10 pour cent dans les lycées.

1 Circulaire n° 99-074 du ministre de l'Éducation nationale du 14 mai 1999.

2 Enquête AEP 2003–2004, résultats et analyses, document dactylographié, 10 p.

Les aumôneries des lycées et des collèges publics en régime de séparation et dans les droits locaux des départements et territoires d'Outre-Mer ont dans leur quasi totalité été créées à la demande de parents catholiques. Les familles protestantes privilégient l'école du dimanche dispensée dans les annexes des locaux de leur culte alors que les enfants des familles juives pratiquantes sont, en grande partie, scolarisés dans des écoles privées où l'enseignement religieux fait partie intégrante des programmes de cours. Il en va différemment pour les trois départements de l'Est (droit local alsacien mosellan) où les élèves de trois religions regroupant quatre cultes statutaires (catholiques, protestants [luthériens et réformés], juifs) peuvent suivre un enseignement religieux sous forme de cours intégrés dans les programmes d'enseignement des établissements public d'enseignement.

Enfin dans les écoles privées sous contrat, l'enseignement religieux fait partie des programmes. Mais les élèves peuvent en être dispensés. Les écoles catholiques proposent en règle générale une heure facultative d'enseignement religieux confessionnel et une heure obligatoire de culture religieuse non-confessionnelle.

En droit interne français, la transmission de la foi est une des composantes de la liberté de croire et d'exercer sa religion, qui est un principe ayant valeur constitutionnelle. En effet contrairement à une idée reçue, le principe constitutionnel de laïcité n'interdit pas aux pouvoirs publics de faciliter l'éducation religieuse dans le cadre du service public de l'enseignement. Au contraire, l'État doit assurer aux élèves de l'enseignement public la liberté des cultes dont l'instruction religieuse est une des ses composantes. La loi codifiée du 31 décembre 1959, dont l'article premier précise que « l'État prend toutes dispositions utiles pour assurer aux élèves de l'enseignement public la liberté des cultes et de l'instruction religieuse », consacre solennellement la garantie de liberté de l'instruction religieuse. L'État est tenu d'en favoriser la mise en œuvre effective par un dispositif approprié.

La liberté d'instruction religieuse peut être mise en œuvre en droit français selon des modalités très différentes sous réserve toute-

fois que cette liberté puisse s'exercer pleinement. Elle peut prendre en régime de séparation la forme d'une journée de vacation hebdomadaire aux fins de dispenser des enseignements catéchétiques aux enfants concernés (A), la création d'aumôneries au sein des collèges et des lycées ou à l'extérieur de ces établissements (B) ou encore dans les départements du Rhin et de la Moselle, l'organisation d'un enseignement religieux intégré dans le cadre des programmes scolaires de l'enseignement public (C).

Par ailleurs, les pouvoirs publics sont susceptibles de mettre en œuvre une politique de renforcement de l'enseignement du fait religieux dans le cadre des disciplines existantes (D).

A. Le principe de la vacation hebdomadaire dans les écoles primaires en droit général

L'enseignement primaire, confessionnel depuis la loi du 15 mars 1850 (loi Falloux), a été séparé de manière radicale de la sphère de la religion par la loi du 28 mars 1882 (loi Ferry). L'école communale est, à dater de la publication de ce texte, complétée par la loi du 16 juin 1886 (loi Goblet), publique, gratuite, obligatoire et strictement laïque. Aux termes des articles 1^{er} et 2 de la loi du 28 mars 1882 codifiée (article L 141-4, Code de l'éducation), le contenu de l'enseignement ainsi que les locaux des écoles primaires publiques sont neutres. Par voie de conséquence, l'enseignement religieux ne peut plus être dispensé dans les écoles primaires publiques.

Un enseignement moral et civique remplace l'enseignement religieux. La loi fait obstacle à toute mise à disposition de locaux à un groupement religieux aux fins d'y dispenser une instruction religieuse. Enfin, d'une manière générale l'enseignement est confié à un personnel laïc. La rupture avec l'esprit et la lettre de la loi de 1850 est radicale, mais aux fins de respecter la liberté d'exercice des cultes des parents et « cette chose délicate et sacrée qu'est la conscience des enfants »³, l'article L 141-3 du Code de l'éducation impose aux

³ Jules Ferry, Lettre aux instituteurs du 17 novembre 1883.

écoles primaires publiques de vaquer « un jour par semaine outre le dimanche, afin de permettre aux parents de faire donner, s'ils le désirent à leurs enfants, l'enseignement religieux ». La loi du 9 décembre 1905, qui garantit dans son article premier la liberté de conscience et d'exercice des cultes, confirme ce dispositif dans son article 30⁴.

La journée laissée vacante pour l'enseignement religieux sera dans un premier temps fixée au jeudi⁵, puis transférée au mercredi⁶ pour enfin être remise en question aux fins de la déplacer vers le samedi dans le cadre d'une semaine scolaire continue. Le mercredi reste cependant et cela, conformément à un arrêté du 12 mai 1972, réservé à l'enseignement religieux mais l'inspecteur d'académie peut apporter des aménagements aux règles ainsi fixées après concertation avec les autorités responsables d'activités à caractère culturel et celles compétentes pour l'enseignement religieux. Une circulaire d'application du 24 avril 1991 précise que ces aménagements ne doivent pas porter atteinte aux conditions d'exercice de la liberté d'instruction religieuse.

B. Le régime des aumôneries des lycées et des collèges

Les fondements juridiques des aumôneries d'internats dans les établissements d'enseignement secondaire publics (collèges et lycées) en régime de séparation sont inscrits dans la loi du 9 décembre 1905. Aux termes de l'article premier de ce texte, « la République garantit la liberté de conscience et de culte ». Personne ne saurait être privé du droit d'exercer sa religion en raison de son confinement dans une enceinte publique. Le juge administratif considère que l'enseignement religieux est une des composantes de la liberté des cultes. Par

4 « Conformément aux dispositions de l'article 2 de la loi du 28 mars 1882, l'enseignement religieux ne peut être donné aux enfants âgés de six à treize ans, inscrits dans les écoles publiques, qu'en dehors des heures de classe ».

5 Arrêté du 18 août 1920.

6 Arrêté du 12 mai 1972, JO, 17 mai 1972, p. 4992; Décret du 13 mai 1985, JO, 14 mai 1985, p. 5419, modifiant le décret du 28 décembre 1976, JO, 4 janvier 1977, p. 93 et Circulaire du ministre de l'Éducation nationale du 24 avril 1991, JO, 24 avril 1991, p. 5908.

voie de conséquence, la création d'une aumônerie est obligatoire lorsque les élèves n'ont pas la possibilité de suivre l'enseignement religieux à l'extérieur de l'établissement⁷.

Parallèlement au statut des aumôneries d'internats la loi codifiée du décembre 1959 (loi Debré) a prévu la possibilité d'instaurer des aumôneries dans les collèges et les lycées. Ces normes s'appliquent sur l'ensemble du territoire français (régime de séparation et des territoires et départements d'outre mer) à l'exception des départements du Rhin et de la Moselle (droit local alsacien mosellan). L'instruction religieuse dispensée dans ces établissements relève exclusivement de la liberté de conscience et de culte des parents et des élèves. Elle ne s'impose pas comme un droit garanti aux confessions religieuses d'organiser cet enseignement. Le statut juridique des aumôneries découle des articles L 141-2, R 141-2 – 141-7 du Code de l'éducation complétés par des circulaires d'application.

La création d'une aumônerie est liée pour les établissements du second degré « à l'existence d'une demande émanant des familles »⁸. Ce service à caractère religieux ne peut être proposé par l'administration de l'établissement, ni par une autorité représentative d'un culte. Il s'agit d'un droit exclusif des parents d'enfants mineurs et d'élèves majeurs. Saisi par des demandes nominatives de parents ou d'élèves, le chef d'établissement est tenu de transmettre la demande au recteur d'académie en indiquant les effectifs prévus. Au vu des dossiers, le recteur d'académie décide chaque année de la création des services d'aumônerie dans les établissements ne comportant pas d'internat. Le pouvoir de décision du recteur n'est pas lié. Un éventuel refus doit toutefois être motivé. La création d'aumônerie d'internat est par contre obligatoire lorsque des parents la sollicitent (article R 141-2, Code de l'éducation).

Une circulaire du 22 avril 1988⁹ précise que la règle générale doit être de donner satisfaction aux vœux des demandeurs, même si

7 Conseil d'État, 28 janvier 1955, Association professionnelle des aumôniers de l'enseignement public, Rec. CE, p. 51.

8 Circulaire du ministre de l'Éducation nationale n° 88-112 du 22 avril 1988.

9 Id.

ceux-ci ne représentent qu'un très faible pourcentage de l'effectif total de l'établissement. Par ailleurs, le recteur dispose d'un pouvoir d'appréciation sur l'opportunité d'organiser un enseignement religieux dans l'école plutôt qu'à l'extérieur de l'école.

L'instruction religieuse est dispensée par un aumônier ou un responsable d'aumôneries, c'est-à-dire une personne désignée par l'autorité religieuse compétente pour exercer cette fonction¹⁰. Le responsable d'aumôneries et ses éventuels adjoints sont agréés par le recteur sur proposition des autorités religieuses. La révocation de l'aumônier intervient à la demande du recteur ou de l'autorité religieuse. Le paragraphe 2 de l'article 2 de la loi du 9 décembre 1905 n'interdit pas la rémunération des aumôniers. Dans les faits, si elle est effective pour les aumôniers, des prisons et des hôpitaux, elle est exclue pour les aumôniers des collèges et des lycées qui sont stipendiés par leurs cultes d'appartenance.

Le fonctionnement des aumôneries est fixé par la circulaire de 1988 qui s'applique à l'inscription des élèves et aux conditions d'organisation des services. L'administration scolaire est tenue d'informer les élèves, ou leurs parents lorsqu'ils sont mineurs, de l'existence d'un service d'aumônerie à l'intérieur ou à l'extérieur de l'établissement, créé conformément à la procédure fixée par le Code de l'éducation. L'initiative de l'inscription revient aux parents pour les jeunes de moins de 15 ans et à ces derniers lorsqu'ils ont plus de 15 ans¹¹. Cette première inscription n'a pas à être réitérée d'année en année. Elle vaut tant qu'elle n'a pas été modifiée par écrit.

C. L'enseignement religieux dans les écoles, les collèges et les lycées des départements du Rhin et de la Moselle

Le droit général des aumôneries, sous tendu par les lois de « laïcisation » de l'enseignement à la fin du 19^e siècle, se limite à dégager des mécanismes visant à garantir la liberté de conscience et de culte

10 Circulaire n° 79-452, 19 décembre 1979, BOEN 1979, p. 47.

11 Les parents peuvent cependant s'opposer à l'inscription. Il ne s'agit donc pas d'une majorité religieuse au sens strict du terme.

des parents et des élèves. Il en va différemment du droit local de l'éducation où l'enseignement religieux fait partie intégrante des programmes scolaires.

Les règles relatives à l'enseignement religieux en droit local alsacien-mosellan sont composites. Elles comportent des textes d'origine française (loi du 15 mars 1850 dite loi Falloux) et des textes d'origine allemande (loi du 12 février 1873 sur l'enseignement public et privé et son ordonnance d'application du 10 juillet 1873 ainsi qu'un règlement du 20 juin 1883). Cet arsenal juridique, qui a été maintenu suite à la désannexion¹², ainsi que les textes subséquents (décret du 3 septembre 1974 modifié) demeurent en vigueur dans les départements du Rhin et de la Moselle conformément à l'article L 481-1 du Code de l'éducation.

L'ordonnance du 10 juillet 1873 dispose dans son article 10A que « dans toutes les écoles, l'enseignement et l'éducation doivent tendre à développer la religion... ». Ce texte s'applique à la fois aux écoles primaires et aux établissements d'enseignement secondaire dans lesquels il a rendu l'enseignement de la religion obligatoire. Cette obligation s'impose cependant différemment selon qu'il s'agit du premier et du second degré.

Aux termes de l'article 36 de la loi du 15 mars 1850 (loi Falloux), les écoles primaires publiques sont confessionnelles. Cette norme tendant à instaurer des séparations en fonction des appartenances religieuses dans les écoles est atténuée par l'article 15 qui autorise les communes « à raison des circonstances et provisoirement, à établir ou conserver des écoles primaires dans lesquelles seront admis des enfants de l'un ou l'autre sexe, ou des enfants appartenant à un culte différent ». En pratique, il n'existe plus à l'heure actuelle de différence entre les écoles primaires confessionnelles – elles regroupent près de deux tiers des établissements – et les écoles interconfessionnelles. Mais contrairement à la situation qui prévaut en régime de séparation, les écoles primaires en droit local

12 Les textes formant le droit local de l'éducation sont demeurés en vigueur dans un premier temps à titre provisoire par une loi du 12 octobre 1919 puis définitivement par défaut d'abrogation explicite de cette loi par celle du 1^{er} juin 1924.

sont caractérisées par une prise en compte effective de la pluralité des expressions religieuses.

Un enseignement religieux confessionnel relevant des Églises catholique et protestante (UEPAL)¹³ ainsi que de la confession juive fait partie intégrante des programmes scolaires¹⁴ des écoles primaires. Cet enseignement, donné par ou sous la surveillance¹⁵ des différents ministres des quatre cultes reconnus, est d'une heure intégrée à l'emploi du temps hebdomadaire. Une seconde heure peut être demandée par les parents d'élèves¹⁶. Il est obligatoire en tant qu'il est lié à l'obligation scolaire en général, mais les élèves peuvent en être dispensés¹⁷. Ils suivent dans ce cas un enseignement « moral » de substitution. L'enseignement religieux dans l'école élémentaire initialement assuré par les instituteurs est depuis plusieurs décennies assuré en grande partie soit par un ministre du culte ou surtout par une personne qualifiée proposée par l'autorité religieuse¹⁸. Dans les écoles maternelles, l'administration organise une activité appelée éveil religieux.

Au contraire des écoles primaires, les établissements d'enseignement secondaire et technique n'ont pas un caractère confessionnel ou interconfessionnel. Mais l'enseignement de la religion pour les élèves des quatre religions statutaires (catholique, réformé et luthérien fédérés dans l'UEPAL, juif) fait là également partie intégrante des programmes de ces établissements. Les textes font obligation à l'administration d'organiser l'enseignement religieux¹⁹ mais les élèves mineurs peuvent en être dispensés à la demande des parents sans être tenus de motiver leur choix. C'est en ce sens qu'il faut interpréter la notion d'enseignement religieux obligatoire. L'obligation

13 Union des Églises protestantes d'Alsace et de Lorraine.

14 Article 23, loi du 15 mars 1850.

15 Cette surveillance reste très théorique lorsque le cours de religion est dispensé par un instituteur ou par un professeur des écoles.

16 Décret n° 74-763 du 3 septembre 1974 modifié par le décret n° 91-517 du 3 juin 1991.

17 Article 6, décret du 10 octobre 1936 et décret n° 74-763 du 3 septembre 1974.

18 Article 2, décret du 3 septembre 1974. La rémunération des ministres du culte et des catéchètes est assurée par l'État sous forme d'heures supplémentaires.

19 Conseil d'État, 6 avril 2001, n° 219379, SNES.

vaut pour l'administration et non pour les élèves. Dans la pratique, le formulaire de demande de dispense est un formulaire d'inscription. Les élèves majeurs et les parents des élèves mineurs optent soit pour une inscription à un enseignement religieux (catholique, protestant ou israélite), soit pour la dispense de cet enseignement.

La durée est de deux heures par semaine pour les groupes de 15 élèves et plus et d'une heure pour les groupes de 5 à 14 élèves. Il n'existe aucun texte juridique déterminant le contenu de l'enseignement religieux. Il relève de la compétence des autorités religieuses des quatre cultes reconnus, sur la base d'un consensus et d'un climat de confiance réciproque. Les personnels enseignant la religion sont essentiellement des agents non titulaires de l'État. Il s'agit de maîtres auxiliaires, de vacataires et de professeurs contractuels. Un nombre important d'enseignants a été titularisé dans le cadre des politiques de résorption de la précarité dans la fonction publique.

D. L'enseignement du fait religieux

L'enseignement du fait religieux en tant que sujet de connaissance et moyen de compréhension des sociétés ne constitue pas en France un enseignement à part mais est dispensé dans le cadre des disciplines scolaires existantes et plus particulièrement l'histoire. Les enseignants devraient dans le cadre de leur formation initiale et de leur formation permanente bénéficier d'une formation spécifique sous l'égide notamment de l'institut européen des sciences des religions de Paris. L'IESR dispose d'antennes dans quelques académies. Mais cette sensibilisation des enseignants au fait religieux ou à la culture religieuse repose sur le bénévolat et les stages sont mis en œuvre de manière très différenciée selon les académies²⁰.

20 Voir *Mireille Estivalèzes*, *Les religions dans l'enseignement laïque*, Paris, PUF, 2005, 309 p. et *Enseigner les faits religieux*, dir. *Dominique Borne et Jean-Paul Willaime*, Paris, Armand Colin, 2007, 223 p.

3. LES CONVICTIONS RELIGIEUSES À L'ÉCOLE PUBLIQUE

A. Les élèves

Les élèves sont tenus d'assister à l'ensemble des enseignements dispensés dans les écoles publiques et les écoles privées sous contrat. Le principe de neutralité des programmes d'enseignement vise tous les élèves quelles que soient leurs convictions religieuses.

Le droit pour les élèves d'exprimer et de manifester leurs croyances religieuses doit s'exercer dans le respect de l'obligation d'assiduité²¹. S'agissant des fêtes religieuses aucun texte réglementaire ne prévoit d'accorder des autorisations d'absence. Mais en pratique elles sont répandues. Les élèves juifs et musulmans absents pour motif de fête religieuse ne sont pas sanctionnés. Enfin le Conseil d'État estime que l'obligation d'assiduité n'a pas pour effet « d'interdire aux élèves qui en font la demande de bénéficier des autorisations d'absence nécessaires à l'exercice d'un culte ou la célébration d'une fête religieuse dans la mesure où ces absences sont compatibles avec l'exercice des tâches inhérentes à leurs études et le respect de l'ordre public dans l'établissement »²².

Une loi du 15 mars 2004 interdit aux élèves le port de tout signe religieux ostensible (voile islamique, grande croix, turban sikh, kip-pa). La loi autorise cependant le port de symboles discrets tels que croix, étoiles de David ou main de fatmas de petites dimensions.

B. Les enseignants

Les convictions personnelles des agents publics²³ et plus précisément des enseignants des écoles publiques ne doivent pas s'afficher visuellement: « les enseignants, du fait de l'exemple qu'ils donnent explicitement ou implicitement à leurs élèves, doivent impérativement éviter toute marque distinctive de nature philosophique, religieuse ou

21 Conseil d'État, avis du 27 novembre 1989.

22 Conseil d'État, 14 avril 1995, n° 15765-3, Koen.

23 Conseil d'État, 3 mai 2000, Dlle Marteaux, JO, 23 juin 2000.

politique qui porte atteinte à la liberté de conscience des enfants... »²⁴. Cette interdiction s'applique sur l'ensemble du territoire français à l'exception des écoles privées qui conservent leur caractère propre (article L 442-1 Code de l'éducation), des écoles primaires publiques tenues par des membres de congrégations en Alsace-Moselle²⁵ et enfin des aumôniers des collèges et lycées en régime de séparation et des professeurs de religion des établissements d'enseignement en Alsace-Moselle.

C. Les emblèmes

En régime de séparation, l'article 28 de la loi du 9 décembre 1905 interdit l'apposition d'emblèmes religieux « en quelque emplacement public que ce soit ». Les écoles, collèges et lycées font partie de ces emplacements. En Alsace-Moselle où la loi de 1905 ne s'applique pas cette question n'a pas été réglée par un texte juridique précis, ni par une décision jurisprudentielle. Des croix ont fort logiquement été placées dans des salles de classe d'écoles primaires confessionnelles catholiques ou protestantes. Actuellement ces écoles sont interconfessionnelles en droit et fait. Cette nouvelle situation a entraîné la quasi disparition des signes religieux installés sans fondement légal formel dans les écoles. Les collèges et les lycées sont non-confessionnels. Ils ne sont pas concernés par l'apposition de signes religieux sur les murs de leurs bâtiments²⁶.

24 Circulaire du ministre de l'Éducation nationale du 12 décembre 1989, JO, 15 décembre 1989; Tribunal administratif Versailles, 14 avril 1992, Mlle Braza c/ Collège « Parc des Tourelles ».

25 Ces écoles sont faute de personnel religieux en voie d'extinction.

26 *Jean-Marie Woehrling*, Les croix dans les salles de classes. Du droit local au droit européen, in *Revue du droit local*, mars 2010, 59, p. 27-34.

RELIGION IN PUBLIC EDUCATION – GERMANY

HANS MICHAEL HEINIG*

I. INTRODUCTION

In Germany, rules concerning the status of religion within the public educational system fit into the general framework of the constitutional law pertaining to religious communities. The *Grundgesetz* (German Basic Law) constitutes a legal order concerning religion, which is characterized by the principles of freedom and equality, benevolent support, neutrality of the state and separation of state and church.¹ The state established under the *Grundgesetz* is open to the religions of its citizens, precisely so that the state may not become religious or ideological itself.² Accordingly, religion plays an important role within the public educational system.

II. GENERAL BACKGROUND

I. Facts and Figures

The public educational system in Germany contains both state and non-state (albeit publicly funded) nurseries and kindergartens as well as a four-tiered school system. Since the organization of the nursery and school system in Germany is a matter for the German federal states (*Länder*), it is shaped by federal diversity.

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1 *Heinig*, ZevKR 2008, 235 et seq.

2 *Heinig*, JZ 2010, 359.

a) Kindergarten and Nursery

To this day, Germany is split when it comes to questions of pre-school education. In the German Democratic Republic, mothers in general returned to their jobs quickly after the birth of a child. A sufficient number of nurseries and kindergartens existed. In Western Germany, however, kindergartens have been designed as half-day care for a long time. Less than 50 % of all children born in a given year make use of these facilities at all. Since the time when this system was created, though, the needs of parents have changed fundamentally. For the past ten years, intensified efforts to increase the number of full-time care facilities in Western Germany can be seen. The reasons are diverse: partly they originate from a gender approach (compatibility of family and job as a demand of women's emancipation), partly they are associated with the development of the population in Germany (demographic change and decreasing population numbers); at the same time they are justified due to integration and education policies (language acquisition by immigrants, change of a facility to just store children to an actual pre-school educational facility). Following the most recent research, the availability of kindergartens in Western Germany is still insufficient – especially outside the big cities.³ A lot of kindergartens are run by churches and other religious organizations. The number of local kindergartens depends on regional influences and the local degree of religious membership.

b) Structure of the School System

Traditionally, education in Germany takes place first in shared *Grundschulen* (basic schools), before classes are divided and based on standards of performance in *Gymnasien* (grammar schools the graduation from which allows access to university), *Realschulen* and *Hauptschulen*. In some states independent orientation classes (*Förderstufe*) mark the transition from elementary school to higher schools. In addition to this three-unit system, there exist different concepts of

³ Bertelsmann-Stiftung, Ländermonitor Frühkindliche Bildungssysteme 2010.

Gesamt- (comprehensive school) and *Gemeinschaftsschulen* (community schools). Also parts of professional education are organized as school-classes (so-called *berufsbildende Schulen*, vocational schools).⁴

c) *Statistical Data*

There are in total about 35,000 *allgemeinbildende Schulen* (general-educational schools) (among which there are 16,000 *Grundschulen*, 4,200 *Hauptschulen*, 2,600 *Realschulen*, 3,000 *Gymnasien* and 700 *Gesamtschulen*) and 8,900 *Berufsschulen*. Of 9 million students in general-educational schools, about 7 % attend private schools. Schools and pupils are divided as follows:⁵

Students according to types of general educational schools			
Type of school	Academic year		Change ¹ in %
	2007/08	2008/09	
	absolute student numbers		
¹ Change in comparison to the previous year.			
total	9,183,811	9,023,572	-1.7
in detail:			
<i>Grundschulen</i>	3,082,499	2,997,074	-2.8
<i>Förderstufen</i>	101,564	104,552	+2.9
<i>Hauptschulen</i>	889,132	825,730	-7.1
<i>Realschulen</i>	1,278,092	1,262,545	-1.2
<i>Gymnasien</i>	2,466,041	2,468,949	+0.1

4 For details see Basic Structure of the Education System in the Federal Republic of Germany, http://www.kmk.org/fileadmin/doc/Dokumentation/Bildungswesen_en_pdfs/en-2009.pdf.

5 For further information see http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Navigation/Statistiken/BildungForschungKultur/Schulen/Tabelle_n.psml.

Students according to types of vocational schools					
Type of School	Academic year				
	2007/08		2008/09		Change ¹ in %
	absolute student numbers				
¹ Change in comparison to the previous year.					
² Including cooperative forms of one-year elementary vocational education.					
total	2,802,776		2,805,940		+0.1
part-time vocational schools ²	1,709,936		1,726,703		+1.0
Students in private schools according to school types					
Type of School	Academic year				
	2007/08		2008/09		Change ² in %
	absolute	percentage	absolute	percentage	
¹ Percentage of the students in private schools in comparison with all students.					
² Change in comparison to the previous year.					
total	912,300	7.6	926,426	7.8	+1.5
general-education schools					
total	674,892	7.3	690,757	7.7	+2.4
in detail:					
elementary schools	73,979	2.4	78,158	2.6	+5.6
<i>Förderstufen</i>	4,619	4.5	4,868	4.7	+5.4
<i>Hauptschulen</i>	25,783	2.9	25,452	3.1	-1.3
Schools with different types of schooling	8,651	2.9	11,237	3.7	+29.9
<i>Realschulen</i>	113,239	8.9	113,623	9.0	+0.3
<i>Gymnasien</i>	269,297	10.9	273,385	11.1	+1.5
integrated comprehensive schools	16,712	3.3	19,856	3.9	+18.8
vocational schools					
total	237,408	8.5	235,669	8.4	-0.7

2. Public and Private Schools with Religious Profile

a) Precedence of Public Schools over Private Schools

In the heartland of the Protestant reformation, the school system had long been shaped by the churches. Until the 19th century, churches were in charge of the local supervision of state schools.⁶ The reli-

⁶ See Link, *Kirchliche Rechtsgeschichte*, 2009, pp. 148, 177.

gious influence of the school system is recognizable even today in some of the federal states (*Länder*).

In Germany, public schools enjoy in some way precedence over private schools. The *Grundgesetz* does protect the foundation of private schools. However, it prescribes some requirements.⁷ Social segregation is to be avoided. These policies are especially strict when it comes to *Grund-* and *Hauptschulen*. As a result, there are a lot less private *Grund-* and *Hauptschulen* compared to the number of private *Realschulen* and *Gymnasien* (see table above). The special denominational or ideological character of a private school provides a legitimate reason for its founding. The constitutional precedence of public over private schools is interpreted as an expression of the idea of democratic equality and aims for social inclusion.

b) Christian Community School

To accommodate the regional characteristics of the religious influence on the school system, some *Länder* have provided special regulations for public schools. Partly public schools are run as Christian community schools (in the states of Baden-Württemberg, Bavaria, Rhineland-Palatinate) while in other states schools can be instituted as schools of religious denomination (cf. §§ 129 et seq. *Niedersächsisches Schulgesetz*, School Law of the State of Lower Saxony).

7 Art. 7 GG: (1) The entire school system shall be under the supervision of the state.

...
(4) The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the **Länder**. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

(5) A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as a denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

The characterization of public schools as Christian community schools was approved by the German Federal Constitutional Court (*Bundesverfassungsgericht*). However it is a prerequisite that the religious freedom of the students is safeguarded as well as that the school does not exhibit missionary traits. The school may only be Christian in the sense of accepting and communicating the cultural shaping power of Christianity. The aim must be the practice of mutual tolerance.⁸

c) State Funding of Private Schools

The school laws of the *Länder* all regulate the funding of private schools. Up to 90 % of the costs are reimbursed by the state. Private schools run by the churches take part fully in this funding.

Because of the freedom to establish private schools under constitutional law, the *Bundesverfassungsgericht* considers the state to be obliged to fund the schools, if otherwise the existence of the private school system was endangered.⁹

3. Religion as a Subject of Instruction and Its Substitutes

Art. 7 sec. 3 GG guarantees religious instruction in public schools. Art. 7 sections 2 and 3 read as follows:

“(2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.

(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state’s right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction. ...”

8 BVerfGE 41, 29 et seq.; 41, 65 et seq.; see also *Robbers*, in: von Mangoldt/Klein/Starck, GG, 6th ed. 2010, Art. 7, margin nos 42 et seq.

9 BVerfGE 90, 128 et seq.; 75, 40 et seq.; for a critique see *Heinig*, *Der Sozialstaat im Dienst der Freiheit*, 2009, pp. 403 et seq.

The norm reflects the basic principles of German constitutional law pertaining to religious communities: the public school is not free of religion. In this respect the German constitutional order is secular but not to the same degree as e.g. in France. Religion has its place in school and is a proper – that is, regular or ordinary – subject of education in schools.

From this character of religious education as an ordinary subject in school it follows that the state offers religious instruction, pays the costs and is responsible for the organization of classes. As a matter of principle, religious instruction is to be treated like any other subject: school attendance is compulsory and the grade is relevant for passing classes.¹⁰

However, according to the *Grundgesetz*, religious instruction is not to be provided as the secular study of religions, but to convey authentically religious teachings theologically in accordance with the religious affiliation of the students. Religious instruction therefore is given according to the denomination of the students in question. Because the religiously neutral state does not have a religion of its own, it must cooperate with religious communities for this kind of teaching. It is the religious communities which have to guarantee the authenticity of the teaching and the theological reliability of the teaching staff. This denominational character and cooperation with religious communities ensures that religious instruction is neither based on an anti-religious world view of the state, nor on a privileged state religion. At the same time the liberal-cooperative state has to respect negative aspects of the freedom of religion. Therefore the law provides for withdrawal of the student from religion classes and no teacher is obliged to give lessons in religious education.

In this sense, religious literacy concerning one's own denomination has to be understood as the expression of a strictly anti-totalitarian and liberal religious education in public schools.

¹⁰ *Robbers*, in: von Mangoldt/Klein/Starck, GG, 6th ed. 2010, Art. 7, margin nos. 130 et seq.

The question why this kind of religious instruction exists in the first place is not without political controversy. I see the following reasons as in favour of the current constitutional solution. Primarily, the focus is on religious education suited to the child's age in the sense of transmitting knowledge about religion. However, religion classes also play an important role to convey values and to strengthen the student's capability to make ethical judgments. In both perspectives a denominational religious literacy is more lasting than a general education in the science of religion and philosophical ethics. Finally a denomination-based religious education secures an element of religious socialization in the student's academic biography. In this sense, the public school becomes part of the process of religious rooting and homing. Therefore most of the pupils in Germany attend public schools, in contrast to, e.g., France where denominational private schools do not play an important role. This results, among other factors, from the fact that the religious interests of pupils and parents are taken into account by the denominational religious education in public schools.

A student who does not participate in religion classes (either after having withdrawn or because he or she belongs to a religious community the principles of which are not taught in religion classes) normally has to attend a substitute class (commonly referred to as "values and norms" or "ethics") according to the school laws of the federal *Länder*.¹¹ The constitutionality of such a substitute class has been confirmed several times.¹² It is reasoned that the legislator would be allowed to offer religion and ethics classes to all students. This view, however, may be questioned: Art. 7 sec. 3 of the *Grundgesetz* implicitly forbids the legislator from offering forms of classes which challenge the guarantee of religion classes as a regular (in other words, normal) subject of education. This requirement, though, cannot be fulfilled if ethics classes or religious studies (sci-

¹¹ See von *Campenhausen/de Wall*, *Staatskirchenrecht*, 4th ed., 2006, p. 214.

¹² BVerfG, 18 February 1999, Case no. 1 BvR 1840/98; BVerwGE 107, 75 et seq.; VGH B.-W., NVwZ 1998, 309 et seq.; Bay. VGH, 14 December 1998, Case no. 7 ZE 98.3211; VG Hannover, NVwZ 1998, 316 et seq.

ence of religion rather than theological instruction) were to be created as substitutes for religious education as a primary subject.

According to the *Grundgesetz*, special rules exist for Bremen and Berlin. Art. 7 sec. 3 *Grundgesetz* does not apply there (Art. 141 *Grundgesetz*). With this exception, the *Grundgesetz* considers traditional local conventions.¹³ After German reunification, it was disputed whether the so-called “*Bremer Klausel*” (Bremen clause) should generally be applied to East Germany. The *Bundesverfassungsgericht* avoided a clear statement. The action before the *Bundesverfassungsgericht* concerning the Brandenburg model, which implies nondenominational religious studies with a partial participation of religious communities, ended with a settlement.¹⁴ The regular class in Brandenburg is the subject “life skills – ethics – religion” (*LER*), which is exclusively organized by the state. However, students can withdraw from *LER* in favour of confessional religion classes.

But even outside these specific cases of Bremen, Berlin and Brandenburg, the practices of religious education vary between the different federal states. Depending on each *Land*, different minimum numbers of students are required for the creation of classes for a specific religion or denomination. The churches increasingly complain that the *Länder* are not ensuring education in this subject to the extent needed, in particular, that the states fail to reach all potential students in the state.

An unresolved problem is the establishment of regular Islamic religious education in public schools. The federal government and several state governments have expressed a political commitment to establish Islamic religious instruction. Art. 7 sec. 3 *Grundgesetz* requires the cooperation with the religious community in question. Islam, however, is currently not sufficiently organized to provide an adequate point of contact, that is, institutions with a clear structure of members for the state. Therefore, the states manage with the provi-

¹³ von Campenhausen/de Wall, *Staatskirchenrecht*, 4th ed., 2006, pp. 210 et seq.

¹⁴ BVerfG, joined cases no. 1 BvF 1/96, 1 BvR 1697/96, 1 BvR 1718/96, 1 BvR 1783/96 and 1 BvR 1412/97, Decision of 31 October 2002.

sional solution of offering education in Islamic studies, which is organized by the state with the aid of councils which include representatives of Islamic organizations.¹⁵ Such solutions promise immediate success but threaten to blur the difference between state-run and denominational religious education. In addition there is a danger that temporary solutions become permanent and that the pressure on the Islamic community to organize ceases, thereby threatening the long-term integration of Islam into the framework of Germany's constitutional law rules pertaining to religious communities.

Due to its guarantee under constitutional law, religious instruction formally has a strong position. It can only be abolished by changing the constitution. The model of imparting religious education through denominational teaching has proven itself in the past. This religious education contributes to a feeling of being at home in one's own religion and thereby allows the transmission of values in a sustainable manner. In this context, ethics is not imparted in philosophical abstraction but derived from religious wisdom. At the same time the development of a reflected religious certainty of identity particularly allows a sound analysis of other religions and world views. Therefore from a pedagogical point of view the increasing religious pluralisation in Germany does not put the model of denominational religious education in doubt. On the contrary: high quality religious education is more necessary than ever.¹⁶

At the same time, however, because of the weakening of the population's ties to churches and the plurality of religious affiliation in both East Germany and urban areas, the practicability of the constitutional approach to religious instruction is in question. Organizational efforts increase in order to reach the same number of students as before. At the same time, cooperation transcending the borders of denomination and religion for specific projects appears to be useful to improve understanding of religious plurality in society.

15 See http://www.deutsche-islam-konferenz.de/cln_110/nn_1864580/SubSites/DIK/DE/ReligionBildung/Schulversuche/schulversuche-node.html?_nnn=true. In North-Rhine Westfalia regular instruction in Alevite religion was established in summer 2008.

16 See also *Koriath/Augsberg*, ZG 2009, 222 et seq.

III. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

In public schools, religion is not only present in religious instruction, but also in other parts of school life. At the beginning of the school year many schools offer an (optional) initial religious service at school. Moreover, in former times prayers at school were widely spread (my English teacher used to start each lesson with a prayer in the mid-1980s). The Federal Constitutional Court approved these prayers at public school as an expression of the students' positive freedom of religion, on condition that no student is forced to participate, absence is not stigmatized and does not lead to discrimination.¹⁷

Since the mid-1990s, an increasing number of restrictions can be observed from the jurisprudence of the Federal Constitutional Court. In particular, two judgments have been discussed intensely: a judgment about a crucifix in a classroom and a case concerning a female teacher wearing a headscarf. Right now, another spectacular case is running through the stages of appeal. It deals with a Muslim student who initiated a prayer during recess in a public school.

1. Crucifixes in Classrooms

Already in the 1970s, the Federal Constitutional Court judged that freedom of religion demands that the crucifix in a court room be taken down if a person who is involved in the lawsuit so desires.¹⁸

In 1995 the court gave a landmark decision concerning crucifixes in classrooms. The decision resembles in many ways the decision of the European Court of Human Rights in *Lautsi v Italy*.¹⁹ The Bavarian state law on schools ordered that a crucifix had to be attached to

17 BVerfGE 52, 235 et seq.

18 BVerfGE 35, 366 et seq.

19 ECtHR, *Lautsi v Italy*, Application no. 30814/06, judgment of 3 November 2009, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=857725&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

a wall in every class room in primary and secondary schools. In the court of first instance, legal actions against this decision were not successful. However, the Federal Constitutional Court considered this specific rule of the Bavarian law to be unconstitutional.²⁰ Freedom of religion does not protect one from being confronted with other religions and religious views as well as their symbolization. However, students are subject to mandatory attendance at school. Thus, they are not able to avoid being confronted with the sight of the crucifix. This touches upon the students' negative freedom of religion as well as the parents' right to educate their children. Furthermore, so the Court held, the instruction to put a crucifix in every class room cannot be justified by reference to the meaning of the crucifix as a cultural symbol since the crucifix is the "religious symbol of Christianity *par excellence*" (author's translation). The Court skates on thin ice with this line of reasoning. It makes an apodictic statement about the theological meaning of the crucifix and thereby violates its own commitment to the state's neutrality in matters of religion and worldviews. It would have made more sense to admit the ambiguity of the crucifix. The perspective of the applicants (who were anthroposophists) was at least plausible: they interpreted the crucifix as a religious symbol, of which they disapproved. The government cannot counter this view by saying that they misinterpreted the meaning of the crucifix because the state would only remind those who see the crucifix of the cultural significance of Christianity. Rather, the negative freedom of religion and the rights of those who approve the crucifix in the classroom (the state's authority to supervise and decide about topics at school according to Article 7 sec. 1 GG, positive freedom of religion of Christian students, Christian parents' right to educate their children) have to be balanced.

The Bavarian school law has since made arrangements for proceedings in order to create such a balance (§ 7 sec. 3 Bavarian Law about academic affairs).²¹ The Federal Constitutional Court has ap-

20 BVerfGE 93, 1 et seq.

21 Art. 7 Abs. 3 BayEUG: Due to the historical and cultural characteristics of Bavaria, a cross is to be affixed in every classroom. This expresses the will to realize the highest

proved these.²² Theoretically, the questionable reasoning in the first decision of the Constitutional Court provided no space for such a solution (which allows for a kind of objection procedure). However, the first decision of the Court concerning crucifixes in classrooms led to significant resistance among the population and to protests against the Court – a new experience for the Federal Constitutional Court which is used to a large degree to be approved of by the people. Not the least against this background, the Court revised its strict stance in later decisions. It is to be hoped that the European Court of Human Rights (ECtHR) will follow suit. Considering the decision of the ECtHR, the current Bavarian norm would, even if not by the judges in Karlsruhe, be disapproved of by the judges at Strasbourg.

2. *The Headscarf and Teachers in Public Schools*²³

a) *The Story behind the Leading Headscarf Case*

In order to better understand the symbolic, meta-legal dimension of the legal proceedings about the headscarf, we should first look to the history of the leading case.²⁴ The name of the Muslim woman who took the headscarf-case to court, and thereby found a place in the annals of German legal history, is *Ferestha Ludin*. She was born in

educational aims of the constitution on the basis of Christian and occidental values while respecting the freedom of religion. Should the affixation of the crucifixes be opposed for reasonable and understandable reasons of faith or world views, the head of the school will aim for an agreement. Should an agreement not be possible he or she, after informing the school authorities, is to decide on an individual basis in a manner which respects the freedom of religion of those opposed to the cross and which balances the views and faith of everybody affected in that class in a just manner while taking into account as much as possible the will of the majority. (translation by the author).

22 BVerfG, NJW 1999, 1020 et seq.; BVerfG, VR 1998, 142 et seq.; see also Bay. VGH, NJW 1999, 1045 et seq.; BVerwGE 109, 40 et seq.

23 The following part is an extract of *Heinig*, The Headscarf of a Muslim Teacher in German Public Schools, in: Brugger/Karayanni (ed.), *Religion in the Public Sphere*, 2007, pp. 181 et seq.

24 BVerfGE 108, 282; BVerwG, NJW 2004, 3581; BVerwG, NJW 2002, 3344; VGH Mannheim, NJW 2001, 2899; VG Stuttgart, NVwZ 2000, 959; a second case ended with an agreement at the Federal Administrative Court (see before the settlement OVG Lüneburg, NVwZ-RR 2002, 658; VG Lüneburg, NJW 2001, 767).

1972 in Afghanistan and has lived in Germany since 1987. She has been a German citizen since 1995. Following her university studies, she was accepted in the state preparatory service for grade school teachers in Baden-Württemberg; however, after passing the second state examination in 1998, she was not hired permanently as a public school teacher. In failing to hire Ms. Ludin, the school board could not, and did not intend to, suggest that she would misuse her teaching position for purposes of Islamic indoctrination, nor that she supported religiously-motivated violence, nor that she would tacitly advocate a strict Islamic lifestyle within the classroom. Instead, the decisive factor for the school board was that she was not willing to refrain from wearing a headscarf during instruction. Thus, she was deemed to lack the necessary “personal aptitude.”

At the various levels of administrative jurisdiction, Ms. Ludin was unsuccessful in challenging the rejection of her application for permanent placement.²⁵ Yet, she achieved partial success before the Federal Constitutional Court: it remanded the case to the Federal Administrative Court because there was no legal basis for refusing to hire a teacher merely based on her religious dress. The state of Baden-Württemberg passed such a statute at once,²⁶ so that the Administrative Court again rejected the complaint.

During the legal proceedings, which were backed among others by Germany’s Central Council of Muslims and *Ver.di*, a major labour union, Ms. Ludin put forward various reasons as to why her wearing of the headscarf was indispensable. At first she claimed that the headscarf was constitutive of her personality, and that she would be robbed of her dignity without the head covering, but she later emphasized her religious motivations. This shift in argument was not accidental. It allowed Ludin to avoid the unpleasant question of whether all (Muslim) women who do not wear a headscarf lack dignity due to their not wearing the headscarf.

²⁵ See note 22.

²⁶ Gesetz zur Änderung des Schulgesetzes vom 01.04.2004 (GBl. 2004, 178).

At least politically Ludin further opened herself to attack by categorically rejecting any form of compromise (for example, during oral proceedings before the Federal Constitutional Court) while simultaneously calling for tolerance from parents, children, and professional colleagues. From the very beginning, she refused to acknowledge the religious interests of third parties in the matter – for instance, a student’s right to be free from the effect of the headscarf’s religious appeal.

It is also remarkable that, during the lawsuit, Ms. Ludin began working for a private grade school belonging to the Islamic Federation in Berlin – an organization closely associated with the Islamist group *Milli Görüs*.²⁷ Confronted with this fact, Ludin responded on record that she had been completely unaware of the school’s background. Whether such a claim is credible, one must decide for oneself. At any rate, it certainly demands extraordinary scepticism: either Ludin knowingly began employment with a dubious private school, categorized as Islamist, which would mean she was publicly untruthful, or she is profoundly naïve. In either case, the state would be well advised to do without such personnel.

b) The Federal Constitutional Court’s Judgment on the Teacher’s Headscarf

aa) Content of the Decision

According to the Court, the legislature should, in principle, define more closely the criteria for aptitude in public service. In the case of a Muslim teacher with a headscarf, the lawmaker must respect constitutional limitations – freedom of religion and the guarantee of access to public positions without discrimination based on religious affiliation. These rights belonging to the teacher then must be weighed against the negative freedom of religion of the students, the

²⁷ On *Milli Görüs* see the Report of the Department of the Interior about the protection of the constitution 2004; *Bundesministerium des Inneren*, Verfassungsschutzbericht 2004, 213–219.

parents' right to educate their children, and the state's duty to supervise the school system (Article 7 sec. 1 *Grundgesetz*). The Court held that the task of balancing these two sets of interests is incumbent on the democratic lawmaker (here, the federal states). However, without a specific legal basis, the non-placement of the teacher due to her headscarf was unconstitutional.

The Court reasoned that, so long as the legislator tolerates a teacher's wearing of a headscarf, it would not *per se* be seen as the state identifying itself with a particular religion.²⁸ The headscarf did not represent a concrete, constant endangerment of peaceful school operations, although such a danger could not be ruled out for all time and in all cases. The Court held that an "abstract danger" exists,²⁹ and that parliament would thus have to conduct a prognosis to measure the degree of such threats. For this, the legislature may consider the objective appearance of the headscarf and its effect on third parties and may also abstract from the wearer's concrete motivations.³⁰

bb) Problems of the Decision

The Constitutional Court's decision expressly permits the federal states "to arrive at varying outcomes, since the appropriate middle course may also incorporate school tradition, the denominational composition of the population and the degree to which it is religiously rooted"³¹ (author's translation). The Court thereby consciously accepts that extremely different regulations might be

28 BVerfGE 108, 282 (299–301, 305–306).

29 BVerfGE 108, 282 (303).

30 A dissenting minority of the Court's Second Senate would have held the then existing regulations of civil-service law to be sufficient to justify the complainant's non-placement. A separate headscarf provision was not necessary, they reasoned, and public officials could raise their fundamental rights only to the degree that the position's specific legalities allow. In the case at hand, the teacher's headscarf was considered a violation of the civil servant's duty of moderation – a duty which can directly be drawn from the constitution – since the headscarf was objectively suited to "bring about impediments to school operation or even conflicts in the school relationship with implications for fundamental rights" (author's translation); BVerfGE 108, 282 (314–340).

31 BVerfGE 108, 282 (303).

adopted in the sixteen federal states. This has led to some criticism. However, if one accepts the Court's premises that different political decisions can be constitutional and at the same time that each state is to make that political decision, albeit within the framework of constitutionally permissible regulations, then the possibility of divergence among the states is unavoidable.

(a) Is every solution really constitutional?

The critics of the Court's decision, however, are correct insofar as they fault the Court for failing to offer any significant assistance in actually shaping permissible regulation.

A close reading of the judgment gives the impression that not only multiple but virtually all imaginable solutions to the problem would be equally compatible with the constitution. In this sense, the margin of discretion seems overextended. Following its holding on the crucifix in the classroom the Court should have, at the very least, ruled out an unconditional right on the part of the teacher to realize her religious interests. In weighing the teacher's interests against the conflicting fundamental rights of the students and parents, the teacher necessarily must be in the structurally weaker position. The teacher voluntarily enters the educational field; she or he has freely chosen this career with the state as one's employer.³² In contrast, the students are subject to mandatory attendance without any possible alternative. Their freedom of religion would be completely repressed were teachers able to assert their religious interests in the school in every instance and without consideration for the interests and rights of students, parents and colleagues. Therefore, for the sake of safeguarding the fundamental rights of third parties, a teacher at a public school can and must be required to refrain from wearing a headscarf or other religious garments in school in cases of serious conflict, motivated by religion or other worldview. Put simply: whoever would teach tolerance cannot merely demand tolerance, but must

³² In this regard, the teacher's constellation of fundamental rights is substantially different than that of a student who wears a headscarf.

also personally live it. In Ms. Ludin's case, this required minimum was evidently not met.

By the way: if one follows the line of logic outlined here, this would also function to "expose" fundamentalist teachers with headscarves. If a teacher is willing, if need be, to defer observance of a rule which is considered religiously obligatory, such as the wearing of a headscarf, then she thereby necessarily displays a modern, democratic understanding of religion. That is, she will not absolutely insist upon her own, certainly sincere, faith in all circumstances and irrespective of the rights of third parties.

A consequence of the considerations presented here is that the rejection of an applicant, who under no circumstances would forego wearing her headscarf during classes, actually required no specific legal justification. Indeed, the civil servant's duties to the law, moderation and neutrality would have sufficed. Thus, the Constitutional Court's reasoning, albeit well-founded in large part, is doubtful on this point. The Court assumes that specific legal regulation would be required for any case of not hiring a teacher on account of her wearing a headscarf. Such a requirement, in my opinion, would only be valid if the framework of constitutional permissibility were defined by state-specific solutions. Yet the Basic Law already prohibits one specific solution to the conflict – here, the solution of conceding extensive priority to the teacher's interests. In this regard, specialized regulation is not required for what is self-evident. Consequently, the provisions of civil service law would have been sufficient.

(b) Constitutional and unconstitutional differentiations

Regrettably, the Federal Constitutional Court neither made such clarifications and differentiations nor supplied further detail on state-law implementation. All the same, it did affirm that civil-service duties that interfere with freedom of religion must "respect the imperative of equal protection for the various belief systems" (author's translation).³³ Accordingly, the prohibition of religious discrimination is to be interpreted restrictively. An explicit differentiation be-

33 BVerfGE 108, 282 (313).

tween Christianity and other worldviews, between Christian and other symbols, would be unconstitutional.

Thus, it is not unproblematic that, in the wake of the Court's ruling, some federal states have adopted exception clauses in school statutes for the display of Christian and Occidental values and traditions.³⁴ To the degree that they specifically intend to prefer a Christian teaching staff, they contradict the judicial guidelines. For example it is not justifiable to explicitly forbid the wearing of a headscarf while permitting a teacher to wear a visible cross. Accordingly, the Federal Administrative Court's second judgment on the headscarf issue upheld Baden-Württemberg's exception clause as constitutional, as it does not prefer any specific religion, but only allows the classroom display of the world of values that has emerged from the Christian-Occidental culture.³⁵ In this sense, it permits a didactic illustration of Christian symbols but *not* the profession of a Christian faith on the teacher's part. Consequently, for instance, a nun who teaches at a public school must refrain from wearing her habit except during religious instruction. Likewise, a Jewish public school teacher may not wear a yarmulke.

Sure enough, the Constitutional Court's decision leaves open the question whether non-religious differentiations in dress code for teachers would be acceptable. Two cases, in particular, are imaginable: first, some symbol might disrupt the peaceful operation of the school or, second, a symbol's objective appearance and its potential effect as an unconstitutional symbol.

The first differentiation plays a role when teachers are forbidden by law from wearing religious symbols that are objectively suited to upset school order.³⁶ Similarly, such a differentiation plays a role

34 So (in a different way) in Baden-Württemberg (§ 38 II Schulgesetz), Hesse (§ 86 III Schulgesetz) and Bavaria (Art. 59 § 2 Gesetz über das Erziehungs- und Unterrichtswesen). For an overview of the legislative measures in the states see <http://www.univ-trier.de/index.php?id=24373>.

35 BVerwG, NJW 2004, 3581.

36 Such clauses exist in nearly every state which enacted legislation after the Constitutional Court's decision, e.g. in Baden-Württemberg (§ 38 II Schulgesetz), Hesse (§ 68

when case-by-case decisions are made, for example, when the headscarf is generally permitted and prohibited only after students and parents object, or when the headscarf is preventatively forbidden and permitted in specific cases. All three constellations involve differentiation based not expressly on religious grounds but on some other conflict or tension in the school.

The second differentiation focuses on possible expression that itself is hostile to the constitution, leading to bans on symbols that are seemingly repugnant to the constitution and educational goals.³⁷ Here, too, the state does not evaluate the religious statement, as such, and does not differentiate in terms of religious doctrine and content; rather, the state looks to potential outward effects. In this respect, such constitutional safeguards in the behaviour and dress codes for schoolteachers are not directed against a particular religion; instead, they discriminate according to the negative, outward, objectively determinable impact. The latter – as the Constitutional Court has repeatedly stressed – does not contravene the state’s neutrality of religion and worldview. When religious regulation is understood not only as cultural law but also as regulation of social dangers, such state action even becomes almost imperative in a militant democracy.

It seems to me that such religion-unspecific differentiation is certainly permissible if properly applied, that is with due respect for freedom of religion and the principle of equality, and where compelling, constitutionally legitimate reasons exist. Examples of such reasons would be, on the one hand, peaceful school operation and, on the other, the civil servant’s duty of political moderation, rooted in the state’s duty of neutrality, or the structural principles of the Basic Law as a whole.

The federal state of Berlin operates a system with no differentiation.³⁸ There, the wearing of any religious symbols for all public servants in schools, the police, and the judiciary is forbidden. From the

II Beamtengesetz, § 86 III Schulgesetz), Bavaria (Art. 59 § 2 Gesetz über das Erziehungs- und Unterrichtswesen), Bremen (§ 59b IV Schulgesetz).

37 See note 31; also Lower Saxony (§ 51 III Schulgesetz).

38 §§ 1, 2 Gesetz zu Artikel 29 der Verfassung von Berlin.

perspective of constitutional theory, or at least of constitutional politics, one might ask whether this solution satisfactorily implements the system for weighing interests outlined above, whether such a generalized ban is compatible with a secular, but non-laical legal system that is to be religiously open and friendly. The Basic Law, at least as traditionally interpreted, establishes a religiously open system of reciprocal interaction, and there are good reasons to follow such an interpretation. As a consequence, then, the lawmaker should carry the burden of proof as to whether religious conflicts with this legal model can no longer be controlled due to the specifics of the situation (for example, increased pluralization or serious cultural and religious tensions between subpopulations). A laical total ban on religious symbols for civil servants, especially in public school, should therefore be considered only *after* the other solutions discussed here.

3. *Pupil's Prayers in a School Break*

However, not only religious interests of Muslim female teachers keep the courts busy. The limits of the freedom of religion of students are also matters of judicial examination against the backdrop of increased religious heterogeneity in schools.

A student wanted to implement an Islamic daily prayer at school during break and in order to do so, kneeled down on his jacket in an isolated place in the corridor in the school building. The school administration forbade such a publicly evident and ostentatious prayer. In their opinion the student endangered peace at the school, and other students have to be protected against being pressured to participate in these prayers at school. After all, the prayer at school contravenes the state's neutrality of religion and worldview as they affirm. Thus, the school would have to provide a separate room for the student where he can pray without creating disturbances. On the other hand, though, the student is not entitled to demand such a room.

The student concerned took legal action. At first instance the court lifted the ban,³⁹ whereas at second instance it was confirmed.⁴⁰ By returning this verdict, the Appeals Court spectacularly misunderstands the constitutional guidelines which have been outlined by the Federal Constitutional Court in the decisions about the crucifix in school buildings and the teacher's headscarf: the peace at the school is a legal good which is protected under Art. 7 sec. 1 *Grundgesetz* and which can limit the individual student's freedom of religion, but a concrete danger must exist, if the prohibition of the prayer is based on the general regulations of the school. Hence, a blanket ban of prayers in schools is simply unconstitutional.

IV. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

The constitutional regulations about the state's duty to supervise the school system (Article 7 sec. 1 *Grundgesetz*) also include the state's duty to educate. This duty is opposed by the parents' right to educate their children (Article 6 sec. 2 *Grundgesetz*).

At the same time the state's responsibility for education is the constitutional basis for compulsory education. This comprises at least nine years of full-time schooling, which either leads to another stage at school or to professional training, absolved in obligatory part-time schooling. In general, compulsory education ends after twelve school years.

The parents are responsible to contribute to education in order that the pupils satisfy their obligation to attend school. The obligation can only be satisfied by attending a public school or a recognized alternative private school. Compulsory education is sanctioned. It may be enforced under compulsion (with the aid of the police). Violating it

39 VG Berlin, 29 September 2009, Az: 3 A 984.07.

40 OVG Berlin-Brandenburg, 27 May 2010, Case no. OVG 3 B 29.09.

means committing an administrative or criminal offence.⁴¹ At worst, the parents' might be deprived of their right to custody.⁴²

1. The General Obligation to Attend School as a Prohibition of Home-Schooling

The school laws of the *Länder* do not offer the possibility for parents to educate their children by themselves (home-schooling). The Federal Constitutional Court always used to approve this compulsory school management which is relatively restrictive when compared to international standards. Though the right balance between the state's responsibility for education and the parents' right to educate their children has to be achieved, the state does not only aim to deliver the knowledge which is essential for a self-determined life, but also to develop the students' personality. In school, the children are to learn how to assert themselves under normal conditions of society. Furthermore, compulsory schooling prevents the formation of "parallel societies" and promotes social integration. These aims would never be achieved by parental home-schooling, irrespective of the parents' capacity.⁴³ Thus, there is no constitutional reason why the state should not prevent religiously motivated home-schooling.⁴⁴ It is remarkable that due to this, a German family has been granted asylum in the United States of America.⁴⁵

41 BVerfG, 31 May 2006, Case no. 2 BvR 1693/04.

42 OLG Hamm, 01 September 2005, Case no. 6 WF 298/05; BGH FÜR 2008, 115 et seq.

43 BVerfG, NVwZ 2008, 72 et seq.; BVerfG, BayVBl. 2006, 633 et seq.; see *Waldhoff*, *Neue Religionskonflikte und Staatliche Neutralität*, 2010, pp. D 112 et seq.

44 BVerwG, DÖV 2010, 147; OVG Bremen, NordÖR 2009, 158 et seq.; OVG Münster, DÖV 2008, 119 et seq.; VG Gelsenkirchen, 19 March 2008, Case no. 4 K 1674/06; VG Bayreuth, 18 April 2005, Case no. B 6 K 04.620; VG Dresden, 7 March 2007, A. 5 K 2283/02; VG Stuttgart, 26 July 2007, Case no. 10 K 146/05.

45 Robertson, Judge in Memphis Grants Asylum to German Homeschoolers, *New York Times*, 1 March 2010, p. A12.

2. Permission not to Attend Faith-Specific Religion Classes

Article 7 sec. 3 *Grundgesetz* explicitly provides for opting out of confessional religious instruction despite the principle of compulsory education. Those who are part of a religious community which offers religious instruction at school are usually obliged to attend the class in question. This follows from the religious education's character as an ordinary subject. However, Article 7 sec. 2 *Grundgesetz* enables the child's legal guardians to withdraw their child from confession-based religion classes. After attaining religious majority (according to § 5 of the *Gesetz über die religiöse Kindererziehung*, the Law about the Religious Education of Children, at the age of 14), the child is able to decide for him- or herself. This regulation concerning the opting out of religious education is a result of the principle of proportionality because the alternative would be that the child would have to leave the religious community he or she is part of in order to avoid the compulsory education for the religious instruction. In comparison to this, not attending classes serves freedom of religion more effectively.

3. Opting out of Specific Subjects

For all other subjects besides religion, the *Grundgesetz* itself does not make any arrangements. However, as a rule, there are some general clauses about the exemption from compulsory education in the federal states' school laws or school regulations. These arrangements are provided for atypical circumstances such as a long-lasting illness.

As to partial opting out we can differentiate between the desire of parents and students not to attend school on religious holidays and the desire not to attend a specific subject.

For a long time the administrative jurisdiction approved the general right of Muslim girls to be exempt from co-educative sport and swimming classes, due to religious reasons in respect of the freedom

of religion.⁴⁶ In order to prevent conflicts, the Federal Administrative Court suggested that schools should first attempt to offer separate classes for both genders. If this is not possible, the courts used to issue rather liberal exemptions. However, this right was not granted to parents of Christian girls.⁴⁷

With regard to other subjects, in particular biology classes and reproductive education, the courts have decided on a significantly more restrictive approach.⁴⁸ The school laws of the *Länder* include special clauses concerning reproductive education which require the schools to be respectful of different views on the part of the parents. The aim of the instruction is to promote both sexual self-determination and responsible sexual behaviour. However, the aim is not governmental enforcement of a specific type of sexual morals, irrespective of whether it is restrictive or liberal.⁴⁹ Thus, compulsory education in reproductive biology has to take precedence over the interests of parents.

Concerning the theory of evolution, the Court came to the same conclusion. Schools are not required to give to the theological doctrine of creation the same degree of attention as is given to the theory of evolution in biology classes.

In sum, a peculiar picture emerges: there are no exemptions from biology classes due to religious reasons; however, for Muslim girls it is not difficult to get an exemption from sports classes and in particular swimming classes, whereas Christian students were refused the same exemption. This result is hard to bear as freedom of religion also protects Christian parents and students in their religious understanding of the sexes. Furthermore, sports and swimming classes are by no means lower-ranked subjects, but an integral part of the school's curriculum, which aims to develop the student's personality in total. Sport not only means physical training, but also learning

46 BVerwGE 94, 82 et seq.; *Waldhoff*, *Neue Religionskonflikte und Staatliche Neutralität*, 2010, pp. D 110 et seq.

47 BVerwG, DVBl. 1994, 168; *Classen*, *Religionsrecht*, 2006, p. 216.

48 See e.g. VG Ansbach, 18 December, Case no. AN 2 K 04.02508.

49 OVG Niedersachsen, 5 March 2003, Case no. 13 LB 4075/01; VG Augsburg, 17 April 2008, Case no. Au 3 S 08.344.

elementary social skills such as team spirit and fair play. Therefore, it is more than welcome that the recent jurisprudence again puts a stronger emphasis on the implementation of compulsory schooling.⁵⁰

4. School Trips and Similar Events

Besides having to attend classes, compulsory school education includes other obligatory school activities such as school trips. Parents do not have the right to withdraw their children from school trips⁵¹ or study projects⁵² merely because they are concerned about the risk that their child could be exposed to influences which are in conflict with their religious views. In practice, though, it is hard to implement compulsory education in such cases. As usual when dealing with topics concerning compulsory education, informing the parents and cooperating with them is more effective than applying any means of governmental compulsion.

5. Opting out of Specific Holidays

Being exempted from classes on specific holidays significantly differs from being exempted from special subjects as in the case of exemptions for holidays the government's aims concerning academic affairs and the contents of education are not put into question. The duty to integrate and to educate is not involved. Thus, the administrative practice and the jurisprudence present a much more liberal point of view with regard to questions about the exemption from compulsory education for specific religious holidays than about the exemp-

50 See VG Hamburg, NVwZ-RR 2006, 121; OVG Münster, NWVBl. 2009, 394; VG Düsseldorf, 7 May 2008, 18 K 301/08; VG Gelsenkirchen, 19 March 2008, Case no. 4 K 1674/06; see *Waldhoff*, *Neue Religionskonflikte und Staatliche Neutralität*, 2010, pp. D 109 et seq.

51 VG Hamburg, 7 April 2009, 15 K 3337/08.

52 For example learning magicians' tricks in a project about the circus: VG Minden, 03 February 2005, Case no. 2 K7003/03 (the students learn that their tricks are just tricks and not the result of supernatural, occult powers).

tion from particular subjects or about home-schooling.⁵³ In the Weimar Republic, Jewish students used to be exempted from classes on Saturdays. An older decision by the Federal Administrative Court underlines this by approving a claim for exemption from school attendance on Saturdays concerning Seventh-Day-Adventists and other religious groups.⁵⁴ Statutory orders and administrative regulations on the state (*Länder*) level include very detailed rules as to which religious groups can apply for exemptions and for which days.⁵⁵

53 See *Waldhoff*, *Neue Religionskonflikte und Staatliche Neutralität*, 2010, p. D 114; *Classen*, *Religionsrecht*, 2006, p. 216.

54 BVerwGE 42, 128 et seq.

55 See e.g. Appendix to § 4 (2) Nr. 1 und 2 Schulbesuchsverordnung Baden-Württemberg (GBl. 1982, 176) or Ausführungsvorschriften über die Beurlaubung und Befreiung vom Unterricht Berlin vom 3.12.2008 (ABl. 2008, 2729).

RELIGION IN PUBLIC EDUCATION – REPORT ON GREECE

NIKOS CH. MAGHIOROS

INTRODUCTION

Education in Greece is compulsory for all children between the ages of 6 and 15 and it lasts 10 years. Religious education is an obligatory subject both in public and private schools. According to Art. 16 § 1 and 2 of the Constitution “*Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.*”

Although the Constitution refers to the development of the *religious consciousness* in general, the law considers that the majority of Greeks are Orthodox. According to Law 1566/85, one of the goals of both primary and secondary education is “*to have faith to the country and the genuine elements of the orthodox Christian tradition*” (Art. 1 § 1), and “*to realize the deeper meaning of the orthodox Christian ethos*” (Art. 6 § 1). Students who do not belong to the Orthodox Church have the right to have teachers of their own dogma (Art. 17 § 4). Some religious communities have even their own private schools, such as the Muslims, the Jews and the Catholics, where courses of religion may be included.

This privileged position of Orthodoxy in education is justified by the presence of the ‘prevailing religion’ (Const. Art. 3 § 1) or ‘State

law rule' over ecclesiastical matters, as a core element of the actual system of the relations between Church and State in Greece.¹

The right of exemption from religious education, prayer and attending mass is recognized for non-Orthodox pupils, if they themselves (when they are adults) or their parents on their behalf request exemption for reasons of conscience.² Due to the fact that religion is a personal datum which is considered to be sensitive (L. 2472/1997 §2 case a), the obligatory declaration of religion in a positive or negative form violates religious freedom.³

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- 1 *Ch. Papastathis*, The Hellenic Republic and the Prevailing Religion, in: Brigham Young University Law Review, 4 (1996), p. 815 et seq.; *Idem*, Church and State in Greece, in Church and State in European Union, ed. *G. Robbers*, Baden-Baden, 2005, p. 116; *P. Naskou-Perraki*, The Legal Framework of Religious Freedom in Greece, Athens-Komotini, 2000, p. 19–26; *N. Maghioros*, State and Church in Greece: “To reform or not to reform?”, in *Droit et Religions* 2 (2006–2007), p. 497–502.
 - 2 Circulars of the Ministry of National Education and Religious Affairs: Γ2/6904/29.11.95, 61723/13-6-2002, 91109/Γ2/10.7.2008, 104071/Γ2/4.8.2008, 12/977/109744/Γ1/26.8.2008.
 - 3 “The obligatory declaration of religion which is considered to be a prerequisite in order that the student may be exempted from Religious Education class violates the principle of necessity because this on the one hand would contravene the negative religious freedom of both students concerned and their parents or custodial parents, and on the other hand it would be opposite to the more specific right of parents “to cater to [their children’s] education according to their own religious and philosophical beliefs” (article 2 of the First Protocol of the European Convention for Human Rights).” *Hellenic Republic – Data Protection Authority*, Decision 77A/2002 n. 5. See also the ECHR judgment in the case of *Alexandridis v. Greece* (appl. no. 19516/06) according to which it was a violation of Art. 9 of the European Convention on Human Rights. The Court held that “the fact that the applicant had had to reveal to the court that he was not an Orthodox Christian had interfered with his freedom not to have to manifest his religious beliefs. ... the freedom to manifest one’s beliefs also contained a negative aspect, namely, the individual’s right not to be obliged to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn regarding whether he or she held – or did not hold – such beliefs.” See also *K. Papageorgiou*, COMMENTAIRE de l’arrêt de la CEDH du 21.2.2008 (affaire *Alexandridis c. Grèce*): l’obligation de prêter le serment religieux dans l’ordre juridique grec, in *Österreichisches Archiv für Recht & Religion*, (to be published).

I. GENERAL BACKGROUND⁴*1. Facts and Figures*

At the end of 2007, the population of Greece was estimated at 11,213,785 persons. In 2008 the population aged 0 to 29 years numbered 3,675,596 individuals who comprised 33 % of the total population. At the beginning of the 2007/08 school year there were 1,074,031 students enrolled in compulsory education (primary and lower-secondary school levels). In 2007/08, 94 % of the students enrolled in primary and secondary education attended public schools, which provide free education. Private schools are not grant aided; they are fully self-financed. Greek is the official language and it is used throughout the Greek territory. Greek is the language of instruction at all levels of education.

Greek citizens of Muslim religious persuasion (the Muslim minority which resides in Thrace) number about 100,000 members. For these Muslim communities, special minority schools have been set up in which the teaching is in both the Turkish and the Greek language on the basis of specialised study programmes offered by specially trained teaching staff.

The general responsibility for education lies with the Ministry of Education, Lifelong Learning and Religious Affairs. The Greek education system is ruled by national laws and legislative acts (decrees, ministerial decisions).⁵ Financing education is the responsibility of the

4 This part was mainly based on the Eurydice Network reports on Greece: Organization of the Education system in Greece 2008–2009 and Structures of Education and Training Systems in Europe: Greece 2009–2010 edition, prepared by *Dimitrios Efstratiou* and *Nikolaos Sklavenitis* with the support of *Athina Plessa-Papadaki* http://eacea.ec.europa.eu/education/eurydice/contacts_national_units_en.php.

5 The legal framework which regulates education issues, except Art. 16 of the Constitution (2010) and Law 1566/85: “Structure and Operation of Primary and Secondary Education and other Provisions”, includes Law 682/1977: “Concerning private schools and boarding schools”, Law 2916/2001: “Structure of Higher Education and regulation of issues in the Technological Sector”, Law 2986/2002: “Organisation of Regional Services of Primary and Secondary Education, assessment of teaching task and staff, teachers’ in-service training and other provisions”, Law 3027/2002: “Regulations concerning the Organisation of School Buildings for Higher Education and

state through the regular budget and the public investments budget, and to a lesser degree by non-state sources. The regular budget covers teachers' salaries, operational costs of school units, books, pupil transportation, provision of meals and accommodation of pupils-students where applicable, scholarships and the purchase of teaching equipment.

The Greek education system consists of three levels: primary, secondary and tertiary.

1. PRIMARY EDUCATION LEVEL is split in **pre-school education** which is provided by the **pre-primary school** (*nipiagogeio*) and **compulsory primary education** by the **primary school** (*dimotiko scholeio*). This level begins at the age of 4 years and is optional, while attendance is compulsory for all 5 year old children.

The majority of **pre-primary** schools as well as child and infant centres are under state control. Nevertheless, there are also private ones. In public *Nipiagogeia* attendance is free of charge. In public child and infant centres as a rule there are monthly fees. The private child and infant centres function under the auspices of the Ministry of Health and Social Welfare.

The curriculum in pre-primary schools is developed by the Pedagogical Institute.⁶

other provisions", Ministerial Decisions 21072α/Γ2/ Government Gazette 303 v.B'/13-3-2003 and 21072β/Γ2/ Government Gazette 304 v.B'/13-3-2003, "Cross-Curricular Thematic Framework and Curricula of Primary and Secondary Education", Law 3255/2004: "Regulation of Issues of all Educational Levels", Law 3369/2005: "Systematisation of Lifelong Learning and other provisions", Law 3467/2005: "Selection of primary and secondary education teachers, regulations for Administration and Education issues and other provisions", Law 3475/2006: "Organisation of secondary vocational education and other provisions", Law 3549/2007: "Reform of the institutional framework as regards the structure and the operation of Higher Educational Institutions", Law 3653/2008: "Institutional framework for research and technology and other provisions", Law 3699/2008: "Special Education for persons with disabilities or with special education needs", PD 189/2009: "Definition and redistribution of the Ministries' responsibilities".

6 It is a self-administered state organization operating under the supervision of the Ministry of Education, Lifelong Learning and Religious Affairs. Its duty is to formulate the guidelines, draft the timetable and the curricula, approve and order textbooks,

Teachers are graduates of the pedagogical departments of the universities. Their admission in these departments is through general entrance examinations and the studies last for 4 years. Law no. 1771/1998 authorized the appointment of non-Orthodox teachers in public elementary schools and in nurseries if they meet the formal requirements.⁷

As stated in Law 1566/1985, the aim of pre-primary schools is to assist the children to develop physically, emotionally, mentally and socially not only on an individual but also on a group level. Special attention should be given to the development of motor and cognitive abilities. There is no particular mention of religious education.

Primary education constitutes a part of the 10-year-long compulsory education and covers 6 grades from A to F. It is provided in primary schools for children aged from 6 up to 12 years old. The curriculum in primary schools is developed by the Pedagogical Institute.

Teachers are exclusively graduates of the pedagogical departments of primary education established by Law 1268/1982. Their studies last 4 years and admission to these departments is through general entrance examinations.

According to Law 682/77 on private education, private primary education is organized and operates along the same lines as that of state schools – equal titles are granted and the national curriculum is implemented. Tuition and other fees are paid in private schools and no state subsidies apply. Other subjects may be added upon the decision of the Minister after consultation with the Pedagogical Institute.

There are also foreign private schools providing education mainly to foreign nationals residing in Greece – these operate on the

apply vocational guidance, introduce issues and innovations, apply new teaching methods, promote in-service training of teachers, etc. <http://www.pi-schools.gr/>.

7 “1. Nursery school and primary school candidate teachers belonging to religions other than Orthodox Christianity can be appointed to public multi-seated primary schools and two-seated nurseries if they have the necessary qualifications. 2. The teachers appointed according to the above paragraph will not teach divinity to pupils other than the ones who belong to the same religion as their own. 3. The appointment of teachers of other dogmas and religions can go ahead in one-seated public schools when pupils belonging to the same dogma or religion are educated there.” Also see *G. Sotiřelis*, *Religion and Education*, Athens-Komotini, 1998 p. 180–198.

basis of bilateral cultural agreements between Greece and the specific contracting states and the provisions of the law on foreign schools. These schools have been founded by foreign institutional bodies and cultural organizations.

Statistical data (Source Ministry of Education, Operational Research and Statistics, 2008):

Pre-Primary Schools – School Year 2007–08	Public	Private
School Units	5,832	130
Pupils	143,770	5,342
Average Number of Pupils per School	24,7	41,1
Teachers	12,172	277
Pupil to Teacher Ratio	11,8	19,3
Average Number of Pupils per Classroom	16,0	21,4
Number of Pupils Graduating	84,365	3,217

Primary Schools – School year 2007–08	Public	Private
School Units	5,448	371
Students	592,855	45,278
Average Number of Pupils per School	108,8	122,0
Teachers	60,558	3,841
Ratio of Pupils to Teachers	9,8	11,8
Average Number of Pupils per Class (Section)	16,7	20,5
Number of Graduates	103,913	7,504
Sections	35,495	2,207

2. SECONDARY EDUCATION LEVEL – this includes two sub-levels:

a. Compulsory lower level secondary education lasts for 3 years and is offered at *Gymnasio* and in parallel at Evening Schools (*Esperino Gymnasio*) in which attendance starts at the age of 14.

b. Post (or non-) compulsory upper secondary education includes general secondary education and vocational secondary education. The first comprises general lyceum (*Geniko Lykeio*) and the

second vocational lyceum (*Epagelmatiko Lykeio*) and vocational school (*Epagelmatiki Scholi*). In parallel with the mainstream schools of secondary education operate evening gymnasia (*Esperina Gymnasia*) and evening *Genika Lykeia* and evening vocational *Lykeia* (*Esperina Genika* and *Epagelmatika Lykeia*). There are also vocational schools (*Epagelmatikes Scholes*) operating during the day only which together with vocational *Lykeia* make up secondary vocational education (Law 3475/2006). The duration of studies is three years for general and vocational *Lykeia* and four years for Evening General and Vocational *Lykeia*. In general and vocational *Lykeio* pupils enrol at the age of 15 while in vocational school at the age of 16.

In addition there are ecclesiastical, minority, cross-cultural, experimental (*Peiramatika*), music and special education *Gymnasia* and *Lykeia*. Other alternative structures in secondary education are the arts schools, sports facilities classes, classes in *Gymnasia* and *Lykeia* for students with special educational needs and second chance schools.

The curricula and timetable of *Gymnasia* and *Lykeia* are drawn up by the Pedagogical Institute and submitted to the Ministry of Education, Lifelong Learning and Religious Affairs for approval.

Teachers at *Gymnasia* and *Lykeia* offer instruction exclusively on the subject of their specialization. They are university graduates of departments relative to the subject they teach. Their studies last for 4 years. Admission to the university sector of higher education is after general entrance examinations. The degree offers their holders the possibility of participating in an examination held by the Supreme Council for Civil Personnel Selection (ASEP).

Secondary Education, School year 2007/08	Public	Private
School Units	1,884	110
Students	322,695	18,876
Average Number of Pupils per School	171	172
Teachers	41,907	2,399
Ratio of Pupils to Teachers	7,7	7,87
Average Number of Pupils per Classroom (Section)	21,5	25,3

A formal but unclassified level of education is **post-secondary – non tertiary education**, which is provided by vocational training institutes (*Instituta Epaggelmatikis Katartisis – IEK*). These Institutes accept graduates from both *Gymnasio* and *Lykeio* according to the relevant specializations they provide.

3. TERTIARY EDUCATION LEVEL comprises the *university sector*, that is, universities (*Panepistimia*), **technical universities** (*Politehneia*) and the **Higher School of Fine Arts** (*Anotati Sxoli Kalon Texnon*), and the *technological sector*, that is, **technological education institutions** (*Technologika Ekpaideftika Idrymata – TEI*) and the **Higher School of Pedagogical and Technological Education** (*Anotati Sxoli Paidagogikis kai Technologikis Ekpaidefsis – ASPETE*).

Students are admitted to these Institutes according to their performance at national level examinations taking place at the second and third grade of *Lykeio*.

Additionally, students are admitted to the Hellenic Open University upon the completion of 22 years of age by drawing lots.

ECCLESIASTICAL EDUCATION SCHOOLS AND ECCLESIASTICAL INSTITUTES OF VOCATIONAL TRAINING (EIEK)⁸

⁸ The legal framework which regulates ecclesiastic education issues includes PD 1025/1977 (Presidential Decree): 1977, 1025, Government Gazette A 344/10.11.77, Modification and Organization of Ecclesiastical Schools and supplementary

According to PD 417/87, the general State supervision of all religions is entrusted to the General Secretariat of Religious Affairs (GSRA) of the Ministry of Education, Lifelong Learning and Religious Affairs.⁹ Its duty is the supervision of the implementation of government policy in the area of cults. The **Department of Ecclesiastical and Religious Education** was established by PD 147/1976 (GG 56 A') to oversee the Ecclesiastical Secondary Schools and Clerical Second Chance Schools (*ISDE*). It is responsible for educational matters, curricula and administrative issues, and issues relating to preachers of the Church of Greece. There are two collective bodies in this department: *The Council of Secondary Ecclesiastical Education (Y.S.D.E.E.)*, which deals with issues regarding the personnel of ecclesiastical education, and *The Supervisory Board of Secondary Ecclesiastical Education (E.S.D.E.E.)*, on educational matters of the schools of ecclesiastical education.

The **Department of Ecclesiastical and Religious Education** is also divided in two sections:

a. The **Personnel Section** is responsible for the appointment, transfers, postings, promotions, layoffs and general issues relating to staff at the schools of ecclesiastical education, as well of the Apostolic *Diakonia* of the Church of Greece which organize the missionary and cultural activities of the Church, and preachers. *b.* The **Administrative Section** deals with the establishment, suspension, modification, and transfer of ecclesiastical schools, as well as with their administration rules and issues regarding the registration, transfer and evaluation of students. The section also monitors the administration of Rizarios Ecclesiastical School and Athonias Ecclesiastical Academy.

provisions of the PD 292/1977, PD 73/2001 (Presidential Decree): 2001, 73, Government Gazette A 64/2.4.2001, Regulation of studies and regulation of operation of boarding schools in higher ecclesiastical schools, Law 3432/2006 (Government Gazette, Issue A, 14), on the structure and function of ecclesiastical education.

⁹ Government Gazette A 186/87. It is divided into the Department of Ecclesiastical Administration, the Department of Ecclesiastical Education, and the Department of Heterodox and Hetero-Religious.

According to Law 3432/2006, ecclesiastical education is provided in ecclesiastical lower secondary schools, ecclesiastical unified upper secondary schools, higher ecclesiastical academies and second chance clerical schools. These educational units are schools of the Orthodox Church in Greece and are supervised by the Ministry of National Education and Religious Affairs (Art. 1).¹⁰

Ecclesiastical lower secondary schools and ecclesiastical unified upper secondary schools belong to post-compulsory secondary education. Higher ecclesiastical academies in public higher education and second chance clerical schools constitute institutions of lifelong learning (Art. 2).

The aim of ecclesiastical education is to raise the educational levels and Christian morals of the staff, clergy and laity, of the Orthodox Church in Greece. The students are only male.

Higher ecclesiastical academies grant degrees equivalent to those of Public Higher Education. Their functions began in the academic year 2007–2008 (Art. 3 § 1). The mission of higher Ecclesiastical academies is: a) to render their student participants in the values of the Orthodox Faith and Christianity, b) to provide their students with suitable education and necessary knowledge, through theoretical and practical training, to a high educational and intellectual level, c) to project and develop the historical sources of the Orthodox faith and tradition, the monuments and heirlooms of Orthodoxy and, generally, the treasures of the spiritual creation and cultural heritage of the Church of Greece and Orthodoxy in general, with a view to serving the Orthodox Church, d) to cultivate in their students the spirit of unity, love, collaboration, which in their turn will disperse to Orthodox believers and to each individual in the social environment of the Orthodox Church in Greece, with the fundamental objective of peaceful and harmonious coexistence at a national and ecumenical level (Art. 3). Access to the programmes of study at the higher ecclesiastical academies is open to those from unified upper secondary

¹⁰ The title recently changed to Ministry of Education, Lifelong Learning and Religious Affairs.

schools (or other equivalent) according to the conditions and the terms of the system of entrance to tertiary education, as long as they are Orthodox Christians. Only male candidates are admitted to programmes of clerical studies.

Secondary ecclesiastical education consists of ten ecclesiastical *Gymnasia*, seventeen general ecclesiastical *Lykeia*, three clerical second chance schools (*ISDE*), one ecclesiastical institute of vocational training (*EIEK*) at Rizarios Ecclesiastical School, and eleven departments of ecclesiastical training, offered at the state institutes of vocational training (*IEK*).

The ecclesiastic *Gymnasia* have a three-year course of studies and are equal to the lower secondary schools of general education. ecclesiastic institutes of vocational training (*EIEK*) provide post-secondary ecclesiastic training that lasts for two semesters and falls under non-compulsory, post-secondary vocational training.

Almost all ecclesiastical educational schools, *ISDE* and *EIEK* operate as boarding schools providing accommodation and meals free of charge to their pupils and students. Pupils in ecclesiastical *Gymnasia* and ecclesiastical *Genika Lykeia* follow the same timetable as that of general, lower and upper, secondary education schools (*Gymnasia* and *Genika Lykeia*). Also, the curriculum includes specific subjects such as the Old and New Testaments, Byzantine music, and liturgy.

Minority Schools

In Thrace there are 194 minority schools for children from the Muslim minority. These schools operate on the basis of the Treaty of Lausanne (1923) and pursuant to legislative measures and regulatory decisions issued within the framework of international cultural agreements. In these schools a bilingual (Greek and Turkish) curriculum is implemented, on the basis of specialised study programmes offered by specially trained teaching staff.

In Minority primary schools a special programme, 'Education of Muslim children', has been implemented since 1997 that aims at harmoniously integrating pupils in education and in society and improving educational outcomes for the Muslim minority.

This programme included targeted education studies and research, the development of educational material, and the provision of further training for teachers. Within the scope of the programme fifty-five new textbooks were drafted, together with their accompanying supplementary material, an electronic method of learning the Greek Language was produced, and, finally, a trilingual software dictionary (Greek–English–Turkish) was developed that includes terminology of the subjects from all three grades of *Gymnasio*.

During the 2007–2008 school year, there were eight Support Centres (*ΚΕΣΠΙΕΜ/ΚΕΣΠΕΜ*) operating for Muslim minority children within the context of the programme that were further enriched by the addition of new libraries, as well by two mobile *ΚΕΣΠΙΕΜ/ΚΕΣΠΕΜ* units that made support services available to remote villages in Thrace.

Proposals for reformation

On 19 October 2005, the Hellenic League for Human Rights (HLHR), the oldest Non-Governmental Organization for the protection and promotion of human rights in Greece,¹¹ published a proposed draft law entitled: “Regulation of relations between the Church and State, religious unions and consolidation of religious freedom”, accompanied by an explanatory report. Among others things, the proposal was considered necessary as it aimed to cover needs such as the enlargement and deepening of the right of equality before the law and the harmonisation of the Greek Constitutional and legal order with the common Constitutional traditions of other European countries.

Article 6, in particular,¹² sought to reform fundamentally the character of religious education. The idea was a transformation from

11 <http://www.hlhr.gr/id-en.htm>.

12 Instruction of religious education

1. Law 1566/1985 “Structure and function of elementary and secondary education and other provisions” (A’ 167) includes the following modifications:

a. In passage a’ of paragraph 1, article 1 the following words have been deleted “and the genuine elements of the orthodox Christian tradition”.

b. In passage b’ of paragraph 2, article 6 the following words have been omitted “of the orthodox Christian ethos”.

“confessional” to “religious studies” including subjects such as an introduction to history, sociology and dogma of all religions. At lyceums, the course on religion should be renamed “religious studies”. The proposed regulation not seek to abolish the religious orientation of the course contemplated under Article 16 par. 2 of the Constitution while its content was determined on the basis of Article 13 of the Constitution (religious freedom) and not according to Article 3 (prevailing religion).¹³

Article 7 sought to “privatise” the existing institutions of Ecclesiastical Education of all levels but not before the final definition of the legal status of educational institutions of all religions and doctrines.¹⁴

2. A presidential decree which is issued after a proposal from the Minister of Education redefines the detailed programme of religious studies, as it is taught in elementary and secondary education, so that instruction will no longer have a compulsory character and it will include introduction to history, sociology and the dogma of all religions. Specifically, in high school, the course on religion is renamed, “religious studies.”

13 Prevailing religion and religious freedom are the two main poles of the formulation of State and Church in Greece according to the Constitution, as in practice they constitute a permanent tug of war for every emerging conflict. The way of interpretation of these two articles is critical in order to describe with precision the actual system of State and Church relations and also to evaluate the need for modifications. If for example the Constitution affirms with the term “prevailing” that the majority of Greeks are Orthodox, the meaning of the article is completely different if prevailing means the official religion of the Greek State.

14 Ecclesiastical education

1. The superior Ecclesiastical Schools, the Ecclesiastical Academy “Athonias”, the Ecclesiastical Academy, the Ecclesiastical Unified Upper Secondary Schools and the Ecclesiastical lower secondary schools are subject to the liability, supervision, and financial support of the Church of Greece, the Church of Crete, the Ecumenical Patriarchate and the Holy Community of Mount Athos, according to the place where these institutions are located.

2. The institutions mentioned in the first paragraph of this article operate as private institutions, subject to the familiar provisions regarding private education. Until the supervising institutions suitably reform the institutional frame of their organisation and their operation, the regulations which were in force upon commencement of this law apply, except those which acknowledge greater competences than that of general supervision to organs of Greek state authorities, which are exercised in private institutions.

3. The students in institutions mentioned in the first paragraph of said article who do not wish to remain in these institutions under this new legal status, can transfer to public institutions of equivalent rank of their choice.

In November 2005 three proposals of law were submitted to the Parliament, based on the proposal of HLHR. The first by the “Communist Party of Greece” (*KKE*),¹⁵ the second by the “Coalition of the Left and Progress” (*Synaspismos*),¹⁶ and the third by the independent deputies *Mr. Stefanos Manos*¹⁷ and *Mr. Andreas Andrianopoulos*.¹⁸

All three proposals were only discussed (without voting) by the Plenary Session of the Parliament on 30 March 2006.¹⁹

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

In primary schools religion education is taught from grade C to grade F for two hours per week. It is of equal value with the other subjects and it is compulsory. According Ministerial Decision 21072α/Γ2 GG 303B/13-03-2003) the aims of religious education in **primary education** are for the pupils:

- to know the basic concepts, symbols, depictions of orthodox faith and life,
- to realize God’s love to the people and the world,
- to recognize the importance and contemporaneity of the Gospel message in personal and social life, and culture,
- to cultivate a spirit of solidarity, peace and justice, respect of religious difference and coexistence with the ‘other’,

4. Personnel of the institutions mentioned in the first paragraph of said article who do not wish to remain in these institutions under this new legal status, are placed in special recommended corresponding positions with the Ministry of Education.

5. A presidential decree issued upon request from the Minister of Education regulates the details in applying the provisions of said article.

15 <http://inter.kke.gr/>.

16 <http://www.syn.gr/en/profile.htm>.

17 http://www.bulls.gr/read_op.php?oid=1371.

18 <http://www.andrianopoulos.gr/indexGB.htm>.

19 See Acts of the Parliament, 11th Period of presidential parliamentary republic, 2nd Synod, Session 114, p. 5560–5595. (in greek). <http://www.parliament.gr/ergasies/showfile.asp?file=end060330.txt>.

- to appreciate the need for respect and protection of the environment, as well as the cultural heritage of our country and humanity,
- to understand what it means for someone to be an active member of the church community.

In the **secondary education** religious is taught from grade A to grade C for two hours per week for a total of 44 units. The aims are for the students:

- to be informed on the nature of the religious phenomenon,
- to know Christianity, especially Orthodoxy, through the Bible, Holy Fathers and the tradition of the Church and to form an attitude,
- to be conscious that Christianity provides suggestions to the modern world on its coherence and quality of life,
- to evaluate the subject, in order to become conscious of the dynamic of the Gospel message and cultivate its ethos and their personality, to be sensitive in the face of modern social problems/issues and to be helped to take position on them,
- to understand that the authentic Christian message is anti-racist, transnational and ecumenical,
- to realize the multi-cultural, multi-racial and multi-religious structure of modern societies,
- to realize the need for inter-Christian and inter-religious communication.

In general lyceum religion is taught in grades A and B for two hours (44 units) and in grade C one hour (24 units).

Aims in grade A are:

- to understand aspects of the Orthodox faith through liturgical texts,
- to reflect on faith issues through knowledge and dialogue,
- to learn about the origin, development and deeper meaning of Christian worship,
- to become aware of their self identity as members of the Church through their active participation in worship,

- to be informed about various sects and movements and to be critical.

The aims in grade B are:

- to know religion as a universal phenomenon,
- to study the fundamental elements of Christianity and especially of Orthodoxy,
- to be informed about criticism, contestation and rejection of Christian faith,
- to be informed on the value and contribution of Christianity in order to develop their personal opinion,
- to be informed on non-Christian religions, to compare and evaluate them, and to learn to respect others beliefs.

The aims in grade C are:

- to be informed on the ethical dimension of human life,
- to understand Orthodox Christian Ethics, as a liberating experience of the Church “in Christ”, and not as a systematic analysis of Ethics as legal rules (Theoretical Ethic – Deontology) but as life in order to retrieve our freedom, and the integrity of our person as “communication” between God and us, among us and between us, and nature as the fight for freedom, dignity, education, peace, justice and solidarity.

The religious education curricula for *Gymnasia* and *Lykeia* are drawn up by the Pedagogical Institute and submitted to the Ministry of Education, Lifelong Learning and Religious Affairs for approval. There is a continuous effort to improve school textbooks in order to deal with other religious minorities in Greece more objectively.²⁰

Teachers are graduates of the two faculties of theology (Athens and Thessaloniki), which are state faculties without a confessional character at least in terms of Greek law. The studies last for 4 years. Admission to the faculties of theology is the same for the university sector and it is after general entrance examinations. The degree of-

²⁰ Textbooks are approved by the Pedagogical Institute, published by the School Book Publishing Organization and distributed to every pupil in public schools free of charge.

fers the possibility of participating in an examination held by the Supreme Council for Civil Personnel Selection (*ASEP*). Many teachers of religion have postgraduate or doctoral degrees.

The character of religious education in compulsory education is strongly influenced by Orthodox theology. Benedictions of school buildings are not institutionalized but are a common practice at the beginning of the school year.

The planning of Church attendance for students once a week or a fortnight at least is mainly a task of school directors and teachers. Usually participation at religious services is once a month. Daily common prayer must necessarily be made, with due reverence, every day before the start of the course, at a joint gathering of students and teachers in the schoolyard.²¹

There is no regulation on religious symbols in public schools. Usually classrooms have icons of Jesus Christ, Virgin Mary or a crucifix.

In September 2006 a directory of the Ministry of Education prohibited the presence of priests in schools for the confession of students after parents of students appealed to the Greek Ombudsman. According to the Ministry, confession is not part of the cognitive process or the course of religious education and “for more educational, and theological reasons, and because in schools there is no appropriate place to ensure peace and privacy during the sacrament, the confession cannot be performed within the schools.”²² If this is to be the case, the director announces at school that the parish priest performs the sacrament of confession especially for students. Directors should also facilitate visits from metropolitans or bishops to schools but without disrupting the school programme.

21 Circulars Φ200/21/16/139240/26-11-1977, Γ/6251/22-10-1979, Γ/2875/30-04-1981, PD 201 /1998.

22 Circular Γ2/76992/27.07.2006.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

PD 104/1979 and PD 294/1979 establish religious holidays for schools. For the Orthodox students Christmas holidays (December 24 until January 7), Easter holidays from Good Monday to Friday after Easter, Sundays, the feast of the Three Hierarchs (January 30), the feast of the Holy Spirit, the feast of the patron saint of the city where the school is, and Clean (Shrove) Monday. Students of the “Latin dogma” may be absent from the courses on the feast of St. Joseph (March 19) and Corpus Christi as well as from the eve of the Latin Easter until the day after. Jewish students may be absent on the eve and the first day of the Jewish year (*Rosh Hashanah*), the Day of Atonement (*Yom Kippur*) and Passover (*Pesach*). Muslim students have no classes during the eve and the day of *Şeker Bayramı* and *Kurban Bayramı*.

The civil law provision leaves no doubt as to the parents’ preference regarding the religious education of their children at school (Art. 1510, 1 1518, 1).²³ The right of exemption from lessons in religious education, prayer and attending mass is recognized for non-Orthodox pupils, if they themselves (when adults) or their parents on their behalf seek exemption for reasons of conscience. As the Council of State has decided in decision no. 3356/1995 refraining from such obligations does not constitute grounds for penalty.

Since 2002 the Greek Ombudsman considered that the general framework of the protection of religious freedom by way of exemption should not be accompanied by any indirect penalty or onerous requirement. Requiring disclosure of the religious beliefs of the student would be onerous. The circular operative then (Γ2/8904/29.11.95) required an express choice between three categories – “non-religious”, “non-Orthodox” or “non-Christian” – which constituted a partial disclosure of religious beliefs.

²³ *Naskou*, p. 30.

Although Article 16 § 2 of the Greek Constitution requires the state to provide religious education, it does not oblige citizens to receive it if religion courses have a confessional character. The right of exemption should be recognized to all students, if they themselves (when adults) or their parents on their behalf seek exemption for reasons of conscience.

Moreover, the Authority on the Protection of Personal Data (77A/2002) judged that such a declaration is illegal on the basis of the provisions of Law no. 2472/1997, because it is contrary to the right of the parents to guarantee the education of their children without any conditions according to their religious and philosophical convictions (ECHR). Furthermore, such a declaration is contrary to negative religious liberty of the student as well as his/her parents or guardians, since it forces them to announce publicly their religious convictions.

In July 2008 a circular letter of the Ministry of Education (91109/Γ2/10.7.2008) clarified that an obligatory declaration of the will of the parents, custodial parents or the student if he is an adult is considered to be a prerequisite in order that the student may be exempted from Religious Education classes. The declaration must not include the reasons for this choice.

The Greek Ombudsman welcomed the circular of the Ministry (31-7-2008) in the light of reports of parents since 2002. Commenting on the earlier circular (Γ2/8904/29.11.95), which provided that declarations of the exact belief of the pupil and the later one under which it was sufficient to state “that he is not an Orthodox Christian”, the Ombudsman pointed out that religious freedom includes exemption for Orthodox pupils from Religious Education classes.

The exercise of the right of exemption should not be accompanied by a demand to reveal religious beliefs (even negatively). Initially the Ministry did not accept the proposal that a statement is enough, and this remained after the decision of the Authority on the Protection of Personal Data (2002).

Less than a month later the Ministry sent a second circular letter (104071/Γ2/4.8.2008) in order to clarify any possible misinterpreta-

tion of the procedure on exemption from religious education. The Ministry affirmed that it has followed the decisions of the ECHR and Greek independent authorities and underlined that the teaching of religion in primary and secondary school is obligatory and follows the curricula approved by the Ministry. The parents of pupils who are minors or adult pupils who do not wish to attend religion classes for reasons of conscience do not need to justify their statement.

Some days later the Ministry returned with a third circular letter (Φ12/977/109744/Γ1/26.8.2008) which provided that **non-Orthodox** pupils who according to the previous circular letter were exempted from religious education classes for reasons of conscience reasons are obliged to attend a different course.

The third circular caused real confusion and the Greek Ombudsman informed by letter (14/11/2008) the Special Chancellor of Primary and Secondary Education of the Ministry of Education that, after investigation of reports submitted by parents, in several schools parents are obliged to express their positive or negative statement about their religion in order to obtain the exemption of their children from the course of religion. In particular, some school directors require parents and students to confirm that they are not Orthodox Christians. The continued receipt of reports from parents who face pressure to declare their religious beliefs confirms that the problem cannot be solved by individual contributions.

The Ombudsman therefore proposed that the Ministry of Education should clarify the content of the third circular and replace “non-orthodox students”, which practically means hetero-religious or heterodox, with the term “exempted students” and also to inform all school directors on the content of the two previous circular letters in order to correctly apply the law.

The Ombudsman pointed out that under the current legislative framework, students and parents had the right of exemption from religious education for reasons of conscience. For the validity of the declaration, it is not constitutionally permissible to depend on any positive or negative form of declaring religious beliefs.

In the same direction the 2009 report of the National Commission for Human Rights²⁴ considers that all students, Orthodox or not, have the right of exemption, based on the circulars 91109/Γ2/10.07.2008 and 104071/Γ2/04.08.2008 mentioned above.

Although on 25 June 2010 the Vice Minister of Education, replying officially to a question of deputy of the opposition, affirmed that religion is a compulsory subject taught in all schools of secondary education, according to the official mandatory curricula and timetables, set out by the Pedagogical Institute. The possibility of exemption is given to hetero-religious and heterodox students who for reasons of conscience do not want to attend this course. However there has been abuse of the possibility of exemption from non-heterodox or different religion students, especially in grade C of the general lyceum, because of the school workload, violating the principle of equal treatment of students, and the principle of equality of effort to get a certificate.

Therefore, students who do not fall into the category of hetero-religious or heterodox can not be exempted from any compulsory course unless there are health reasons (Art. 22 PD 104/1979).

BIBLIOGRAPHY

EURYDICE, National system overviews on education systems in Europe and ongoing reforms: Greece 2010

http://eacea.ec.europa.eu/education/eurydice/documents/eurybase/national_summary_sheets/047_EL_EN.pdf

EURYDICE, Organization of the Education System in Greece 2009–2010

http://eacea.ec.europa.eu/education/eurydice/documents/eurybase/eurybase_full_reports/EL_EN.pdf

24 According to Law 2667/1998 NCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection and promotion. <http://www.nchr.gr/>.

- EURYDICE, Structures of Education and Training Systems in Europe: Greece 2009–2010 edition, prepared by *Dimitrios Efstratiou and Nikolaos Sklavenitis* with the support of *Athina Plessa-Papadaki*
- http://eacea.ec.europa.eu/education/eurydice/documents/eurybase/structures/041_EL_EN.pdf
- Greek <http://www.greekhelsinki.gr/english/reports/GHM-Reports-Greece.html>
Helsinki Monitor, Religious Freedom in Greece: Report 2002, (GHM/MRG-G, 15/10/2002)
- Konidaris I.*, Manual of Ecclesiastical Law, Athens-Komotini, 2000, p. 95. (in greek)
- Maghioros N.*, State and Church in Greece: “To reform or not to reform?”, in *Droit et Religions 2* (2006–2007), p. 497–502
- Naskou-Perraki P.*, The Legal Framework of Religious Freedom in Greece, Athens-Komotini, 2000
- Papastathis Ch.*, The Hellenic Republic and the Prevailing Religion, in: *Brigham Young University Law Review*, 4 (1996), p. 815–852
- Papastathis, Ch.*, Ecclesiastical Law, Athens-Thessaloniki, 2003 (in Greek)
- Papastathis, Ch.*, Church and State in Greece, in: *Church and State in European Union*, ed. *G. Robbers*, Baden-Baden, 2005
- Sotirelis G.*, Religion and Education, Athens-Komotini, 1998

RELIGION IN PUBLIC EDUCATION IN HUNGARY

BALÁZS SCHANDA

I. GENERAL BACKGROUND

1. Facts and Figures

The population of Hungary has been declining since the mid 1970s, and is about to fall under 10 million. Due to low birth rates the number of pupils is declining. In 2008/2009 the number of pupils and students between the age of 3 and 22 visiting kindergartens, schools and institutions of higher education was 1.931 million. About 92 % of children between the age of 3 and 6 frequent kindergartens, whereas compulsory education reaches practically all minors (until 18). About 800,000 children are in general primary schools from Kindergarten to school year 8 (age 6 to 14), and about 90 % of them finishes primary school in eight years. About 23 % of pupils in secondary education study at vocational schools, 41 % in secondary vocational schools, and 35 % in secondary general schools (*Gymnasium*, to use the German terminology). Secondary vocational schools offer alongside vocational training a final examination (*Abitur*, again in German usage) that is necessary to enter higher education.

Since the collapse of the communist system freedom to set up schools is acknowledged. As well as schools run by the state and local communities, schools may be run by churches, minority communities, enterprises, foundations, associations, and private individuals, in any event upon the fulfilment of legal and administrative criteria. Public, church-run and private schools are equally recognized. Church-run schools are well established at the secondary school level, as general schools. In average public institutions are larger than private ones. Private institutions have a special focus on

part-time (adult) education. The vast majority of public institutions are maintained by local self-governments (municipalities). The following charts provide an overview of the number of institutions as well as the number of their pupils; because some schools may have buildings at different locations, e.g. neighbouring villages, the figures for sites is sometimes significantly higher than figures for institutions. Data on institutions providing adult education (relevant especially at secondary school level with evening classes and vocational training) is not included.

Kindergarten is available for children aged from 3 to 6, and attendance in the last year before school is compulsory. Primary general schools are for ages 6 to 14, with an option to leave for secondary general school after grades 4 and 6. The vast majority of pupils, however, stay at primary school for eight years. After primary school there is a choice between general and vocational secondary schools as well as vocational schools, for pupils aged 14 to 18 (with some exceptions in the case of vocational secondary schools with a programme of five years).¹

Number of Institutions

	Public	Ecclesiastical	Other
Kindergartens	2,216 on 3,992 sites	134 on 141 sites	212 on 222 sites
Primary schools	2,081 on 3,007 sites	183 on 213 sites	111 on 143 sites
Vocational schools	317 on 361 sites	24 on 32 sites	110 on 193 sites
Secondary general schools	410 on 431 sites	103 on 110 sites	108 on 294 sites
Secondary vocational schools	482 on 555 sites	28 on 42 sites	194 on 311 sites

¹ A bilingual (Hungarian-English) overview of the system of education is available at: http://www.okm.gov.hu/letolt/statisztika/okt_evkonyv_2008_2009_091207.pdf.

RELIGION IN PUBLIC EDUCATION IN HUNGARY

Number of Pupils (in Full Time Education)

	Public	Ecclesiastical	Other
Kindergartens	306,683	10,757	8,237
Primary schools	728,237	46,789	14,364
Vocational schools	105,847	3,874	15,144
Secondary general schools	155,831	35,051	12,720
Secondary vocational schools	201,221	4,846	30,451

Schools are bound by a national core curriculum, but this provides for autonomy with regard to curriculum, schoolbooks and textbooks. Church schools are not bound by the principle of ideological neutrality, whereas public schools should be neutral. Public (neutral) schools have to be available to all in the relevant age groups without an undue burden.

It has to be noted that ever since education in the country has become an issue, the Churches – after the Reformation the various denominations, especially the Calvinist and the Reformed Church besides the Catholics – have played a determinative role in organizing and providing education. Also, since the introduction of compulsory elementary education by the *'Ratio educationes'* of Queen Maria Theresa issued in 1777 schools serving the public and the state were maintained by church communities. Public schools only emerged in the 19th century. When education was nationalized in course of the communist takeover in 1948 2/3 of all elementary schools and 1/3 of secondary schools were run by churches. In public schools denominational religious education remained compulsory until 1949. During the four decades of communist rule (1949–89) education was totally controlled and provided by the state (only ten denominational secondary schools survived due to agreements concluded with the Catholic Bishops' Conference in 1950, and the Reformed Church and the Alliance of Jewish Communities in 1948). Churches made huge efforts to overcome the legacy of the communist system, but took the present social context – the fact of seculari-

zation – into consideration. In this way church-run schools have become an important alternative to public schools but churches did not aim to restore their earlier role in education.

Schools run by religious entities do not qualify as private schools. The place of religion is quite different in these institutions. Educational institutions run by public entities (state, local communities, minority self-governments) are bound by the principle of neutrality with regard to religion, whereas institutions run by churches are not.

Denominational religious education can be compulsory at church-run schools, as part of the school curriculum. Church-run schools can also be exclusive with regard to their religion.² Teachers of religion need a university degree, usually issued by a theological college or faculty. In church-run schools the teachers of religion are members of the faculty.

Public education is financed by the central budget that provides a *per capita* funding to all institutions providing accredited education, including private and church-run schools, as well as local self-governments which run the vast majority of public schools. Self-governments usually supplement this *per capita* subsidy from their own means, while private providers do so from tuition and fees. Church-run schools are entitled to the national average of public spending on schools, which means local spending alongside the central subsidy – to obtain this they cannot charge tuition fees.

For financial reasons it is not likely that denominational schools would be run by a private entity instead of a church legal entity. Private schools often offer special pedagogic programmes (languages, sports, arts), and may have a special religious identity. As registering a religious entity is merely a formal act, a school run by such an entity would enjoy significantly more favourable financial conditions than a private school. Private schools also have the right not to provide for religious education. Private schools are also entitled to certain public subsidies, but they are not fully funded by the state budget.

² Act CXXV/2003. § 28 (2).

2. Religion as a Subject of Instruction and Its Substitutes

Religious Instruction

There are no special rules applicable to religious education and religious instruction: religious education (or instruction) is understood as a faith-based instruction, as this is offered by religious communities and serves not only the dissemination of information on religion but also the introduction of the pupil into the faith of the given community. At public schools (maintained by the state or a local or national-ethnic self-government) the possibility for children/students to participate in optional religious education and instruction organised by a church legal entity has to be ensured. Church legal entities may organise religious education and instruction on the demand of the parents at kindergartens and on the demand of the parents and the pupils at schools and halls of residence, but they do not need to do so. Religious education and instruction at kindergartens may be organised separately from kindergarten activities, at the same time as taking account of the daily routine at the kindergarten. They may be organised at schools in conformity with the order of compulsory curricular activities. It is the task of church legal entities to define the content of the religious education and instruction, to employ and supervise religious education teachers and to execute the acts of administration related to the religious education and instruction with special regard to the organisation of the application for religious education and instruction, the issuance of progress reports and certificates and the supervision of lessons. The school, dormitory or kindergarten is obliged to provide the necessary material conditions for religious education and instruction, using the tools available at the educational-teaching institution, with special consideration to the proper use of rooms and the necessary conditions for application and operation. The kindergarten, school or dormitory shall co-operate with the interested church legal entity in the course of the performance of the tasks related to the optional religious education and in-

struction organised by the church legal entity.³ The reality of religious education at public schools shows great regional differences. At elementary schools in certain rural areas the large majority of children frequent religion classes at school, whereas in urban areas, especially at secondary school level, religious education is not even offered by churches, but held on church premises. Certainly at secondary school level the availability of church-run schools provides an alternative in most major cities.

Religious instruction in public schools is delivered by religious communities, not by the school. The instruction is not a part of the school curriculum, the teacher of religion is not a member of the school staff, grades are not given in school reports, and churches decide freely on the content of the religion classes as well as on their supervision. Teachers of religion are in church employment; however, the State provides funding for the churches to pay the teachers. The school has only to provide an appropriate time for religious classes (this is a difficult issue in many cases) as well as teaching facilities. Churches are free to expound their beliefs during the religious classes: they do not have to restrict themselves to providing neutral education, merely giving information about religion, as do public schools. Religious education is not part of the public school's task; it is a form of introduction into the life and doctrines of a given religious community at the request of students and parents.

Instruction about Religions and Ethics

Neutral public schools should not endorse any religion or ideology, but must provide objective and multi-sided information about religions and philosophical convictions.⁴ Teachers at public schools should teach on a neutral basis; they have the right to express their opinion or belief, but they should not indoctrinate their students (see below). The

³ Act LXXIX/1993, § 4 (4).

⁴ Act LXXIX/1993, § 4 (2).

pedagogical programme, the functioning, and the direction of public schools shall not take a position in matters of religious truth.

Schools should provide fundamental information on ethics.⁵ Separate courses on ethics have been discussed for a while, but so far only a limited number of schools have introduced experimental courses at certain grades. Ethics cannot substitute religious instruction as the latter – provided at schools by churches – is not part, and can not be part, of the curriculum.

Religious matters certainly come up in classes in literature, history, music etc. These shall not require identification by students or teachers but rather provide neutral and factual information and would not be considered as a challenge.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

Working conditions mean that teachers and other staff in schools have to set aside their religious affiliation and religious issues whilst at school. Teachers as public employees have to adjust to the rules of their profession. This general requirement also means that teachers shall not wear extreme garments. Margins largely depend on local communities: in some places an unusual dress may distract the school discipline, whereas in others it would not constitute an issue. Non-discrimination on the basis of religion or belief would be the fundamental principle. Data protection rules rule out keeping records on the religious affiliation of employees (and pupils). Public employees may express their belief, but shall not use their office in order to spread their convictions. In practice this means that teachers in public schools may respond to questions with regard to their religious beliefs but they do not have to. They certainly should not invite their pupils to their congregation or use their position in order to influence the religious decisions of pupils.

⁵ Act LXXIX/1993, § 4 (2)–(3).

There are no religious symbols at public institutions in Hungary. Inmates, pupils and students, however, could post religious symbols at their own designated spaces if these do not disturb others – such as a cross above their bed in a dormitory.

According to the law the pupil has the right to have his religious convictions respected and to express his conviction or belief in ways that do not violate the law, do not violate the similar rights of others, and do not infringe the right of fellow pupils to study.⁶ Due to the limited number of Muslims in the country headscarves have not yet become an issue in Hungary, but there is no dress code that would rule them out. Whereas with regard to teachers it could be argued that a religion-neutral appearance would constitute a general condition of their profession, limitations for students would be certainly unacceptable.

Although benediction of public works (bridges, tunnels, construction sites) has become customary, this is not common with school buildings. A religious service on school premises is hardly imaginable, but a benediction at an inauguration of a new building – in most cases as an ecumenical gesture of local denominations – would not be seen as an institutional entanglement challenging neutrality. “Routine” benedictions (e.g.) every year are not done at public schools.

Religious gestures of pupils would not constitute an issue as far as they do not touch upon the rights of others. Such gestures (like self-initiated prayers of pupils), however, are not likely to happen. Religious communities may attach services to the school year (e.g. a mass at the beginning as well as at the end of the year), but these are customary at the church and not at school premises. A common prayer in the framework of a class or the school in general would not be imaginable. Many schools and classes organize a common celebration of Christmas, which is regarded to be rooted in the general culture (e.g. singing traditional carols), and not as a gesture of worship. Opting out from these common events would be ensured.

⁶ Act LXXIX/1993. § 11 (1) h).

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

There are not many holidays in Hungary: besides January 1, and a few national days only Christmas, Easter Monday, and Pentecost Monday – and since 2001 All Saints are days of rest. The protection of Sunday as well as the acknowledgement of certain Christian holidays was challenged before the Constitutional Court, but the court rejected the petition in 1993 stating that all employees had the possibility to take time off for their holidays.⁷ Saturdays can be designated as days of work by the Minister of Labour in order to provide “long weekends” (for example if a public holiday is on Thursday or Tuesday, the day between the holiday and the weekend is given free, and a Saturday from the previous week or the next week becomes a working day instead). Sundays are not to become working days. The Constitutional Court stated that the constitutional obligations of the state prohibit the privileged treatment of one religion (e.g., by declaring all of its holidays as days of rest). However, the state must ensure the free exercise of all religions. Historically, religious motives did determine the state’s decision in choosing the holidays; however, the present holidays are the ones celebrated by the vast majority in society (not only practising Christians). Christmas and Easter, for example, are closely connected to family and community traditions. As in the given case the petitioners were acting for a Jewish organisation, the Constitutional Court stated that no Jewish holiday gained such a popular acceptance. The protection of Sunday used to have a religious background; however, it has lost that background now. Sunday as a uniform day of rest is almost universal. The uniformity of this day of rest has a secular purpose.⁸ This means that it is not a majority claim that is accommodated.⁹ As employees have the right to decide on one fourth of their

7 Decision 10/1993. (II. 27.) AB.

8 Decision 10/1993 (II. 27) AB, ABH 1993, 105.

9 The solution the Constitutional Court has reached in the case is similar to what the Supreme Court of the United States of America reached in the *McGowan v. Maryland* case: “There is no dispute that the original laws which dealt with Sunday labor were

paid leave without the consent of the employer,¹⁰ this ensures religious minorities are able to observe their holydays. The same would apply to students – and practices would be relatively tolerant.

As religious instruction is strictly optional on an “opting in” basis, opting out cannot be an issue. From compulsory (and neutral) elements of instruction about religions opting out could be possible. Due to the relatively small number of Muslims in the country the issue of opting out of physical education has not arisen so far. It is likely that tolerance would prevail in practice. With regard to community events (like the celebration of Christmas at public schools) the practice is generally tolerant. The same would apply to analogous opting out issues, like opting out from biology or other classes which might include material related to religion; certainly pupils could only opt out from elements of the lesson, not the entire class.

The right to home-schooling has been recognised since 1996, but children participating in home-schooling also have to be affiliated to a school and are graded by the school upon examination. There are no overall data available on religiously motivated home-schooling. At primary school level the number of children in home-schooling is between 5,000 and 6,000 (under 1 % of the age group) – about a third of them for health reasons and about a quarter of them because their parents work abroad. With regard to about 2,000 of those who undergo home-schooling, the only reason given is the decision of parents, what may cover in certain cases religious reasons, but this is likely to be very rare. Children from a farm managed by ISKCON used to be home-schooled (affiliated to a village school), but since 2009 they run an accredited school on the farm for 24 pupils.¹¹

motivated by religious forces. [However], the present purpose and effect ... is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for dominant Christian sects, does not bar the State from achieving its secular goals.” [366 U.S. 420 (1961)].

¹⁰ Act XXII. (Labour Code) § 134 (3).

¹¹ According to the website of the farm, there are only five children at the school. <http://oktatás.krisnavolgy.hu/>.

RELIGION IN PUBLIC EDUCATION IN IRELAND¹

PAUL COLTON²

Introduction

The Irish education system is a crucible for social and political comment as well as controversy.³ The role of religion and religious groups in education is a dominant theme of that debate, as is the challenge of according each citizen rights afforded by Articles 42 and 44 of *Bunreacht na hÉireann*.⁴ This has been referred to as ‘a

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- 1 This paper will deal solely with the Republic of Ireland. The paper follows the *Grille Thématique* of the Consortium including the request to deal only with education prior to third level. For detailed reading on the subject of the law, children, education and religion in Ireland see *J. Coolahan, Irish Education: History and Structure* (1981, Institute of Public Administration, Dublin); *D. Glendenning, Religion, Education and the Law* (2008, Tottel, Dublin) Ch.9; *D. Glendenning, Education and the Law* (1999, Butterworths, Dublin); *A. Hyland and K. Milne (eds.) Irish Educational Documents Vols. I and II* (1987, Church of Ireland College of Education, Dublin); and *G. Shannon, Child Law* (2005, Thomson Round Hall, Dublin).
 - 2 Church of Ireland (Anglican/Episcopalian Bishop of Cork) and Research Associate at the Centre for Law and Religion at Cardiff University. Paul Colton is patron of 20 primary schools in Ireland and sits on the boards of management of two voluntary secondary schools and one comprehensive school (he is chairperson of two of these boards). He is patron of a comprehensive school. Nationally, he is a member of the Board of Education of the General Synod of the Church of Ireland, and he is chairperson of the Secondary Education Committee (a nationwide ecumenical body of the Church of Ireland and Protestant Churches which, on behalf of the patrons of second level schools liaises with the government and represents the interests of schools under Protestant patronage).
 - 3 See e.g. ‘Suburbs full of empty promise’ *Irish Times* 26th August 2006; ‘Is your child Catholic enough to get a place at school?’ *Irish Times* 5th May 2007; ‘Is denominational education suitable for 21st Century Ireland?’ *Irish Times* 4th April 2008; ‘Protestant Bishops fear cuts will close schools’ *Irish Independent* 1st November 2008.
 - 4 *Bunreacht na hÉireann* – the Constitution of Ireland; hereinafter ‘the Constitution’. See generally *O. Doyle, ‘Article 44: Privileging the Rights of the Religious’* in *E. Carolan, and O. Doyle (eds.) The Irish Constitution: Governance and Values*. (2008, Thomson Round Hall, Dublin) 476-89.

dormant crisis in waiting.⁵ The religious institutions are wrestling with the issues also.⁶

Religion and Education: A Cauldron of Debate

The contemporary reality is remote from the vision put forward by Lord Stanley in 1831. He envisaged a system of national education in Ireland, which endeavoured ‘...to unite in one system children of different creeds.’⁷ Today, the established educational framework is predominantly denominational in character. At the same time there are new religious groups (not exclusively Christian) either seeking their own schools or more multi-denominational schools. There is also a small, but vocal, group calling for a universal secular system of education.⁸ Others seek diversification of the numbers of patrons (religious and non-religious) of schools.⁹ All of this, however, subsists in active tension with the expectation that the wishes of the religious majority will be protected.¹⁰

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- 5 C. Hogan, ‘A Veiled Problem: Religion in Irish Schools’ (2005) 8 TCLR 5-31 at 29.
 6 See e.g. R. Clarke, ‘What do we want from Denominational Education?’ (2006) Vol. 29 no.3 SEARCH: A Church of Ireland Journal 228-33.
 7 ‘The Stanley Letter’ in A. Hyland and K. Milne (eds.) *Irish Educational Documents, Volumes I and II* (1987, Church of Ireland College of Education, Dublin) 98–103. See also A. Hyland, ‘The multi-denominational experience’ in ‘Report of the Constitution Review Group’ (1996, Government Publications, Dublin) 630-4.
 8 See e.g. A. Mawhinney, ‘The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools’ in [2006] *Education Law Journal* 102-15; also A. Mawhinney, ‘Freedom of religion in the Irish primary school system: a failure to protect human rights?’ in (2007) 27 no.3 *Legal Studies* 379–403; also E. Daly, ‘Religious freedom as a function of power relations: dubious claims on pluralism in the denominational schools debate’ in (2009) Vol. 28 (3) *Irish Educational Studies* 235-51; also A. Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (2009, VDM Verlag Dr. Müller, Saarbrücken); also O. Doyle, ‘Article 44: Privileging the Rights of the Religious’ in E. Carolan and O. Doyle (eds.) *The Irish Constitution: Governance and Values* (2008, Thomson Round Hall, Dublin) 476-89.
 9 P. Colton, ‘Schools and the law: a patron’s introspection’ in (2009) Vol. 28 (3) *Irish Educational Studies* 253–77; ‘Martin calls for school patronage change’ on <http://www.rte.ie/news/2009/0616/education.html>; ‘Martin welcomes plans to reduce Catholic Schools’ in *Irish Times* 6th March 2010.
 10 ‘Archbishop defends Catholic schools’ in *Irish Times*, 22nd September 2007.

*The Irish Education System**Education in a Religious Society*

Ireland is predominantly a Roman Catholic country:¹¹ in 2006, 86.9 % of the total population.¹² Much smaller, and with 3 %, the second largest denomination is the Church of Ireland.¹³ For the first time in a census, the third largest religious grouping was Muslims (0.8 %). Through net migration, all of the main Christian denominations had increased since the previous census in 2002. Between 1991 and the census of 2002 the number of newer Christian denominations in Ireland and in adherents of the world's other faiths had already grown.¹⁴

Only 6 % of the population stated either that they had no religion, or did not state a religion. However, this group grew rapidly since the previous census and have, naturally, been vocal in their claim for space within the educational structures within the State.¹⁵ Statistics alone indicate, however, only one level of reality. Modern Ireland is a complex society in the midst of flux and rapid change. The statistical snapshot does not expose the fact that patterns of religious affiliation and participation have changed enormously in recent

11 See generally *J. H. Whyte, Church and State in Modern Ireland 1923–1979* (2nd ed., 1980, Gill and Macmillan, Dublin), *D. Keogh, The Vatican, the Bishops and Irish Politics 1919–39* (2004, Cambridge University Press), *D. Keogh, Ireland and the Vatican: The Politics and Diplomacy of Church-State Relations 1922–1960* (1995, Cork University Press), *D. Ó Corráin, Rendering to God and Caesar: The Irish churches and the two states in Ireland, 1949–73* (2006, Manchester University Press).

12 While the number of Roman Catholics had increased since the previous census in 2002, the overall increase in Ireland's population resulted in a small percentage decrease in the number of Roman Catholics as a proportion of the total.

13 For a full analysis of the census figures in relation to the Church of Ireland see *M. Macourt, Counting the People of God? The Census of Population and the Church of Ireland* (2008, Church of Ireland Publishing, Dublin).

14 For example, Orthodox, Evangelical, Pentecostal, Lutheran (increased in that period by 2815 %, 362 %, 1006 % and 203 % respectively); and Muslims, Hindus, Buddhists and adherents of other stated religions (increased by 394 %, 225 %, 295 % and 306 % respectively). Since then, between 2002 and 2006, the number of Orthodox Christians doubled.

15 See e.g. 'New school model still tramples on the rights of the non-religious' *Irish Times* 14th April 2009.

decades. There is also considerable evidence that some, among all denominations, exercising parental choice, are not necessarily choosing the schools run by their own religious denomination for the education of their children.

This changing demography poses challenges. New minorities require accommodation both physically and ideologically within the existing structures.¹⁶ The challenge is exacerbated by the dispersal of minority religious groups throughout the State: by way of illustration, the educational needs of the growing Muslim community can more easily be addressed in Dublin than throughout the rest of the State. By analogy, the principle of support for members of the Church of Ireland and of Protestant churches – communities also dispersed throughout the State – is, for example, well established since the introduction of free second-level education in Ireland in 1967.¹⁷

*Education and Demography*¹⁸

The Census 2006 showed that Ireland had a total population of 4,239,848.¹⁹ In 2008/2009,²⁰ the number of full-time students in educational institutions aided by the Department of Education and Skills (DOES)²¹ was 979,360. This comprised 498,914 pupils at first level and 341,312 at second level. In the same year there were

16 See generally *A. Hyland*, 'Patronage and our National Schools: can we claim to cherish our children equally?' in (2006) Vol. 29 No. 3 SEARCH: A Church of Ireland Journal, 207-15.

17 See Reports of Dáil Éireann Volume 230 (26th October, 1967) para. 52 'Financing of Protestant Schools'; Volume 241 (23rd October 1969) paras. 295-7 'Secondary Education for Protestant Children'; Volume 321 (3rd June 1980) 'Protestant Schools'; and Volume 497 (26th November 1998) para. 187 'School Funding'.

18 Statistics from the website of the Department of Education and Skills www.education.ie, accessed on 24th June, 2010.

19 Central Statistics Office www.cso.ie, accessed on 24th June, 2010.

20 The most recently published figures from the Department of Education and Skills (as at 12th July 2010).

21 In 2010 the Department of Education and Science was renamed the Department of Education and Skills.

31,349 teachers at first level. In the previous year there were 25,906 teachers at second level.

Parents of children in Ireland are required to cause their child (from the age of 6 years until either they attain the age of 16 or have completed 3 years of post-primary education) to attend a recognised school on each school day.²²

Types of School

In 2008/2009 there were 4,035 schools aided by the DOES, of which 3,303 were first level (primary) schools and 732 were second level (post-primary) schools. At primary level the 3,303 schools included 3,175 National Schools (the principal type of school at that level) and 128 Special Schools. In addition, but not aided by the DOES, are private primary schools, of which there are approximately 45 in the State.²³

The 732 schools at second level, in 2008/2009, comprised 388 voluntary secondary schools, 91 community or comprehensive schools (of those 91, 14 are comprehensive schools), and 253 vocational schools and community colleges. This categorisation needs to be elucidated.

Voluntary secondary schools are privately owned and managed: their trustees are generally church or religious communities, boards of governors, charitable trusts or, in some cases, individuals. They are of two types: fee-paying (where the State funds the costs of a quota of teachers but not running costs) and non-fee-paying (where the State also funds the costs of a quota of teachers and, in addition, these schools are eligible also for a range of grants and subsidies from the State). Historically, these schools were those of a more academic and grammar school model.

Vocational schools and community colleges are schools under the patronage of one of the thirty-three Vocational Education Com-

22 Education Welfare Act 2000 s.2 (1) and s.17(1) (This Act repealed the School Attendance Acts 1926 – 1967).

23 Source www.schoolsdays.ie, accessed on 10th July 2010.

mittees (VECs) in Ireland.²⁴ The Vocational Education Act 1930 provided that vocational schools should engage in continuation education and in technical education.²⁵ Following the advent of community schools in the 1970s, the VECs established community colleges under VEC control and run on similar lines to the community schools. The State owns the schools and pays the full running costs. The boards of management of these are sub-committees of the local VEC.

In the 1960s community and comprehensive schools were established to provide a broader curriculum of both academic and practical subjects and open to all people in the community. They are emblematic of the merging of the academic and practical, as well as the voluntary and vocational, strands in the Irish education system as was often evidenced by the physical amalgamation of two or more schools.²⁶ They are managed by boards of management representing local interests in accordance with deeds of trusts or terms of reference which generally reflect a partnership with a religious nominating authority (e.g. a bishop or religious community) or the local Vocational Education Committee (VEC) in whom the school has been vested.

As an aside, it can be noted that in 2007/2008 there were 32 third level colleges in Ireland aided by the DOES: 7 universities, 15 in the technology sector, 7 teacher-training colleges and 3 others. The place of religion in these, at third level, is not the subject matter of this paper.

24 Hereinafter VEC.

25 Vocational Education Act 1930, Ss.3 and 4.

26 e.g. Ashton Comprehensive School, of which this writer is co-patron, was formed in the early 1970s following the amalgamation of Cork Grammar School and Rochelle School. Also, Mount Temple Comprehensive School in Dublin was formed in the 1970s as an amalgamation of Mountjoy School, the Hibernian Marine School and Bertrand and Rutland School.

A Denominational System: Patronage and Characteristic Spirit

The Irish education system is overwhelmingly religious in character. At both primary and post-primary levels this is under-pinned by two legal principles articulated in the Education Act 1998: patronage and characteristic spirit.²⁷

Patronage

In the colloquial sense a patron is a person who supports with money, gifts, endorsement or efforts a person or institution. Its etymology carries connotations of fatherhood, defence, protection and advocacy. A specific meaning, however, is given to the term 'patron' by section 8 of the Education Act 1998.

In the case of a primary school the patron is the person who is recognised as such by the Minister for Education and Science.²⁸ In the case of post-primary schools, the relevant section of the Act is sequential: the patron is, in the first instance, either the trustees of the school or the board of governors; or where there are no such trustees or board, the patron is the owner of the school.²⁹ The name/s of the person/s deemed to be patron is/are to be entered by the Minister in a register kept for that purpose.³⁰ The register may be amended by the Minister on the application of a patron who is already registered as the patron of a school (or that person's successor).³¹

What is of primary interest in the current context is the overarching governance of the patron. It is a function of the patron to nominate the trustees of a National School.³² A patron may request that a school be accorded recognition for the purposes of the Educa-

27 Education Act 1998 s.8 (patronage) and s.15(2)(b) (characteristic spirit).

28 Education Act 1998 s 8(1)(a). Note, the name of the Minister was changed in 2010 to 'Minister for Education and Skills'.

29 Education Act 1998 s 8(1)(b).

30 Education Act 1998 s 8(1)(a).

31 Education Act 1998 s 8(3).

32 Boards of Management of National Schools: Constitution of Boards and Rules of Procedure (2003, Department of Education and Science, Athlone).

tion Act.³³ A patron appoints a board of management of a school.³⁴ (In doing so, in the case of Primary Schools, partnership is given effect, but the nominating patron retains a majority of representatives on the board).³⁵ A number of matters governing that appointment are determined, however, in consultation by the Minister with the partners in education: composition;³⁶ gender balance;³⁷ and the manner of the appointment of a board.³⁸ The patron, subject to the consent of the Minister and for good and valid reasons, may, in writing, remove a member of a board of management from office.³⁹ Similarly if satisfied that the functions of a board are not being effectively discharged, the patron may, according to agreed procedures, dissolve a board.⁴⁰

The role of the patron is one of oversight, delegation and support. The board of management appointed by the patron manages the school *inter alia* 'on behalf of the patron'.⁴¹ Consequently the board is

- to consult with and keep the patron informed of its decisions and proposals;⁴²
- to seek the patron's agreement concerning the manner of publication of a variety of school policies: admission, participation, expulsion and suspension of students; the admission of students with disabilities of special education needs.⁴³

While patronage carries responsibilities, inherent in it is considerable authority and oversight.

33 Education Act 1998 s 10(2).

34 Education Act 1998 s 14(1).

35 Boards of Management of National Schools: Constitution of Boards and Rules of Procedure (2008) Appendix C.

36 Education Act 1998 s 14(1).

37 Education Act 1998 s 14(5).

38 Education Act 1998 s 14(6).

39 Education Act 1998 s 16(1)(a) See also Rules of Procedure p 5 at 7(a)(iv).

40 Education Act 1998 s 16(1)(b) See also Rules of Procedure p 5 at 7(a)(iv).

41 Education Act 1998 s 15(1).

42 Education Act 1998 s 15(2)(c).

43 Education Act 1998 s 15(2)(d).

Characteristic Spirit

The concept of ‘characteristic spirit’ is key to the inculcation of a value system (religious outlook in the case of schools under religious patronage). According to the legislation, ‘characteristic spirit’ is ‘... determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school...’⁴⁴ School boards of management are accountable to the patron for upholding the characteristic spirit of the school.⁴⁵ The patron is the arbiter of what the ethos is;⁴⁶ and provision is made for the resolution of disputes about ethos⁴⁷ and the removal, by the patron, subject to the Minister’s approval, of a trustee.⁴⁸

Defining ‘characteristic spirit’ or ‘ethos’ is as elusive as the pursuit of any legal definition in Ireland, of the meaning of religion. The courts have acknowledged that religious denominations are to be free to describe and define themselves.⁴⁹ Nonetheless, where constitutional rights are at stake, the Supreme Court, in *Re Article 26 and the Employment Equality Bill 1996* made clear that ‘...the final decision on this question as well as the final decision on what is necessary to protect the ethos will rest with the court and the court in making its overall decision will be conscious of the need to reconcile the various constitutional rights involved.’⁵⁰

The law embodies a number of provisions further to protect the characteristic spirit or ethos of a school. In *Greally v Minister for Education (No.2)*, Geoghegan J said that

The State could not adopt a funding scheme for secondary teachers which had the effect of destroying the denominational nature of

44 Education Act 1998 s 15(2)(b).

45 Education Act 1998 s 15 (2)(b).

46 Education Act 1998 s 3(a).

47 Education Act 1998 s 3 (b) to (g).

48 Education Act 1998 s 5.

49 *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 I.R. 321 at 359. See also *McGrath and O Ruairc v Trustees of the College of Maynooth* [1979] I.L.R.M. 166.

50 *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 I.R. 321 at 356.

schools requiring funding. I believe that this particular view is warranted by a reading of Article 42 of the Constitution as a whole.⁵¹

Within recent years, and in an on-going process, the schools' leases created pursuant to the Leases for Schools (Ireland) Act 1881⁵² are the subject of Deeds of Variation. These deeds embody, in a legal instrument, the concept of characteristic spirit. For example, in such deeds for Church of Ireland schools, the trustees and boards of management undertake that they shall be familiar with the Church of Ireland ethos of the school; cause the school to be managed in accordance with that ethos and to that end ensure that, as far as possible, a majority of the students in the school will be members of the Church of Ireland (unless, in particular circumstances, the patron gives written consent to the contrary).⁵³

These legal principles, allied with the prevailing pattern of religious adherence in Ireland, reinforce an education system dominated by religious groups: the majority of Irish schools are under the patronage of religious entities.⁵⁴

The Anatomy of the Denominational System

Of the State-aided primary schools c. 3,104 are under the patronage of Roman Catholic Bishops.⁵⁵ The others under religious patronage are: the Church of Ireland (176 schools); Presbyterian (16); Methodist (1); Jewish (1); and Muslim (2).⁵⁶ In addition there are

51 *Greally v Minister for Education (No.2)* [1999] 1 I.R. 1 at 10-11, [1999] 2 ILRM 296 at 304-5.

52 44 & 45 Vic c 65.

53 Deed of Variation, s 2. There are analogous deeds for other patronage bodies, including the Roman Catholic Church.

54 The Constitution Review Group referred to the '*de facto* denominational reality of the national school system' as never having been legally enshrined, but as having been 'recognised' in successive editions of the *Rules for National Schools*. 'Report of the Constitution Review Group' (1996, Government Publications, Dublin) 338; concerning the denominational character of second-level schools see 340.

55 CPSMA Handbook (2007, Catholic Primary Schools Management Association, Dublin) 5.

56 Figures supplied by the Education Officer, Board of Education of the General Synod of the Church of Ireland.

other patronage bodies such as Educate Together (56) where the religious ethos is multi-denominational;⁵⁷ and *An Foras Pátrúnachta na Scoileanna Lán Ghaeilge* (51) whose Irish language schools may be either inter-denominational or multi-denominational in ethos.⁵⁸ The private primary schools are of many types, some denominational, others multi-denominational or non-denominational.

The profile of modern-day religious patronage is colloquially and simplistically, but mistakenly, portrayed as catholic schools and protestant schools. At second level, for example, not all the ‘protestant’ schools are of the same type, nor are they all under the patronage of the Church of Ireland.⁵⁹ Even among the Church of Ireland schools there are subtleties of emphasis, a fact not widely grasped.⁶⁰

In more general terms, as already detailed above, at second-level there are three main types. First, there are secondary schools⁶¹ (of which all but 24 are under the patronage of the Roman Catholic Church).⁶² Second, the vocational schools and community colleges are State schools under the patronage of one of the thirty-three VECs in Ireland.⁶³ However, in a small number of these schools the VEC, as patron, takes account of a partnership agreement – such as a Deed of Trust or model agreement – with a local Christian denomination

57 See www.educatetogether.ie, accessed on 24th June 2010. Educate Together defines ‘multi-denominational’ as including ‘...all denominations of all faiths.’

58 This is a patronage body established in 1993 to promote education through immersion in the Irish language. See www.foras.ie.

59 Wesley College, Dublin (Methodist), St Andrew’s College, Dublin (Presbyterian), Newtown School Waterford and Drogheda Grammar School (Society of Friends), Villiers School, Limerick (the Board if nominated jointly by the Church of Ireland and the Presbyterian Church).

60 Schools which refer to themselves as Church of Ireland Schools: (Middleton College, Wilson’s Hospital School, St Patrick’s Cathedral Grammar School, St Columba’s College, Alexandra College, King’s Hospital School); Schools under the patronage of the Incorporated Society for Promoting Protestant Schools in Ireland (Bandon Grammar School, Kilkenny College, Dundalk Grammar School and Sligo Grammar School); and a Church of Ireland Diocesan Secondary School (Wilson’s Hospital School).

61 Known also as ‘voluntary secondary schools’. See Intermediate Education (Ireland) Act 1878 (41 & 42 Vict. c.66); Intermediate Education (Ireland) Act 1882 (45 & 46 Vict. c.69), and Educational Endowments (Ireland) Act 1885 (48 & 49 Vict. c.78).

62 Of the 24, 21 are Protestant, 2 inter-denominational and 1 Jewish. [Debates Dáil Éireann Volume 666 (6th November 2008) ‘School Staffing’].

63 Hereinafter VEC.

or denominations).⁶⁴ Third are the community schools (all of which operate under a model of co-patronage between the VEC and Roman Catholic patrons) and comprehensive schools (5 of which are under 'Protestant' patronage).⁶⁵

Technically VEC schools and colleges are non-denominational. However, religious education is taught. They have chaplains funded by the State. Similarly community and comprehensive schools have chaplains funded by the State. This provision of chaplains by the State has been held to be constitutional.⁶⁶

Religious Education and Practice in Irish Schools

*Religion and Education in the Irish Constitution*⁶⁷

The Constitution treats of education in the context of Articles 41 and 42 (the Family and Education) and parts of Article 44 (religion). The constitutional provisions relating to the family and to education have been described as having 'a close mutual connection'.⁶⁸ It is widely acknowledged that this constitutional framework gestated from within the leadership and teaching of the Roman Catholic Church.⁶⁹

64 See Vocational Education Act 1930.

65 Since 2004 the Protestant Comprehensive Schools have been in dispute with the Department of Education and Skills concerning the patronage of their schools. Successive officials assert the Minister for Education and Skills' patronage and the Church of Ireland asserts its patronage in the case of four of the schools (the patronage of the fifth being claimed by the Donegal Protestant Board of Education). In December 2010, an historic breakthrough was made by one of the schools – Ashton School Cork – whereby the Minister for Education and Skills consented to that school being under the joint patronage of the Church of Ireland Bishop of Cork and the City of Cork Vocational Education Committee. It remains to be seen whether this can become a model for the other Protestant Comprehensive Schools to follow.

66 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

67 See generally *G. Hogan and G. Whyte, J.M. Kelly, The Irish Constitution* (4th ed., 2003 LexisNexis/Butterworths, Dublin) Chs. 7.6 and 7.8; and also *J. Casey, Constitutional Law in Ireland* (2000, Round Hall/Sweet & Maxwell, Dublin), Chs. 17 and 19.

68 *GW Hogan and GF Whyte J.M. Kelly, The Irish Constitution* (4th edition, 2004, LexisNexis, Dublin) 1830 at 7.6.06.

69 *D. Keogh and A. McCarthy, The Making of the Irish Constitution 1937* (2007, Mercier Press, Cork) 115. *I. Bacik, 'Future Directions of the Constitution'* in *E. Carolan and O. Doyle (eds.) The Irish Constitution: Governance and Values* (2008, Thomson

Indeed, the whole Constitution has been described as embodying ‘a pro-religion ethos’.⁷⁰

In relation to the family and education the Constitution makes provision in Article 42:⁷¹

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

Round Hall, Dublin) 135-43 at 140. See also Papal Encyclical of Pope Pius XI *Divini illius Magistri* 31st December 1929.

70 I. Bacik, ‘Future Directions of the Constitution’ in E. Carolan and O. Doyle (eds.) *The Irish Constitution: Governance and Values* (2008, Thomson Round Hall, Dublin) 135-43 at 135.

71 See also Report of the Constitution Review Group (1996, Government Publications, Dublin) 342-56.

Accordingly, the family is the primary and natural educator of the child.⁷² Parents have the right to provide education in their homes or in private schools or in schools recognised or established by the State.⁷³ In *O'Sheil v Minister for Education*⁷⁴ Laffoy J upheld the primacy of parental choice. However, she also ruled that, in the case of primary education, there were some limits on the State's duty to support parental choice.

For its part, the State is to lay down a 'certain minimum' education (moral, intellectual and social – but there is no mention of religious education).⁷⁵ It is '...to provide for free primary education...'⁷⁶ It is also to '...endeavour to supplement and give reasonable aid to private and corporate educational initiative...' giving '...due regard to the rights of parents, especially in the matter of religious and moral formation.'⁷⁷ The courts have held that the current denominational system is constitutional:⁷⁸ parents are free to choose to send their children to schools with a religious ethos and the State, for its part, may give assistance to them to do so.⁷⁹

In *Quinn's Supermarket v Attorney-General*⁸⁰ Walsh J emphasised that our '...[c]onstitution reflects a firm conviction that we are a religious people.' For this reason (and because the educational system is, in the main, denominational) Article 42 also needs to be read in tandem with Article 44 which deals with religion. It states:

72 *Bunreacht na hÉireann* Article 42.1.

73 *Bunreacht na hÉireann* Article 42.2.

74 *O'Sheil v Minister for Education* [1999] 2 IR 321, [1999] 2 ILRM 241.

75 *Bunreacht na hÉireann* Article 42.3.2. *Re Article 26 and the School Attendance Bill, 1942* [1943] I.R. 334; *O'Sheil v Minister for Education* [1999] 2 I.R. 321, [1999] 2 ILRM 241; and *DPP v Best* [2000] 2 I.R. 17, [2000] 2 ILRM 1.

76 *Bunreacht na hÉireann* Article 42.4 (my emphasis). For the distinguishing of 'provide' and 'provide for' see *Crowley v Ireland* [1980] I.R. 102 per *Kenny J* at 127. For children with learning difficulties see: *O'Donoghue v Minister for Health* [1996] 2 IR 20 and *Sinnott v Minister for Education* [2001] 2 IR 545.

77 *Bunreacht na hÉireann* Article 42.4.

78 *Primary Schools: Crowley v Ireland* [1980] IR 102; *Post-Primary Schools: Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

79 *Crowley v Ireland* [1980] I.R. 102; *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 I.R. 321, [1998] 2 ILRM 81.

80 *Quinn's Supermarket v Attorney General* [1972] IR 1.

The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

Although Article 44.1 has been interpreted as underpinning Christianity,⁸¹ the courts have also made clear that the benefits are not confined to Christians.⁸² According to Article 44, freedom to profess and practise one's religion is guaranteed, subject to public order and morality.⁸³ The autonomy of each religious denomination is guaranteed in relation to the management of its own affairs:⁸⁴ '...the primary aim of the constitutional guarantee is to give vitality,

81 *Norris v Attorney General* [1984] IR 36.

82 *McGee v Attorney General* [1974] IR 284 and in *Norris v Attorney General* [1984] IR 36.

83 *Bunreacht na hÉireann* Article 44.2.1.

84 *Bunreacht na hÉireann* Article 44.2.5.

independence and freedom to religion.⁸⁵ Restrictions are placed in principle, subject to certain exceptions, on State acquisition of the property of religious denominations and educational institutions.⁸⁶

The State is precluded from endowing any religion.⁸⁷ It may not discriminate on the ground of religious profession, belief or status,⁸⁸ and where there is legislation providing State aid for schools under the management of different religious denominations it shall not discriminate between those schools.⁸⁹ The funding of a Roman Catholic Seminary (since it was part of the National University of Ireland),⁹⁰ the provision of chaplains in denominational schools⁹¹ and the financial support of those denominational schools⁹² have all been found to be constitutional and consonant with Article 44.2.2.

The current constitutional position was well-summarized in *Quinn's Supermarket v Attorney General* by Walsh J:

The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists. But Article 44.1 goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality.⁹³

85 *Henchy, J* in *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] I.L.R.M. 166 at 187.

86 *Bunreacht na hÉireann* Article 44.2.6.

87 *Bunreacht na hÉireann* Article 44.2.2.

88 *Bunreacht na hÉireann* Article 44.2.3.

89 *Bunreacht na hÉireann* Article 44.2.4.

90 *McGrath and Ó Ruairc v Trustees of Maynooth College*, [1979] ILRM 166.

91 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

92 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

93 *Quinn's Supermarket v Attorney General* [1972] IR 1 at 23-4.

Barrington J quoted this view with approval in *Corway v Independent Newspapers (Ireland) Ltd*.⁹⁴

In *Campaign to Separate Church and State Ltd and Murphy v Minister for Education*⁹⁵ Keane J said that the constitutional prohibition on endowing religions ‘...was not designed to render unlawful the comprehensive system of aid to denominational education which had become so central a feature of the Irish schools system and the validity of which was expressly acknowledged by the Constitution.’ Barrington J said that

...the system of denominational education was well known to the framers of the Constitution. We know this because they refer to it. Article 44.2.4o prescribes that legislation providing State aid for schools shall not discriminate between schools under the managements of different religious denominations nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.⁹⁶

Religious Education and Religious Instruction: Primary Schools

In primary schools, the provision of a religious education curriculum is the responsibility of the patron. The Primary School Curriculum celebrates ‘the uniqueness of the child’, and ‘...is designed to nurture the child in all dimensions of his or her life – spiritual, moral, cognitive, emotional, imaginative, aesthetic, social and physical.’⁹⁷ Moreover, the importance that ‘the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum,...’ is emphasised.⁹⁸

94 *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

95 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81 at 88-9. See also *Bunreacht na hÉireann* Article 42.4.

96 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 356.

97 *Primary School Curriculum* (1999, Government Publications, Dublin) 6.

98 *Primary School Curriculum* (1999, Government Publications, Dublin) 27.

The promotion of ‘tolerance and respect for diversity...’ is underscored.⁹⁹ In the case of religious education, the curriculum notes:

Since the Department of Education and Science, in the context of the Education Act (1998), recognises the rights of the different church authorities to design curricula in religious education at primary level and to supervise their teaching and implementation, a religious education curriculum is not included in these curriculum documents.¹⁰⁰

Rule 68 of the Rules for National Schools lays down (albeit in what seem to us archaic terms) the regulation of religious instruction in primary schools:

Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school...¹⁰¹

Section 9 of the Education Act 1998 states that one of the functions of a recognised school is to ‘...promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school...’¹⁰²

A board, in determining how much of the reasonable time allotted by the Minister ‘...for subjects relating to or arising from the characteristic spirit of the school...’ requires the consent of the patron.¹⁰³ In the national curriculum for primary schools the section on religious education is blank: the individual religious authority is expected to determine the content.¹⁰⁴

99 *Primary School Curriculum* (1999, Government Publications, Dublin) 28.

100 *Primary School Curriculum* (1999, Government Publications, Dublin) 58.

101 Rules for National Schools 1965 Rule 68.

102 Education Act 1998 s.9 (d).

103 Education Act 1998 s 30(2)(d).

104 In the case of schools under the patronage of the Roman Catholic Church *Alive O* is used. In the case of Church of Ireland and Protestant schools the R.E. curriculum is *Follow me*.

Rule 69 contains an opt-out clause: '[n]o pupil shall receive, or be present at, any religious instruction of which his parents or guardian disapprove.' The periods of formal religious instruction are to be fixed so that pupils may be withdrawn.¹⁰⁵ That formal period is to be clearly indicated on the timetable.¹⁰⁶ Pupils of other religious outlooks are to be afforded the opportunity to be absent in order to receive instruction elsewhere.¹⁰⁷ The Board of Management's consent is required for the presence of a visitor during formal religious instruction.¹⁰⁸ Although this right to opt-out or to seek alternative provision is designed to protect pupils, it is criticised by many as inadequate.¹⁰⁹ Moreover, with the advent of the new (as it was then) primary school curriculum in 1971, the integration of subjects – secular and religious – has been encouraged and so, religion and religious values in schools under religious patronage infuse the whole life of the school.

The integration of religion in the entire curriculum raises the question of how the rights of children of minority religious groups or their parents (as primary and natural educators) are to be protected, while at the same time protecting the rights of patrons within a system that is inherently denominational. However, in *Campaign to Separate Church and State Ltd v Minister for Education*, Barrington J emphasised that there is a difference between religious education and religious instruction:

The Constitution therefore distinguishes between religious 'education' and religious 'instruction' – the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious 'ethos' of the school. A religious denomination is not obliged to change the

105 Rules for National Schools 1965 Rule 69 (2)(b).

106 Rules for National Schools 1965 Rule 69 (5).

107 Rules for National Schools 1965 Rule 69 (3).

108 Rules for National Schools 1965 Rule 69 (4).

109 See *A. Mawhinney*, 'The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools' in [2006] *Education Law Journal* 102-15.

general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.¹¹⁰

Moreover, one of the caveats in his judgment was that it is '...constitutionally impermissible for a chaplain [and presumably by extension any other person] to instruct a child in a religion other than its own without the knowledge and consent of its parents.'¹¹¹

Religious Education and Religious Instruction: Second-level (Post-Primary) Schools

At second level the study of Religious Education (R.E.) as an academic subject is optional and is not offered in all schools. R.E. was introduced on a phased basis as an optional examination subject (and a syllabus laid down) in 2000 at Junior Certificate level and was first examined as a Leaving Certificate Subject in 2005.¹¹² The courses are academic rather than catechetical. The stated aim of the junior certificate syllabus is '...to provide students with a framework for encountering and engaging with the variety of religious traditions in Ireland and elsewhere... [and] ...to promote an understanding and appreciation of why people believe, as well as tolerance and respect for the values and beliefs of all...'¹¹³ The Leaving Certificate syllabus '...offers continuity and progression...' from the Junior Certificate programme.¹¹⁴

Quite separate from the provision of R.E. as an academic and examinable subject, many second-level schools provide the subject in a generic form in fulfilment of their characteristic spirit or religious

110 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 357-8.

111 *G Hogan and G Whyte, J M Kelly*, *The Irish Constitution* (4th Edition, 2003, Lexis-Nexis Butterworths, Dublin) 2056 at 7.8.67.

112 At second level Irish students sit State examinations after three years (Junior Certificate) and again at the conclusion of their second-level education either two or three years later (Leaving Certificate).

113 Junior Certificate Religious Education Syllabus 'Guidelines for Teachers 2' available at www.education.ie.

114 Leaving Certificate Religious Education Syllabus available at www.education.ie.

ethos. Where this is the case, the curriculum and extent of provision is a matter for a school's patron. For example, the Roman Catholic Bishops in Ireland require second-level schools under their patronage to do two hours (three periods) of R.E. each week. The provision of an opt-out, protected by the Constitution, pertains at this level also.

The outworking of the praxis of R.E. in a number of contexts is insightful.

Religious Education: Roman Catholic Church

The Roman Catholic Church's approach to education is underpinned by the *Code of Canon Law*.¹¹⁵ In 2007 the Irish Catholic Bishops' Conference published *Catholic Primary Schools: A Policy for Provision into the Future*.¹¹⁶ It sets out the approach of the Roman Catholic Church to education, including: the upholding of the primacy of parents' rights in the education of their children; recognition of the primary responsibility of parents as educators; and committing itself to '...providing Catholic schools to cater for the needs of parents who wish their children to have a Catholic education.'¹¹⁷ While acknowledging the new pluralism in Ireland and welcoming diversity and striving for inclusivity, the document states that '[t]he Catholic school seeks to support... [the] religious, spiritual and moral formation... [of the children] ...and encourages them when they become adults to grow into mature faith.'¹¹⁸ Such religious education may

115 See Code of Canon Law Canons 747 and 794-803. The Canon Law in this area is based substantially on the 'Declaration on Christian Education: *Gravissimum educationis*' of Pope Paul VI proclaimed on 28th October 1965. See also generally *S.A. Euart*, 'Title III: Catholic Education' in *J.P. Beal, J.A. Coriden and T.J. Green*, *New Commentary the Code of Canon Law* (2000, Paulist Press, Mahwah, New Jersey) 953-71.

116 *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin).

117 *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin) 3 at par. 2.1.

118 *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin) 3 at par. 3.1.

include preparation for the sacraments.¹¹⁹ To this end, the core resource for the teaching of religious education at primary level is *Alive-O*.¹²⁰

Religious Education: Church of Ireland and Protestant Churches

The Church of Ireland, the Presbyterian Church in Ireland and the Methodist Church in Ireland share a common religious education programme: *Follow Me*. Notably it was developed with the ecumenical assistance of the Roman Catholic Episcopal Commission on Catechetics and its publishers, *Veritas*.

The editor of *Follow Me* describes it as follows:

The aims of Religious Education are to enable children to develop a knowledge and understanding of the beliefs, worship and witness of the Christian faith and in particular of the Church of Ireland and other principal reformed traditions; to explore the biblical witness to God as Father, Son and Holy Spirit; to develop their own religious beliefs, values and practices through a process of personal search and discovery; to develop an awareness of and a sensitivity towards those of other faiths and none.

It can therefore be noted that the approach is that of Religious Education rather than Religious Instruction. Indeed there is no sacramental preparation in school. The approach is child centred and encourages individual responses from pupils rather than imposing beliefs... The teaching of the programme is not intended to compromise the beliefs of a teacher nor to require spiritual commitment of any particular form.

The Religious Education programme plays an important part in developing and supporting the school's ethos. Prayer, School Assemblies and Church Services are regularly found in the school's calendar and these may link in with the work completed in the Religious Education lesson. Crosses or other religious symbols may be displayed in

119 Catholic Primary Schools: A Policy for Provision into the Future (2007, Veritas, Dublin) 3 at par. 2.2.

120 *Alive-O* (Veritas, Dublin).

schools and the rector/minister is valued as a member of the school community.¹²¹

Religious Education: Islamic Community

‘[T]he Muslim community in Ireland believes that the education of children, not only religious education, is primarily the duty of the community...’¹²² The religious education programme ‘...covers a range of religious, social and moral issues from an Islamic perspective.’¹²³ The Qur’an, Deen and Arabic are taught by part-time Muslim teachers. A weekend school is provided for children who are not attending a Muslim school.¹²⁴

Religious Education: Jewish Community

There is one Jewish Primary School in the State.¹²⁵ Its enrolment is multid denominational. Hebrew Studies are taught to Jewish pupils each day by a separate team of teachers. Roman Catholic pupils study R.E. before school.¹²⁶

Stratford College is a voluntary secondary school founded by the Jewish Community in Dublin. It is committed to educating its students ‘...in an inclusive academic environment that promotes and is guided by Jewish ethics and values, while simultaneously teaching out Irish heritage.’¹²⁷ It is dedicated to ‘...instructing Jewish students in their religion while fostering mutual respect for all traditions.’¹²⁸ The College’s code of behaviour lays down that students ‘...should

121 Jacqui Wilkinson, editor of *Follow Me* (2002–2010, Board of Education of the General Synod of the Church of Ireland, Dublin).

122 www.islaminireland.com/education/mns, accessed on 24th June 2010.

123 www.islaminireland.com/education/ndmns, accessed on 24th June 2010.

124 http://www.islaminireland.com/education/alfalah_weekend_school.html.

125 Stratford National School.

126 www.stratfordns.ie, accessed on 24th June 2010.

127 www.stratfordcollege.ie Information for Parents and Students page 3.

128 http://www.stratfordcollege.ie/downloads/school_policies/pastoral_care_policy.pdf, accessed on 10th July 2010.

not bring ham/pork or shellfish into school.’¹²⁹ The College also follows the DOES curricula for Jewish Studies and Hebrew Studies.

Educate Together

Educate Together schools are multi-denominational, and as a patronage body, this term has been defined as including ‘...all denominations of all faiths. Thus Educate Together schools are committed to the principle that all religious backgrounds should be equally respected in the operation of the school. Included in this definition are humanist, agnostic and atheistic viewpoints and a generic concept of “personal creed”.’¹³⁰ The time set aside in schools under religious patronage is used in Educate Together schools for its Ethical Education Curriculum known as *Learn Together*. The programme is divided into four strands: moral and spiritual development, justice and equality, belief systems and ethics and the environment. Local boards of management may authorise the use of the school by specific religious groups outside school hours for doctrinal instruction.

Religion within the Education Infrastructure

Choosing a School: Enrolment

Under the Equal Status Acts 2000 and 2004 derogations are given on the religious belief grounds to schools in relation to the admission of students of a different belief where those schools provide education in an environment which promotes certain religious values, and where such refusal is necessary to maintain the ethos of the school.¹³¹

Admission and enrolment is one of the most fraught areas of school life, particularly in rapidly growing suburban areas. Schools are required to have and to publish, with the agreement of the patron, the policy on admission to and participation in the school.¹³² The

129 www.stratfordcollege.ie Information for Parents and Students page 19.

130 www.educatetogether.ie, accessed on 10th July 2010.

131 Equal Status Act 2000, s.7(3)(c).

132 Education Act 1998 s.15(2)(d).

promotion of the right of parents to send their children to a school of the parents' choice is to be fulfilled 'having regard to the rights of patrons...'¹³³

Recruitment of Teachers and Other Staff

The Employment Equality Act 1998 prohibits discrimination on nine grounds: gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the traveller community. Section 37, however, permits discrimination by a religious, educational or medical institution established for a religious purpose, where it is reasonable to do so in order to maintain the religious ethos of the institution or is reasonably necessary in order to avoid the undermining of that ethos.¹³⁴ This includes denominational schools. Religious discrimination was deemed to be permissible in order to give 'life and reality to the constitutional guarantee of freedom of religion'.¹³⁵ This exemption from equality legislation is undoubtedly one of the areas of most concern to many teachers.¹³⁶ In *Flynn v Power*¹³⁷ (which predated this legislation) the dismissal of a teacher from her employment in a denominational school because her lifestyle was not in accord with the values promoted by the school was held to be lawful.

Patrons of religious schools under their patronage generally expect that teachers being recruited will be sympathetic to, and supportive of, the religious ethos of their schools. At primary school level, this is buttressed by the system of teacher training: there are five teacher-training colleges, most of which are under the governance of churches.

The Roman Catholic Bishops require that those who teach in primary schools under their patronage hold a Certificate in Religious

¹³³ Education Act 1998 s 6 (e).

¹³⁴ See Re Article 26 and the Employment Equality Bill 1996 [1997] IR 321.

¹³⁵ Re Article 26 and the Employment Equality Bill 1996 [1997] 2 I.R. 321 at 360.

¹³⁶ See generally, *A. Mawhinney*, *Freedom of Religion and Schools: the Case of Ireland* (2009, VDM Verlag Dr. Müller, Saarbrücken).

¹³⁷ *Flynn v Power* [1985] ILRM 336.

Education. This is generally a pre-condition of employment. According to the promotional material

[t]his Certificate offers opportunity for primary school educators to gain an overview of selected areas in contemporary Catholic theology and to study theological and religious content that pertains to teaching within the diversity of cultures in Ireland's primary schools today. The course content is intended to foster appreciation of the special place of Religious Education in Catholic Schools and to enable such religious education to be presented with understanding, creativity and confidence.¹³⁸

Religious Symbols and Dress

The issue of religious symbols or dress in schools has not been addressed before the courts.¹³⁹ However, it has been suggested that the reasoning in *Campaign to Separate Church and State Ltd v Minister for Education*¹⁴⁰ may be used '...to provide constitutional cover for the display of religious artefacts in publicly funded schools and for the public funding of a curriculum permeated by religious values...'¹⁴¹

The issue of religious dress is not remote from Ireland. In 2008 the Principal of Gorey Community School, County Wexford sought guidance from the DOES following a request from a Muslim student

138 www.mic.ul.ie, accessed on 25th June 2010.

139 The issue has been addressed elsewhere. For example, in the United Kingdom: see generally *J.G. Oliva*, 'Religious Symbols in the Classroom: A Controversial Issue in the United Kingdom' in [2008] B.Y.U.L. Rev. 877-96; *M. Hill and R. Sandberg*, 'Is nothing sacred? Clashing symbols in a secular world' in [2007] Public Law (Aut.) 488 - 506; *N. Gibson*, 'Faith in the courts: religious dress and human rights' in [2007] C.L.J. 657-97; *P. Petchey*, 'Legal issues for faith schools in England and Wales' in (2008) 10 EccLJ 174-90. See also *R (on the application of Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15; *R (on the application of X) v Headteacher of Y School* [2007] EWHC 298; [2007] All E.R. (D) 267.

140 *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321.

141 *G Hogan and G Whyte, J M Kelly*, *The Irish Constitution* (4th Edition, 2003, Lexis-Nexis Butterworths, Dublin) 2057 at 7.8.68.

to wear a hijab.¹⁴² The response of the Minister for Education was to refer the matter to the Minister for Integration.¹⁴³ He declined to give guidance. The entire matter generated debate, sometimes heated, but no conclusions.¹⁴⁴

In the case of one Muslim school it is laid down that the uniform required for the students be in line ‘...with Islamic requirements.’¹⁴⁵ In the absence of specific guidelines or regulations such as this, it would appear that the matter is to be resolved by management authorities in schools locally.

One example of how dialogue about issues such as this is being addressed is *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* published in 2010.¹⁴⁶ This extensive advisory document describes the changing context for Roman Catholic Schools in Ireland, sets out background information about other faiths and gives practical advice about the inclusion of students of other faiths (including enrolment, religious education, opting out, prayer, liturgy, religious imagery and uniform). It suggests that no ‘...pupil or staff member should be prevented from wearing a religious symbol or garment...’, while at the same time suggesting that, on ‘...the other hand, the wearing of a full veil over a girl’s face (*niqab*), for example, is a more challenging issue...’¹⁴⁷

142 ‘The hijab is a religious requirement for all Muslim ladies who have reached puberty’ *Irish Times* 20th May 2008; ‘O’Keefe says review will look at hijab policy’ *Irish Times* 20th May 2008.

143 ‘State to consider Muslim School-Dress Code’ *Irish Independent* 20th May 2008; ‘Uniform rules referred to Integration Minister’ RTE News 19th May 2008 see <http://www.rte.ie/news/2008/0519/integration.html>; ‘O’Keefe says review will look at Hijab policy’ *Irish Times* 20th May 2008.

144 ‘Muslim anger at Opposition calls for school ban on Hijab’ *Irish Independent* 2nd June 2008; ‘Hijab issue should be decided by schools, say Unions’ *Irish Independent* 21st July 2008; ‘Policy U-Turn on Hijab in Irish schools’ *Sunday Times* 3rd August 2008.

145 www.islamireland.com/education/mns, accessed on 24th June 2010.

146 *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* (2010, Joint Managerial Body/Association of Management of Catholic Secondary Schools, Dublin).

147 *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* (2010, Joint Managerial Body/Association of Management of Catholic Secondary Schools, Dublin), 15.

Blessing of School Buildings

In the case of schools under the patronage of a religious body, the blessing of school buildings or a liturgical celebration is normative when new school buildings or extensions are opened. Frequently, however, there are ecumenical guests and, in some cases (depending on the quality of local ecumenical relationships) the participation of representatives of other churches.

Liturgy, Celebrations and Religious Practice

In the case of schools under religious patronage, an assembly with prayers, readings from religious texts and hymns or songs are normal practice in schools under religious patronage. Religious festivals and calendars shape the implementation of the curriculum. Some of the liturgies and ceremonies the school take place in the local place of worship to which such schools are attached. Local religious events and activities are frequently publicised in the school context. At the Muslim National School the ‘...ethos of the school is distinctly Islamic... [C]hildren from 3rd class up perform midday (Dhuhr) during the school day. On Friday (Jummah) the children from 3rd class up attend the congregational prayer.’¹⁴⁸ At the Jewish school, the day begins with the traditional Shacharit prayer.¹⁴⁹

Religious Holidays

Standardised school holidays, with the exception of the summer months, are shaped by the Christian calendar: principally, Christmas, Easter and Saint Patrick’s Day. At the Muslim Schools school holidays are taken for national and bank holidays, as well as the Islamic religious festivals of Ramadan (continuing through Eid-ul-Fitr) and also at Eid-ad-Adha.¹⁵⁰ In the case of the Jewish School,

148 www.islaminireland.com/education/mns, accessed on 24th June 2010.

149 http://www.stratfordcollege.ie/downloads/school_policies/jewish_education.pdf, accessed on 10th July 2010.

150 www.islaminireland.com/education/mns, accessed on 24th June 2010.

Jewish holy days which fall outside the regular school holidays are observed by the school.¹⁵¹

Opting out

The principle of opting out is implicit in, and afforded constitutional protection in Articles 42 and 44. Rule 69 of the *Rules for National Schools*, as has been seen, deals with it expressly in the primary school setting. As shown, the key dilemma for those who do not share the ethos and have not had the choice of a different school, is that the religious ethos vivifies the whole life of the school.¹⁵² Opting out of religious education classes as such may be achieved, but to speak of opting out from an entire curriculum or a school life infused with a religious outlook is impractical. The integration of religion in the entire curriculum raises the question, therefore, of how the rights of children of minority religious groups or their parents (as primary and natural educators) are to be protected, while at the same time protecting the rights of patrons within a system that is inherently denominational.

Conclusion

Among the key challenges facing an Irish education system, overwhelmingly religious in character, is protection of and empowerment of minorities, both religious and non-religious. The State, for its part, will have to consider increasing the number of patrons and diversity of types of school. Schools currently dominating the system will have to face up to the distinction drawn by the Supreme Court, between 'religious education' and 'religious instruction'.¹⁵³

Not only in relation to Religious Education, but in the case of all engagement of religion with the educational process, should not the aspiration be that set by the European Court of Human Rights in

¹⁵¹ www.stratfordcollege.ie Information for Parents and Students page 11.

¹⁵² Rules for National Schools 1965 Rule 68.

¹⁵³ *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 357-8.

PAUL COLTON

Hasan and Eylem Zengin v Turkey when it suggested that such teaching was to be delivered in an ‘objective, critical and pluralistic manner...’¹⁵⁴

Perhaps the greatest challenge to all involved in religion and education in Ireland is set out by that Court in the same case when it suggested that

in a democratic society, only pluralism in education can enable pupils to develop a critical mind with regard to religious matters in the context of freedom of thought, conscience and religion...¹⁵⁵

¹⁵⁴ *Hasan and Eylem Zengin v Turkey* (Application No. 1448/04), Judgment October 9, 2007 Paras. 30–33.

¹⁵⁵ *Hasan and Eylem Zengin v Turkey* (Application No. 1448/04), Judgment October 9, 2007 Para. 69.

LA RELIGION DANS L'ÉDUCATION PUBLIQUE – LE CAS ITALIEN

ALESSANDRO FERRARI

§ 1 CONSIDÉRATIONS GÉNÉRALES

Dans les dernières années la visibilité du pluralisme religieux et culturel de l'Italie s'est accrue. Si la grande majorité de ses habitants se déclarent catholiques, le nombre de « sans religion » a augmenté; les orthodoxes et les musulmans ont dépassé le million de fidèles; les hindous, dont la présence est très récente sont presque trois fois plus nombreux que les juifs¹. Ces changements se répercutent dans le système scolaire étatique², marqué par la reconnaissance du catholicisme comme identité collective de la Nation et où l'enseignement de cette religion connaît une histoire ininterrompue de présence en situation de monopole³.

1 Cf. http://www.cesnur.org/religioni_italia/introduzione_01.htm (consulté le 10 septembre 2010).

2 Aux élèves nés à l'étranger s'ajoutent les « deuxièmes générations », les fils – nés en Italie – des anciens immigrés: cf. *Servizio Statistico – Ministero dell'Istruzione, dell'Università e della Ricerca*, Focus in breve sulla scuola. La presenza degli alunni stranieri nelle scuole statali (marzo 2010), in <http://www.istruzione.it/getOM?idfileentry=219173> (consulté le 10 septembre 2010): la présence des élèves issus de l'immigration s'approche désormais de 15 %. La circulaire ministérielle n° 2 du 8 janvier 2010 a établi un taux maximum de 30 % d'élèves non italiens par classe, taux souvent dépassé.

3 La loi Coppino de 1877 qui abrogeait formellement cet enseignement à l'école primaire eut pour conséquence la transformation de l'enseignement catholique en enseignement facultatif, parfois à la charge des municipalités: cf., pour un écho français, *Jean Baubérot*, *La morale laïque contre l'ordre moral*, Seuil, Paris 1997, p. 56.

§ 2 L'ENSEIGNEMENT DE LA RELIGION DANS LES ÉCOLES PUBLIQUES

§ 2.1 *L'enseignement de la religion catholique*

Le Concordat entre Italie et Saint-Siège du 18 février 1984 prévoit l'enseignement de la religion catholique aux frais de l'État⁴, dans un système de cogestion basé sur des ententes entre la Conférence épiscopale italienne et le ministère de l'Instruction⁵.

Au cours de l'année scolaire 2008/2009 ces cours ont été suivis par 91 % des élèves, plus largement dans le Sud que dans le Nord;

4 L'art. 9, 2e par. du Concordat dispose: « La République italienne, reconnaissant la valeur de la culture religieuse et tenant compte du fait que les principes du catholicisme font partie du patrimoine historique du peuple italien, continuera à assurer, dans le cadre des finalités de l'école, l'enseignement de la religion catholique dans les écoles publiques non universitaires de toutes catégories et tous degrés. Dans le respect de la liberté de conscience et de la responsabilité éducative des parents, est garanti à chacun le droit de choisir de suivre ou non cet enseignement. Au moment de l'inscription, les élèves ou leurs parents exerceront ce droit, à la demande de l'autorité scolaire, sans que leur choix puisse donner lieu à une quelconque forme de discrimination ».

Pour l'année scolaire 2008/2009 l'État a dépensé 800 millions d'euros pour les 25 694 enseignants de religion catholique: cf. *Roberta Carlini*, Dio non si taglia, in <http://espresso.repubblica.it/dettaglio/2050468/&print=true> (consulté le 10 septembre 2010).

5 L'entente cadre a été signée le 14 décembre 1985 (cf. le décret d'exécution du Président de la République n° 751 du 16 décembre 1985): elle prévoit deux heures par semaine dans les écoles enfantines et primaires et une heure dans les collèges et lycées; elle fixe les critères pour la définition bilatérale des programmes, le choix des livres et la qualification professionnelle des enseignants. Entre 1986 et 2009 ce même ministère et la Conférence épiscopale Italienne ont signé dix autres ententes spécifiques: cf., pour la période 1985–2004, <http://www.governo.it/Presidenza/USRI/confessioni/accordointese.html> et, pour l'entente du 1er août 2009, le décret d'exécution du 11 février 2010, in <http://www.olir.it/documenti/index.php?argomento=&documento=5362> (consultés le 10 septembre 2010).

La tendance est, quand même, celle d'une grande disponibilité aux *desiderata* ecclésiastiques: dans l'attente d'une entente sur les programmes pour le deuxième cycle, la circulaire ministérielle n° 70 du 3 août 2010 a unilatéralement décidé d'adopter les indications de la Conférence épiscopale: cf. <http://www.olir.it/documenti/index.php?argomento=62&documento=5468> (consulté le 10 septembre 2010).

davantage dans le premier cycle et dans les petites villes que dans les écoles secondaires et dans les grandes villes⁶.

Cet enseignement doit être, tout à la fois, en accord avec la doctrine de l'Église et avec les « finalités de l'école ». Il doit donc, tout en gardant sa nature confessionnelle, présenter une base scientifique rigoureuse et éviter tout prosélytisme ou discrimination: il peut, en effet, être suivi quelle que soit la religion de l'élève. Une entente signée le 1^{er} aout 2009 par le ministre de l'Instruction et le Président de la Conférence épiscopale, tout en rappelant la nécessité de « souligner avec plus d'évidence la centralité de la figure et de l'œuvre de Jésus Christ », définit cet enseignement « fondamental et constructif pour la connivence civile » et « expression de la laïcité de l'État »⁷. Dans la pratique, les élèves étant peu intéressés à un catholicisme doctrinaire, cet enseignement va de l'éthique morale à une présentation approfondie des implications culturelles du catholicisme et des autres religions, selon la formation et la sensibilité des enseignants et le contexte spécifique. Cependant, son caractère confessionnel est incontesté et le suivre n'est pas obligatoire ni optionnel mais facultatif⁸. Il doit être explicitement demandé en début d'année⁹ et les élèves qui ne le suivent pas peuvent quitter l'école¹⁰.

6 Cf. http://www.chiesacattolica.it/ci_new_v3/allegati/328/REL_ANNUARIO%20IRC%202009.pdf (consulté le 10 septembre 2010).

7 Cf. <http://www.olir.it/documenti/index.php?argomento=&documento=5362>, cit.

De même, cet enseignement n'est pas en conflit avec les autres matières, par exemple en opposant la théorie créationniste à l'évolutionnisme. L'entente, en effet, tout en soulignant les intersections entre l'enseignement de la religion catholique et les autres matières, explicite son but de « confronter la foi chrétienne et les résultats de la science comme lectures de l'homme et du monde distinctes mais non conflictuelles ».

8 Les conditions posées par la Cour de Strasbourg dans les arrêts Følgero et Zengin sont, donc, respectées.

C'est aussi le cas dans les « régions des confins », les ex-territoires de l'Empire autrichien (aujourd'hui les provinces autonome de Trente et Bolzano), pour lesquelles le n° 5, lett. c du Protocole additionnel du Concordat de 1984 admet le maintien des anciennes spécificités. En particulier, si aujourd'hui la législation de la province de Trente ne s'éloigne pas beaucoup de la législation nationale, la province de Bolzano a gardé une certaine spécificité. Par exemple, à l'opposé du modèle concordataire, dans cette province, la religion catholique ne constitue pas une matière facultative mais une matière obligatoire pour laquelle il faut demander une dispense si on ne veut pas la suivre.

La Cour constitutionnelle a déclaré ce système compatible avec le principe de laïcité dans la mesure où il exprime la reconnaissance, soit de « la valeur positive de la culture religieuse, qu'il ne faut plus considérer comme une religion, mais comme le pluralisme religieux de la société civile », soit de « l'acquisition des principes du catholicisme dans le patrimoine historique du peuple italien »¹¹.

Dans les dernières années, hors de toute révision concordataire et par voie entièrement unilatérale de la part de l'administration scolaire étatique, ce caractère facultatif a été progressivement érodé et cette matière est devenue en fait optionnelle. En effet, les enseignants de religion catholique ne se limitent pas à signaler la participation des élèves avec une note spécifique¹², mais ils participent

9 Dans les écoles enfantines, primaires et dans les collèges les responsables de la demande sont les parents; à partir du lycée (normalement à 14 ans), les élèves eux-mêmes, avec signature des parents pour ceux qui n'ont pas 18 ans: cf. la loi n° 281 du 18 juin 1986.

Il faut souligner qu'il y a une certaine sollicitation de cette demande dans la mesure où, au début de l'année, les autorités scolaires demandent explicitement aux parents et – éventuellement – aux élèves s'ils entendent, ou pas, choisir cet enseignement. De son côté, la circulaire ministérielle n° 174 du 14 décembre 2001 admet le renouvellement tacite, pour tout le cycle scolaire, du choix exprimé la première année.

10 Cf. les décisions de la Cour constitutionnelle n° 203 du 11–12 avril 1989 et n° 13 du 11–14 janvier 1991, in <http://www.olir.it/documenti/?documento=370> et <http://www.olir.it/documenti/?documento=371> (consultées le 10 septembre 2010). Le caractère facultatif représente pour la Cour un signe de respect pour la liberté de conscience et de religion des élèves dont le choix ne dépend pas de la présence d'alternatives obligatoires. Dans tous les cas, la composition des classes fait abstraction des choix en cette matière: cf.: *Silvio Ferrari*, *Ora di religione: per la Consulta l'ora alternativa non è obbligatoria*, « Corriere giuridico », 1989, p. 642 et *Id.*, *Ora di religione. La Corte costituzionale interviene sullo "stato di non-obbligo"*, *ibid.*, 1991, p. 427.

11 Cf. décision du 11–12 avril 1989, n° 203, cit. Il faut, toutefois, observer que la législation concordataire ne prévoit ni le dépassement de la considération tout à fait spéciale d'une religion spécifique ni une telle « culturalisation » du catholicisme qui le prive de sa connotation doctrinaire et dogmatique. En même temps, l'orientation exprimée par la décision du 1989 reflète la tendance à considérer le catholicisme comme « religion civile » italienne.

Cependant, des initiatives cherchent à expérimenter une approche plus large: cf., par exemple, l'entente signée le 29 mars 2010 par le ministère de l'Instruction et l'association non confessionnelle « Biblia » pour favoriser une plus grande connaissance de la Bible à l'école au-delà d'une empreinte confessionnelle trop marquée: <http://www.istruzione.it/getOM?idfileentry=538505> (consulté le 15 décembre 2010).

12 L'insertion de l'évaluation de l'enseignement de la religion dans le même document où se trouvaient les notes pour les matières ordinaires, très contestée par les mouve-

aussi à leur évaluation globale lors de l'admission à l'examen final du premier cycle et à l'évaluation finale des résultats du deuxième cycle¹³. Ceci permet d'influencer la carrière scolaire des élèves et, pour éviter la disparité avec les élèves qui ne disposent pas des crédits de cet enseignement, les écoles doivent maintenant organiser des cours alternatifs¹⁴. Toutefois, au moins à la fin du deuxième cycle, les élèves qui opteront pour l'exercice de la partie négative du droit de liberté religieuse en ne choisissant ni la religion catholique ni ses alternatives disposeront, forcément, de crédits moindres¹⁵. Ces transformations regardent des aspects très techniques, qui n'arrivent pas à soulever un vrai débat public. Cela évite toute discussion sur l'éventualité d'introduire d'autres enseignements, d'éthique, d'éducation civique, de religions comparées en alternative à l'enseignement de la religion catholique¹⁶. En effet, si l'introduction

ments laïques et les autres confessions religieuses, a été prohibée par le tribunal administratif du Latium avec deux ordonnances du 2 février et 15 mars 2006, in <http://www.giustizia-amministrativa.it/WEBY2K/frmRicercaOrdinanza.asp> (consulté le 10 septembre 2010).

- 13 Ce processus, commencé juste après la signature du concordat, est caractérisé par les plusieurs recours des minorités religieuses et des associations laïques devant les tribunaux administratifs et le Conseil d'État contre le ministère de l'Instruction qui a toujours essayé que les cours de religion catholique soient pleinement intégrés dans le cursus. Le dernier acte de cette bataille a été la sentence du Conseil d'État du 7 mai 2010, n° 2749 qui a jugé légitime l'inclusion de l'évaluation obtenue aux cours de religion catholique dans la note finale obtenue par les élèves des lycées: in <http://www.olir.it/documenti/?documento=5336> (consulté le 11 septembre 2010).
- 14 Cf. la note n° 427 du ministère de l'Instruction du 21 janvier 2010 (<http://www.olir.it/areetematiche/19/index.php?documento=5244>) et, surtout, la sentence du tribunal de Padoue du 30 juillet 2010 (<http://www.olir.it/documenti/index.php?argomento=&documento=5453>), documents consultés le 11 septembre 2010.
- 15 Cette discrimination a été justifiée par le Conseil d'État pour sa « mesure limitée »: cf. note 13, mais elle donnera lieu, très probablement, à de nouveaux contentieux: le VIe congrès de l'Union des communautés juives italiennes, conclu le 8 décembre 2010, tout en rappelant la centralité du principe de laïcité, s'est clairement prononcé contre la transformation de l'enseignement de la religion catholique en matière du cursus scolaire: cf. <http://www.ucei.it/pdf/VI%20Congresso%20UCEI.%20Mozioni%20politica%20esterna.%20Israele,%20diaspora%20e%20Societ%C3%A0%20italiana.pdf> (consulté le 16 décembre 2010).
- 16 La loi n° 169 du 30 octobre 2008 a introduit l'enseignement de « Citoyenneté et Constitution ». Il ne s'agit pas d'une matière autonome, mais d'un enseignement inclus dans le parcours historico-géographique et historico-social: cf. la circulaire n° 86 du 27 octobre 2010 du ministère de l'Instruction, <http://www.istruzione.it/>

explicite de telles alternatives optionnelles contredirait l'orientation de la jurisprudence constitutionnelle en faveur du caractère absolument facultatif de l'enseignement de la religion catholique, l'introduction silencieuse et éparpillée d'alternatives probablement faibles et neutres du point de vue « idéologique » ne met pas en danger la position de monopole de l'enseignement catholique.

L'incardination croissante de l'enseignement de la religion catholique au sein de l'école étatique et le dépassement de la perspective plus libérale, basée sur les demandes individuelles et non pas sur la proposition privilégiée de la part de l'administration scolaire, qui semblait amorcée par le concordat du 1984 résulte aussi du renforcement du statut des enseignants de religion catholique. Traditionnellement, les enseignants de religion catholique, choisis par l'évêque sous la juridiction duquel se trouve l'école¹⁷, munis d'un diplôme reconnu par l'État¹⁸ et payés par ce dernier, perdaient leur place s'ils étaient privés de la confiance de l'autorité religieuse ou de celle des élèves qui cessaient de suivre leurs cours¹⁹. Toutefois, la loi n° 186 du 18 juillet

alfresco/d/d/workspace/SpacesStore/19b60061-d624-4dbd-be97-784876cb6393/cm86_10.pdf (consulté le 16 décembre 2010).

Sur le rôle joué par le poids de l'Église catholique dans l'implantation (difficile) d'un enseignement d'éducation civique (mais on pourrait dire le même pour l'enseignement des autres religions) dans les écoles étatiques, cf. *Andrea Pugiotto*, *La Costituzione tra i banchi di scuola*, in <http://www.associazionedeiconstituzionalisti.it/materialix/dossier/pugiotto.html> (consulté le 11 septembre 2010).

- 17 Dans l'école infantine et primaire cet enseignement peut être délivré directement par les maîtres ordinaires, avec l'accord de l'autorité ecclésiastique.
- 18 C'est-à-dire, alternativement, un titre académique en théologie (baccalauréat, licence ou doctorat) délivré par une faculté approuvée par le Saint-Siège; une attestation d'études dans un séminaire majeur; un diplôme académique de magistère en Science religieuse délivré par un Institut supérieur de Sciences religieuses (ISSR) reconnu par le Saint-Siège; un diplôme universitaire étatique plus un diplôme délivré par un Institut de Sciences religieuses (ISR) reconnu par la Conférence épiscopale italienne: cf. les décrets du Président de la République 751/1985 et n° 175 du 2 février 1994 portant approbation de l'entente conclue entre l'Italie et le Saint-Siège pour la reconnaissance des titres académiques pontificaux: cf. note 5.
- 19 Les cas de révocation regardent généralement des enseignantes (normalement femmes: ce sont elles, en effet, qui assurent la « reproduction » de l'éducation catholique à l'école) divorcées et remariées ou mères célibataires: la tutelle de maternité cède, ainsi, le pas à la tutelle de l'intégrité religieuse.
La décision n° 2803 du 24 février 2003 de la Cour de cassation représente encore l'orientation prévalent selon laquelle « la révocation du certificat d'aptitude (de la part

2003 a mis fin à cette précarité en prévoyant un système de concours publics régionaux réservant 70 % des places disponibles pour cet enseignement à des titulaires à temps indéterminé²⁰. Ceux qui seront choisis pourront, en cas de perte de leur poste, obtenir soit un nouvel emploi dans un autre diocèse, soit un poste pour une matière différente, soit un poste dans l'administration scolaire²¹.

§ 2.2 L'enseignement des autres religions

L'ouverture de l'école publique à la société et aux demandes des familles, se traduit en une reconnaissance privilégiée de la culture « majoritaire »²². L'espace des autres religions dans l'école publique est, donc, plutôt résiduel²³ et résulte de leur force institutionnelle,

de l'évêque) constituait un acte dont on ne peut appeler devant les autorités étatiques » qui détermine « l'impossibilité juridique de la prestation de travail, absolue et relative, en déterminant la résolution du rapport même », <http://www.wolir.it/documenti/index.php?documento=2845> (consulté le 16 décembre 2010); les enseignant(e)s de religion sont, ainsi, formellement soumis(e)s à un devoir de réserve très fort, regardant les choix les plus intimes.

- 20 Une condition préalable pour participer à ces concours (prévus tous les trois années) est l'agrément de l'évêque du diocèse où on entend enseigner. Les jurys, constitués d'enseignants des écoles étatiques et des universités, s'abstiendront d'évaluer la préparation religieuse des candidats en se limitant à vérifier leur préparation culturelle et didactique générale. Pour garantir aux évêques une pleine liberté de choix les noms des candidats reçus seront transmis aux évêques par ordre alphabétique, sans indication de notes.
- 21 La nécessité d'un agrément des autorités religieuses pour participer à un concours public a soulevé de fortes réserves pour l'*entanglement* entre structures civiles (les régions) et religieuses (les diocèses); pour la fin de la précarité pour des enseignants d'une matière facultative (et très discutée) quand cette précarité existe encore pour beaucoup des autres enseignants et pour la possibilité de faire de l'enseignement de la religion catholique une voie d'entrée privilégiée pour l'enseignement d'autres matières et l'administration scolaire: cf. *P. Consorti*, Sul nuovo stato giuridico degli insegnanti di religione cattolica, con particolare riferimento alla loro mobilità, in http://statoechiese.it/imagesstories/2009.6/consorti_sul_nuovo.pdf (consulté le 6 septembre 2010) et *M. Gattaponi*, Insegnanti di religione: dalla precarietà all'immissione in ruolo. Primi nodi al vaglio della Corte costituzionale, in « Quaderni di diritto e politica ecclesiastica », 2006, 3, pp. 785 ss.
- 22 Le même risque est évoqué par la Cour de Strasbourg dans la décision *Karaduman c/ Turquie* du 3 mai 1993 pour légitimer l'interdiction du voile islamique dans les universités turques.
- 23 Les nouvelles « Indications nationales » pour les lycées, par exemple, se réfèrent rarement au fait religieux.

c'est-à-dire de leur capacité à signer une entente avec l'État²⁴. C'est par ce biais que certains cultes non catholiques ont demandé la garantie que leurs fidèles soient toujours libres de ne pas suivre l'enseignement catholique et que les écoles publiques ne donnent pas de « formes d'enseignement religieux diffus pendant le déroulement des programmes des autres disciplines²⁵ » en excluant « toute ingérence sur l'éducation et la formation religieuse » des élèves²⁶. Ces

On cite les diversités linguistiques et religieuses dans les programmes de géographie et les rapports entre philosophie hellénistique et néo-plotinienne et « religions bibliques » dans ceux de philosophie. Enfin, dans les programmes d'anthropologie/sciences humaines des dernières classes est prévu, en termes assez larges, l'étude des « grandes cultures-religions mondiales et la rationalisation particulière du monde que chacune d'elles produit ». L'Islam, seule religion à être spécifiquement nommée, Église catholique mise à part, est étudié seulement dans les deux premiers années d'histoire, lorsqu'on parle de sa « naissance et (...) diffusion »: http://www.indire.it/lucabas/lkmw_file/licei2010//decreto_Indicazioni_nazionali%20_26_05.pdf (consulté le 10 septembre 2010). Les indications prévues pour le premier cycle, qui datent de 2007, réservent une place majeure aux expressions religieuses insérées à l'intérieur d'un contexte du pluralisme social et culturel plus affirmé: cf. www.bdp.it/indicazioni/showattach.php?id_cnt=4682 (consulté le 10 septembre 2010).

- 24 Ce sont les ententes, en effet, qui prévoient des jours de congé scolaire en raison des besoins religieux des élèves: cf., par exemple, les articles 4 (reconnaissance des absences pour le shabbat) et 5 (reconnaissance des fêtes juives) de la loi 101/1989, qui approuve l'entente avec les communautés juives. Dans la même ligne l'entente avec les adventistes, mais seulement avec référence au repos du shabbat (art. 17 loi 516/1988) et les ententes, signées mais pas encore approuvées par le Parlement, avec les témoins de Jéhovah (art. 7, festivités religieuses) et les orthodoxes (art. 9, festivités religieuses).
- 25 Une ordonnance du préteur de Turin du 5 décembre 1989 interdit l'utilisation de certaines pages d'un manuel scolaire en raison de la présence de nombreuses références à l'iconographie et à la tradition catholiques, ce qui aurait représenté un enseignement religieux implicite, « avec finalités, contenus et formes contraires avec le droit de ceux qui n'entendent pas suivre l'enseignement de religion catholique », in « Quaderni di diritto e politica ecclesiastica », 1990/1, pp. 212-221. Le tribunal civil de Turin, avec ordonnance du 5 février 1990, révoqua la décision au nom de l'incompétence du préteur face à une question de pertinence du juge administratif, *ibid.*, pp. 207-212.
- 26 Cf., spécialement, l'entente avec les juifs (art. 11 loi 101/1989), les adventistes (art. 11 loi 516/1988) et les Assemblées de Dieu (art. 8 loi 517/1988). Toutes les dernières ententes signées (mais pas encore approuvées) contiennent ces mêmes garanties. Ce type de demande de la part des cultes non catholiques est, donc, accru dans les dernières années: cf. http://www.governo.it/Presidenza/USRI/confessioni/intese_indice.html#3 (consulté le 10 septembre 2010). Il est vrai aussi que ces garanties négatives, en traduisant les principes constitutionnels d'impartialité, neutralité et laïcité des adminis-

mêmes ententes prévoient le droit pour les cultes non catholiques de « répondre », à leur frais, « aux demandes des élèves, de leurs familles ou des autorités scolaires » concernant « l'étude du *fait religieux* et de ses implications »²⁷.

Les cultes sans entente, comme, par exemple, l'islam, peuvent obtenir, mais seulement en dehors de l'horaire scolaire, « la mise à disposition de quelques locaux scolaires pour l'enseignement religieux de leurs enfants » « quand le nombre des élèves le justifie et quand, pour des raisons bien fondées l'usage d'un lieu de culte n'est pas possible »²⁸. Cette possibilité, qui pourrait être source d'un certain embarras entre administrations scolaires et municipalités hostiles à l'ouverture des lieux de culte musulmans, n'a jamais été expérimentée.

trations publiques, sont maintenant assurées aussi par le droit commun: cf. art. 311 du Code de l'instruction (décret législatif n° 294 du 16 avril 1994).

Toutefois, il faut souligner l'impossibilité d'exclure « toute ingérence » de la formation scolaire sur l'éducation religieuse des élèves: il suffit de penser aux effets d'un enseignement inspiré par le principe d'égalité, sans différence de religion ou de sexe, sur des élèves issus des milieux très traditionnels. D'autre part, c'est la *Convention sur les droits de l'enfant* (New York - 20 novembre 1989) qui associe la conservation et le développement des identités culturelles et religieuses communautaires et l'absence d'initiatives assimilationnistes des États aux « mesures adoptées à l'intérieur d'une politique générale d'intégration ». Le respect d'une tradition religieuse/culturelle spécifique par l'école publique doit, donc, être mis en balance avec la proposition éducative faite aux élèves d'une vie active à l'intérieur de la société dans laquelle ils vivent. D'autre part, le décret 24 juin 1998 n° 249 qui contient le « statut des étudiantes et des étudiants de l'école secondaire » vise à une « pleine formation », « dans le respect de la conscience morale et civile des élèves », « à travers une confrontation *ouverte* de positions culturelles ».

27 En ce sens, les ententes avec les vaudois, les Assemblées de Dieu, les adventistes, les baptistes et les luthériens et les autres ententes signées mais pas encore approuvées; au contraire, l'entente avec les juifs parle, plus précisément d'« étude du judaïsme ». Les propositions d'entente unilatéralement proposées, il y a déjà quelques années, par trois groupes musulmans ont été plus proches du modèle de l'entente signée par les communautés juives ou bien encore du modèle concordataire: deux de celles-ci, en effet, demandaient pour l'enseignement de la religion musulmane la même institutionnalisation que celle accordée à la religion catholique: cf. *Alessandro Ferrari*, *La scuola italiana di fronte al paradigma musulmano*, in *Id.* (ed.), *Islam in Europa/Islam in Italia tra diritto e società*, Il Mulino, Bologna, 2008, pp. 171-198.

L'orientation « neutraliste », qui ne confie pas aux cultes l'étude de leur expérience religieuse spécifique mais plus généralement l'étude du « fait religieux » caractérise aussi tous les projets pour une loi générale de liberté religieuse présentés sans succès dans les dernières années.

28 Cf. art. 23 du décret n° 289 du 28 février 1930, exécutif de la loi sur « les cultes admis dans l'État ».

§ 3 SIGNES ET COMPORTEMENTS RELIGIEUX DANS L'ÉCOLE PUBLIQUE

En lien avec une laïcité plus intégratrice que séparatiste vis-à-vis du rôle des religions dans la sphère publique et, donc, dans le système scolaire, l'école publique italienne n'est pas vidée de toute teinte religieuse, en étant, plutôt, le lieu d'une neutralité-pluraliste d'orientation catholique²⁹. Les crèches y sont massivement présentes, surtout dans les écoles enfantines et primaires³⁰, des messes, bénédictions et visites pastorales y sont parfois organisées³¹ et, on le sait,

29 L'art. 2 de la loi organique sur l'instruction (n° 53 du 28 mars 2003), confie au système scolaire le devoir de promouvoir « une formation spirituelle et morale, inspirée aussi des principes de la Constitution » et la lettre e) de ce même article inclut parmi les devoirs de l'école infantine celui de « concourir au développement affectif, psychomoteur, cognitif, moral, *religieux* et social de l'enfant ».

30 La décision de certaines écoles publiques de ne pas préparer de crèches à Noël est souvent stigmatisée. En décembre 2004, le ministre de l'Instruction envoya une lettre aux écoles où on lisait, entre autre: « Il y a, toutefois, un autre Noël, celui qui nous vient transmis par la tradition de la crèche, le Noël qui nous rappelle la naissance de Jésus, né dans une grotte pour porter sur la terre un message d'amour, l'amour plus sublime, celui qui est pour tous, aussi pour ceux qui sont divers, loin, pour ceux qui ne nous aiment pas, l'amour plus extrême amené jusqu'au sacrifice de la mort (...) Je suis certaine que ces considérations sont valables, parce que sans respecter notre histoire, nos racines, nous ne pouvons pas penser de comprendre et respecter les valeurs de ceux qui ont histoires et cultures différentes de la nôtre » et qui concluait: « (N)enlevez pas le symbole de l'amour de la vie de nos élèves mais aidez-les, par la crèche, à en comprendre l'importance et à la vivre dans sa signification la plus profonde, la plus vraie, la plus pure », in http://archivio.pubblica.istruzione.it/ministro/comunicati/2004/allegati/lettera_natale.pdf (consulté le 10 septembre 2010).

31 La légitimité de ces initiatives est douteuse: une circulaire ministérielle du 13 février 1992 (<http://www.olir.it/documenti/?documento=3147>, consulté le 10 septembre 2010) les avait subordonnées à l'accord des conseils scolaires et à l'absence de tout caractère obligatoire, mais le tribunal administratif d'Émilie Romagne (décision n° 470 du 1er août 1992, in « Quaderni di diritto e politica ecclesiastica », 1993/3, pp. 753-754) avait exclu la possibilité de considérer ces activités parmi les activités extrascolaires. Cette orientation toutefois, était contestée par le Conseil d'État, qui les considéra non discriminatoires si elles étaient accomplies « dans le respect de droit des minorités »: ordonnance n° 392 du 26 mars 1993, in « Quaderni di diritto e politica ecclesiastica », 1993/3, pp. 752-753. Cependant, les tribunaux administratifs régionaux n'adoptèrent pas toujours cette position permissive: cf., par exemple, tribunal administratif d'Émilie Romagne, 17 juin 1993, n° 250, *ibid.* 1994/III, pp. 683-687 et tribunal administratif de Vénétie, 2 mars 1995, n° 489, *ibid.*, 1996/3, p. 729. Même l'art. 311 du Code de l'instruction semble interdire ces activités, au moins pour les classes avec des élèves qui ne suivent pas l'enseignement catholique, mais le décret du

les crucifix (catholiques³²) sont sur les murs³³. En effet, en adoptant une interprétation métajuridique qui fait du catholicisme la « condition d'usage » du principe de laïcité, le Conseil d'État, tout en reconnaissant la nature (même) religieuse des crucifix, a justifié leur exposition au nom de la coïncidence entre la laïcité constitutionnelle et les principes du Concile Vatican II³⁴. Pour le Conseil d'État, la présence du crucifix ne constitue pas une discrimination envers les élèves non catholiques mais, plutôt, « un symbole des principes de liberté, égalité et tolérance (...) qui fondent notre vivre ensemble et qui font partie du patrimoine juridique, social et culturel de l'Italie ». Par conséquent, le crucifix devient l'instrument pour transmettre « aux élèves extracommunautaires les valeurs d'ouverture à la diversité et de refus de tout intégrisme » et pour réaffirmer, « contre tout choc de civilisa-

Président de la République n° 567 du 10 octobre 1996 sur la discipline des activités scolaires complémentaires et intégratives à réouvert la question en donnant lieu à un nouveau contentieux, contraignant le tribunal administratif de Vénétie, à répéter son interdiction: cf. arrêt 2478 du 20 décembre 1999, in http://www.uaar.it/laicita/visite_pastorali/24g.html (consulté le 10 septembre 2010). Le Conseil d'État, toutefois, semble plus nuancé: l'arrêt 1911 du 6 avril 2010 confirme la délibération d'une école en faveur d'une visite pastorale de l'évêque excluant toute signification strictement culturelle en considérant, au contraire, cette visite comme un simple « témoignage culturel » comparable à « une audition d'un représentant d'une croyance religieuse ou spirituelle différente », in <http://www.olir.it/areetematiche/19/index.php?documento=5309> (consulté le 10 septembre 2010).

- 32 L'interprétation catholique originaire de cette représentation iconographique n'apparaît pas seulement par l'opposition des Églises « protestantes » à cette présence mais aussi, historiquement, par celle qui a été appelée comme l'« exception vaudoise », c'est-à-dire la circulaire ministérielle n° 8823 du 8 avril 1923 qui admettait de substituer le crucifix avec « une image du Rédempteur avec une expression significative qui aurait pu manifester le même très haut idéal du crucifix (par exemple, 'Christ et les enfants') »: cf. <http://www.olir.it/areetematiche/75/index.php?documento=4143> (consulté le 16 décembre 2010).
- 33 Les sources, de l'époque fasciste, qui règlent l'affichage des crucifix ainsi que les décisions jurisprudentielles sur la matière sont publiées in <http://www.olir.it/areetematiche/75/documenti.php?argomento=127> (consulté le 10 septembre 2010).
- 34 Cf. Conseil d'État, arrêt n° 556 du 13 février 2006, in http://www.olir.it/ricerca/index.php?Form_Document=3517. Avec l'ordonnance n° 389 du 13 décembre 2004, la Cour constitutionnelle a refusé d'intervenir dans la question pour la nature réglementaire et non pas législative de dispositions concernées: cf. <http://www.olir.it/documenti/index.php?documento=1712> (consultés le 10 septembre 2010).

tions », une « identité qui se caractérise par les valeurs du respect pour la dignité de tout être humain et de l'universalisme solidaire »³⁵.

Le crucifix est devenu ainsi le *symbolon* de la rencontre entre religion et Constitution mais aussi le *symbolon* de la postmodernité juridique, c'est-à-dire la reconnaissance explicite de l'impossibilité pour l'État contemporain de vivre sans les « présupposés qu'il ne peut pas garantir »³⁶. On pourrait dire, en effet, qu'en Italie c'est le crucifix qui permet le libre port des habits religieux, foulard islamique compris, dans le milieu scolaire³⁷. Le crucifix agit, donc, comme garant de la laïcité-pluralisme et comme garant des principes constitutionnels qui, sans cette médiation culturelle-religieuse à vocation universelle, pourraient être interprétés bien plus restrictive-ment dans le climat actuel de repli identitaire³⁸.

À côté de la « saine laïcité », des autres principes constitutionnels favorisent la manifestation d'opinions religieuses et culturelles dans l'école publique. Le principe constitutionnel d'autonomie des

35 Conseil d'État, avis du 15 février 2006, in <http://www.olir.it/areetematiche/75/documenti.php?argomento=127&documento=3638> (consulté le 10 septembre 2010).

36 Cf. *Ernst-Wolfgang Böckenförde*, *Die Entstehung des Staates als Vorgang der Säkularisation*, in *Säkularisation und Utopie*. Ebracher Studien. Ernst Forsthoff zum 65. Geburtstag, Kohlhammer, Stuttgart 1967, pp. 75-94. Ce discours est à la base du cas Lautsi qui oppose l'Italie et la Cour de Strasbourg, cette dernière plus liée à une conception « moderne » de protection des droits, axée sur la primauté des droits individuels ... mais seulement quand une certaine conception de neutralité de l'État n'est pas en jeu.

37 Il faut signaler aussi qu'on ne connaît pas, jusqu'aujourd'hui de demandes d'exemption pour raisons religieuses; de même, les pratiques alimentaires, au moins pour ce qui concerne la possibilité de menus sans viande de porc, sont normalement prises en compte par les écoles.

38 Si le raisonnement de la Cour de Strasbourg sur le cas Lautsi est formellement linéaire, il risque, néanmoins, de ne pas tenir compte ni de la complexité du cas concret ni de la faisabilité et des conséquences d'un processus iconoclaste généralisé dans les écoles italiennes où, par ailleurs, semble s'affirmer une tendance à la décentralisation, qui laisse à leurs instances représentatives la décision en la matière: cf. tribunal civil de Terni, ordonnance du 24 juin 2009, in <http://www.olir.it/areetematiche/75/documenti.php?argomento=127&documento=5032> (consulté le 10 septembre 2010). La Cour de Strasbourg, enfin, ne se limite pas à surveiller que le *symbolon* ne dégénère pas en un *diabolon*, excluant ceux qui ne le reconnaissent pas de la jouissance des droits, mais, comme dans le cas Dahlab, elle finit par des considérations par-législatives abstraites fondées sur une conception de neutralité stricte de l'espace public vis-à-vis du phénomène religieux qui pourrait bien être discutée.

établissements scolaires³⁹ ainsi que le droit à la liberté d'enseignement des enseignants, qui a reçu depuis sa constitutionnalisation en 1948 une interprétation extensive peut-être unique en Europe, empêchent que ces derniers, bien que titulaires d'une fonction publique, soient conçus comme une sorte de porte-parole de l'État. Il n'est pas, par conséquent, rare que les enseignants usent de croix ou d'autres signes⁴⁰. Le pluralisme de l'école publique se reflète dans la diversité de son corps enseignant; de même, la limite de ce pluralisme est l'exécution correcte de la mission d'enseignement, fonctionnelle à une instruction qui nécessite organisation et coordination.

§ 4 LES ÉCOLES CONFESSIONNELLES

Au cours de l'année scolaire 2007/2008 l'école catholique correspondait, environ, à 5–6 % du système scolaire italien⁴¹.

Les écoles catholiques sont régies par le droit commun sur les bases posées par la Constitution du 1946 pour le dépassement des privilèges qu'avait reconnus la législation fasciste⁴².

39 Cf. art. 117 Const.

40 Dans les écoles étatiques, les religieuses ainsi que les religieux et les prêtres peuvent enseigner avec les vêtements propres de leur état et, dans une école enfantine municipale, une stagiaire de religion musulmane a porté le voile sans que personne ne conteste au nom des principes de laïcité ou de neutralité: cf. <http://www.arcidonna.org/index.php/donne/notizie-donne/Fatima-la-maestra-col-velo-le-polemiche-e-la-soluzione-della-vicenda.html> (consulté le 10 septembre 2010).

41 L'établissement d'un réseau scolaire autonome, en effet, n'a jamais été l'objet d'un choix stratégique de la part de l'Église catholique qui préféra toujours sauvegarder le rôle public du à sa présence stable à l'intérieur des écoles étatiques: cf. *Alessandro Ferrari*, *Libertà della scuola e laicità dello Stato in Italia e Francia*, Giappichelli, Torino 2002.

Au cours de l'année scolaire 2007–2008 l'école catholique comptait environ 5107 écoles enfantines avec 314 327 enfants (18 897 sans citoyenneté italienne et 8931 non catholiques); 1041 écoles primaires avec 142 684 enfants (2888 sans citoyenneté italienne et 701 non catholiques); 580 collèges avec 60 176 élèves (972 non citoyens et 216 non catholiques) et 636 lycées avec 65 148 élèves (861 non citoyens et 171 non catholiques). À ces écoles il faut ajouter les quelques deux cent centres techniques qui regroupent environ soixante-dix-mille jeunes: cf. *Centro Studi per la Scuola Cattolica*, *La scuola cattolica in cifre. Conferme e Andamenti in controtendenza Anno 2007/2008*, a cura di G. Malizia, S. Ciatelli et V. Pieroni, Roma 2009.

Ce droit commun a son fondement dans l'article 33 de la Constitution qui permet l'ouverture des écoles privées sans besoin d'autorisation administrative et leur garantit la liberté pleine de l'enseignement, l'État étant chargé de dicter les « règles générales concernant l'instruction », c'est-à-dire, les dispositions organisationnelles, les indications relatives aux programmes scolaires et aux titres et statuts aux enseignants⁴³. Tout en ne prévoyant pas des subventions publiques et semblant, plutôt, aller dans le sens de les interdire⁴⁴, la Constitution permet aux écoles privées de délivrer des titres d'étude ayant valeur légale. Par conséquent, les écoles privées se divisent en deux catégories: les écoles paritaires, qui peuvent délivrer ces titres et dont les élèves sont de plus en plus bénéficiaires d'aides publiques⁴⁵ et les écoles non paritaires qui ne jouissent pas de ces possibilités. Aujourd'hui, quand le système d'instruction est conçu comme un réseau où la différence entre écoles paritaires et publiques tend à s'effacer, la place des écoles non paritaires est marginale. Il est donc naturel que, pour garder un rôle public, l'Église catholique privilégie la parité pour ses écoles.

Pour accéder à la parité une bonne capacité organisationnelle est nécessaire, ainsi que la présence d'enseignants qualifiés et un nombre d'élèves assez élevé. À la différence du passé, la parité ne comporte pas homologation entre école publique et école privée paritaire, cette dernière jouissant de l'« autonomie » reconnue aux établissements étatiques⁴⁶.

42 Même le concordat de 1984, bien que contenant une disposition spécifique relative à l'école catholique (art. 9 par. 1), va dans ce sens.

43 La loi n° 27 du 3 février 2006 et les décrets ministériels n° 267 du 29 novembre 2007 et n° 82 et 83 du 10 octobre 2008 demandent la conformité des projets éducatifs aux principes de la Constitution; le respect de règles d'hygiène et de sûreté des bâtiments et la possession par les enseignants des titres requis.

44 L'article 33 de la Constitution parle, en effet, de liberté d'ouvrir écoles privées « sans charge pour l'État ». Il s'agit d'une longue querelle qui est dépassée au moins *de facto* par la multiplication des subventions publiques à l'école privée paritaire et à ses élèves soit de la part de l'État central soit de la part des régions: cf. *Ferrari*, *Libertà della scuola ...*, cit., pp. 281–350.

45 Cf. loi 10 mars 2000, n° 62.

46 Paradoxalement, en effet, dans le système scolaire contemporain la liberté d'enseignement est directement proportionnelle au degré d'homologation entre école

En ce qui concerne spécifiquement l'éducation religieuse, la loi exige des écoles paritaires le respect des « principes de liberté établis par la Constitution républicaine »; l'admission de tous ceux qui le demandent et la garantie que les élèves ne soient pas obligés de participer aux activités religieuses⁴⁷. En revanche, elle garantit la pleine liberté d'orientation culturelle et didactique; la possibilité de développer un projet éducatif confessionnel et le droit d'en demander l'acceptation aux usagers. Dans la vie concrète des écoles, surtout catholiques, cette éducation religieuse semble influencée plus par le contexte social que par les contraintes légales. Il en résulte, en général, un enseignement assez ouvert et constitutionnellement orienté où l'éducation religieuse est réglée, par analogie, selon le modèle concordataire en vigueur dans l'école étatique⁴⁸.

privée et école publique. La logique ancienne de l'affrontement entre école publique et école privée a été remplacée par une logique de coopération, favorisée par l'attitude consumériste et pragmatique de familles. Cela peut être problématique pour les écoles des minorités moins aptes à s'organiser et, parfois, plus distantes de la « culture dominante »: cf. *Ferrari*, op. ult. cit., pp. 254 ss.

47 Cf. art. 1, par. 3 de la loi 62/2000.

48 Au-delà du fait que les projets éducatifs de ces écoles spécifient souvent le caractère obligatoire de l'enseignement religieux et sa durée, qui est normalement de deux heures par semaine dans tous les degrés, cette analogie devrait comporter, en principe, une substantielle équivalence des titres des enseignants et les livres utilisés dans des écoles publiques et privées. Paradoxalement, toutefois, l'éducation religieuse offerte par les écoles catholiques, que l'on pensait aller d'elle-même, a été longtemps surestimée et négligée. Dans une enquête réalisée en 2001, en effet, il apparaît que l'enseignement religieux dans les écoles catholiques était confié, en général, à des enseignants (femmes au 70 %) souvent dépourvus d'une formation culturelle solide et qui agissaient sans coordination entre eux: cf. *Bruno Stenco, Guglielmo Malizia*, I contenuti essenziali della formazione nella Scuola cattolica. I risultati di una recente indagine del centro Studi per la Scuola Cattolica, en « Quaderni della Segreteria generale Cei. Notiziario dell'ufficio nazionale per l'Educazione, la Scuola e l'Università », 2-XXVI (2001), pp. 132–164. Par conséquent, c'est seulement récemment qu'on assiste à une plus grande attention de la part de l'Église catholique au rôle de ses écoles dans la formation religieuse des élèves, soit par une plus grande attention portée aux contenus de cet enseignement et à la capacité ou formation des enseignants; soit par la recherche d'une plus grande coordination des écoles catholiques entre elles ainsi qu'avec les autres structures d'Église, à commencer par les paroisses. Cela a donné lieu à la production de plusieurs documents épiscopaux sur l'éducation catholique et sur la fonction des écoles catholiques et à la mise en place d'un réseau « administratif » qui, centré sur les bureaux de la Conférence épiscopale, assure une liaison et une cohérence entre toutes les écoles catholiques (et leur fédérations) en leur fournissant des directives uniformes, du niveau national jusqu'aux diocèses.

§ 5 CONCLUSIONS

L'enseignement religieux est progressivement entré parmi les matières qui font l'objet de la législation bilatérale entre État et cultes, ce qui rend assez improbable une modification des normes déjà approuvées par le Parlement, ce qui nécessite une majorité qualifiée pour leur abrogation unilatérale.

Toutefois, si ce n'est par le haut, c'est-à-dire par la législation, c'est par le bas, c'est-à-dire par la société, que la nécessité de répondre aux besoins d'une éducation interculturelle oblige à une plus grande attention envers les diversités, même religieuses. Il s'agit, souvent, d'accommodements silencieux, locaux, et qui n'affectent pas, formellement, un cadre institutionnel encore caractérisé par une certaine rigidité.

RELIGION IN PUBLIC EDUCATION – LATVIAN EXPERIENCE

RINGOLDS BALODIS

1. GENERAL BACKGROUND

The statistical data currently available in the public sphere may not be applicable today as ten years have passed since the last census in 2000.¹ The economic crisis, which started in 2007, has had a significant impact on Latvia and economic emigrants and immigrants have also affected the religious landscape. Considering the data available in the public sphere there are 2.3 million inhabitants in Latvia. National or ethnic composition: Latvian 57.6 %, Russian 29.6 %, Byelorussian 4.1 %, Ukrainian 2.7 %, Polish 2.5 %, Lithuanian 1.4 %, Jewish 0.4 %, German 0.1 %, other 1.6 %.² According to a survey made by a **Latvian public opinion research centre** in 2003, 49.3 % of the inhabitants of Latvia do not read the Bible, 4 % read the Bible almost every day, and about half read the Scriptures from time to time. According to the survey data, the declared religious affiliations of the population are:

Orthodox	25 %
Lutherans	25 %
Roman Catholics	21 %
Old Believer Orthodox	2.7 %
Adventists	0.4 %
Jews	0.1 %

1 The next census will take place in 2011.

2 *Balodis R. Latvia*, Encyclopedia of World Constitutions Volume II Ed. G. Robbers – U.S. Facts on File, 2007 p. 513–519.

In this survey 9 % considered themselves to be believers without identifying themselves with any particular denomination, while 12 % declared themselves to be non-believers. There are significant numbers of atheists. Orthodox Christians, many of them Russian-speaking, non-citizen, permanent residents, are concentrated in the major cities, while many Catholics live in the east.

In the academic year 2009/2010 in total there were 948 schools with a comprehensive curriculum in the state, 45 of these were primary schools, 463 elementary schools, 377 high schools, 63 special schools.³ In Latvia, 19 Christian educational institutions have received a state licence in 2009. 12 of these are state schools.⁴ The others are pre-school institutions (for example, the Christian consultative and play centre of the Jesus parish *Jēriņš* (“Lamb”)). There are also elementary schools of non-traditional religions – elementary school of Priekavests “*Harmonija*”⁵ which includes grades 1 to 6.

2. RELIGIOUS EDUCATION AND ETHICS

Religion as a subject and other non-traditional religion subjects, such as Judaism, are not compulsory in Latvia. Each school may offer such subjects as electives. The standard in these subjects is formed through coordination with the Ministry of Science and Education.⁶

3 For comparison in the academic year of 1998/1999 there were 1074 schools in the State.

4 Baltinava Christian special boarding elementary school, Riga Christian high school, Bauska city Christian elementary school, Talsu Christian high school, Dobele Christian elementary school, Rezekne Catholic high school, Kalnezeru Catholic elementary school, Liepaja Catholic elementary school, Riga Catholic gymnasium, Aglona Catholic gymnasium, Ogre St. Meinard's Catholic elementary school, Graveru elementary school of Riga and Latvia Metropolitan Aleksander (Kudrjasov).

5 http://www.priekavests.lv/lv/izglitiba/privatskola_harmonija?read=131.

6 According to the Agreement between the Republic of Latvia and the Holy See Article 15, the teaching of the Catholic religion shall be conducted exclusively on the basis of a programme approved by the Bishops' Conference of Latvia, in agreement with the Ministry of Education and Science, and shall be undertaken only by qualified teachers who possess a certificate of competence issued by the Bishops' Conference of Latvia, the revocation of which signifies the immediate loss of the right to teach the Catholic religion.

From September 1, 2004, either Ethics or Religion will be offered as compulsory subjects to grades 1–3, where the parents of pupils have to choose one of the subjects mentioned above.

By taking a broad interpretation of the Law on Religious Organisations, Christian teaching is the teaching of the common Christian principles in the Bible, values and manifestations in the development of the world culture of the traditional Christian confessions (Lutheran, Catholic, Baptist, Orthodox, and Old-believer). Christian teaching is inter-denominational – it concentrates on the essentials of Christianity, important to both the state and society. In Christ's teaching the model of an open society has God at its centre and humans as the highest value within it.⁷ In these subjects students seek to gain knowledge and understanding about the order of the world created by God; learn to master the skills of the Christian life (praying, serving, and the common good); and develop the motivation to act in a way that is based on Christian values. For example, the Evangelical Lutheran Church declares that by learning Christian teaching under democratic circumstances students will be able to create their own world outlook.⁸ According to Article 1.6 and 1.7 of the Law on Religious Organisations, Christian teaching is about the system of views, doctrines and ideas of particular Christian denominations, but religious teaching is about the system of particular religious views, doctrines and ideas. According to this Law everyone shall be entitled to acquire religious teaching, either individually or together with others in the educational institutions of religious organisations, but in the state and municipal schools only the Christian religion may be taught to persons who have expressed such wish. Since 1998 the Religious Organisations Law has been supplemented by Article 6 (5), which provides that religious teaching and ethics classes are financed from the state budget.

As already mentioned, in Latvia if a student does not want to receive religious teaching he has to choose classes in ethics. The

7 <http://www.lalb.lv/lv/?ct=skolas>.

8 *Ibid.*

amount of the compulsory subjects and their content⁹ in educational programmes of the institutions run by the local governments providing general education, and private educational institutions that carry out licensed general elementary or secondary education programmes of the Republic of Latvia, is defined by ministerial regulations, namely Regulations No. 1027 of the Cabinet of Ministers of December 19, 2006, “Regulations on the State elementary education standard and elementary education subject standard” and Regulations No. 715 of the Cabinet of Ministers of September 2, 2008 “Regulations on the State general secondary education standard and general secondary education subject standards”.

The standards of the subjects included in these regulations define the basic requirements for the subjects’ acquisition on completion of grades 3, 6, 9 and 12, but they do not define the order of acquisition. In the case of educational programmes published by the State Educational Content Centre, the order of the subjects is provided by school year as well as information of a methodological character. However, these are recommendatory documents and are not legally binding on educational institutions which do not act under the supervision of the Ministry of Education and Science – for this reason are not considered as instructions.

A Glance at Origins

In Latvia, providing for religious education in line with the requirements of modern pedagogy and psychology began only at the beginning of the 20th century. Because of the influence of historical materialism (Marxism) and the revolutions of 1905 and especially 1917, religious education in Latvian schools underwent a crisis.¹⁰ The *Terbata* Teacher’s Congress of 1917 decided that religious instruction

9 <http://visc.gov.lv/saturs/vispizgl/standarti.shtml>; <http://visc.gov.lv/saturs/vispizgl/programmas.shtml>.

10 *Balodis R.* State and Church in the Baltic States: 2001/Latvian Association for Freedom of Religion. Riga, 2001 p. 35–37.

should not be included in the curricula of Latvian schools.¹¹ Nevertheless, in 1918 when Latvia was proclaimed an independent republic, the first Law on Education of the Republic of Latvia provided for compulsory religious instruction in schools for children and optional religious instruction for parents. In 1934 the law “On National Education” was passed and it introduced **denominational faith teaching** as one of the basic subjects in elementary and secondary schools. Children who did not belong to any of the traditional denominations could choose ethics lessons. Demand for those lessons was not very high.¹² The provision of religious education then was seen as similar to that in Scandinavian countries. Religious education was placed under denominational control thus preventing the teaching of socialism or any other world outlook in the lessons on religion.¹³ The teachers of religion had to be fully-fledged members of the parish of the relevant denomination. In 1934 a revolution occurred, as a result of which the authoritarian regime of Dr. Karlis Ulmanis was the new state power. The constitution was suspended and Parliament dismissed. Most probably, the position under the law “On National Education”, favouring the church, would not be accepted under democratic circumstances.

On Soviet occupation, the atheistic USSR regime abolished religious education in schools and closed all educational institutions with a religious orientation.¹⁴ During the communist regime (1945–

11 *Balodis R.* Church and State in Latvia. Grām. Law and Religion in Post-Communist Europe (Ed. Silvio Ferrari, W. Cole Durham). Peeters, Leuven – Paris – Dudley, MA, 2003 p. 161.

12 *Balodis R.* Baznīcu tiesības (The Rights of Churches). Rīga, Reliģijas Brīvības Asociācija, 2002 p. 320.l.

13 *Freij A.* About the holy and the good. Riga, 1936 p. 88–89.

14 On August 4, 1940 with the decision of the Cabinet of Ministers, the Faculty of Theology at the University of Latvia was closed. The communists did the same regarding similar institutions of a religious nature. Even gymnasiums with a religious tendency were closed. Students of the Faculty of Theology were denied the opportunity to continue their studies in other faculties. Lecturers were not allowed to teach either theological subjects or any other subjects in the other faculties. The library and the museum of the Faculty of Theology were moved to a special area in the Central library of the LU. Works with a religious content were removed from the libraries and later a state permit was required for the printing of books and church song sheets.

1990), the Criminal Code of the Latvian Soviet Socialist Republic (LSSR) penalized the teaching of religion. Article 137 of the LSSR Criminal code dealt with *Breach of the regulations regarding the partition of the church from the State and the partition of the school from the church* – the organisation of systematic religious teaching for minors was a crime. However, it did not prohibit the individual teaching of your own children by the parents themselves. The criminal investigators of the LSSR considered that the organisation and realization of religious teaching for minors could occur both publicly (classes in small groups) and secretly (preparing confirmation candidates and the like).¹⁵ Liability arose regardless of whether classes took place on request of the minors or without them knowing it.

On May 4, 1990, the Supreme Council of the Latvian Soviet Socialist Republic adopted a declaration “On Restoration of [the] Independence of the Republic of Latvia”,¹⁶ and Latvia began a rapid dismantling of the Soviet system. This applied both to the economy and limitations on human rights. Taking into consideration the wish of Latvian religious organisations to initiate positive action even before the adoption of the so-called constitutional law “On Human and Citizen Rights and Responsibilities”,¹⁷ on September 11, 1990, the law “On Religious Organisations” was adopted. This law regulated their registration as well as the rights of religious organisations to religious education. Article 3 of the law (on “Education and Religious Organisations”) provided that religion may be taught individually or together with other students in the schools, Sunday schools, hobby groups, and summer camps of religious organisations, as well as – on a voluntary basis – extracurricular activities at public and private educational institutions. This law stated that students at both

15 Latvijas PSR Kriminālkodeksa komentāri (Comments on the Criminal Code of LSSR). Rīga, 1982 p. 445.

16 Declaration of the Supreme Council of the LSSR "On the renewal of the independence of the Republic of Latvia". Latvijas Republikas Saeimas un Valdības Ziņotājs, 17.05.1990, No. 20.

17 Constitutional Law Human and Citizen Rights and Liability: Law of the Supreme Council of the Republic of Latvia. *LR Saeimas un MK Ziņotājs*. January 30, 1992, No.4.

public and private school were to be given the opportunity to become acquainted with different religious subjects, their nature and history. The law did not provide a specific number of denominations or churches that would be allowed to teach religion. The Law "On Religious Organisations" of September 11, 1990 was replaced by a new law on religious organisations,¹⁸ on September 7, 1995; this happened because the law of 1990, like other laws adopted at that time, was incomplete and poorly drafted.

The Law on Religious Organisations of 1995 provides a specific range of denominations with the right to teach religion in schools. The early romanticism of regaining independence had gone and a harsh competition between religions arose in its place. Even *dievturi* (Latvian Pagans), who during the national awakening were seen as a symbol of freedom, were excluded from schools. Despite desperate attempts to enter the circle of those denominations entitled to teach religion they are in the same position as new religious movements. Basically, new religious movements are those which entered Latvia after the fall of the "iron curtain" – the Jehovah's Witnesses, Scientologists, charismatic Christians, Mormons, etc. Even though membership in these is rapidly growing they cannot qualify to enter the list of denominations that have the right to teach religion, because they have to fight for registration.

The first "Jehovah's Witness" parishes were registered in the Ministry of Justice of the Republic of Latvia on October 12, 1998, and so in 2008 they gained "independent religious organisation status" and could now campaign to enter the schools to teach. It is similar with the Mormons, etc. Different situations arose with the Methodists, and Adventists, who judging by Article 6 of the law "On Religious Organisations" of 1995 were not counted amongst the "chosen denominations" entitled to teach their faith in schools. Both Adventists¹⁹ and Methodists²⁰ have special laws for such rights. The

18 The Law on Religious Organisations LR likums. Latvijas Vēstnesis, 1995. 9 September no. 146 (429).

19 Article 14 of Law on Latvian Association of Seventh-day Adventist Communities: LR likums. Latvijas Vēstnesis, 2007. 12.jūnijs nr. 93 (3669).

author believes that the entry of these two confessions into the list under the Law “On Religious Organisations” is only a matter of time, as they have both acquired the special status of traditional denominations,²¹ after the approval of their special laws. Another issue is the small number of the members of these denominations.

3. LEGAL SOURCES AND RELIGIOUS INSTRUCTION

3.1. *The Constitution – Satversme*

In the Constitution of the Republic of Latvia (*Satversme*) religion/church is mentioned only in Article 99: “Everyone has the right to freedom of thought, conscience and religion. The Church shall be separate from the State.” This provision was included in the Constitution in 1998, which was supplemented with a new section on human rights. In practice Latvia is a partial separation state, where the constitutionally-declared separation of church and state does not work in practice. Latvia does not associate itself with any specific religion, and matter is not about religious tolerance, but about interpretation of Article 99. Above all, there is no clear opinion about where the border between the state and church should be strictly marked. State and Church are separate. However, if we speak about essentials to ensure separation of church and state, then practically

20 Article 12 of Latvian Joint Methodist Church Law: LR likums. Latvijas Vēstnesis, 2007. 6.jūlijs 91 (3667).

21 In Latvia there is no state religion. The Constitution of the Republic of Latvia (*Satversme*) does not mention any specific religion. The Latvian legislative norms (unlike the Lithuanian) have no concept of “traditional” denominations. “Traditional” and “non-traditional” organisations are not regulated by the Law on Religious Organisations and the Law does not list religions or religious denominations that are regarded as traditional. For all that, confessions included in Article 51 of the Civil Law as having the right to solemnize marriages, are called “traditional”. These are the Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh Day’s Adventist and Jewish religious communities. Although the issue of traditional churches in Latvia has been discussed for more than ten years, it was included in all the special church laws. On this see Article 2 of the special church laws which provide that the Latvian state recognises the existence and prevalence of the respective traditional religious organisations in the territory of Latvia.

none of these exist in Latvia. One of the reasons for this is the issue of the State-funded religious education in State and municipal schools and the rights of churches to contract a marriage on behalf of the State.

In addition to the clause on religious freedom in Article 99, the right to religious education may arise contextually by virtue of Article 112 of the Constitution which provides for the right of everyone to education. Article 114 also states that “persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” It follows that everyone, including minorities, in Latvia has equal rights to the free choice of religion. This is also declared in Article 2 of the Law of Religious Organisations: “The state does not grant any privileges to any religion or confession.”

Religious freedom in Article 99 of the Latvian Constitutions includes freedom to believe or disbelieve freely, and to practise or not to practise religion. This results in a distinction between positive and negative religious freedom. Thus, the right to withdraw from religious education and the right to alternative education does not need to be *expressis verbis* in the basic law of the State, but result automatically from positive and negative religious freedom. The rights to protection (e.g., symbols, etc.) of their own religion (religious belief), can be as widely interpreted as the rights to religious rituals. The state has an obligation to provide individuals and/or religious organisations with space for action where their world outlook can develop and be protected from the followers of other religions or the attacks or restrictions of competing religious groups. Without doubt one can add the right to religious education, which includes also the right to study one’s own religion, the right to provide religious education, the right to train clergy, the right to create and distribute religiously educational literature etc.

3.2. *Religious Instruction*

The content of education is regulated by the Law of Education 1998. Articles 32–35 of this state that the content of the subjects (and lessons) is regulated by prescribed standards. According to the relevant order such subjects as Religion, History of Culture, Christianity, Ethics, and Christian ethics are considered as educationally valuable.

The principle of freedom of religion is a fundamental of the Law on Religious Organisations from September 7, 1995. Article 2 deals with the right to freedom of religion, including the right to freely state one's attitude towards religion, to adhere to some religion, individually or in community with others, or not to adhere to any religion, and to change freely one's religion in conformity with the law. The Law on Religious Organisations, in compliance with the Constitution, as well as international agreements concerning human rights in the sphere of religion, regulates social relations established through exercising the right to freedom of conscience and through engaging in the activities of religious organisations. The state shall protect the legal rights of religious organisations as prescribed by the law. The state, municipalities and their institutions, non-governmental and other organisations, shall not interfere with the religious activities of religious organisations.

Under Article 6 of the Law on Religious Organisations, the Christian religion may be taught in state and municipal schools to persons who have requested it in a written application. Applications by minors to be taught the Christian religion must be approved by parents or guardians. If the minor is under 14 years of age, the minor's parents or guardians submit the application.²² The concept of Christian religious instruction does not include and cannot include

22 According to the Agreement between the Republic of Latvia and the Holy See Article 14 the Republic of Latvia recognizes the right of parents and their legal representatives, and, in the cases provided for by law, of children themselves, to ensure for their children an adequate religious education in institutes of education through religion classes in State and municipal schools, and the Catholic Sunday schools. The State guarantees this right within the terms established by law and the international treaties binding upon the Republic of Latvia.

the Jewish faith or Islam. Due to the very small amount of Muslim and Jewish students, neither the parochial management of the Muslim nor Jewish parish has been interested in teaching their faith in schools. Christian religion in accordance with the curriculum approved by the Ministry of Education and Science may be taught by teachers of the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers or Baptist denominations, if not less than 10 students of the same school have expressed their wish to study the religious teaching of the relevant denomination. The teachers must be selected by the denomination leaders and be approved by the Ministry of Education and Science. They can also be chosen from secular teacher staff. Ethics is offered as an alternative to religious instruction. Students at state-supported national minority schools may also receive education in the religion “characteristic of the national minority” on a voluntary basis. Other denominations may provide religious education in private schools only. Those organisations that have no rights to teach religion in schools put their emphasis on Sunday schools. For example, on Sundays parents go to mass while children aged 3–10 years are taught in Sunday school.²³ Many denominations have developed comprehensive systems of Sunday Schools. For example the Baptist congregations in Latvia, with more than 6,200 members have Sunday Schools attended by approximately 5,000 children.²⁴

According to the Law, everyone individually or in groups, has the right to religious instruction in the educational establishments of religious organisations. In national minority schools supervised by the state or municipalities, if such is the wish of the students and their parents or guardians, the religion appropriate to the particular national minority may be taught in compliance with procedures prescribed by the Ministry of Education and Science. Thus for example, the Orthodox, whose religion is not mentioned in the Law on Religious Organisations, can ensure religious classes for their children.

23 <http://www.priekavests.lv/lv/izglitiba/svetdienasskola?read=3730>.

24 *Balodis R.* School – Religion Relations: Republic of Latvia. *Revue Européenne de Droit Public*, 2005; Vol. 17 (1) spring p. 397–408.

3.3. *Agreements and Special Laws*

In Latvia, there are two types of legal agreements between churches and the State: international and national. The international agreement – and in Latvia there is only one – signed with the Holy See in 2000, unlike national agreements signed with local churches in 2004, has a higher authority than laws. Moreover we will see that the legal status of the agreements of 2004 can be called into question, to operate they must be implemented in laws.

International Agreement with Holy See: The Latvian Parliament on 12 September 2002 ratified the agreement with the Holy See. In accordance with Article 15 of the agreement between the Republic of Latvia and the Holy See, the teaching of the Catholic religion shall be conducted exclusively on the basis of a programme approved by the Bishops' Conference of Latvia, in agreement with the Ministry of Education and Science, and must be undertaken only by qualified teachers who possess a certificate of competence issued by the Bishops' Conference of Latvia; the revocation of the certificate carries with it the immediate loss of the right to teach the Catholic religion. Moreover, Article 9 (a) provides: “With respect to the laws of the Republic of Latvia and in view of its legitimate pastoral undertakings, to the Catholic Church shall be guaranteed freedom of access to the media and freedom of speech, including the establishment of its own means of social communication and access to those of the State, in accordance with the legislation of the Republic of Latvia.” According to Articles 16, 18 and 19 in conformity with the legislation of the Republic of Latvia, the Catholic Church has the right to found institutions of higher formation for teachers of religion which will grant civilly recognized diplomas. The Catholic Church has the right to establish and manage schools at every level, in conformity with the laws of the Republic of Latvia and the norms of Canon Law. The foundation of Catholic Schools shall be requested by the Bishops' Conference of Latvia, the latter acting on behalf of the local Ordinary. Catholic Schools, as well as institutions of higher formation, shall observe the laws of the Republic of Latvia concern-

ing the general norms relating to the national curriculum, to their management and the granting of civilly recognised diplomas. Catholic Schools are entitled to state financial support, in accordance with the laws of the Republic of Latvia. Teachers and other employees in officially recognised Catholic Schools, as well as students and their parents, shall enjoy the same rights and have the same obligations as their counterparts in State and local government schools.²⁵ Whilst the Roman Catholic Church was interested in concluding an international agreement between the Holy See and the Republic of Latvia, no agreement was made with the Catholics and thus no special law was adopted.

Agreements between the Latvian government and churches: Agreements of 2004 between the Cabinet of Ministers and churches were made due to the discontentment of the traditional churches regarding the treatment of Roman Catholics that stemmed from the 2000 agreement with the Holy See. Each of these agreements has a preamble recognizing the special role of the Church in the existence of the legal system of the country and the system of values of the society, as well as its significant contribution to the morale of society and the process of socialization.²⁶ Every agreement also implemented the right to teach religion in schools run by the state and local government. For example, according to the Agreement signed on June 8, 2004, between the Republic of Latvia and the Evangelic Lutheran Church of Latvia (Article 14 on religious lessons) the latter has the right to teach religion in line with the regulatory enactments of the Republic of Latvia according to a curriculum jointly approved by the Ministry of Education and Science and the Evangelic Lutheran Church of Latvia. There are similar provisions in other the agreements. Although the agreements based on the experiences of

25 *Balodis R.* School – Religion Relations: Republic of Latvia. *Revue Européenne de Droit Public*, 2005; Vol. 17 (1) spring p. 397–408.

26 General presentation: Latvia/Sociological and legal data on religions in Europe// <http://www.eurel.info/EN/index.php?pais=59&rubrique=662>.

Spain, Italy, Hungary and Poland in this sphere,²⁷ agreements had to be implemented in laws so that in accordance with the demands of Latvian law they would acquire legal effect. On the basis of the request from the Saeima Legal Office, under the leadership of the author of this article, the Ministry of Justice prepared 7 special laws which were accepted in parliament in 2007–2008.²⁸ The primary reason for draft laws was to strengthen the relationship included in agreements of 2004 between the Republic of Latvia and its traditional churches. After long and difficult negotiations between the representatives of the churches and the deputies and legal service of Parliament this was accomplished. In the end, questions about the Sabbath were not included in the laws of Seventh-Day Adventists and Jewish community and the Lutherans failed to secure tax benefits in their laws.

These special laws acknowledge the long-standing existence and spread of the Church as a traditional religious organisation in the territory of Latvia and “*its contribution to and rich experience in the areas of society’s physical and mental health, education, culture, social support and other areas*”.²⁹ The legal provisions on education in all the special laws are similar. So according to that applicable to the Latvian Old Believers’ Pomor Church, under Article 12 (The Church and education), the church has the right to educate its priests and the Church shall possess the right to provide religion lessons in

27 *Balodis R.* The recent developments of Latvian model of Church and State relationship: Constitutional changes without revising of Constitution. *Jurisprudencija* 2009, 3 (117) p. 19.

28 Law on Latvian Association of Seventh-day Adventist Communities: LR likums. *Latvijas Vēstnesis*, 2007. 12.jūnijs nr.93 (3669); Latvian Baptist Community Association Law: LR likums. *Latvijas Vēstnesis*, 2007. 30.maijs nr. 86 (3662); Riga Jewish Religious Community Law: LR likums. *Latvijas Vēstnesis*, 2007. 20.jūnijs 98 (3674); Latvian Joint Methodist Church Law: LR likums. *Latvijas Vēstnesis*, 2007. 6.jūlijs 91 (3667); Latvian Old-Believers Pomor Church Law: LR likums. *Latvijas Vēstnesis*, 2007. 20.jūnijs 98 (3674), Latvian Evangelical Lutheran Church Law: LR likums. *Latvijas Vēstnesis*, 2008. 20.novembris 188 (3972), Latvian Orthodox Church Law: LR likums. *Latvijas Vēstnesis*, 2008. 13.novembris 188 (3972).

29 *Balodis R.* Las Relaciones entre el Estado de Letonia y las Organizaciones Religiosas: de la Realidad Sovietica el Modelo de España e Italia. *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 21 (2009), http://www.iustel.com/v2/revistas/detalle_revista.asp?numero=21&id=2.

state or municipal educational establishments under the procedure stipulated in the relevant laws and regulations.

Finally, when comparing the rights of traditional churches that have been established by the law, it can be seen that the Roman Catholic Church has the largest number of matters treated in the law regarding education, despite the fact that it does not have a special law.

No	Issues in the law	Adv	Bapt.	Met	Jews	Old-B	Luth.	Orth.	Cath.
1.	Education	14. §	14. §	12. §	-	12. §	14. §	15. §	14-20. §
2.	Autonomy of content of educ. inst.	-	-	-	-	-	14. §	15. §	4. and 15. §
3.	Educational instut. employees' rights	-	-	-	-	-	-	-	19. §
4.	Spiritual seminars	-	-	-	-	-	-	-	20. §
5.	Dept. of Theology of the University of Latvia	-	-	-	-	-	-	-	21. §

Special laws and the comparative table of the Holy See regarding issues of education.

4. REQUIREMENTS FOR TEACHERS OF RELIGION

In order to be able to teach Christianity, the teacher has to have a degree in pedagogy and they have to have graduated from or enrolled in one of the aforementioned schools (until 2009, a B1 certificate from courses of professional development was sufficient (36 hours), which were financed by the state – 17 teachers were hired by the state to

teach other teachers in the whole country). Since 2004, more than 700 teachers have received the certificate asserting their rights to teach Christianity. Until 2009, the teacher had to receive a permit from the higher leadership of their denomination under the responsibility of the parish priest (with the aim of not letting representatives of different sects into the schools). When starting work, the teachers are not asked about their religious leaning or beliefs.

5. RELIGION WITHIN THE FRAMEWORK OF CLASSES IN LITERATURE, HISTORY, PHILOSOPHY, ARTS, LANGUAGE CLASSES

Religion is (fully or partially) covered in the elective subjects “Christianity” or “Teaching of the Christian faith”. Other subjects with a state-approved syllabus do not formally include religious themes, so, according to the Ministry of Education and Science, one cannot determine the share of religion in them.³⁰ By coordinating with the administration of each school, the teacher himself or herself determines the order of themes to be taught within each subject as well as the number of hours to be spent on specific themes.

The standard high school syllabus of “Biology” determines the body of knowledge and skills to be taught at the secondary level of education. Appendix 12, point 16.8 of the provisions issued by the Cabinet of Ministers of September 2, 2008, Number 715 (“Provisions concerning the standard for a comprehensive standard of secondary education and the standards of subjects of comprehensive secondary education”), provides that the student, having learnt Biology, has become acquainted with the main laws applicable to the origin of life and evolution. Opinions have been voiced publicly (including those of the leaders of Christian denominations such as the Archbishop of the Latvian Evangelical Lutheran Church J. Va-

30 The letter number 1.-12/3426 on 18 May 2010 by *M. Gruskevics*, the Secretary of State in the Ministry of Education and Science, to *R. Balodis*, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.

nags) about the hegemony of Darwinism in schools and the need to teach the so-called the theory of intelligent origin, but they have not gained much ground and may be considered merely as exercising one's rights to an opinion. According to the adherents of this theory, life is so complex that only an outside force could have created it, hence there must be some "intelligent designer".

In Culture, which is also an elective subject, religion is treated as a form of culture, and is an integral part of it. History (which is compulsory) includes a short survey of the history of religion. Philosophy, similarly, includes religion in the context of the main subject.

In conclusion, creationism dominates in the electives, whereas in compulsory subjects like Physics, Biology, and History, Darwinism is stronger. According to experts, in this way it is possible to ensure parity between the two. However, that is not the official opinion of the state.

6. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

The deployment of religious signs and symbols is a matter of discretion with regard to religious schools such as Christian public schools and private schools and Jewish private schools.³¹ Prayers are said every morning in such schools and during the holidays students are welcomed to attend church as they wish.

The standard of each subject taught is coordinated with the Ministry of Science and Education, and so free practice of religion is regulated by the national Law of Education. There are eight private schools with religious specialization – Lutheran, Jewish and Baptist.

Religious ceremonies and rituals in comprehensive schools may occur with the consent of parents, and, without this, no actions of a religious nature can be carried out in such schools.

Such issues (currently on the agenda in Scandinavia) as coeducational swimming instruction for Muslim girls are still uncommon in

31 Education: Latvia/Sociological and legal data on religions in Europe, <http://www.eurel.info/EN/index.php?pais=59&rubrique=658>.

Latvia. According to the Ministry of Education and Science, it had not received requests until May 2010³² from Muslims to organize separate groups for boys and girls in the subject “Sports”.³³ Obviously, the Baltic States have different problems regarding the issues concerning Muslims, given the low number of Muslim believers in these countries.

7. RELIGIOUS SYMBOLS AT SCHOOL

The Ministry of Education and Science admits³⁴ that it is not legally able to determine the norms of behaviour of students in comprehensive schools, or their internal regulations, special requirements regarding teachers’ or students’ clothing, times of festivities or meetings etc. A code of conduct, designed to supplement laws and regulations, can be determined by the founders of each school – and local governments or private bodies (for private schools) confirm the internal regulations of each specific school. The use of religious symbols is up to the administration of each religiously-oriented school, both in Christian public and private schools, and minority schools, for example, the Jewish private school. These norms can be determined in greater detail by the principal of each school.³⁵

Prayer is a part of every religion, thus it is one of the practical actions to be learnt by the student. Therefore, religiously-oriented schools include morning prayers, and, on religious holidays, students are welcome to go to the church on a voluntary basis.

32 The letter number 1.-12/3426 on 18 May 2010 by M. Gruskevics, the Secretary of State in the Ministry of Education and Science, to R. Balodis, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.

33 It must be noted that the current laws and regulations allow dividing students into groups during lessons, including divisions of gender. The division into groups, given the funding allocated to each institution, is a matter for each founder.

34 The letter number 1.-12/3426 on 18 May 2010 by M. Gruskevics, the Secretary of State in the Ministry of Education and Science, to R. Balodis, the Chair of the State Law Department of the Faculty of Law of the University of Latvia.

35 Taking into consideration that the standard syllabus of each subject has to be coordinated with the Ministry of Education and Science.

Latvian laws and regulations do not include requirements regarding the clothing or the use of symbols by academic personnel; these, including norms of behaviour, can be included in the internal regulations of each school by the founders of an institution of higher education or its main administrative bodies.

8. THE SABBATH AND RELIGIOUS HOLIDAYS: POSSIBILITY OF AND CONDITIONS FOR TAKING OFF RELEVANT DAYS

The school year and holidays, according to Article 4, Paragraph 16 of the Law on Comprehensive Education, are determined by regulations of the Cabinet of Ministers regarding the start and end date of each specific school year and semester (for example, the 10 February 2010 regulation of the Cabinet of Ministers Number 119 “Regulations of the 2009/2010 school year and semester start and end dates”). Paragraph 11 of the 2 February 2010 Regulations of the Cabinet of Ministers Number 96 “Regulations of the 2009/2010 school year and semester start and end dates”, provides that the local government, after a suggestion by a principal of an educational institution, can independently take a decision on extending the winter break by one or two days, noting the dates for substituting those days in the school year 2010/2011. This norm has been included after taking into consideration the suggestion by many educational experts and local governments regarding Orthodox Christmas, which is celebrated by many families, often also by visiting relatives outside of Latvia. Schools are closed on Sunday and no graduation examinations or tests are organized on this day. Issues about graduation examinations during a holiday of a religious minority are dealt with on an individual basis, with both sides seeking a compromise.

It must be noted that at the 4 June 2010³⁶ meeting of the Council of Spiritual Affairs,³⁷ chaired by the Prime Minister, the agenda in-

36 Prime Minister: Attending the meeting of the Council of Spiritual Affairs/ Latvijas Vēstnesis, 6 June 2010.

cluded ensuring the teaching of the Christian faith in schools. Discussing teaching of Christian values in comprehensive secondary schools, the representatives of religious denominations praised the cooperation with the Ministry of Education and Science on developing the syllabus for the teaching of Christianity. At the end of the discussion, the Council of Spiritual Affairs agreed on appealing to the schools to find extra opportunities for the representatives of the traditional religious denominations to organize guest lectures several times during the school year, including Christmas and Easter.³⁸

9. RELIGIOUSLY MOTIVATED HOME-SCHOOLING

The opportunities of home-schooling under the responsibility of the student's parents are set in the 1 November 2005 Regulations of the Cabinet of Ministers Number 811 "Regulations on the compulsory requirements for the admittance and advancement to the next grade of students in comprehensive schools (excluding boarding schools and special educational institutions)". According to Paragraph 14 of these regulations, home-schooling is allowed from grades 1 to 4, on the basis of a written petition by the student's parents, coordinated with the local government. The permission is given by the principal of the school, issuing a decree. The parents and the administration of the educational institution have to agree on the procedure of consulting the parents and the procedure on assessing the student's achievements during the year by the teachers in order to give their decision on advancing the student to the next grade.³⁹ Religious affiliation of the family to a religious organisation registered according

37 The Council of Spiritual Affairs is an independent, consultative institution for coordinating the cooperation between the state and the church, with the aim to promote harmony and understanding among the followers of different religious denominations and beliefs in Latvian society.

38 Prime Minister: Attending the meeting of the Council of Spiritual Affairs, *Latvijas Vēstnesis*, 6 June 2010.

39 The letter number 1-17/923 on 6 April 2006 by *K. Jarinovska*, the Secretary of State in the Ministry of Education and Science, to the Authority of Religious Affairs of the Republic of Latvia.

to the provisions of the Law on Religious Organisations cannot be a basis for denying the parents their right to educate their child at home. However, if the teachers note that the student's knowledge does not conform to the standard of comprehensive education set by the state, the principal can lift the permission to educate the student at home under the authority of his or her parents.⁴⁰

10. TEACHING RELIGION IN THE INSTITUTIONS OF HIGHER EDUCATION

Part 3 of Article 4 of the Law on Institutions of Higher Education states that each institution can determine independently the content and standards of their study programmes. Study programmes are regulated by the description of their content and realization, which, according to the type and level of education, includes the aim of each programme, planned results, the content of offered education, compulsory subjects and electives, and the division of time among them, and the means of control and their regulation. According to Article 55 of the Law on Institutions of Higher Education, one quarter of the total study programmes is determined by the senate of the highest council of the institution. Hence, it is under the authority of the founders and the highest organs of administration of each institution to include religious themes in their study programmes, determining their content, extent and order of teaching. Therefore, specific institutions should be consulted to find the share of religious themes in the total body of all study programmes.

40 Ibid.

RINGOLDS BALODIS

Number of students who study *ethics* in grades 1 to 9 in comprehensive daily education programmes in school year 2009/2010

Region	In total	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year	9th year
41 Kurzeme region	3544	1157	1173	1168	46					
42 Latgale region	3171	992	1003	1135	41					
43 Riga region	7050	2443	2204	2303	27	11	20	9	16	17
44 Vidzeme region	4388	1530	1443	1555	54	3	1	1	1	14
45 Zemgale region	4058	1411	1237	1305	44	12	12	10	13	
10 Jekabpils	609	188	191	225	5	5				
25 Valmiera	1116	239	245	243	74	52	61	55	62	85
27 Daugavpils	2183	719	719	722	23					
28 Jelgava	1350	457	454	435	4					
29 Jurmala	1299	421	425	426	24			1	1	1
30 Liepaja	1543	568	469	506						
31 Rzekane	708	237	214	257						
32 Ventspils	884	265	258	323	38					
Riga	14497	4727	4453	4375	246	129	123	194	129	121
34 Central district	1266	401	416	449						
35 Kurzeme district	3132	886	805	763	126	111	98	101	122	120
36 Latgale suburb	3422	1049	1079	1117	51	14	22	86	4	
37 Vidzeme suburb	3427	1228	1102	1097						
38 Zemgale suburb	1792	633	619	518	4	4	3	7	3	1
39 Northern district	1458	530	432	431	65					
In the State in total:	46600	15354	14488	14978	621	212	217	270	222	238
school year 2008/2009	44558	14892	14900	13971	418	93	67	145	21	51
school year 2007/2008	44551	15588	14033	13431	521	81	120	705	38	34
school year 2006/2007	46657	14684	13566	13215	529	214	198	3651	381	239
school year 2005/2006	40428	14369	14092	243	138	102	166	10757	341	220

In total 226,034 students have been registered in the State from grades 1-12 in the school year 2009/2010 (the number of students is decreasing, for example, in the school year 2004/2005, 300,667 students were registered)

RELIGION IN PUBLIC EDUCATION IN LITHUANIA

ANDRIUS SPRINDZIUNAS

DEMOGRAPHY AND DESCRIPTION OF THE GENERAL SCHOOL SYSTEM IN LITHUANIA

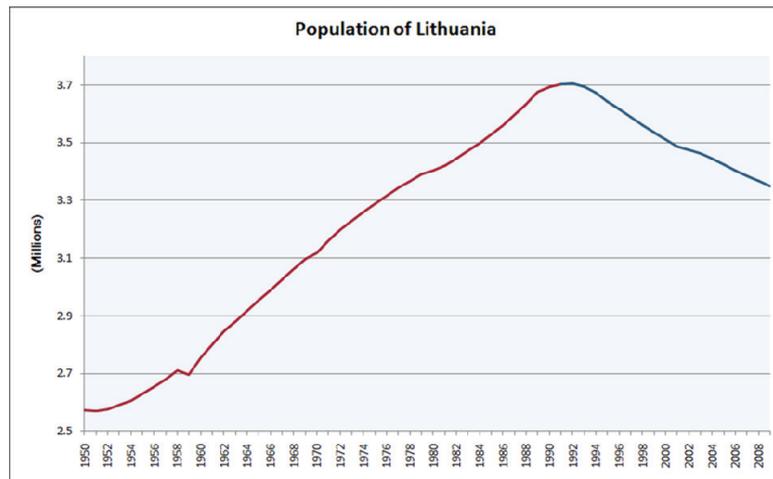
According to the Department of Statistics the population of the Republic of Lithuania was registered in July 2010 as 3.29 million.¹ A better picture of the rapid and radical changes in the population and of its relationship to political and economical reform (from 1990, soon after which the reform of education began) can be found in the diagram below, covering the last 60 years (Diagram 1)². As the prominent Lithuanian educationalist Dr. Meile Luksiene said after re-establishment of the independent Republic of Lithuania, the “System of education should be reformed to meet the new challenges of the historical changes”.³

1 <http://www.stat.gov.lt/lt/>.

2 http://lt.wikipedia.org/wiki/Lietuvos_demografija.

3 *Bruzgeleviciene R.* Lietuvos svietimo kurimas 1988–1997. UAB „Sapnu sala“, Vilnius, 2008, p. 6.

Diagram 1.

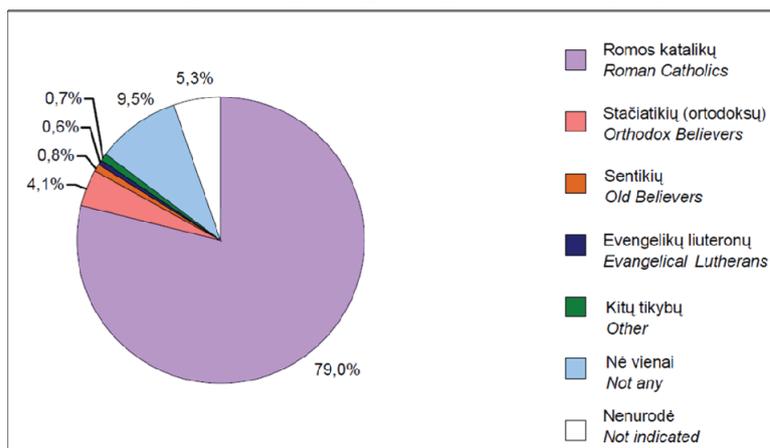


One may notice that political change, following reforms in Lithuania, did not affect the historical pattern of religious affiliation in Lithuanian society. Lithuania remains predominantly Catholic with almost 80 % of population registered as Roman Catholics, 5.5 % – other Christian communities, 0.7 % – other religions, and almost 15 % of nonbelievers or those who did not indicate their religious affiliation during the national total registration in 2001 (Diagram 2).⁴

4 <http://www.stat.gov.lt/lt/>.

RELIGION IN PUBLIC EDUCATION IN LITHUANIA

Diagram 2. The percentage of religions in Lithuania (2001).



The Statistical Yearbook of Lithuania⁵ noted a decrease in the total number of educational establishments in the country over the past decade (a drop from 2,521 in 2000 to 1,544 in 2008) but a slight increase in the number of the private educational establishments (from 42 to 47 during the same period). Table 1 presents a comparison of absolute numbers of public and private educational establishments in Lithuania.

Table 1. Numbers of public and private educational establishments in Lithuania, 2008–2009⁶

	Total	General schools	Vocational schools	Professional colleges	Colleges	Universities
Public	1,497	1,389	78	-	15	15
Private	47	26	2	-	12	7

Recent surveys reveal that not more than 0.7 % of all general school students attend private schools, and also very low, the lowest in the

⁵ http://www.smm.lt/svietimo_bukle/docs/statistika/LSM_2009.pdf.

⁶ Ibid.

European Union, is attendance at private kindergartens.⁷ Research explains this state of affairs on the basis of the average monthly cost (1,300–1,500 Lt) of private kindergarten or school for parents with an average monthly income below 2,000 Lt.⁸

In brief, the General School System of Lithuania is based on humanistic and democratic values and could be described by reference to the following:

- Free education, corresponding to the nature of an individual;
- The concept of educational goals which conform to the principles of a humanistic educational paradigm;
- The image of an educated personality;
- The concept of holistic reality and holistic education;
- Didactic and cognitive theory-related ideas;
- The development of values;
- Ideas about the content of education;
- Conceptual substantiation of the educational process.⁹

A prominent architect of the National Reform of Education in Lithuania was Dr. Darius Kuolys, the former Minister of the Department of Education of the Republic of Lithuania. He pointed out that fostering freedom and a sense of national community were the two basic goals of reform; this involved “[c]ontinuing [the] tradition of the end of the 18th century and the beginning of the 20th century”,¹⁰ education in Lithuania would once again be “related to ideas of the freedom and autonomy of the individual, as well as national community”.¹¹ In 1990 the Lithuanian Parliament brought the country back to its pre-Soviet occupation legal position, with

7 <http://www.veidas.lt/visuomene/studijos/privatus-darzeliai-ir-mokyklos-lietuvoje-nepopuliarus>.

8 <http://www.stat.gov.lt/lt/>.

9 *Bruzgeleviciene R.* Lithuanian Educational Reform in Terms of the Shift in the Educational Paradigm 1988–1997. Summary of doctoral dissertation. “Vilnius Pedagogical University”, Vilnius, 2007, p. 23.

10 Those were the periods of the independent state of Lithuania. The end of 18th century was called “The Golden Age” of Lithuania (auth.).

11 *Bruzgeleviciene R.* Lietuvos svietimo kurimas 1988–1997. UAB, Sapnu sala, Vilnius, 2008, p. 6.

educationalists seeking to return to the concept of the “National School” (*Tautine Mokykla, Lith.*) characteristic of the beginning of the 20th century. The “National School” was supposed to be intrinsically Catholic, but the idea encountered resistance from liberal and anti-Catholic movements. The reform of Education slowed down and became a general process of democratization with common efforts to elaborate new forms of the “National School” which met current provisions of EU educational policies. Some critics then argued that Lithuanian schools were becoming “westernized” too quickly.¹²

The latest analytical sources discuss the philosophy and context of Lithuanian education policy, including issues of the global economy and global education transformation. The whole process also raised questions about EU policy, values, competence development, changes to the curriculum, curriculum control, decentralization, bureaucratic control, institutional autonomy and school self-governance, as well as alternative schooling and private tuition and its practical, ethical and legal outcomes.

Moreover, authors of a collective monograph, “Education Policies Transformations in Lithuania” (2010), emphasized that funding of educational institutions by the government of Lithuania was insufficient and recognized the continuing transitional character of the System of Education of Lithuania. During the first decade of the educational changes in Lithuania “it was considered to be more important to concentrate on the issues of liberation from the totalitarian Soviet system and return to national traditions in education”; however, more recently reform has focused on globalization issues.¹³

Learning about other cultures and religions would be one of the needs of contemporary Lithuanian society. The curricula of many school programmes seek to achieve this, for instance, History, Foreign Languages, Literature, Arts, Moral and Civic Education, etc.

¹² Ibid. p. 9.

¹³ *Bulajeva T., Duobliene L., Ed. Education Policy Transformations in Lithuania // Lietuvos svietimo politikos transformacijos. “Vilniaus universiteto leidykla”, Vilnius, 2010, p. 244.*

Particular courses of neutral Religion studies rarely exist in basic and higher national schools.

Article 9 of the Law on Religious Communities and Associations of the Republic of Lithuania provides that “confessional teaching is allowed in the church buildings, state and non-governmental educational institutions and other buildings and places”. Moreover: “If parents (or foster-parents) wish, confessional teaching of the traditional and recognized ... religious communities and associations can be organized in public educational institutions. ... A child [held] in ward by the State should be taught that religion which was confessed in their family or among relatives”. Also: “Religious teaching in public educational institutions is regulated by the Law on Education”.¹⁴

According to the Law, only the State’s recognized religious communities and associations (including the traditional ones) are allowed to teach in public educational institutions. It is important to note here that the same Law on Religious Communities and Associations recognizes the status of “traditional religion in the Republic of Lithuania” for nine religious associations, on the basis of their historical, spiritual and social heritage in Lithuania. The nine religious associations are Latin Rite Catholics (Roman Catholic), Greek Rite Catholics (Eastern Rite Catholic), Evangelical Lutherans (Lutheran), Evangelical Reformats (Reformed), Orthodox (Russian Orthodox), Old Believers (Old Rite Orthodox), Judaic, Muslim Sunnites and Karaite.¹⁵ Some Evangelical communities, particularly the Seventh Day Adventists and the Baptist Church were recognized later by the State (by vote in the Parliament of the Republic of Lithuania) and consequently acquired the right to provide religious instruction in public schools. The basic conditions for becoming a religious community “recognized by the State” are at least 25 years of existence in Lithuania, contributing to the historical, spiritual and social heritage of Lithuania, demonstrating public support and compliance with the

14 The Law on the Religious Communities and Associations of the Republic of Lithuania. I-1057, Oct 4, 1995, Vilnius. Article 9.

15 Ibid. Article 5.

conventional morality and laws of the Republic of Lithuania. It is interesting to note here that religious instruction of any religious group, even un-registered, was lawful during the period from 1990 to 1992, after re-establishment of the independent Republic of Lithuania. A draft of the Law on Religious Communities in 1992 listed the nine traditional religions in Lithuania and prohibited religious instruction by other religions in the public educational institutions.

Confessional teaching in Lithuanian schools is also regulated by the Law on Education of the Republic of Lithuania.¹⁶ Article 31 of this is on “The Right to Study Religion”:

- “1. Religion is an optional part of moral education. Moral education is a part of primary, basic and secondary education. Upon parents’ (foster parents’, guardians’) request, the subject of religion may be included in the pre-school education of their children. Non-formal religious education and self-education in religion may be carried out.
2. A learner in a school that implements primary, basic and secondary curricula has the right at the age of 14 to choose one of the following subjects of compulsory moral education: religious education (of a recognized traditional religious community or association) or ethics.
3. Parents (foster parents, guardians) choose between the subject of religious education (of a recognized traditional religious community or association) and the subject of ethics on behalf of learners who are under 14 years of age; in cases of learners who are wards of the State, the school decides between the subject of religious education (of a recognized traditional religious community or association professed by the learner’s family or relatives) and the subject of ethics.
4. At a formal education school (except schools of higher education) the curriculum of religious instruction is prepared by the respective recognized traditional religious community or association; the hierarchy of the religious community or association and the Minister of Education and Science assess and approve the curriculum, each in line with their competency.

¹⁶ Law on Education of the Republic of Lithuania. I-1489, Jun 25, 1991, Vilnius.

5. A person who has attained a post-secondary or higher education level and a pedagogue's qualification or has the necessary special preparation may teach religion in formal education programs (except higher education studies curricula). Such a person must have permission to teach religion, issued as prescribed by the hierarchy of the corresponding recognized traditional religious community or association.
6. A school that is unable to provide religious instruction requested by the learners or parents (foster parents, guardians) in line with the beliefs of their recognized traditional religious community or association, grants credit for the learners' religious instruction provided at a Sunday school or another religious instruction class, subject to the requirements in paragraphs 4 and 5 of this Article.
7. Conditions for religious instruction and for teaching modules supplementing the program of religious instruction and satisfying the learners' need for self-expression are equivalent to those for the teaching of other elective subjects (and for teaching modules supplementing their respective programs and satisfying the learners' needs of self-expression)."¹⁷

Besides the Law on Education, several other instruments of the Republic of Lithuania delineate basic provisions of national educational policy, particularly the Provisions of the National Education Strategy 2003–2012,¹⁸ the General Concept of Education in Lithuania,¹⁹ the Republic of Lithuania Law on Higher Education and Research,²⁰ etc. It is important to mention also the Agreement between the Holy See and the Republic of Lithuania on Co-operation in Education and Culture,²¹ including the following articles:

17 Ibid. Article 31.

18 [http://www.smm.lt/en/legislation/docs/Lithuanian %20Education %20Strategy %202003-2012.pdf](http://www.smm.lt/en/legislation/docs/Lithuanian%20Education%20Strategy%202003-2012.pdf).

19 http://www.smm.lt/en/legislation/docs/General_concept_of_education_in_Lithuania_1992.pdf.

20 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366717.

21 Agreement between the Holy See and the Republic of Lithuania on Co-operation in Education and Culture. May 5, 2000, Vilnius. http://www.lcn.lt/b_dokumentai/kiti_dokumentai/AS-LR-sutartis-svietimas.html.

Article 1

1. The Republic of Lithuania, upholding the principle of freedom of religion and acknowledging the natural right of parents to provide their children with religious education, shall create the same conditions for teaching the Catholic religion in all State and municipal schools of general education as for teaching other curriculum subjects.
2. At the request of parents or guardians State or municipal preschool educational establishments shall be provided with conditions for Catholic education.
3. All educational establishments and study institutions shall guarantee respect for religious convictions, symbols and values.

Article 2

1. Holding in respect freedom of conscience, everybody shall have a guaranteed right to choose freely classes in religion or ethics as a subject for required moral education. Such a choice shall not be a ground for discrimination.
2. For students attending school up to the age indicated in the legal acts of the Republic of Lithuania the right to choose classes in religion or ethics shall be reserved to their parents or guardians. Students who have reached the age indicated in the legal acts of the Republic of Lithuania shall have the right to decide independently regarding religious education.
3. Students under the guardianship of the State or municipality shall be guaranteed the right to study the Catholic religion, provided that Catholicism is the faith professed by their families or relatives.

Article 3

1. The qualifying certificate for teaching the Catholic religion shall be granted in accordance with the procedure prescribed by the legal

acts of the Republic of Lithuania with due regard to the norms of the Conference of Lithuanian Bishops.

2. Teachers of the Catholic religion must have the written authorization (*missio canonica*) of the local Bishop. Such authorization constitutes an indispensable part of the qualification requirements for the profession. From the moment when the authorization is withdrawn, a teacher shall lose the right to teach the Catholic religion. The procedure for the notification of the withdrawal of the authorization shall be established by a separate agreement between the authorized institution of the Republic of Lithuania and the Conference of Lithuanian Bishops.

3. Teachers of religion in State or municipal schools have the same rights and duties as teachers of other subjects.

Article 4

1. In educational establishments where the Catholic religion is taught as a subject of moral training, teachers and students of the Catholic religion shall enjoy the same opportunities as teachers and students of other subjects as regards the development of extra-curricular activities, using of the school premises and resources.

2. Appreciating the contribution of the Catholic Church to the education of youth, the Republic of Lithuania shall support the activities of Catholic youth organizations, providing said organizations with the same possibilities to use premises and resources of the State or municipal educational institutions as other public youth organizations registered in accordance with the procedure prescribed by the legal acts of the Republic of Lithuania.

Article 5

The Catholic Church may organize courses and engage in spiritual-religious education in universities and other establishments of higher

education in agreement with the administration of these institutions.²²

In May 2000, the Constitutional Court of the Republic of Lithuania considered an appeal of a group of members of the National Parliament to explain whether particular parts of the Law on Education of the Republic of Lithuania conformed to particular articles of the Constitution of the Republic of Lithuania. The Court addressed questions about freedom of religion and religious practices, interpretation of the content of freedom of religion, the legacy of exclusion of the State's recognized traditional religious communities, and the concept of separation of state and church. The Constitutional Court of the Republic of Lithuania announced its decision on June 13, 2000, in Vilnius,²³ explaining that several provisions of the Law on Education of the Republic of Lithuania on the authority of the municipalities to establish and to organize education at pre-school and various other school levels did not contradict the Constitution of the Republic of Lithuania.²⁴ Some provisions of the Law of Education were found to contradict: Part 1 of Article 25 of the Constitution of the Republic of Lithuania: "A human being shall have the right to have his own convictions and freely express them"; Part 1 and 2 of Article 26: "Freedom of thought, conscience and religion shall not be restricted. Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief"; and the Part 1 of Article 40: "State and municipal establishments of teaching and education shall be secular".²⁵

An example of a typical objection could be the former practice of including members of the clergy on commissions to approve the appointment of teachers to educational institutions jointly established

22 Ibid. Article 1–5.

23 <http://www.religija.lt/content/view/142/64/#1.#4>.

24 Constitution of the Republic of Lithuania (adopted on Oct 25, 1992, Vilnius) <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

25 Ibid. Articles 25, 26, 40.

by the state or municipality and religious communities or associations. After decision of the Constitutional Court of the Republic of Lithuania, the practice of including priests on such commissions was discontinued. Actually, the Ruling of June 13, 2000 of the Constitutional Court of the Republic of Lithuania,²⁶ led to several amendments of the Law on Education of the Republic of Lithuania²⁷ over the coming years. Religious communities and associations were allowed only to control appointments of teachers of their religion, but not other teachers, etc.

Recently all schools in Lithuania guarantee a free choice between Ethics and Confessional teaching with the stipulation that a particular religious community participates in providing a qualified teacher of their confession. In practice, the majority of students who choose religious classes learn Roman Catholicism. Orthodox, Evangelical, Jewish and other smaller communities in practice need to concentrate their students to be able to organize their religious instruction in kindergartens and schools. This means it is necessary to establish their own private schools unilaterally or jointly with state institutions. In 2008 the government Office of the Equal Opportunities Ombudsman was informed about one Jewish Sholem Aleichem School in Vilnius for possible discrimination on the grounds of nationality, because the school administration announced on their website that students of Jewish nationality (or Jewish relatives) had priority in admissions to the school. Soon the school withdrew the precondition of nationality.²⁸ In fact many students of the Sholem Aleichem School are non-religious or indifferent, and they are allowed to miss religion, Yiddish language classes, etc.

Ethics, as an alternative choice within compulsory moral education, includes basic knowledge and understanding about religions of the world. But no particular religious ethical trends are distinguished in its curriculum.

26 <http://www.lrkt.lt/dokumentai/2000/r000613.htm>.

27 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=236465&p_query=&p_tr2=

28 Annual Report of the Office of Equal Opportunities Ombudsman, 2008. <http://www.lygybe.lt/?pageid=7>.

At the beginning of the summer of 2009 the Office of the Equal Opportunities Ombudsman received an anonymous report from a mother, who was concerned with her daughter's relationship with her friends at the school, because the Confessional teacher told the students at the end of the school year: "Don't make friendships with infidels". Consequently some friends started avoiding the daughter. The complainant emphasized that her aim was not to complain about one particular teacher, but to prevent religious intolerance and to promote equality. She also remarked that the general certificate of secondary education records whether ethics or some particular religion was chosen by the student, and that this might later become a ground of discrimination when an employer gets the certificate. Moreover, the same complainant asked for an explanation about the choice between ethics and religious instruction in the context of the Law on Education of the Republic of Lithuania, 1st part of Art. 31: "Religion is an optional part of moral education" but not a complete moral education, and therefore all students should be taught ethics to meet the required standard of public education. The complaint was analysed and answered by Mr. Vaidas Bacys, the vice-minister of the Dept. of Science and Education, who noted that both programmes, of ethics and religion, are united by the same educational aim of fostering human dignity and humanistic values – the same principles and didactics, and they were similar in content. The difference was that instruction in ethics is non-confessional, based on a variety of cultures and religions, while confessional teaching is based on the experience of a particular confession. The personal confession of the students must not be indicated in the certificate – only the kind of chosen moral education (Ethics or Confessional Teaching) should be indicated.²⁹

The curriculum for literature in Lithuanian schools is under constant improvement. Of course it includes prominent Lithuanian and foreign authors. Some Lithuanian authors have recently been re-

29 Annual Report of the Office of Equal Opportunities Ombudsman, 2009. <http://www.lygybe.lt/?pageid=7>.

moved or have been discussed by the relevant authorities because they were seen to have fostered nationalism, sexism, or indecency. It is important to note here that a professional philologist Dalia Ciocyte wrote a dissertation (1998) and subsequently a book (“The Bible in Lithuanian Literature: the variance of imitation, transformation, deformation”),³⁰ followed by further articles (1999, 2002), in which she discussed the thesis that much Lithuanian literature is penetrated with Biblical images. Nevertheless, the authorities in Lithuania have received no official complaints on the basis of religious content in school literature curricula.

It is interesting that the Office of the Equal Opportunities Ombudsman reported a recent complaint that the English language examination included a topic on the traditions of celebrating Christmas Eve, with a hint that non-Christian students might be ignorant of Christian traditions and thus discriminated against on religious grounds. Examination topics were later revised.

The curricula for history, philosophy and the arts are neutral or else represent a variety of religions without any particular bias. Indeed, the leading Lithuanian journal on religion, philosophy, comparative cultural studies and the arts, “LOGOS”,³¹ embraces a wide variety of authors and publications on Judaism, Christian, Islamic, Oriental, and many other topics.

RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS AND OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Religious symbols, garments, prayers and religious celebrations are common in private confessional schools and in schools jointly established by state and church (such as the Jesuit Gymnasia in some Lithuanian cities). However, it is different in the majority of public schools, established by the state or municipalities – yet some reli-

30 *Ciocyte D.* “Biblija lietuvių literatūroje: santykio variantai: imitacija, transformacija, deformacija”. LLTI, Vilnius 1999.

31 http://www.litlogos.lt/default_eng.html.

gious symbols or at least one of them (the Crucifix most often) are found probably in most schools, typically in the classroom designated for religious instruction. Only rarely do schools display the Crucifix in other rooms, such as the central hall. Indeed this might occur in some smaller schools and the Head of the school would probably explain it as meeting the wishes of the school community, parents and their children, rather than the wishes of teachers. Religious garments, benedictions, prayers and religious services are also likely to happen in these schools during visits of priests (such as at the opening of a new school, at the start of the school year, or to celebrate State or religious feasts, etc.).

Some schools exhibit religious symbols and other materials as part of Lithuanian history and the identity of the school (for instance, the Gabija Gymnasium in Vilnius is named after the pre-Christian Lithuanian deity of Fire who is depicted in corridors and so on alongside various “Lithuanian gods” – these carry explanations and pictures of the gods and examples of prayers.

Other light manifestations of religiosity in public schools might include scouts spreading candles in classrooms to depict the “Light of the Bethlehem” before Christmas, etc.

There is no State religion in the Republic of Lithuania,³² but major Christian feasts are also public holidays. The students of other religions may miss their classes on their feasts with the written permission of the parents (for up to 3 days). One national day, *Jonines* (St. John’s Day) in the summer solstice, was announced a public feast by the Lithuanian Parliament to mark a pre-Christian tradition of Baltic tribes; there is something similar in Latvia.

Opting out of Physical education or Biology for religious reasons and religiously motivated home-schooling are not prominent in Lithuania at the moment. Indeed, home-schooling would actually be illegal under Lithuanian law.

32 Constitution of the Republic of Lithuania (adopted on Oct 25, 1992, Vilnius), Art. 43.

CONCLUSIONS

97 % of the total numbers of schools in Lithuania are public schools. Private schools present elite conditions for the minority (less than 1 % of school age children). Among the reasons why private schools are not popular yet, is the general lack of funds for them and their low profile. The situation in national education is also reflected in high proportions of emigration by young Lithuanians, as well as increasing number of high-school graduates joining universities in various foreign countries.

Religion is an optional part of moral education in Lithuanian schools. Moral education is a mandatory part of primary, basic and secondary education. According to statistical summaries, approximately 50 % of Lithuanian students take classes of Ethics and another 50 % of the students opt for confessional teaching of a particular religion offered by the nine religious communities recognized as “traditional religions” in the Republic of Lithuania. Non-confessional teaching about religions is being considered by the Centre for the Development of Education in Lithuania but has not been implemented yet.

Religious symbols, prayers and ceremonies are common in private confessional schools and in schools jointly established by the state and religious communities, but rarely in public schools. The pre-dominantly Catholic society of Lithuania admits a flexible interpretation of the principle of separation of Church and State, thus emphasizing freedom of religion and beliefs, including public religious practices. Moreover, governmental and non-governmental institutions of education constantly seek to improve the curriculum and general regulations to meet common European norms, resulting in a basically secular atmosphere in Lithuanian schools.

L'ÉTAT ET L'ENSEIGNEMENT PRIVÉ AU GRAND-DUCHÉ DE LUXEMBOURG

PATRICK KINSCH

IN MEMORIAM ALEXIS PAULY

I. INTRODUCTION

1. La Constitution luxembourgeoise dispose en son article 23¹ que « l'État veille à l'organisation de l'instruction primaire, qui sera obligatoire et gratuite et dont l'accès doit être garanti à toute personne habitant le Grand-duché ». L'alinéa 3 du même article dispose que « la loi détermine les moyens de subvenir à l'instruction publique ainsi que les conditions de surveillance par le Gouvernement et les communes; elle règle pour le surplus tout ce qui est relatif à l'enseignement et prévoit, selon des critères qu'elle détermine, un système d'aides financières en faveur des élèves et étudiants ».

L'article 22 de la Constitution dispose que « l'intervention de l'État dans la nomination et l'installation des chefs des cultes, le mode de nomination et de révocation des autres ministres des cultes, la faculté pour les uns et les autres de correspondre avec leurs supérieurs et de publier leurs actes, ainsi que les rapports de l'Église avec l'État, font l'objet de conventions à soumettre à la Chambre des Députés pour les dispositions qui nécessitent son intervention ».

La Constitution ne prévoit pour la religion et l'instruction religieuse aucune place spéciale dans l'enseignement scolaire, mais ne prévoit pas non plus leur exclusion. L'enseignement privé n'est pas particulièrement protégé par la Constitution, mais chaque Luxem-

¹ Voir le commentaire publié par des membres du Conseil d'État: Le Conseil d'État, gardien de la Constitution et des droits et libertés fondamentales, Luxembourg, 2006, p. 104 et s.

bourgeois est libre de s'inscrire dans une école luxembourgeoise ou étrangère.

2. À partir du XIX^e siècle, des dispositions légales ont déterminé la place de l'instruction religieuse dans l'enseignement public et ont posé des conditions pour l'enseignement privé.

Au Luxembourg, la grande majorité des établissements d'enseignement primaire et post-primaire est publique. On distingue deux catégories d'écoles privées, les écoles offrant le même programme que les écoles publiques et les écoles offrant un programme différent de celle des écoles publiques. La plupart des écoles offrant le même programme que les écoles publiques sont des écoles confessionnelles (catholiques), par exemple l'école privée « Fieldgen » et l'école privée Notre-Dame Sainte Sophie.

Du fait que ces écoles dispensent un enseignement correspondant à l'enseignement du secteur public, leurs élèves peuvent participer aux examens de fin d'études organisés par l'État.

De l'autre côté, les écoles offrant un programme différent de celle des écoles publiques, tel que la « Waldorfschule », « l'International School of Luxembourg » ou la « St George's School », écoles non confessionnelles, sont soumises à un régime différent.

3. Avant la loi du 13 juin 2003 concernant les relations entre l'État et l'enseignement privé et portant abrogation des articles 83 à 87 de la loi modifiée du 10 août 1912 concernant l'organisation de l'enseignement primaire² et la loi du 6 février 2009 portant organisation de l'enseignement fondamental³, les textes de la loi du 10 août 1912 sur l'enseignement primaire et la loi du 31 mai 1982 concernant les relations entre l'État luxembourgeois et l'enseignement post-primaire privé déterminaient les conditions que les établissements scolaires privés devaient remplir pour être agréés par le gouvernement.

2 *Mém. A.*, p. 1650.

3 *Mém. A.*, p. 2981.

II. LES RELATIONS ENTRE L'ÉTAT ET LES ÉCOLES PRIVÉES

A. Généralités

4. La loi du 13 juin 2003 concernant les relations entre l'État et l'enseignement privé règle l'uniformisation, le contrôle et l'inspection des écoles privés. De plus la question des frais d'entretien et des investissements est définie par cette loi.

En vertu de cette loi, les directeurs et les enseignants de ces écoles doivent disposer des qualifications nécessaires à la profession d'enseignant.

5. La création d'une école privée est soumise à une procédure stricte de la part du ministère de l'Éducation nationale. L'article 2 de loi du 13 juin 2003 concernant les relations entre l'État et l'enseignement privé dispose que « les organismes d'enseignement privés sont soumis au contrôle et à l'inspection pédagogiques du ministre ayant l'Éducation nationale dans ses attributions ». En vertu de l'article 3 de la loi

« Nul ne peut créer, ouvrir ou faire fonctionner un établissement d'enseignement préscolaire, primaire ou post-primaire privé, s'il n'est muni d'une autorisation délivrée par arrêté grand-ducal, pris sur la proposition du ministre qui examine

- a) les conditions d'honorabilité de la personne physique ou morale responsable de la gestion de l'organisme d'enseignement;
- b) les conditions d'honorabilité et de qualification professionnelle du personnel de direction et du personnel d'enseignement;
- c) les conditions d'hébergement des classes et de salubrité des lieux;
- d) les buts, les programmes et les méthodes d'enseignement;
- e) les conditions d'admission et de promotion des élèves;
- f) les certificats délivrés aux élèves;
- g) le règlement de discipline et d'ordre intérieur;

- h) le financement de l'enseignement;
- i) le contrat-type d'enseignement à conclure avec les élèves ou leurs représentants légaux ».

En cas de refus d'autorisation, celui-ci est prononcé par arrêté grand-ducal dûment motivé.

B. Le financement des écoles privées

6. La vraie question de l'enseignement privé n'est pas, au Grand-duché de Luxembourg, une question de liberté d'enseignement: l'exigence d'une autorisation administrative existe, mais l'État ne s'en sert pas pour restreindre la liberté des parents de choisir l'école qu'ils jugent à propos pour leurs enfants.

C'est, au contraire, une question financière.

Afin de pouvoir bénéficier d'une contribution de l'État, l'établissement d'enseignement privé doit remplir un certain nombre de conditions prévues par la loi du 13 juin 2003 concernant les relations entre l'État et l'enseignement privé.

La législation luxembourgeoise prévoit pour les écoles privées la possibilité d'une réglementation contractuelle. Ceci est possible lorsque l'enseignement de ces écoles correspond à celui du niveau secondaire du système scolaire étatique, lorsqu'elles respectent le programme du système scolaire étatique ainsi que l'emploi du temps des écoles publiques. De plus, elles doivent appliquer les critères d'admission que le système scolaire étatique et les enseignants doivent présenter les mêmes qualifications que ceux issus du système scolaire public.

Lorsque ces conditions sont remplies, l'État prend en charge 90 % du prix coûtant d'une heure d'enseignement. Lorsque les enseignants ne remplissent pas toutes les conditions, cette aide ne s'élève qu'à 40 % du prix coûtant.

7. Ainsi la loi du 13 juin 2003, précitée, régit l'enseignement privé sous régime contractuel. Les articles 16 à 31 de cette loi sont relatifs

aux conditions et exigences requis pour que l'école privée puisse profiter d'une contribution étatique.

L'article 16 dispose que « pour pouvoir bénéficier au titre de la présente loi d'une contribution de l'État, l'établissement d'enseignement privé doit conclure le contrat prévu à l'article 22 ».

Cet article 22 énonce qu'en « acceptant la contribution annuelle de l'État, l'établissement bénéficiaire s'engage à respecter les dispositions de la présente loi et à ne pas modifier, pendant l'année scolaire en cours, les facteurs ayant servi à déterminer les taux de la contribution. À cette fin, un contrat est conclu entre le ministre et le délégué mandaté de l'organisme d'enseignement privé ».

Pour pouvoir profiter d'une contribution élevée, l'école privée doit se soumettre à un contrôle et une inspection étatique.

L'article 23 dispose que « chaque année le ministre détermine le coût par élève de l'enseignement préscolaire et primaire public en se référant au budget de l'exercice en cours et en prenant en compte l'intervention de l'État dans les rémunérations du personnel enseignant, y compris les charges sociales. Lors de la détermination des charges sociales, il est tenu compte du pourcentage de la part patronale due par les établissements privés ».

8. L'article 24 de la loi de 2003 énonce les contributions allouées à chacun des établissements bénéficiaires d'enseignement préscolaire et primaire appliquant les programmes de l'enseignement public luxembourgeois. Ceux-ci sont arrêtés annuellement par le ministre, conformément aux dispositions suivantes:

« Le taux de base de la contribution est déterminé comme suit:

- 90 % du coût par élève visé à l'article 23 dans la proportion des leçons assurées par des enseignants remplissant les conditions de l'article 19 (1) sous a) et liés à l'organisme d'enseignement privé par un contrat à durée indéterminée pour une demi-tâche au moins;
- 40 % du coût par élève visé à l'article 23 dans la proportion des leçons assurées par des enseignants autres que ceux qui sont visés à l'alinéa précédent ».

L'article 25 définit les contributions allouées à chacun des établissements bénéficiaires d'enseignement préscolaire et primaire n'appliquant pas les programmes de l'enseignement public luxembourgeois sont arrêtées annuellement par le ministre conformément aux dispositions suivantes:

« Le taux de base de la contribution se limite à 40 % du coût par élève visé à l'article 23.

Le produit par élève ainsi établi est multiplié par le nombre d'élèves inscrits à la date du 31 octobre de l'année précédente ».

En matière de financement des infrastructures, sur la base de la loi du 13 juin 2003, l'État cofinance les dépenses de construction à concurrence de 80 %. Une partie de la contribution mensuelle des parents (au maximum 20 %) est dédiée au fonds de construction.

III. BREF APERÇU DE QUELQUES ÉCOLES PRIVÉES LUXEMBOURGEOISES

9. *L'École européenne de Luxembourg, organisée* sur le fondement d'un traité international (la Convention des Écoles européennes) est constituée de deux établissements qui sont des établissements d'enseignement officiel créés par les gouvernements des États membres de l'Union européenne. La vocation de ces écoles est de dispenser un enseignement multilingue et multiculturel, en enseignant jusqu'à quatre langues étrangères dans le cycle secondaire général. Elles sont destinées en priorité aux enfants du personnel des institutions européennes. À l'origine, le système des Écoles européennes comptait quatre sections linguistiques et deux options d'enseignement confessionnel: les confessions catholique et protestante. Au fil des ans, non seulement le nombre de langues représentées aux Écoles européennes a considérablement augmenté mais l'offre d'enseignement confessionnel s'est aussi largement diversi-

fiée. C'est ainsi que l'organisation des cours de religion s'est progressivement compliquée⁴.

10. *L'École privée Fieldgen* est une école catholique réservée aux jeunes filles, indépendamment de leurs origines sociale, religieuse ou ethnique. Au niveau de l'enseignement secondaire général, l'école prépare les élèves aux examens organisés et aux diplômes émis par le ministère de l'Éducation nationale. Un accueil en internat est possible à tous les niveaux d'enseignement.

L'École privée Notre-Dame Sainte Sophie est un établissement mixte qui intègre tous les cycles d'enseignement et qui peut accueillir les élèves durant toute la journée (« Ganztagschule »). Les cours dispensés dans les filières moderne et classique de l'enseignement secondaire général suivent les programmes officiels du ministère de l'Éducation nationale et prépare les élèves aux diplômes de l'État (diplôme de fin d'études secondaires).

11. *L'école Waldorf / Fräi-Öffentlech Waldorfschoul* est un établissement intégré qui propose tous les cycles d'éducation. Au niveau préscolaire, elle accueille les enfants de 4 à 6 ans en leur proposant toutes sortes d'activités d'éveil (musicale, logique, artistique etc.). Sa pédagogie se fonde sur l'intégration sociale et le développement des facultés de l'enfant, notamment grâce à l'apprentissage des langues ainsi qu'à des activités corporelles et manuelles.

Depuis janvier 2004 l'État contribue au fonctionnement de l'école Waldorf. Sa contribution se limite à 40 % du coût d'un élève de l'école publique. C'est la loi du 13 juin 2003 qui règle les relations entre l'État et l'enseignement privé, dont l'école Waldorf Luxembourg fait partie, malgré la volonté de ses fondateurs d'en faire un établissement public.

4 Voir le document « Le cours de religion aux cycles primaire et secondaire dans les écoles européennes, approuvé par le Conseil supérieur les 20 et 21 janvier 2009 »: www.eurasc.org.

Cette loi distingue deux catégories d'écoles privées: 1) les établissements appliquant les programmes de l'enseignement public luxembourgeois et 2) les établissements n'appliquant pas les programmes de l'enseignement public luxembourgeois. La première catégorie reçoit par élève un taux de 90 % et la deuxième de 40 % des coûts occasionnés par un élève dans l'enseignement public.

12. Au vu des réformes récentes de l'enseignement public et de la création d'écoles publiques à pédagogie alternative se pose la question de la pertinence de la distinction par la loi en deux catégories, dont il résulte un subventionnement à deux vitesses. Cette inégalité soulève la question du respect du principe d'égalité en matière d'enseignement, car elle conduit soit à réserver les écoles de la deuxième catégorie aux familles aisées, soit à créer des problèmes économiques aux écoles qui – comme l'école Waldorf – ont le souci d'être accessibles à toutes les catégories sociales. Dans le cas de l'école Waldorf, le fait de conjuguer un faible taux de participation de l'État avec une contribution parentale échelonnée selon le revenu a pour résultat que ses enseignants gagnent moins que leurs homologues tout en faisant preuve d'un engagement égal ou supérieur. Quant à l'enseignement privé confessionnel, il s'est toujours efforcé de se conformer aux standards de l'enseignement public, ce qui lui permet de bénéficier d'une contribution étatique plus élevée – et d'offrir à des élèves même modestes l'accès à une école qui répond aux options religieuses, ou seulement pédagogiques, de leurs parents.

LA RELIGION DANS L'ENSEIGNEMENT PUBLIC AU LUXEMBOURG

PHILIPPE POIRIER

I. INTRODUCTION

Comme ailleurs en Europe occidentale, le Luxembourg, un ancien bastion du catholicisme, est soumis à un important processus de sécularisation. En 2008, par exemple, 57,3 % des répondants estimaient que la religion n'est « pas très importante » ou « pas du tout importante » (*Hausman et Zahlen, 2010*)¹. Toutefois, simultanément, le Grand-duché est confronté à un renouveau religieux, stimulé par les questions d'éthique (par exemple, le vote de la loi autorisant l'euthanasie en 2009) et par la montée de mouvements évangéliques, l'activisme de confréries musulmanes et l'essor d'organisations catholiques charismatiques et/ou conservatrices. Étonnamment, les phénomènes mentionnés ci-dessus ne perturbent pas le système politique national. L'apaisement de la controverse religieuse et laïque au Luxembourg, du moins la baisse de son intensité par rapport à ses voisins (Belgique, Allemagne et France) est dû non seulement à la structure originale de son système institutionnel et partisan, mais aussi à son niveau élevé de coopération entre l'État et les religions et les mouvements philosophiques, y compris dans le domaine scolaire. La volonté de statu quo prédomine entre les partis politiques.

En effet, le Luxembourg est une « démocratie consociative » (*Lijphart, 1969*). Au sommet de l'État, les différents piliers de la société (principalement catholique, socialiste et libéral), recherchent systématiquement le compromis afin d'assurer la stabilité politique, en dépit de la transformation permanente de la société et son envi-

1 (Online), Available at: <http://www.europeanvaluesstudy.eu/>, (Accessed 10 July 2010).

ronnement externe (*Hirsch*, 1995). Le processus d'eupéanisation a renforcé ce goût pour la conciliation dans la défense de plusieurs intérêts nationaux (par exemple la souveraineté fiscale). En outre, à partir de 1945, le système de partis au Luxembourg a partagé toutes les fonctionnalités d'un « pluralisme modéré » (*Sartori*, 1976: 173). Tous les gouvernements ont été des coalitions, et la concurrence centripète a favorisé le Parti chrétien-social (PCS), qui a toujours dirigé le pays en coalition depuis 1919 (sauf entre 1974 et 1979) avec les socialistes (le Parti ouvrier socialiste luxembourgeois – POSL) ou libéraux (le Parti démocrate – PD). L'objectif commun des partis susmentionnés est d'assurer la paix civile et la cohésion sociale, en acceptant la coexistence de narrations multiples de la modernité y compris dans l'éducation publique, pour garder l'attrait économique du Grand-duché.

A) L'état de la religiosité au Luxembourg

La société luxembourgeoise est non seulement fortement sécularisée mais aussi où la religiosité est vécue de plus en plus sur un mode personnel et souvent en contradiction avec le cœur dogmatique des différents cultes. Dans de nombreuses enquêtes sur les valeurs de ses habitants, qui ont été effectuées au cours des deux dernières décennies (*European Values Study-EVS*, 1981, 1990, 1999, 2008), la religion a disparu de l'horizon culturel pour une grande partie de la population. En 2002, 72 % des répondants déclaraient ainsi appartenir à une religion spécifique, mais seulement 58,4 % affirmaient être « religieux ». Il y avait un écart important entre le niveau de l'identification religieuse institutionnelle et celle subjective (*Le-grand*, 2002). Ainsi, 48 % disaient être des « religieux qui ne respectent pas leur religion » ou « la pratique un peu ». Les pratiques de prière et de participation au culte, au moins une fois par mois, étaient observées par moins de 40 % de la population du Luxembourg durant la décennie 2000–2010. Si 68 % des habitants du Grand-duché croyaient également en « Dieu »; 44 % d'entre eux déclaraient croire en un « Dieu personnel » et 37 % dans une « sorte d'esprit ou force

de vie ». Le christianisme semblait très affaibli dans ces enquêtes. Seulement 31 % des chrétiens avaient confiance en un Dieu personnel, 42 % croyaient dans le péché et 46 % dans la vie après la mort.

Parmi les citoyens qui déclaraient, « appartenir à une religion », 93,5 % affirmaient être affiliés à la religion catholique, 2,4 % se rattachaient aux différentes Églises protestantes, 1,2 % aux Témoins de Jéhovah, 0,9 % à l'islam et 0,8 % au Judaïsme. La domination des Églises chrétiennes, particulièrement celle du catholicisme, parmi les croyants du Luxembourg peut être expliquée par le nombre croissant d'étrangers. En 2009, ils représentaient 43,8 % de la population totale ce qui est un cas unique au sein de l'Union européenne (avec une surreprésentation des populations lusophones). Qui plus est, si le catholicisme a perdu un grand nombre de sociétés affiliées dans les années 1980, le nombre de ses fidèles est resté stable par la suite. Les groupes charismatiques, l'Opus Dei et des associations caritatives (telles que Caritas) sont les principales organisations responsables du maintien de l'adhésion à la foi catholique et aussi les plus actifs dans le domaine social et politique². Le protestantisme, en légère progression, se nourrit de l'activité des Églises néo-apostoliques et pentecôtistes ayant convertis des anciens catholiques du Portugal et des anciennes colonies portugaises (par exemple, le Cap-Vert). L'islam s'est aussi développé grâce à l'immigration de citoyens de l'ex-Yougoslavie au milieu des années 90 mais dont le sentiment d'appartenance apparaît plus politique que religieux (Madeley, 2002).

En 2002, seulement 46 % des habitants du Grand-duché avaient confiance dans l'Église catholique. La confiance dans les institutions religieuses était plus élevée chez les Protestants et les Juifs (respectivement 52 % et 50 %) et plus faible chez les Musulmans (30 %). Toutefois, les institutions religieuses conservaient du crédit pour la vie spirituelle (38 % en moyenne suivant tous les cultes, mais 28 % seulement pour l'islam). Leurs interventions sur la morale, la famille

2 Entre l'élection du Pape Benoît XVI en 2005 et mai 2010, seulement 0,1 % des catholiques ont signé une déclaration dans laquelle ils affirmaient officiellement quitter l'Église.

et les questions sociales étaient perçues de façon positive par moins de 30 % de tous les Luxembourgeois. En règle générale, l'influence religieuse sur la politique n'était pas désirée. 75 % affirmaient « être libres de recommandations religieuses quand ils prennent une décision en politique ». Toutefois, 71 % des personnes interrogées étaient contre l'abolition de l'enseignement religieux dans les écoles publiques et 69 % contre la fin des accords entre les religions et l'État tel que prévu dans la Constitution (Legrand, 2002: 681–699). 76 % de tous les habitants du Luxembourg estimaient que finalement la religion était aussi « une morale et une règle de vie importante ».

B) L'État et les Cultes au Luxembourg

Initialement, les relations entre les religions et l'État ont été déterminées par le concordat napoléonien (23 fructidor an IX) lorsque le Grand-duché était le « département des Forêts ». Les dispositions constitutionnelles actuelles relatives aux religions ont été introduites avec la Constitution du 23 juin 1848 (basée sur la Constitution belge de 1831), et ont été incluses dans la Constitution du 17 octobre 1868³. L'article 22 de la Constitution prévoit notamment la ratification de conventions entre les religions et l'État qui ainsi contrôle et autorise les activités culturelles sur le territoire luxembourgeois.

La ratification complète des conventions par le Parlement n'a débuté qu'en 1997–98 pour deux raisons liées au clivage historique entre catholiques et partisans de la laïcité. Premièrement, le système constitutionnel et politique luxembourgeois a été construit principalement comme un rempart contre la religion dominante, le catholicisme. Jusqu'en 1919, la Chambre des députés a été dominée par les parlementaires proches de loges maçonniques et animés par un anticléricalisme virulent. Le mode de désignation des députés au suffrage censitaire – progressivement réduit entre 1892 et 1901 – a renforcé la politique d'exclusion de la majorité sociale de la population acquise au catholicisme. Deuxièmement, après l'introduction du

3 *Service Central de législation* (2008), Constitution du Grand-duché de Luxembourg. Texte à jour au 1^{er} septembre 2006.

suffrage universel direct en 1919, le système luxembourgeois politique a toujours été dominé par le parti catholique (le Parti de la Droite et, après 1945, le PCS), qui peut être considéré comme le « Parti de l'État » (Staatstragend) au Grand-duché. En raison de cette structuration politique et décisionnelle très originale, jusqu'au début des années 1980, il n'y a pas eu de consensus sur la ratification d'un accord avec la religion principale et les *partis juniors* de la coalition (POSL et PD).

Le clivage mentionné ci-dessus a été intensifié avec la question scolaire en 1881, 1898 et 1912 et lors de la création du diocèse de Luxembourg en 1870. Les premiers accords sur les écoles, qui avaient été signés entre l'Église et l'État, irritèrent les deux parties (catholiques et libéraux). D'une part, les catholiques croyaient que l'Église était limitée dans sa liberté. D'autre part, les libéraux et les sociaux-démocrates, avaient peur que l'enseignement religieux obligatoire puisse être préjudiciable à la liberté de l'éducation. L'adoption de la loi de 1912 autorisant l'enseignement de la doctrine religieuse seulement par des prêtres représenta un second point de tension. Les catholiques rejetèrent le projet de loi parce que le nombre de membres du clergé était insuffisant pour la tâche. Les dirigeants chrétiens étaient persuadés qu'il y avait un risque potentiel d'une sécularisation progressive de la société par le biais du système éducatif. Un compromis fut trouvé seulement pendant les années 1960 sous le Gouvernement social-chrétien-socialiste, dirigé par Pierre Werner (PCS). Pour pallier à la pénurie de prêtres, des catéchistes laïcs furent autorisés à enseigner dans l'école publique. En contrepartie, il fut introduit un programme d'enseignement de morale non confessionnelle. Depuis, les enfants ont le choix entre le catéchisme et cette leçon « laïque ». Jusqu'en 1999, une troisième option exista: la non-participation à l'un ou l'autre cours d'instruction religieuse ou de leçon laïque (*Trausch*, 1991, *Margue* 1989).

En plus de la question scolaire, le pape Pie IX accentua la détérioration des relations entre catholiques et l'État par la création de l'évêché en juin 1870 sans consultation avec le Gouvernement. En 1873, ce dernier reconnut tout de même l'existence dudit diocèse, à

condition que ses relations avec l'Église catholique continuent d'être régies par le régime napoléonien et par la nouvelle Constitution adoptée en 1868. Deux changements importants furent alors introduits: un serment obligatoire de fidélité au « Roi-Grand-duc » par le nouvel évêque et une obligation pour le Vatican de nommer un citoyen luxembourgeois. Néanmoins, la personnalité juridique fut refusée au diocèse et ce jusqu'à l'adoption de la loi du 30 avril 1981 l'autorisant lors de la coalition chrétienne-sociale-libérale dirigée par Pierre Werner. Enfin, en 1997, un accord de reconnaissance mutuelle entre le gouvernement chrétien social- socialiste dirigé par Jean-Claude Juncker (PCS) et l'archevêque catholique fut ratifié. Le Conseil d'État, la « seconde chambre » s'opposa toutefois à l'article 3 de l'accord au motif qu'il risquait d'incorporer involontairement des brides de droit canonique dans le droit public. La même année, une autre convention entre le ministre de l'Éducation nationale et l'Archevêché sur l'enseignement religieux fut conclue. Conformément à cette convention, l'éducation religieuse était coordonnée par des représentants de l'Église catholique et les communes. Toutefois, le Gouvernement continuait de payer le salaire des enseignants qui dispensent l'enseignement religieux pour un total de deux heures par semaine dans les écoles primaires.

Par la suite, la Chambre des députés a décidé en 1998 pour la première fois d'approuver les accords avec trois autres confessions: la communauté juive, l'Église protestante et l'Église orthodoxe grecque. En outre, il a été décidé que toute communauté religieuse désireuse d'établir des relations permanentes avec l'État par l'article 22 de la Constitution doit répondre désormais à quatre critères⁴:

- Professer une religion qui est reconnue dans le monde;

4 *Chambre des Députés* (1998) A-1998-067-0001, Loi du 10 juillet 1998 portant modification des articles 22, 23 et 26 de la loi modifiée du 10 août 1912 sur l'organisation de l'enseignement primaire, (Online), Available at: <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=0&secondList=&action=document>, 10 juillet 1998, (Accessed 2 January 2008).

- Être officiellement reconnue dans au moins un État membre de l'UE;
- Être prêt à se conformer au cadre juridique et la Constitution du Grand-duché.
- Être établi au Luxembourg et soutenu par une communauté suffisamment large et représentatif.

Avec la Constitution et la ratification de ces conventions en 1997–98, le Gouvernement a ainsi le droit d'intervenir directement dans l'organisation du culte. Alors que plusieurs articles de la Constitution (19, 20 et 21) garantissent la liberté de culte et de conscience ainsi que le droit d'exprimer ses convictions religieuses en public, un certain nombre d'articles (22, 25 et 26) autorise le contrôle direct des activités religieuses par le Gouvernement: la nomination et l'installation des leaders confessionnels, pour des rassemblements en plein air religieux, et pour la mise en place d'une nouvelle congrégation religieuse. En outre, l'article 119 stipule que si des accords sont conclus en conformité avec l'article 22, de nouvelles religions sont obligées de signer une convention avec l'État avant de pouvoir exercer librement leurs activités. Aucun Gouvernement n'a toutefois utilisé ce droit jusqu'à ce jour afin d'interdire une religion ou pour se prémunir contre les dangers d'une quelconque secte religieuse.

En retour, l'article 106 de la Constitution prévoit que les traitements et pensions des ministres du culte sont rémunérés par l'État et une série de mesures ont été introduites dans le Code pénal pour des infractions liées à la liberté de culte. En outre, l'article 268 du Code pénal exige que les ministres de la religion doivent éviter toute attaque contre les activités du Gouvernement ou contre les lois et règlements adoptés par le Parlement. Il faut noter finalement que le Luxembourg n'a pas de législation spécifique sur la définition et le suivi des sectes.

Jusqu'en 1982, les relations avec les Églises protestantes ont été régies par les articles organiques introduits par Napoléon Bonaparte (loi du 18 germinal de l'an X de la République). L'article 22 de la Constitution a trouvé sa première application avec l'accord entre l'État et l'Église protestante réformée du Luxembourg, approuvée

par la loi du 23 novembre 1982. Cette convention est devenue le modèle pour toutes les autres religions à Luxembourg à l'exception de l'Église catholique.

Elle prévoit notamment que l'Église est dirigée par un consistoire, reconnu comme une personne morale sous le régime de droit public. Le Pasteur, président du consistoire, est reconnu en tant que directeur de culte. Contrairement à l'Église catholique, la nationalité luxembourgeoise n'est pas nécessaire pour présider le consistoire. Toutefois, la nomination prend effet après le serment suivant: « Je jure par Dieu et les Saintes Écritures et la promesse de garder obéissance et fidélité au Grand-duc et au Gouvernement établi par la Constitution du Grand-duché de Luxembourg et de s'abstenir de tout acte contraire à la paix et la sécurité publique du Grand-duché »⁵.

En dépit de la nature inégale de l'égalité de traitement entre les religions juive et catholique, le décret napoléonien du 17 mars 1808, a été pratiqué en droit à Luxembourg jusqu'en 1997. Jusqu'à cette date, le culte juif n'était pas concerné par l'article 106 de la Constitution sur le paiement des salaires des ministres du culte par l'État et aucune législation n'abordait non plus le financement, la construction ou l'entretien des synagogues. La Convention de 1997 a mis fin à ces discriminations⁶. Un consistoire, présidé par un laïc, représente la communauté dans ses contacts avec le Gouvernement. Le consistoire a la personnalité juridique. Le Gouvernement reconnaît le Grand Rabbīn en tant que directeur de culte. Le Grand Rabbīn de Luxembourg est tenu de prononcer un serment du même type que le Pasteur de l'Église protestante réformée⁷.

5 Mémorial, Journal Officiel du Grand-duché de Luxembourg (1982), Loi du 23 novembre 1982 portant approbation de la Convention de reconnaissance de l'Église protestante réformée du Luxembourg, A, 96: 1993-2000, 27 novembre 1982. This Church is composed of adherents of the Reformed Church of France, of Dutch Calvinist churches, of the Heidelberg Catechism and of the Swiss Confessions.

6 Mémorial, Journal Officiel du Grand-duché de Luxembourg (1997), Loi du 10 juillet 1982 portant approbation de la Convention du 31 octobre 1997 entre le Gouvernement d'une part et l'Archevêché, les communautés israélites, et l'Église orthodoxe hellénique, A, 66: 1318-1338, 20 août 1998.

7 Chambre des Députés (1997) A-1998-066-0002, Loi du 10 juillet 1998 portant approbation de la Convention du 31 octobre 1997 entre le Gouvernement, d'une part, et les

La reconnaissance d'une nouvelle communauté religieuse par le Gouvernement s'est posée pour la première fois en 1997 avec la revendication de l'Église orthodoxe grecque. Le Conseil d'État et la Chambre des députés étaient d'accord avec l'idée que la reconnaissance de cette Église créait une nouvelle étape. Ce nouvel accord, et les conditions de son approbation, devait éviter toute possibilité pour toute autre communauté religieuse de l'utiliser dans le futur devant les tribunaux. En 2003, les Églises orthodoxes serbe et roumaine ont également été reconnues par l'État luxembourgeois. À cette occasion, le Gouvernement est intervenu, non seulement pour faciliter la coopération administrative entre les différentes Églises orthodoxes, mais aussi pour exiger d'elles d'accepter l'autorité religieuse du Patriarche de Constantinople. À cette occasion, le Conseil d'État jugea que le Gouvernement avait violé le principe d'indépendance mutuelle entre les autorités civiles et religieuses. Elle obligeait les Églises orthodoxes à s'unir. Pour le Gouvernement, cette participation indirecte dans la vie des Églises orthodoxes a permis au contraire l'introduction de nouveaux mécanismes de gouvernance religieuse, en particulier pour l'organisation future de l'Islam sur le territoire luxembourgeois.

Après les orthodoxes, il a été passé aussi une convention avec l'Église anglicane en janvier 2003. Aux yeux de l'État luxembourgeois, l'Église anglicane est une Église universelle soutenue par une communauté suffisamment large au Grand-duché. L'État luxembourgeois, en l'absence de statistiques religieuses, estima pour ce faire qu'il existe un lien étroit entre la nationalité et l'appartenance religieuse. Légalement, la communauté anglicane à Luxembourg dépend de l'évêché de Gibraltar. L'accord ne prévoit pas l'intervention étatique dans la nomination du directeur de culte. Aucune institutions ou partis politiques ont critiqué cette différence de traitement dans la nomination du chef de cette Église. Selon l'approche luxembourgeoise, l'État devrait être directement impliqué dans la nomination et la supervision de culte que si la religion est

communautés israélites du Luxembourg, d'autre part, (Online), Available from: <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=0&secondList=&action=document>, 31 octobre 1997, (Accessed 2 January 2008).

considérée comme une partie intégrante de la société et si le culte peut avoir un impact sur la cohésion sociale et nationale. Par conséquent, les Anglicans ne sont pas considérés comme des habitants permanents de Luxembourg d'où l'acceptation d'une politique légèrement différenciée quant aux relations de leur Église avec l'État luxembourgeois.

Comme pour les autres religions, il est impossible de connaître le nombre réel des musulmans à Luxembourg. Le Gouvernement social-chrétien-socialiste dirigé par Jean-Claude Juncker estime toutefois que l'Islam est la deuxième plus grande communauté religieuse au Luxembourg. Le Gouvernement a considéré tous les « Bosniaques » comme « musulmans » si ces derniers ne se déclaraient pas « croate » ou « serbe ». Les libéraux, le Parti démocratique et réformateur (le parti souverainiste luxembourgeois, l'ADR), les Verts et un groupe important de socialistes n'ont pas été d'accord avec ce système de calcul. Toutefois, tous les partis partageaient l'avis (encore aujourd'hui) que les différentes communautés musulmanes sont divisées et soumises à une forte concurrence entre des nationalités et des gouvernements. 80 % des musulmans luxembourgeois seraient sunnites et la plupart d'entre eux sont considérés comme membres de confréries musulmanes. La plus grande communauté musulmane a pour origine l'ex-Yougoslavie (environ 68 % de la communauté musulmane). L'Arabie Saoudite et la Turquie cherchent à la contrôler. La communauté turque (20 %) arrivée dans les années 1950–1960 maintient des connexions directes avec le service religieux de l'ambassade de Turquie à Bruxelles. D'autres musulmans, principalement de l'Inde, de l'Iran et du Pakistan, ont exprimé à maintes reprises leurs préoccupations au sujet de la participation directe des États étrangers dans la communauté musulmane au sein de Luxembourg. En 2003, le Gouvernement luxembourgeois a arrêté une douzaine de militants islamistes, dont certains d'entre eux ont été extradés vers les États-Unis. Cette extradition, cependant, n'est pas devenue un enjeu politique national.

En juillet 2007, le ministre des Cultes, François Biltgen, a présenté le projet d'accord entre l'État et la communauté musulmane du Grand-

duché⁸. Le texte est le résultat de longues négociations entre son ministère et des représentants de la communauté musulmane à Luxembourg. Elles ont commencé en mars 2003, après une pétition présentée par les dirigeants musulmans au Parlement demandant un tel accord, soutenue et signée par l'Archevêque catholique.

Selon le ministre des Affaires religieuses, les discussions ont été marquées par deux exigences principales pour le Gouvernement. Tout d'abord, la constitution obligatoire d'une Assemblée des musulmans, appelée le Conseil de la Choura de Luxembourg, représentant les quatre grands centres de culte du pays. En second lieu, l'accord doit être conforme à la Constitution du Luxembourg et notamment être en harmonie avec l'ordre public. Le ministre a également insisté sur le fait que « l'accord vise également à promouvoir l'intégration des citoyens musulmans de Luxembourg ». Selon l'accord, la Choura, composée du Mufti et des membres élus laïcs, animerait ensemble les cultes musulmans. Le Mufti serait élu et nommé par la Choura. Le Mufti ferait le serment suivant: « Je jure par Allah et le Coran et la promesse d'obéir et d'être fidèle au Grand-duc et au Gouvernement établi par la Constitution du Grand-duché de Luxembourg et de s'abstenir de tout acte qui va à l'encontre de l'ordre public et de la sécurité du Grand-duché ». Contrairement à l'Église catholique, aucune condition de nationalité n'est exigée. L'entité juridique concernant le culte devait être basé au Luxembourg et ne concernerait que les musulmans du Luxembourg. Le projet de convention avec l'Islam a été vivement critiqué par plusieurs partis et ONG. Une partie des socialistes et des libéraux, ainsi que par tous les députés écologistes et ADR, craignent que le serment sur le Coran puisse avoir force de loi pour les citoyens

8 *Gouvernement du Luxembourg* (2007), François Biltgen présente le projet de convention entre l'État du Grand-duché de Luxembourg et le culte musulman, Question parlementaire n° 1924 de Monsieur le Député Aly Jaerling concernant le projet de convention entre l'État et le Culte musulman. Question parlementaire n° 1934 concernant les compétences du Mufti dans le cadre du projet de convention entre l'État et le Culte musulman. Q-2006-O-E-19202, Publishing on the internet. (Online), Available at: http://www.Gouvernement.lu/sallepresse/actualite/2007/07/24biltgen_cultemusulman/index.html, 24 juillet 2007, (Accessed 2 January 2008).

luxembourgeois musulmans (*Marx, 2007*)⁹. Il n'a pas été encore présenté au vote au Parlement en raison des dissensions internes survenues à la Choura constituante en 2009. En 2006, l'ancien président du PCS et membre du Parlement européen, Erna Hennicot-Schoepges, a proposé l'introduction de l'enseignement coranique dans les écoles luxembourgeoises, suivant l'exemple de la Basse-Saxe. Cette proposition n'a pas été retenue.

II. ORGANISATION DU SYSTÈME SCOLAIRE PUBLIC

Suite à la loi du 6 février 2009 relative à l'obligation scolaire, « tout enfant habitant le Luxembourg âgé de quatre ans révolus avant le premier septembre, doit fréquenter l'École. Cette obligation s'étend sur douze années consécutives à partir du premier septembre de l'année en question ».

Enseignement primaire public

L'éducation préscolaire comprend les groupes de l'éducation précoce et les classes de l'éducation préscolaire proprement dite. L'éducation précoce a été introduite progressivement à partir de 1998 et est proposée dans toutes les communes depuis 2009. Facultative, elle est destinée aux enfants ayant atteint l'âge de 3 ans et s'inscrit selon le Gouvernement « dans le contexte d'une meilleure socialisation des enfants ainsi que d'une acculturation des enfants immigrés ». Au plan national, 30 communes ou syndicats de communes sur les 103 offrant l'éducation précoce comptent parmi leurs élèves un pourcentage d'au moins 50 % d'élèves de nationalité étrangère.

La fréquentation de l'éducation préscolaire est obligatoire pour les enfants âgés de quatre ans.

9 Chambre des Députés, Question n° 2018 de Madame Anne Brasseur concernant l'Introduction de cours du Coran dans les programmes de l'école publique, Q-2006-O-E-2018-01, <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=69&secondList=&action=document>, 13 août 2007, (Accessed 2 January 2008).

L'enseignement primaire, qui comprend les six années d'études primaires et l'enseignement spécial, est quant à lui inscrit dans l'article 23 de la Constitution luxembourgeoise et est organisé par la loi organique du 10 août 1912.

L'administration de l'éducation préscolaire et de l'enseignement primaire ainsi que le budget relèvent d'un partage des tâches entre le ministère de l'Éducation nationale et les communes. Certaines mesures, notamment celles touchant les besoins en personnel et la nomination des enseignants, nécessitent une concertation entre le ministère et les communes, y compris ceux qui ont en charge les cours d'instruction religieuse. Les salaires des enseignants incombent pour 2/3 à l'État et pour 1/3 à la commune. Les frais de fonctionnement et d'équipement des écoles sont à charge des communes. Chaque année les différentes communes établissent leur propre organisation scolaire et arrêtent le nombre de groupes pour l'éducation. Ces deux branches sont désormais nommées depuis la rentrée 2010, l'école fondamentale.

Enseignement post-primaire public

L'enseignement post-primaire comporte quant à lui deux ordres:

- L'enseignement secondaire, régi par la loi organique du 10 mai 1968 modifiée par la loi du 22 juin 1989 et la loi du 12 juillet 2002. Les études, d'une durée de sept ans, conduisent au diplôme de fin d'études secondaires préparant avant tout aux études universitaires;
- L'enseignement secondaire technique, régi par la loi modifiée du 4 septembre 1990 portant réforme de l'Enseignement secondaire technique et de la formation professionnelle. Les études, qui comprennent différents régimes de formation, ont une durée de cinq à huit ans selon l'orientation choisie. La loi du 14 mars 1973 portant création d'instituts et de services d'éducation différenciée a introduit aussi l'obligation scolaire pour tous les enfants affectés d'un handicap ou les enfants à besoins éducatifs spéciaux.

Population scolaire

A) Population totale

Le contexte démographique du Grand-duché de Luxembourg est unique dans l'Union européenne. Le recensement de la population en janvier 2009 dénombre un total de 493 500 habitants, parmi lesquels 215 500 (= 43,7 %) personnes de nationalité étrangère. La communauté portugaise, représentant 16,2 % de la population résidente au Luxembourg, constitue la population étrangère la plus importante, puis viennent les résidents français (5,8 % de la population totale), les résidents italiens: (3,9 % de la population totale), les résidents belges: (3,4 % de la population totale) et enfin les résidents allemands: (2,4 % de la population).

B) Population scolaire

Pour l'année 2008–2009, la population scolaire totale au Luxembourg s'élève à 91 477 élèves. La répartition de ces élèves, entre enseignement public et privé¹⁰ se présente comme suit:

Nombre d'élèves 2008–2009					
Ordre d'enseignement	Enseignement public	Enseignement privé*	Total public et privé*	Enseignement privé et international**	Total
Éducation précoce	4 036	-	4 036	183	4 219
Éducation préscolaire	9 966	-	9 966	972	10 938
Enseignement primaire	32 136	138	32 274	2 771	35 045
Enseignement spécial	222	-	222	-	222
Éducation différenciée	663	-	663	-	663

10 La loi du 13 juin 2003 concernant les relations entre l'État et l'enseignement privé règle l'uniformisation, le contrôle et l'inspection des écoles privés. De plus la question des financements est également définie par cette loi.

LA RELIGION DANS L'ENSEIGNEMENT PUBLIC AU LUXEMBOURG

Nombre d'élèves 2008-2009					
Enseignement secondaire	11 968	501	12 469	3 598	16 067
Enseignement technique	21 097	3 226	24 323	-	24 323
Total	80 088	3 865	83 953	7 524	91 477
* Enseignement qui suit les programmes officiels de l'Éducation nationale					
** Enseignement qui ne suit pas les programmes officiels de l'Éducation nationale					

Parmi les élèves résidants au Luxembourg certains sont scolarisés dans un enseignement précoce, préscolaire, primaire, secondaire ou bien encore spécial d'un pays voisin. Un recensement dans les pays limitrophes a permis de trouver en tout 2941 élèves résidants au Luxembourg et scolarisés dans un pays limitrophe pour l'année scolaire 2008/2009. Ces élèves se répartissent de la manière suivante entre l'Allemagne (18 %), la Belgique (52 %) et la France (30 %).

C) Population scolaire par nationalité et par type d'établissement

Éducation précoce	Luxembourgeois	Étrangers	TOTAL
Écoles publiques et privées*	2 119	1 917	4 036
Écoles privées et internationales**	20	163	183
TOTAL	2 139	2080	4 219
		49,3 %	
Éducation préscolaire	Luxembourgeois	Étrangers	TOTAL
Écoles publiques et privées*	5 071	4 895	9 966
Écoles privées et internationales**	93	879	972
TOTAL	5 164	5 774	10 938
		52,8 %	
Enseignement primaire	Luxembourgeois	Étrangers	TOTAL
Écoles publiques et privées*	18 069	14 427	32 496
Écoles privées et internationales**	200	2 571	2 771
TOTAL	18 269	16 998	35 267

PHILIPPE POIRIER

Éducation précoce	Luxembourgeois	Étrangers	TOTAL
		48,2 %	
Enseignement secondaire général	Luxembourgeois	Étrangers	TOTAL
Écoles publiques et privées*	10 077	2 392	12 469
Écoles privées et internationales**	329	3 269	3 598
TOTAL	10 406	5 661	16 067
		35,2 %	
Enseignement secondaire technique	Luxembourgeois	Étrangers	TOTAL
Écoles publiques et privées*	13 862	10 461	24 323
Écoles privées et internationales**			
TOTAL	13 862	10 461	24 323
		43,0 %	
<i>* Enseignement qui suit les programmes officiels de l'Éducation nationale</i>			
<i>** Enseignement qui ne suit pas les programmes officiels de l'Éducation nationale</i>			

Au plan national, 15 communes ou syndicats de communes affichent un pourcentage d'élèves de nationalité étrangère d'au moins 50 %.

D) Éducation privée en 2008–2009

Le système privé est en plein essor au Luxembourg avec parmi ses effectifs une surreprésentation des nationalités suivantes: 22,9 % française, 9,4 % luxembourgeoise, 7,1 % britannique, 6,1 % italienne, 5,9 % belge, 5,5 % danoise, 5,2 % allemande.

Établissement scolaire	éducation précoce			éducation préscolaire			Enseignement primaire			Total		
	Filles	Garçons	Total	Filles	Garçons	Total	Filles	Garçons	Total	Filles	Garçons	Total
École européenne I ¹¹				136	162	298	430	500	930	566	662	1228
École européenne II ¹¹				92	120	212	343	333	676	435	453	888

¹¹ Ces écoles sont des établissements d'enseignement créés par les gouvernements des États membres de l'Union européenne. La vocation de ces écoles est de dispenser un

LA RELIGION DANS L'ENSEIGNEMENT PUBLIC AU LUXEMBOURG

	éducation précoce			éducation préscolaire			Enseignement primaire			Total		
École française de Luxembourg	36	33	69	59	77	136	162	195	357	257	305	562
International School	14	16	30	52	56	108	165	180	345	231	252	483
St. George	24	16	40	28	30	58	108	99	207	160	145	305
Waldorf	12	15	27	32	35	67	64	79	143	108	129	237
École privée Notre-Dame Ste. Sophie	6	11	17	41	52	93	61	52	113	108	115	223
Schengen lycée							45	37	82	45	37	82
Total	92	91	183	440	532	972	1378	1475	2853	1910	2098	4008
	50,3 %	49,7 %	100 %	45,3 %	54,7 %	100 %	48,3 %	51,7 %	100 %	47,7 %	52,3 %	100 %

Écoles privées et internationales 2008–2009**					
Dénomination de l'établissement	Nombre d'élèves				
	précoce	préscolaire	primaire	secondaire	TOTAL
École maternelle et primaire francophone	69	136	357		562
École Waldorf – Fräi-Öffentlech Waldorfschoul	27	67	143	158	395
Écoles Privées Notre-Dame Ste Sophie	17	93	113		223
European School of Luxembourg		510	1 606	2 210	4 326
International School of Luxembourg ¹²	30	108	345	429	912

enseignement multilingue et multiculturel, en enseignant jusqu'à quatre langues étrangères dans le cycle secondaire général. Elles sont destinées en priorité aux enfants du personnel des institutions européennes et reprennent les dispositions réglementaires concernant la religion à l'école publique de leurs États respectifs.

- 12 La pédagogie et le programme de l'école sont comparables à ceux employés dans le système public en Angleterre et au Pays de Galles. Il proclame dans son règlement intérieur un enseignement tenant compte de la diversité culturelle et religieuse des enfants.

Écoles privées et internationales 2008–2009**					
Lycée Vauban ¹³				716	716
St George's International School ¹⁴	40	58	207	85	390
Total	183	972	2 771	3 598	7 524
** Enseignement qui ne suit pas les programmes officiels de l'Éducation nationale					

E) Régime linguistique scolaire dans l'enseignement public

À l'école, l'emploi des trois langues officielles (allemand, français et luxembourgeois) s'effectue dès les premières années de la scolarité.

Dans l'éducation précoce (enfants de 3 ans) et dans l'éducation préscolaire (enfants de 4–5 ans), une importance particulière est accordée à l'apprentissage du luxembourgeois qui est la langue de communication à ce niveau. Après pour les enfants de 6–12 ans, l'allemand devient la langue véhiculaire de toutes les branches de l'enseignement fondamental (à l'exception du français).

Dans l'enseignement secondaire général (à partir de l'âge de 12 ans) la langue véhiculaire est l'allemand pour toutes les branches, sauf pour le français et les mathématiques. À partir de la 4^e année de l'enseignement secondaire, toutes les branches sont enseignées en français, sauf le cours d'allemand et le cours d'anglais. À partir de la 5^e année du secondaire, les élèves peuvent ajouter une quatrième langue, en l'occurrence l'italien, l'espagnol ou le portugais. Dans l'enseignement secondaire technique, la langue véhiculaire est toujours l'allemand mais il existe des classes à régime linguistique spécifique, où la langue véhiculaire est le français.

En 2008/09, la langue luxembourgeoise perd sa prépondérance en tant que première langue parlée au domicile parmi le total des élèves de l'éducation précoce et préscolaire et de l'enseignement primaire.

13 Il est stipulé dans son règlement intérieur « le respect des principes de laïcité et de pluralisme qui exclut tout emblème religieux, toute propagande politique, partisane ou confessionnelle ».

14 Il proclame dans son règlement intérieur un enseignement tenant compte de la diversité culturelle et religieuse des enfants.

51,8 % des élèves indiquent parler une autre langue que le luxembourgeois comme première langue au domicile, même si la part des élèves de nationalité étrangère n'est que de 45,7 % dans ces ordres d'enseignement.

F) Budget de l'éducation au Luxembourg

Les principaux bailleurs de fonds du système éducatif luxembourgeois restent le ministère de l'Éducation nationale et les communes, suivis par l'administration des Bâtiments publics et le ministère de la Fonction publique et de la Réforme administrative. Cependant, pour déterminer le coût effectif de l'enseignement, il ne suffit pas de considérer le budget du ministère ayant dans ses attributions l'Éducation nationale. Tous les autres bailleurs de fonds directs ou indirects de l'enseignement, qu'ils soient publics (État, communes,...) ou privés (ménages, entreprises,...) et toutes les dépenses satellites liées à l'enseignement doivent également être pris en compte pour déterminer un coût total. Au Luxembourg, une analyse exhaustive de ces dépenses est effectuée annuellement depuis 2002. En 2007, l'État luxembourgeois et les 116 communes qui le composent ont investi plus d'un milliard d'euros dans le financement du système scolaire.

III. RELIGION ET ENSEIGNEMENT PUBLIC

Enseignement primaire

A) Loi du 6 février 2009 relative à l'obligation scolaire.

Tout enfant habitant le Luxembourg âgé de quatre ans révolus avant le premier septembre, doit fréquenter l'école. Cette obligation s'étend sur douze années consécutives à partir du premier septembre de l'année en question. L'article 7 de la loi stipule que la formation scolaire obligatoire s'accomplit dans les établissements scolaires publics. L'article 8 autorise que la formation scolaire obligatoire peut également être suivie dans une école privée, une école européenne ou

à l'étranger et son article 9 affirme qu'elle peut aussi être dispensée à domicile sous les conditions déterminées par la loi.

Dispositions concernant l'enseignement et la religion

Pour le législateur, la formation scolaire permet d'acquérir une culture générale, le prépare à la vie professionnelle et à l'exercice de ses responsabilités de citoyen dans une société démocratique. Elle l'éduque aux valeurs éthiques fondées sur la Déclaration universelle des droits de l'homme et l'amène à respecter l'égalité entre les filles et les garçons. Son article 4 stipule que dans le respect de la liberté de conscience des élèves et à l'exception des cours d'instruction religieuse et morale, la formation scolaire ne privilégie aucune doctrine religieuse ou politique. L'article 5 affirme qu'à l'exception de l'enseignant titulaire d'un cours d'instruction religieuse et morale, l'enseignant ne peut manifester ostensiblement par sa tenue vestimentaire ou le port de signes son appartenance à une doctrine religieuse ou politique.

B) Loi du 6 février 2009 portant organisation de l'enseignement fondamental.

Dispositions concernant l'enseignement et la religion

Le premier cycle de l'enseignement fondamental comprend les domaines de développement et d'apprentissage suivants: 6. la vie en commun et les valeurs. Les deuxième, troisième et quatrième cycles de l'enseignement fondamental comprennent les domaines de développement et d'apprentissage suivants: 6. la vie en commun et les valeurs enseignées à travers l'éducation morale et sociale ou l'instruction religieuse et morale.

D'après l'article 7, les élèves des classes primaires sont inscrits sur demande des parents soit dans le cours d'éducation morale et sociale, soit dans le cours d'instruction religieuse et morale. Suivant l'article 11, les manuels destinés à l'instruction religieuse et morale sont proposés par le chef du culte et arrêtés par le ministre.

Le cours d'éducation morale et sociale est donné par un instituteur dans les locaux de l'école que fréquentent les élèves à raison de deux leçons hebdomadaires. Le cours d'instruction religieuse et morale est donné suivant le même rythme conformément aux dispositions de la convention conclue entre le Gouvernement et l'Archevêché de Luxembourg en application de l'article 22 de la Constitution, sauf dérogation accordée par le ministre.

Dans chaque classe, le cours d'éducation morale et sociale et le cours d'instruction religieuse et morale sont donnés aux mêmes heures. Les modalités d'inscription au cours d'éducation morale et sociale et au cours d'instruction religieuse et morale ainsi que les modalités d'organisation du cours d'éducation morale et sociale sont fixées par règlement grand-ducal.

Selon l'article 12 de la loi, l'organisation des cours d'éducation morale et sociale ainsi que celle des cours d'instruction religieuse et morale font partie intégrante de la délibération annuelle du conseil communal sur l'organisation scolaire. La commune expédie l'extrait du registre aux délibérations relatif à l'organisation des cours d'instruction religieuse et morale au ministre des Cultes qui en transmet une copie à l'Archevêché. Suivant l'article 57, la surveillance de l'enseignement religieux appartient au chef du culte. À cet égard, il fait visiter les cours d'instruction religieuse et morale par des délégués chargés d'une mission d'inspection qu'il fait connaître au ministre.

Il faut insister qu'avec l'article 60 de la loi, l'inspecteur de l'enseignement fondamental assure la surveillance des écoles de l'enseignement fondamental, publiques et privées, et de l'enseignement à domicile dans son arrondissement. Il exerce le pouvoir hiérarchique sur le personnel des écoles de son arrondissement à l'exception des enseignants et chargés de cours de religion. Il surveille l'ensemble des activités d'apprentissage ayant lieu pendant l'horaire scolaire, excepté le cours d'instruction religieuse et morale.

C) Organisation de la formation morale et sociale et/ou de l'instruction religieuse et morale

C'est le règlement grand-ducal du 27 avril 2009 qui fixe les modalités d'inscription au cours d'éducation morale et sociale et au cours d'instruction religieuse et morale¹⁵.

Dans son article premier, c'est à partir de son inscription au deuxième cycle de l'enseignement fondamental, que tout élève est inscrit, sur déclaration écrite de la personne investie de l'autorité parentale, soit au cours d'éducation morale et sociale soit au cours d'instruction religieuse et morale. Cette inscription est à renouveler pour chaque année scolaire. Au nom de la diversité et de la sociabilité multiple, l'article 2 interdit la création de classes regroupant uniquement des élèves soit d'éducation morale et sociale soit d'instruction religieuse et morale, sauf s'il n'y a aucune demande pour l'un des deux cours. Suivant l'article 3 du règlement, c'est le cours pouvant se prévaloir du plus grand nombre d'élèves qui a lieu dans la salle de classe à disposition permanente de la classe. Qui plus est, selon l'article 4, sous réserve d'une autorisation préalable du ministère de l'Éducation nationale, les élèves de plusieurs classes au sein d'un cycle d'apprentissage peuvent être regroupés, afin de permettre de constituer un groupe d'élèves plus important soit pour le cours d'éducation morale et sociale, soit pour le cours d'instruction religieuse et morale.

L'enseignement religieux est donné à raison de deux leçons hebdomadaires dans les écoles primaires publiques. Cet enseignement est régi par la Convention entre le Gouvernement du Grand-duché de Luxembourg, représenté par son ministre de l'Éducation nationale et des Cultes, d'une part, et l'Archevêché de Luxembourg, représenté par l'Archevêque de Luxembourg, d'autre part concernant l'organisation de l'enseignement religieux dans l'enseignement pri-

¹⁵ Règlement grand-ducal du 27 avril 2009 fixant les modalités d'inscription au cours d'éducation morale et sociale et au cours d'instruction religieuse et morale ainsi que les modalités d'organisation du cours d'éducation morale et sociale aux 2^e, 3^e et 4^e cycles de l'enseignement fondamental (Mém. A – 98 du 14 mai 2009, p. 1469).

maire Mémorial A n° 67, page 1340, 21 août 1998). Suivant son article 2, les titulaires des cours d'instruction religieuse et morale ainsi que leurs remplaçants éventuels sont désignés par l'archevêque qui fait connaître sa résolution aux autorités communales, si possible avant la délibération annuelle du conseil communal sur l'organisation scolaire. À cet effet, les administrations communales communiquent à l'archevêque le nombre de classes à pourvoir dans leur commune. Si le conseil communal désapprouve une décision d'affectation d'un enseignant de religion faite par l'archevêque, il peut, dans un délai de trente jours à compter de la notification de la décision concernée, inviter l'archevêque, au moyen d'une délibération spécialement motivée, à retirer ou à modifier sa décision. En cas de maintien des positions contraires, le ministre de l'Éducation nationale statue. Les autorités communales fixent les jours et heures auxquels auront lieu les cours d'instruction religieuse et morale, d'accord avec l'archevêque. En cas de désaccord, le ministre de l'Éducation nationale statue.

D'après l'article 3 de la Convention, l'archevêque peut confier l'enseignement religieux soit à un enseignant de religion, soit à un ministre du culte. L'enseignant de religion est engagé par l'archevêché conformément aux dispositions de la législation sur le contrat de travail des employés privés. L'État garantit, en tant que tiers-payant, la rémunération sous forme de subvention-salaire payable directement à l'enseignant de religion. L'article 4 prévoit une obligation linguistique forte pour l'enseignant de religion. Il ne peut donner des cours d'instruction religieuse et morale s'il ne possède pas les trois langues officielles du pays (allemand, français et luxembourgeois). Dans une stricte non immixtion de la formation théologique de la part de l'État, il appartient suivant l'article 5 de la Convention à l'archevêque d'organiser la formation spécifique des enseignants de religion. L'article 6 indique néanmoins certains pré-requis professionnels obligatoires. L'enseignant de religion doit être détenteur du certificat de fin d'études secondaires luxembourgeois ou d'un certificat reconnu équivalent par le ministre de l'Éducation nationale; du diplôme de l'Institut catéchétique de Luxembourg sanctionnant un cycle complet

de formation en théologie et en pédagogie s'étendant sur trois ans ou d'une formation reconnue équivalente par l'archevêque. D'autres dispositions législatives régissent l'instruction religieuse et morale notamment le règlement grand-ducal du 10 juillet 1998 portant approbation de la Convention du 31 octobre 1997 entre le Gouvernement, d'une part, et l'Archevêché, d'autre part, concernant l'organisation de l'enseignement religieux dans l'enseignement primaire, (Mém A – 67 du 21 août 1998, p. 1338) et celui du 7 août 1998 portant fixation des subventions-salaires des enseignants et chargés de cours de religion, (Mém. A – 67 du 21 août 1998, p. 1341). En son article 3, les subventions-salaires des chargés de cours de religion sont calculées par l'administration du personnel de l'État et versées directement par celle-ci aux enseignants de religion.

D) Contenu des cours de formation morale et sociale et/ou de l'instruction religieuse et morale

Le domaine de développement et d'apprentissage « Vie en commun et valeurs » revêt un caractère particulièrement transversal: beaucoup d'éléments sont repris dans d'autres domaines, notamment dans « Langage, langue luxembourgeoise et éveil aux langues » et « Découverte du monde par tous les sens ». Il est enseigné sur demande des parents, à travers le cours d'éducation morale et sociale ou à travers le cours d'instruction religieuse et morale. Les contenus des cours sont fortement différents bien que des thèmes d'enseignement soient communs.

Éducation morale et sociale

Compétences à développer	Exemples de descripteurs
Distinguer différents symboles	Identifier des symboles linguistiques (lettres, mots) utilisés dans différentes langues et indéchiffrables sans maîtrise de la langue en question. Identifier des symboles de base tels que le cercle, le carré, des panneaux de circulation, des drapeaux, la croix, la demi-lune en tant que symboles religieux, des symboles de contes (fée, nain, vent, ombre...).

Agir dans le monde: Connaître et participer à la célébration de fêtes traditionnelles

Compétences à développer	Exemples de descripteurs
Connaître les principales fêtes de l'année Aider à préparer une fête Explorer des traditions et coopérer à leur maintien	Comprendre que certaines fêtes sont célébrées en rapport avec les saisons. Présenter des traditions. Distinguer fêtes religieuses et non religieuses, p. ex. Octave au Luxembourg et Fête du Travail. Distinguer fêtes personnelles et sociétales, p. ex. anniversaire et Fête nationale. Prendre conscience que d'autres fêtes sont célébrées dans d'autres cultures. Prendre conscience qu'une fête demande à être préparée (décorations, invitations, achats de mets...). Respecter les règles pour le bon déroulement d'une fête (bougies, cadeaux secrets...). Connaître l'origine et le déroulement de certaines traditions luxembourgeoises, p. ex. Trauliicht, procession dansante d'Echternach, etc.

Percevoir le monde: Percevoir les êtres humains comme membres d'une communauté

Compétences à développer	Exemples de descripteurs
Connaître différents types de communautés Participer à une discussion «socratique»	Définir des communautés telles que la famille, l'école, le club des sports, les scouts, la communauté religieuse... Réaliser qu'on appartient à différentes communautés. Décrire ces communautés. Préparer ensemble une discussion: trouver un sujet se prêtant à une discussion philosophique. Recourir à des textes ou à des observations soulevant des questions Fixer et noter les règles de la discussion: à quoi faire attention, quand prendre la parole... Présenter un avis argumenté sur un sujet d'éthique. Écouter autrui pour bien comprendre ce qu'il/elle veut dire. Trouver une solution (consensus) ou accepter la diversité d'opinions.

Comprendre le monde: Adopter un point de vue personnel, interpréter les opinions d'autrui, analyser des concepts

Compétences à développer	Exemples de descripteurs
Participer à une discussion «socratique»	Préparer ensemble une discussion: trouver un sujet se prêtant à une discussion philosophique. Recourir à des textes ou à des observations soulevant des questions. Fixer et noter les règles de la discussion: à quoi faire attention, quand prendre la parole... Présenter un avis argumenté sur un sujet d'éthique. Écouter autrui pour bien comprendre ce qu'il/elle veut dire. Trouver une solution (consensus) ou accepter la diversité d'opinions (Dissens aushalten).

Agir dans le monde: Agir en fonction de valeurs et de normes; respecter les droits de l'enfant

Compétences à développer	Exemples de descripteurs
Connaître différents types de normes	Énumérer et expliquer les normes qui dominent dans le milieu (p. ex. familial, scolaire ...). Connaître des normes de communautés religieuses, p. ex. les dix bouddhismes. Connaître et comprendre la règle d'or (Goldene Regel) comme norme universelle dans différentes cultures. Appliquer la règle d'or dans des activités et exercices pratiques.

Percevoir le monde: Percevoir les êtres humains comme appartenant à des cultures différentes

Compétences à développer	Exemples de descripteurs
Comprendre les différences culturelles	Percevoir la valeur des traditions culturelles dans les familles immigrées. Connaître certains grands moments dans le calendrier des familles appartenant à des minorités culturelles.

Agir dans le monde: Découvrir le monde des grandes religions et idéologies

Compétences à développer	Exemples de descripteurs
Participer à la discussion sur les concepts de foi, «religion» et «humanisme»	Différencier entre «croire» et «savoir». Différencier entre «religion» et «raison». Différencier entre «foi» et «confession». Différencier entre «croire» et «ne pas croire». Comprendre que pour certaines personnes la foi en tant que reliée à une conviction religieuse peut fournir une orientation dans la vie. Faire la connaissance de quelques fondateurs de religions (Moïse, Jésus, Mohamed).
Faire la connaissance avec différentes conceptions divines	Exprimer en ses propres mots qui sont Jahwe, Allah, Jésus dans les trois religions. Décrire différents lieux de culte.
Connaître les principales fêtes religieuses	Expliquer l'importance de ces fêtes pour les fidèles: Judaïsme: Bar-Mizwa, Bat-Mizwa, Jom Kippur, Pessach, Sukkot, Chanukka. Christianisme: Noël, Pâques, Pentecôte. Islam: Idu el Adha, Idu el Fitre.

L'instruction morale et religieuse

Développer sa propre personnalité

Thèmes	Compétences à développer	Contenus et méthodes
Voir plus loin – voir en profondeur	Participer à des exercices de perception et s'exprimer à ce sujet Devenir silencieux et respecter les moments de silence. Décrire sa propre unicité. Reconnaître que des images ou histoires rendent l'invisible «visible», et exprimer cette expérience verbalement, graphiquement et créativement. Comprendre à l'aide d'exemples que les hommes «voient aussi avec le cœur», et représenter ce fait de manière créative.	Exercices de perception. Méthodes et médias invitant au silence et encourageant à la prière. Comment perçois-je ma propre personne? Mon «reflet» J'ai conscience de ma personne L'histoire «Der Korb mit den wunderbaren Sachen». Goldmarie et Pechmarie (Marien-Or et Marie-la-Poisse). Le conte japonais d'Oschoo. Des yeux qui voient plus – des yeux qui ne voient point. Le conte des talents d'étoile. L'aveugle Bartimée (Marc 10,46–52). Le symbole du cœur. Voir le Christ dans le nécessaire: Martin. Voir avec le cœur: Nicolas.

Thèmes	Compétences à développer	Contenus et méthodes
Gérer mes sentiments	Reconnaître ses sentiments (peur, deuil, colère, joie, courage...), les articuler et les transposer créativement. Affronter ses propres sentiments et ceux d'autrui, les reconnaître et les nommer. Reconnaître en fonction de l'âge respectif les paroles de psaumes en tant que forme d'expression de sentiments. Reconnaître les paroles de psaumes en tant que forme de communication de sentiments à l'égard de Dieu et tenter d'interpréter et d'utiliser leur langage imagé. S'exprimer dans ses propres «psaumes» à travers le dessin, le jeu et l'écriture créative.	J'ai des sentiments, mon «horloge des sentiments». Possibilités d'expression reflétant des sentiments p. ex. langage corporel, travail de cire de cire, matériaux sonores, jeux de rôle, voyages intérieurs. Psaumes.

Vivre ensemble

Thèmes	Compétences à développer	Contenus et méthodes
Du «je» au «nous»	Explorer et reconnaître que les règles facilitent la vie commune au sein de la classe. Respecter des rituels. Reconnaître la diversité de ses prochains et faire preuve de respect à l'égard de cette différence. Découvrir cette diversité en tant que richesse à travers des exemples (histoires et jeux). Reconnaître à l'exemple d'une narration biblique comment Jésus accepte les hommes et l'exprimer créativement.	Apprendre à connaître et appliquer des règles et rituels. Nous devenons une classe. Nos différences constituent une source de richesse. L'histoire de «Swimmy» – L'histoire «Irgendwie anders» • Je te vois désormais avec d'autres yeux – je te comprends mieux. Jésus bénit les enfants

LA RELIGION DANS L'ENSEIGNEMENT PUBLIC AU LUXEMBOURG

Thèmes	Compétences à développer	Contenus et méthodes
Être attentif – vivre «dans le respect»	Écouter attentivement et sciemment. Vivre le silence et le découvrir en tant que prémisses à l'écoute. Procéder à une écoute «interne» et l'exprimer. Découvrir l'écoute en tant que moyen d'accès à autrui et l'exprimer. Comprendre que les hommes entendent aussi avec le cœur écoute l'un l'autre comme Élisabeth et sont à l'écoute de Dieu comme Samuel. Connaître la règle d'or et réaliser qu'elle conduit à un comportement respectueux à l'égard d'autrui. Traduire cet enseignement de manière créative et développer ainsi de la compréhension pour autrui.	Exercices d'écoute (bol chantant; instruments Orff; jeu du téléphone) ainsi que méthodes et médias invitant au silence. Les trois plumes, la Reine des abeilles (voir également Lb I 1) Élisabeth de Hongrie Samuel Salomon prie le Seigneur de le munir d'un cœur qui sache écouter (1e livre des rois 3,9–14). La guérison d'un sourd-muet (Marc 7,32–37). La règle d'or (Matthieu 7,12)

Familiarisation avec les traditions et les formes de vie de la foi

Thèmes	Compétences à développer	Contenus et méthodes
Rencontre avec Jésus et les images de Dieu	Rencontre avec Jésus et des images de Dieu • Reconnaître dans les histoires de Jésus que les rencontres avec Jésus changent la vie et l'exprimer par la parole, l'image ou la représentation • Réaliser dans des histoires et images que l'on parle de Dieu de manière «métaphorique» et exprimer cette connaissance de manière créative. Connaissances de base • connaître le pays et les habitants d'Israël à l'époque de Jésus. L'année liturgique • Connaître les fêtes et les associer à leurs histoires d'origine, symboles, mages, coutumes, chansons, danses.	Rencontre avec Jésus et des représentations de Dieu • Jésus et ses amis • Zachée • Jésus et l'histoire du bon berger • Différentes images de Dieu: Dieu est comme ... Connaissances de base • La vie en Israël: habitants, paysages, localités, maisons L'année liturgique • Avent: Dans l'attente de la lumière, Couronne d'Avent • Noël: La naissance de Jésus s'accompagne de joie et de lumière (Luc 2, 1–20) • Le fête des Rois Mages: L'étoile indique le chemin (Matthieu 2,1–12) • La Chandeleur: Apporter la lumière de Jésus aux hommes (Luc 2, 21–40) • Pâques -Le chemin de l'obscurité à la lumière: Dimanche des Rameaux, Vendredi saint, Pâques, signe de la croix et cierge pascal.

Familiarisation avec la culture et la civilisation

Thèmes	Compétences à développer	Contenus et méthodes
Où l'homme se sent «chez lui»	Nommer, imaginer des lieux où je me trouve protégé, à l'aise et en sécurité. Concevoir de manière créative mes propres idées du «chez-moi». Connaître les rêves de vie/espaces vitaux d'autres enfants dans le monde et les comparer. Nommer les caractéristiques essentielles d'une église. Concevoir des espaces de culte et les respecter en tant que lieux de confiance, de silence, de chant et de prière.	Mes lieux de rêve: espaces réels et imaginaires (cabane perchée, tente, coin de jeu, salle de classe). Les enfants dessinent, construisent, conçoivent des maisons, ils jouent à la «maison». Les rêves de vie/espaces vitaux dans d'autres cultures. Voyage de découverte à travers notre église (chapelle). Percevoir les lieux de culte par le silence, le chant et la prière Aménager des lieux de culte p. ex. à l'école et y organiser des célébrations.
Ce qui sépare les hommes – ce qui les rapproche	Comprendre que la vie est en permanence tributaire de la communauté. Reconnaître ce qui rapproche les hommes. Réfléchir de manière critique à l'aspiration de certaines personnes à la «grandeur». Repérer dans le récit de la Tour de Babel, tiré de l'Ancien Testament, les motifs expliquant une séparation entre les hommes. Percevoir l'équivocité métaphorique de l'expression «ne plus comprendre», et la transposer sur sa propre communauté de vie. Découvrir le récit de l'Événement de la Pentecôte en tant que pendant au récit de la Tour de Babel et le représenter. Interpréter la puissance du Saint Esprit en tant qu'instrument permettant de surmonter les barrières linguistiques.	Exercices créatifs en matière de vie communautaire. Diverses activités communes stimulant l'expérience collective. Récits, dans lesquels l'un des acteurs aspire à la «grandeur», tels que: Théodore et le Champignon parlant, Bolla-Bolla, la Terreur des Enfants. La Tour de Babel, Gen 11,1-9 L'Événement de la Pentecôte, Actes des Apôtres 2,1-13.

La vie dans la Nature et dans le Monde

Thèmes	Compétences à développer	Contenus et méthodes
Découvrir le Monde du Seigneur – la Vie Communautaire dans un Monde Unique	<p>Percevoir les choses de la nature au travers de sens différents et les distinguer de par leurs particularités. Découvrir les aspects surprenants de la nature et les exprimer. Réaliser une image avec des matériaux naturels.</p> <p>Formuler et exprimer avec ses propres paroles des éloges et de la gratitude pour les merveilles de la nature.</p> <p>Interpréter et représenter le récit de la création en tant que louange à Dieu Respecter soigneusement l'environnement, la flore et la faune Reconnaître à un exemple précis la précarité de la vie dans la nature et en faire une représentation créative. Connaître la diversité ethnique, culturelle et écologique du Monde et élaborer différents éléments à ce sujet.</p> <p>Développer la solidarité avec autrui et la manifester.</p>	<p>Je perçois un coquillage, un caillou, une plume, une fleur, un animal avec tous mes sens Phénomènes surprenants dans la nature (renaissance au printemps).</p> <p>Mandalas relatifs à la nature. Remercier – louer le Seigneur pour le «miracle» de la nature.</p> <p>Louange à la Création (Cantique de la Création, Gen 1).</p> <p>Exercices d'initiation susceptibles d'encourager le propre respect de l'environnement «La Reine des Abeilles».</p> <p>Naissance et précarité de toute vie dans la nature (Jour des Morts).</p> <p>Documentation de Missio, Brot für die Welt, Bridderlech deelen (en fonction des thèmes de l'année) ou matériel personnel.</p>
Notre sœur Nature, notre frère Animal – Partenariat dans le Monde	<p>Associer la foi chrétienne à un comportement responsable envers toutes les créatures – en particulier envers les animaux.</p> <p>Établir des parallèles entre la Légende de St Hubert et les récits de Martin et Elisabeth</p> <p>S'exprimer à l'instar de St François dans le dialogue avec les créatures et les éléments de notre monde.</p> <p>Connaître la diversité ethnique, culturelle et écologique du Monde et élaborer différents éléments à ce sujet.</p> <p>Développer sa solidarité avec autrui et la manifester.</p>	<p>Le sermon aux oiseaux de St François d'Assise.</p> <p>Hubert et le Cerf.</p> <p>Cantique de Frère Soleil de St François d'Assise.</p> <p>Documentation de Missio, Brot für die Welt, Bridderlech deelen (en fonction des thèmes de l'année) ou matériel personnel.</p>

E) Jurisprudence Enseignement primaire – dispenses de fréquentation scolaire de l’instruction religieuse et morale

En 1999, la justice luxembourgeoise [TA 16-2-98 (9360 et 9430, Martins Casimiro, confirmé par arrêt du 2-7-98 10648C), Pas. admin. 1/1999, p. 56] a rappelé qu’en principe, il est possible aux élèves qui en font la demande de bénéficier individuellement et ponctuellement des dispenses de l’enseignement scolaire nécessaires à l’exercice d’un culte ou à la célébration d’une fête religieuse. Ce cas de figure doit demeurer exceptionnel dans la mesure où cela concerne « l’ensemble de la communauté scolaire ».

F) Répartition des élèves entre cours formation morale et sociale et/ou d’instruction religieuse et morale en 2008–2009

Année scolaire	Instruction religieuse et morale	Éducation morale et sociale	Total élèves
1 ^{re} année	86,6 %	13,4 %	5 158
2 ^e année	85,6 %	14,4 %	5 544
3 ^e année	85,8 %	14,2 %	5 619
4 ^e année	84,1 %	15,9 %	5 470
5 ^e année	82,6 %	17,4 %	5 364
6 ^e année	82,4 %	17,6 %	5 119

Enseignement secondaire et secondaire technique¹⁶

A) Organisation du cours d’instruction religieuse et morale

L’enseignement secondaire comporte également un cours d’instruction religieuse et morale et un cours de formation morale et sociale obliga-

¹⁶ Il est réglé par un vaste corpus législatif s’étendant de 1968 à 2005. Loi du 10 mai 1968 portant réforme de l’enseignement, titre VI: de l’enseignement secondaire, (Mém. A – 23 du 25 mai 1968, p. 435) modifiée par: Loi du 23 décembre 1978, (Mém. A – 89 du 29 décembre 1978, p. 2537), Loi du 13 avril 1979, (Mém. A – 32 du 25 avril 1979, p. 648), Loi du 16 novembre 1988, (Mém. A – 63 du 10 décembre 1988, p. 1216) Loi du 22 juin 1989, (Mém. A – 46 du 10 juillet 1989, p. 862), Loi du 8 juin 2001, (Mém. A – 70 du 19 juin 2001, p. 1411), Loi du 12 juillet 2002, (Mém. A – 87 du 12 août 2002, p. 1778), Loi du 25 juin 2004, (Mém. A – 126 du 16 juillet 2004, p. 1856), Loi du 29 juin 2005, (Mém. A – 95 du 8 juillet 2005, p. 1702).

toire au choix. Pour le premier, un règlement grand-ducal, après avis du Conseil d'État et du chef du culte, en détermine les lignes directrices du programme, les modalités de formation des enseignants chargés de ce cours ainsi que la durée et le nombre des leçons hebdomadaires. Pour le second c'est avec l'avis du Conseil d'État et celui d'un Conseil national de la formation morale et sociale (constitué d'enseignants, de représentants d'association et de parents d'élèves) qui le règle¹⁷.

La note obtenue en formation morale et sociale ou en instruction religieuse et morale est uniquement prise en compte pour le calcul de la moyenne générale annuelle¹⁸. La langue véhiculaire de ces cours est l'allemand pour les classes inférieures, l'allemand et le français pour les classes supérieures. La langue luxembourgeoise peut être utilisée pour faciliter la communication orale.

Des cours à option sont également offerts, notamment un cours d'histoire et de philosophie des religions en classe de deuxième. Il est considéré comme un cours d'éducation aux valeurs, prenant en compte aussi bien la diversité croissante des cultures et des convictions religieuses et philosophiques au plan mondial. Il tient spécialement compte des réalités de la société luxembourgeoise en réservant « une place adéquate à la présentation authentique des divers courants de pensée religieuse et humaniste présents dans le pays »¹⁹.

17 Règlement grand-ducal du 30 juillet 2002 déterminant les matières obligatoires et les matières à option, la répartition des matières sur les différentes classes ainsi que le nombre des leçons hebdomadaires de chaque cours dans les classes de la division supérieure de l'enseignement secondaire, (Mém. A – 87 du 12 août 2002, p. 1781).

18 Règlement grand-ducal du 14 juillet 2005 déterminant l'évaluation et la promotion des élèves de l'enseignement secondaire technique et de l'enseignement secondaire, (Mém. A – 115 du 29 juillet 2005, p. 1950) modifié par: Règlement grand-ducal du 1^{er} septembre 2006, (Mém. A – 165 du 11 septembre 2006, p. 3040).

19 Loi du 25 juillet 2005 portant création d'un lycée-pilote, Mém. A-124 du 10.8.2005, p. 2156 – Republication: Mém. A-139 du 26 août 2005, p. 2478.

B) Contenu des cours de formation morale et sociale et/ou d'instruction religieuse et morale

Le cours de formation morale et sociale des classes inférieures de l'enseignement secondaire et de l'enseignement secondaire technique aborde l'étude des Droits de l'homme. Les relations humaines sont le principal sujet de réflexion; au cours des débats en classe, les élèves se familiarisent avec les règles à respecter dans la discussion et doivent apprendre la tolérance. Le point de départ des réflexions, souvent concret, doit permettre des développements allant de la justification de certaines conceptions morales et sociales à la critique des réalisations passées et présentes. L'analyse des conceptions morales et sociales doit amener « l'élève à adopter une conduite intellectuelle et un comportement empreints de l'esprit des Droits de l'homme et se fera plus abstraite ». L'élève examine d'abord la situation culturelle de l'homme au 20^e siècle pour se consacrer ensuite à l'étude des religions et des philosophies morales les plus marquantes²⁰.

Le cours d'instruction religieuse et morale se fonde quant à lui sur la Bible et la tradition chrétienne. L'élève approfondit la foi chrétienne en se basant surtout sur les textes de l'Ancien et du Nouveau Testament. Le cours doit relever les défis du monde actuel, sensibiliser à la tolérance et au respect d'autrui et encourager à une rencontre existentielle avec l'Église, tant au niveau local qu'universel. Dans la fidélité à l'évangile, à la conception chrétienne de l'homme et dans une prise de conscience des valeurs communes aux sociétés démocratiques, cet enseignement vise à donner au futur citoyen l'éducation morale à laquelle il a droit. La vision chrétienne de l'élève s'enrichit d'une introduction aux Droits de l'Homme²¹.

20 Règlement grand-ducal du 10 août 1991 concernant les lignes directrices du programme, la durée et l'organisation du cours de formation morale et sociale ainsi que la formation des enseignants chargés de ce cours, (Mém. A – 69 du 1^{er} octobre 1999, p. 1344).

21 Règlement grand-ducal du 10 août 1991 concernant les lignes directrices du programme, la durée et l'organisation du cours d'instruction religieuse et morale ainsi que la formation des enseignants chargés de ce cours, (Mém. A – 69 du 1^{er} octobre 1991, p. 1345).

Plus particulièrement, l'élève étudie le phénomène religieux en général, ses expressions dans les différentes croyances et la mise en question de la religion par les athéismes, les idéologies et les courants philosophiques et scientifiques. L'étude des étapes majeures de l'Ancien et du Nouveau Testament et de l'histoire de l'Église fait découvrir à l'élève la dimension historique et culturelle de la foi chrétienne. L'élève apprend à connaître les vérités fondamentales de cette foi, à savoir la foi en un Dieu Créateur, la foi en Jésus le Christ, la foi en l'action de l'Esprit Saint ainsi que la valeur de ces vérités pour l'orientation de sa vie. L'enseignant incite l'élève à une réflexion critique et responsable face aux divers systèmes éthiques. Partant d'une anthropologie chrétienne, il lui apprend à se situer, comme homme/femme et citoyen, par rapport aux réalités du monde: le mariage, la famille, le travail, la justice sociale, les droits et devoirs de l'homme, l'écologie etc. Le monde contemporain y apparaît sous le double éclairage de l'Évangile et des Droits de l'Homme.

Dans le primaire et le secondaire, il est prévu également une couverture sociale spécifique et une libération de temps scolaire pour les élèves qui accomplissent un service religieux particulier²². Les élèves des deux corps enseignants doivent être capables de discerner et de combattre les diverses formes de discrimination, notamment celles qui sont fondées sur le sexe, la religion, la race ou le handicap²³. Finalement, les infractions susceptibles d'être sanctionnées par un renvoi définitif du lycée sont portées devant le conseil de discipline du lycée par le conseil de classe. Il s'agit notamment de l'incitation à la haine raciale, à la xénophobie et à l'intolérance religieuse²⁴.

22 Règlement grand-ducal du 23 février 2001 concernant l'assurance accident dans le cadre de l'enseignement précoce, préscolaire, scolaire et universitaire, (Mém A-65 du 31 mai 2001, p. 1280).

23 Règlement grand-ducal du 2 juin 1999 concernant la formation théorique et pratique ainsi que la période probatoire des enseignants de l'enseignement post-primaire, (Mém. A – 75 du 18 juin 1999, p. 1662) modifié par: Règlement grand-ducal du 24 juillet 2001, (Mém. A – 94 du 10 août 2001, p. 1886), Règlement grand-ducal du 21 janvier 2002, (Mém. A – 15 du 18 février 2002, p. 259).

24 Loi du 25 juin 2004 portant organisation des lycées et lycées techniques, (Mém. A – 126 du 16 juillet 2004, p. 1856) modifiée par: Loi du 29 juin 2005, (Mém. A – 95 du

C) Formation des enseignants des cours de formation morale et sociale et/ou d'instruction religieuse et morale

Le cours de formation morale et sociale est dispensé par des professeurs de philosophie. Toutefois, d'autres professeurs peuvent assurer la formation morale et sociale à condition qu'il soit certifié qu'ils ont suivi des cours portant sur la philosophie morale, la philosophie sociale ou les Droits de l'Homme, soit à l'université, soit pendant le stage de formation pédagogique, soit au titre de la formation continue. Les professeurs de doctrine chrétienne doivent être détenteurs d'un diplôme final sanctionnant un cycle d'études universitaires en théologie ou en sciences religieuses; ils doivent avoir l'autorisation d'enseigner délivrée par le chef du culte catholique²⁵.

D) Vacances scolaires, participation à des fêtes et offices religieux et éducation

Une semaine de congé divise chacun des trois trimestres en deux périodes ayant approximativement la même durée. Ces congés se situent vers la Toussaint, le Carnaval et la Pentecôte. Les classes de l'éducation préscolaire et de l'enseignement primaire proprement dit chôment le jour du pèlerinage à Notre-Dame de Luxembourg et le jour de la Saint-Nicolas. Un congé supplémentaire ne peut être accordé que par le ministre de l'Éducation nationale²⁶. La législation et

8 juillet 2005, p. 1702), Loi du 6 février 2009, (Mém. A – 19 du 16 février 2009, p. 191).

25 Loi du 29 juin 2005 portant a) fixation des cadres du personnel des établissements d'enseignement secondaire et secondaire technique; b) modification de la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'État; c) modification de la loi modifiée du 10 mai 1968 portant réforme de l'enseignement; d) abrogation de la loi du 25 août 1971 portant création de la fonction de professeur de sciences économiques et sociales aux établissements d'enseignement secondaire; e) modification de la loi du 22 juin 1989 portant modification de la loi modifiée du 10 mai 1968 portant réforme de l'enseignement; f) modification de la loi modifiée du 4 septembre 1990 portant réforme de l'enseignement secondaire technique et de la formation professionnelle continue; g) modification de la loi du 25 juin 2004 portant organisation des lycées et lycées techniques; h) modification de la loi modifiée du 24 mai 1989 sur le contrat de travail, (Mém. A – 95 du 8 juillet 2005, p. 1702).

26 Règlement grand-ducal du 31 juillet 1980 fixant le régime des vacances et congés scolaires, (Mém A – 55 du 12 août 1980, p. 1346).

la réglementation en vigueur permettent de dispenser des élèves de la fréquentation des cours pendant la durée d'une journée. C'est tantôt l'instituteur, tantôt le directeur qui l'accorde à la demande motivée des parents (art. 7 de la loi du 10 août 1912 concernant l'organisation de l'enseignement primaire; art. 13 du règlement grand-ducal du 23 décembre 2004 concernant l'ordre intérieur et la discipline dans les lycées et lycées techniques). La participation à une fête religieuse importante est généralement considérée comme motif valable. Il est laissé à l'instituteur et au régent de classe ou au directeur la liberté d'appréciation des demandes au cas par cas. En 2007, des directeurs d'école ont commencé à accorder des jours libres supplémentaires à des élèves juifs, musulmans ou bouddhistes.

En décembre 2009, Madame Mady Delvaux-Stehres, la ministre de l'Éducation nationale socialiste a décidé, vu que les élèves de confession catholique bénéficient des jours de congés officiels pour assister aux fêtes religieuses qui les concerne, que les élèves adhérant à d'autres religions doivent pouvoir faire valoir une excuse valable pour la participation à l'une ou l'autre fête religieuse importante, à condition que la communauté religieuse concernée sollicite son accord au préalable, ce qui a été le cas pour la Fête de l'Aïd²⁷.

En septembre 2010, une question parlementaire a signalé que dans certaines communes, à l'occasion de la rentrée scolaire, des titulaires de classes de l'école fondamentale emmenaient leurs classes dans une messe catholique, ceux qui étaient inscrits au cours d'instruction religieuse. Pour l'auteur de cette question, député du Parti de La Gauche (une dissidence du Parti communiste luxembourgeois - KPL), cette pratique soulève évidemment la question de la neutralité religieuse de l'école²⁸.

27 Chambre des Députés, Réponse de la ministre de l'Éducation nationale et de la Formation professionnelle à question n° 0264 de Monsieur Fernand Kartheiser concernant la Fête de l'Aïd (fête du sacrifice d'Abraham), Q-2009-O-E-0264-02, décembre 2009.

28 Chambre des Députés, Question n° 0924 de Monsieur André Hoffmann concernant la Neutralité de l'école en matière de religion, Q-2009-O-E-0924-01, septembre 2010.

IV. CONCLUSION

Le conflit religion et politique a progressivement diminué en intensité jusqu'en 2004. Bien qu'il reste encore une minorité au sein du POSL et du Parti de La Gauche attaché aux principes d'une laïcité militante, les partis gouvernementaux (PCS, POSL et PD) ont souhaité maintenir le statu quo régissant les relations entre l'État et l'Église et particulièrement concernant l'enseignement religieux dans l'école publique.

A) La sécularisation de la société et du Parti chrétien social (PCS)

Tout d'abord, l'importance de la religion dans la vie quotidienne des Luxembourgeois a lentement décliné. Le combat culturel de l'Église et de ses organisations a été en grande partie perdu. Les politiciens catholiques ont dû admettre que leur conception d'une contre-société ne mobilisait plus la majorité sociale (*Heiderscheid*, 1991: p. 191). Dans ces circonstances, les partis catholiques ont été forcés de reconnaître l'existence de modernités multiples à Luxembourg. Ils ont donc souhaité que l'héritage chrétien reste dans la législation économique et sociale et dans le domaine de l'éducation plutôt que dans les positions sur les questions éthiques et sociétales.

Deuxièmement, le déclin de la pratique religieuse a certainement eu un impact sur le comportement politique. Même si aujourd'hui le PCS est certainement perçu comme l'héritier du catholicisme social, en même temps, ses dirigeants et leurs discours sont largement sécularisés (*Poirier*, 2004). Leurs attitudes à l'égard des libertés fondamentales et le libéralisme politique et culturel sont presque identiques aux valeurs des dirigeants et des membres d'autres partis politiques. Leur héritage chrétien est maintenant perceptible dans leur engagement pour la promotion du dialogue interreligieux et le maintien du cadre institutionnel régissant les relations entre les religions et l'État.

Toutefois, depuis 2004, nous pouvons voir une évolution différente dans le débat entre les partis politiques sur la question reli-

gieuse, avec une radicalisation des partis laïques, comme le montre le document de référence 2008 publié par le groupe de travail du POSL « Socialisme et religion ». Les négociations entre les musulmans et le Gouvernement ont joué également un rôle important dans ce changement ainsi que le débat européen sur l'introduction des racines chrétiennes de l'Union européenne dans le Traité constitutionnel européen.

Pour le PCS, l'État doit prendre en charge les religions comme une expression de la société et encourager le dialogue interreligieux au nom de la paix civile et la cohésion sociale, (*Institut Pierre Werner*, 2007). Le dialogue entre les religions doit avoir lieu dans le contexte religieux et historique qui caractérise l'État. La disposition selon laquelle il devrait y avoir un accord entre l'État et chaque communauté religieuse est en fait pour lui une reconnaissance de la séparation entre l'État et l'Église.

C'est pourquoi le PCS n'a pas appuyé l'inclusion des racines chrétiennes dans le traité CE et a refusé d'approuver au niveau européen la position du PPE (Parti populaire européen)²⁹. En 2004, le Gouvernement chrétien-social-libéral de Jean-Claude Juncker a lancé un programme pilote dans une école secondaire au Luxembourg assurant un enseignement non confessionnel sur les valeurs, en soulignant les principales religions du monde et écoles de pensée. Ce programme a été élaboré en consultation avec tous, les Églises chrétiennes, les communautés juives et musulmanes³⁰.

Aux yeux des socialistes (en coalition avec les chrétiens-sociaux depuis 2004), des libéraux et de la majorité des écologistes, l'Église catholique a joué un rôle très limité dans l'avènement de la démocratie et essaye maintenant de récupérer son influence (présumée « anti-

29 *Borrell Fontelles*, J (2003), 'Laissons Dieu en dehors de ça', Bruxelles: Secrétariat de la Convention européenne, contributions 204, Publishing on the internet. (Online), Available at: <http://register.consilium.eu.int/pdf/fr/03/cv00/cv00501fr03.pdf>. (Accessed 4 June 2007). See also *Pottering*, 2002.

30 Chambre des Députés, A-2005-139-0003, Règlement grand-ducal du 10 août 2005 relatif au fonctionnement du lycée-pilote, Publishing on the internet. (Online), Available at: <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=2&secondList=&action=document>, 10 août 2005, (Accessed 2 January 2008).

moderniste » de leur point de vue avec les deux derniers papes, Jean-Paul II et Benoît XVI) sur les questions éthiques. Par conséquent, les positions de l'Église catholique sur les questions de l'euthanasie, de la génétique et de l'éducation doivent être « contrées » dans les écoles. Pour eux, la présence de l'Église catholique dans l'enseignement public et privé conduit à un endoctrinement permanent des enfants. Qui plus est, le financement de l'éducation post-primaire privé par l'État affaiblit l'école publique qui est un instrument clé pour l'intégration de tous les enfants quelle que soit leur origine. En particulier, le POSL propose dans le court terme, une séparation entre l'État et l'Église ainsi que l'école de l'Église. Il s'oppose formellement à l'extension d'autres cours d'instruction religieuse et morale à d'autres cultes comme il a été demandé par les associations musulmanes du Luxembourg en 2009. Plus d'importance devrait être accordée à l'éducation civique dans les écoles, afin de favoriser la connaissance et la pratique des droits et devoirs des citoyens ainsi que la compréhension et le respect des différences philosophiques et religieuses. Un cours de morale et sociale de l'enseignement devrait être inclus dans le cursus scolaire normal au même titre que les mathématiques, l'histoire, etc. L'invocation d'une croyance religieuse ne saurait justifier l'exemption de ce cours. Afin d'éliminer toute ambiguïté, le nom du cours devrait être remplacé par « programme d'éducation civique ».

B) Les législations concernant les questions sociétales et éthiques restaurent le clivage politique et religion

Une importante controverse est née en 2008–09 sur la délicate question de la légalisation ou non de l'euthanasie. Le débat a finalement été réglé en décembre 2008 (*Dumont et al* 2008: 1065), quand une majorité de 31 députés ont voté en faveur de la loi légalisant l'euthanasie et le suicide médicalement assisté. Cette majorité comprenait tous les députés écologistes et libéraux (PD), onze des 14 socialistes (POSL), deux députés de l'ADR, et un membre du Parti chrétien-social (PCS). Parmi les 26 qui ont voté contre, 23 membres

étaient du groupe PCS, deux députés ADR et les indépendants (ex-ADR). Trois députés socialistes se sont abstenus. Dans l'ensemble, seul le vert et les groupes parlementaires PD, à la fois dans l'opposition, a maintenu une parfaite cohésion.

Quelques jours avant le vote, le président de l'Académie pontificale pour la Vie, Monseigneur Rino Fisichella avait envoyé une lettre inattendue aux députés au Grand-duché en leur rappelant que le législateur catholique a « l'obligation claire de s'opposer à toute loi qui est une attaque contre la vie humaine ». Il a précisé, en outre, que les électeurs catholiques ne pouvaient pas en bonne conscience appuyer les députés qui ont adopté une loi d'homicide. En décembre 2008, le Grand-duc a refusé d'approuver le projet de loi. Le Gouvernement et tous les partis politiques ont immédiatement décidé de modifier la Constitution. L'article 34 modifié de la Constitution a supprimé le droit du Grand-duc d'approuver (« le droit de sanction ») toutes les lois³¹. Cette modification a été adoptée en mars 2009 par un vote à l'unanimité en deuxième lecture à la Chambre.

Le Premier ministre Jean-Claude Juncker (PCS) a sévèrement critiqué l'intervention de l'État du Vatican avant le vote sur la loi sur l'euthanasie. En février 2009, à l'imitation de la Chancelière allemande Angela Merkel, il a également condamné le processus de réintégration des quatre évêques traditionalistes à l'intérieur de l'Église catholique et a demandé au Pape d'expulser définitivement l'évêque R. Williamson qui avait nié l'importance de la Shoah³². Toutefois, les questions éthiques n'ont pas été sur l'agenda politique au cours des dernières élections générales en juin 2009. La campagne a été dominée par la viabilité économique du Luxembourg dans le contexte de la crise financière internationale. Seuls les libéraux et les écologistes souhaitaient rouvrir le dossier scolaire et particulièrement le thème de l'éducation aux valeurs.

31 Le Grand-duc conserve son droit de promulguer toutes les lois en tant que chef de l'exécutif.

32 *Gouvernement du Luxembourg*, Réaction de Jean-Claude Juncker à la réhabilitation par le pape d'un évêque négationniste, Published on the internet. (Online), Available from: http://www.Gouvernement.lu/salle_presse/actualite/2009/02-fevrier/04-juncker-pape/index.html, 4 février 2009, (Accessed 10 July 2008).

En août 2009, un accord pour une nouvelle coalition gouvernementale entre le PCS et le POSL a prévu la création et le financement des Maisons de la laïcité pour compléter le cadre institutionnel entre l'État et les religions. Les Maisons de la Laïcité, sur le modèle belge seraient financées jusqu'à 75 % par l'État. Elles sont destinées à devenir une sorte de centre de ressources pour les activités éducatives, culturelles et funéraires. Les ONG laïques (Liberté de Conscience, Centre d'action laïque) ont critiqué cette proposition, faisant valoir que la création des Maisons de la laïcité pourrait à l'avenir empêcher l'abolition des conventions existantes entre l'État et les religions et maintenir l'instruction religieuse et morale au Luxembourg dans l'enseignement public³³. Les partis de la coalition se sont mis aussi d'accord pour le maintien du statu quo, à savoir le parallélisme et la liberté de choix entre le cours de formation morale et sociale et le cours d'instruction religieuse et morale. Si toutefois, en cours de période législative, des changements à ce propos s'avéraient nécessaires en raison d'évolutions ou d'événements indépendants de la volonté du Gouvernement, toute modification afférente fera l'objet de négociations préalables du Gouvernement avec les Églises et cultes concernés. En 2009, environ 82 % des élèves du primaire choisissaient l'enseignement religieux, ce chiffre tombait à 71 % pour les élèves du secondaire. L'Église catholique est le seul à bénéficier de ce type de convention dans le système éducatif.

RÉFÉRENCES

- Bader, V.* (2003), 'Religious Diversity and Democratic Institutional Pluralism'. *Political Theory*, 31: 265–294.
- Besch, S.* (2002), 'Une citoyenneté en évolution', in *M. Legrand*, *Les Valeurs au Luxembourg: portrait d'une société au tournant du 3^e millénaire*. Luxembourg: Éditions Saint-Paul, 391–530.

33 Liberté de conscience (2009), Le piège d'une maison de la laïcité. (Online), Available from: <http://www.libco.lu/>, 18 juillet 2009, (Accessed 20 September 2009).

- Byrnes, Timothy A./Katzenstein, Peter J.* (éd.) (2006), *Religion in an expanding Europe*, Cambridge (UK)/New York: Cambridge University Press.
- Donnadieu, G.* (2001), 'Vers un marché du religieux? – Le nouveau paysage du croire', *Futuribles*, Janvier, 260: 5–22.
- Dumont, P./De Winter, L.* (2003), 'Luxembourg: Stable coalitions in a pivotal party system', in *Wolfgang C. Müller/K. Strøm* (éd.), *Government Coalitions in Western Europe*, Oxford: Oxford University Press, p. 399–432.
- Dumont P./Kies, R./Poirier Ph.* (2008), 'Luxembourg', *European Journal of Political Research*, 47, 7–8: 877–1175.
- Eisenstadt, Shmuel N.* (2002), *Multiple Modernities*. Piscataway: Transaction Publishers.
- Gouvernement du Luxembourg*, Code de l'Éducation nationale, Législation jusqu'au 31 décembre 2009, Ministère de l'Éducation nationale, de la Formation professionnelle et des Sports, Luxembourg, 2009.
- Groupe de Réflexion Socialisme et Religion* (2008), 'Le POSL face à l'amalgame politico-catholique', *Tageblatt*, 5 janvier, 18–19.
- Hausman, P./Zahlen, P.* (2010), 'Les valeurs au Luxembourg: Premiers résultats du programme, European Values Study. Enquête 2008 sur les valeurs. 2010', *Les Cahiers du CEPS/INSTEAD*, juillet, 2010.
- Heiderscheid, A.* (1991), 'L'Église dans la société moderne sécularisée'. *Nos Cahiers*, 1: 187–211.
- Hirsch, M.* (1995), 'La société dépolitisée', *Nos Cahiers*, 16, 4, 69–73.
- Institut Pierre Werner* (2007), *Intervention de François Biltgen L'Union européenne: les idées inspiratrices et les institutions*, Ministère du Travail, de la Culture, de l'Enseignement supérieur, de la Recherche et des Cultes, Luxembourg: L'identité européenne et les défis du dialogue interculturel.
- Lambert, Y.* (1994), 'Les régimes confessionnels et l'état du sentiment religieux', in *J. Baubérot*, *Religions et Laïcité dans l'Europe des Douze*, Paris: Syros, 241–271.
- Legrand, M.* (éd.) (2002), *Les Valeurs au Luxembourg: portrait d'une société au tournant du 3^e millénaire*. Luxembourg: éditions Saint-Paul.
- Lijphart, A.* (1969), 'Consociational Democracy', *World Politics*, 21, 2, 207–225.

- Lipset S.M./Rokkan S.* (1967), *Party Systems and Voter Alignment: cross national perspectives*, New York: Free Press.
- Madeley, John T. S.* (2003), 'European Liberal Democracy and the Principle of State Religious Neutrality', *West European Politics*, 26, 1–22.
- Margue, G.* (1989), 'L'Église et l'État au Grand-duché de Luxembourg: Un coup d'œil sur la situation après 1950', in *M. Gergès (éd.), Mémorial 1989*. Luxembourg, Publications Mosellanes: 295–302.
- Martin, D.* (1996), 'Remise en question de la théorie de la sécularisation', in *D. Grace/D. Hervieu-Léger (éd.), Identités Religieuses en Europe*, Paris: La Découverte.
- Marx, L.* (2007), 'Prudence et petits pas...', *Tageblatt*, 23 août.
- Poirier, Ph.* (2004), 'At the Centre of the State: Christian Democracy in Luxembourg', in *E. Gerard/S. Van Hecke (éd.), Christian Democratic Parties in Europe since the End of the Cold War*. Leuven: Katholieke Universiteit Leuven Press, 179–195.
- Pottering, H.-G.* (2002), *Homme, Dieu, Religion: L'Union européenne, une communauté de valeurs*. Bruxelles: Groupe du Parti Populaire Européen, et des Démocrates Européens.
- Preyer, G.* (2007), 'Shmuel Eisenstadt: Multiple Modernities. A paradigm of social and cultural evolution', *Protosociology*, 24: 5–19.
- Robbers, G.* (2005), *State and Church in the European Union*, 2^e éd. Baden-Baden: Nomos.
- Sartori, G.* (1976), *Parties and Party Systems: a framework for analysis*, Cambridge: Cambridge University Press.
- Spohn, W.* (2007), *Europeanization, Religion and Collective Identities in an Enlarged Europe – a multiple modernities perspective*. New York City: paper presented at the annual meeting of the American Sociological Association.
- Stoeckl, K.* (2010), 'The Impact of the Return of Religion on Theoretical Approaches to Democracy and Governance in the Social and Political Sciences'. *Sociology Compass*, June, 4, 6: 354–364.
- Trausch, G.* (1991), 'L'Église, l'État et la Nation au Luxembourg de 1839 à 1989: relations complexes en pays catholique', *Nos Cahiers*, 12: 61–75.

RELIGION IN PUBLIC EDUCATION IN THE NETHERLANDS

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I. INTRODUCTION

Education has always been an issue of profound importance in church-state relationships. Without exaggeration it can be said that the process of shaping the system of education in the Netherlands is and has been one of the most lively and hotly debated topics of its constitutional history. It also forms an important benchmark in defining the place of religion in the public sphere and is of equal importance for the general typology of church and state relationships.¹ Apart from this, the process of shaping the system of education has had great significance for the social emancipation of religious groups in society and has served as a model for societal organisations that have developed over time in the system of so-called pillarisation.² Its importance and turbulent history is reflected in the constitutional article on education: it is the longest article in the Constitution. A significant fact is also that the article on education remained unaltered during the general revision of the Constitution of 1983, due to the sensitivities surrounding the topic.³

At present, education is the focus of public attention as well. The issue of education has become intertwined with debates on such great social challenges as integration, religious pluralism, changes in patterns of societal values, and the position of Islam in the Netherlands. Similarly, education plays an important role in social and po-

1 This is the case even though in the Netherlands religiously oriented schools tend not to be run directly by churches, but by associations of by foundations based on a religion.

2 See below, Section II.

3 However, Article 23 of the Constitution has been amended afterwards.

litical debates as a reference point for a solution of a myriad of general social challenges and problems.

This essay deals with the place of religion in the law concerning education. It focuses on primary education as the type of education where the issue is most pronounced. In this essay, the legal regime relating to religion in education will be discussed rather than social and political challenges. However, they do form the background of the current strong interest in the topic of religion in education in the political, social, professional, and academic realms.

This essay is structured as follows. First, the general background of religion in Dutch education will be presented. Attention will be paid to the main facts and figures and an overall sketch of the Dutch educational system will be given (II). Next, religion as a subject of instruction will be discussed (III). Then religiously motivated behaviour in schools will be dealt with (IV). This is followed by a discussion on opting out of school obligations for religious reasons (V). I will finish with a brief conclusion (VI).

II. GENERAL BACKGROUND

Facts and Figures

The Netherlands is a small and densely populated country. The number of inhabitants in November 2010 was about 16.5 million people (16,486,000).⁴ The Netherlands has always been a pluralist society where religious or political affiliations are concerned. As far as religion is concerned, no solid figures are available.⁵ Each church has its own criteria for membership and these may differ widely from one church to another. These, in turn, may differ from affiliation or non-

4 <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=37556&LA=NL>.

5 The following part of this section as well as the next section is derived from my paper 'Religion and the Secular State', in J.H.M. van Erp, L.P.W. van Vliet (eds.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law*. Washington 2010, Antwerp-Oxford-Portland: Intersentia 2010, p. 93–112.

affiliation as experienced by believers or non-believers themselves. There is no census, so figures on religious affiliation as presented in statistical surveys tend to be quite rough. Depending on the way statistical surveys are set up, these figures may also differ quite significantly. According to a recent statistical survey, 58 % of the population regards itself as having a religious affiliation. For 29 % this is Catholic; for 19 % this is one of the larger protestant denominations, which have been united since 2004 in the Protestant Church in the Netherlands (two large reformed churches and the Lutheran Church in the Netherlands); 5 % is Muslim; and 6 % are affiliated with another religion or belief.⁶

A characteristic of Dutch society is that of ‘pillarisation’. Traditionally, churches or church-affiliated organisations in the Netherlands have been active in the social and cultural domains, for instance, in schooling, in youth activities, in health care institutions, in social support, and in the mass media. With the expansion of the state in these domains from the 19th century onwards and typically in the 20th century, the state has accommodated these initiatives. This has resulted in a system of, on the one hand, state facilities in these domains, i.e., neutral from the point of view of religion and belief, and, on the other hand, the existence of similar facilities, but provided by faith-based organisations. This is the case in the area of education as well. After the Second World War, in the development towards the social welfare state, pillarisation diminished; in many existing organisations, the religious identity became less pronounced, with the exception maybe of those that had a strong educational character and were involved with children, such as primary schools.⁷

6 See *Centraal Bureau voor de Statistiek*, *Religie aan het begin van de 21ste eeuw*, Heerlen 2009, p. 14 and p. 7.

7 See *Sophie van Bijsterveld*, ‘Church-Related, Charitable, Non-Profit Making Institutions and their Relations to Church, State, Civil Society and the Market. The Dutch Perspective’, in Inger Dübeck, Frans Ole Overgaard (ed.), *Social Welfare, Religious Organizations and the State*, Milaan: Giuffrè 2003, p. 137–155.

In the year 2009, there were 6,882 primary schools in the Netherlands.⁸ About one third of these were public schools (32.8 %); about two thirds denominational (with 30.1 % Roman Catholic; 29.8 % various Protestant denominations; and 0.6 % Islam). A variety of smaller denominations makes up the total of 100 %.⁹

The number of secondary schools in the Netherlands in 2009 was 657.¹⁰ The general pattern of division among public education and confessional education for the larger denominations was comparable to that of primary education, albeit that the Protestant denominations made up for ca. half of the educational establishments. In 2009, a great shift occurred in the percentages of public education and Roman Catholic education in that they overwhelmingly opted for a special co-operative structure. The private non-denominational category in secondary schools is over 16 %, a substantive difference compared to primary education.

General Characteristics of the School System

The educational system functions against the general background of the relationship between religion and the state in the Netherlands. Keywords are: separation of church and state, neutrality of the state with regard to religion and belief, and freedom of religion and belief. The latter is explicitly guaranteed in the Constitution (Article 6).¹¹ The principle of neutrality is embodied in Article 6 in conjunction

8 <http://www.stamos.nl/index.bms?verb=showitem&item=3.24>. For a full overview over the years 2002–2009, broken down by denomination (in percentages), see <http://www.stamos.nl/index.bms?verb=showitem&item=3.24.3>.

9 The Dutch Constitution speaks of public-authority education and private education. Public-authority schools are run by or on behalf of municipal authorities. Private schools are run by private associations or foundations. The overwhelming majority of private schools are denominational ones. Private schools are financed from public funds (see the Annex). This essay uses the notions public education/schools and private education/schools. For further figures on education, see <http://www.rijksoverheid.nl/ministeries/ocw/documenten-en-publicaties/rapporten/2010/05/19/kerncijfers-o.html>.

10 <http://www.stamos.nl/index.bms?verb=showitem&item=5.24.3>; broken down by denomination, see: <http://www.stamos.nl/index.bms?verb=showitem&item=5.24.3>.

11 For the text of Article 6 Netherlands Constitution, see the Annex.

with Article 1.¹² The latter guarantees equal treatment and it prohibits discrimination on the basis of religion and belief. Separation of church and state is not explicitly mentioned in the Constitution or in any other legislation. It can be said to be implicitly embodied in a combination of constitutional guarantees, notably those of Articles 6 and 1.¹³ That these principles form the core of the constitutional context of church and state relationships is uncontested.

Article 23 of the Constitution provides the parameters for the educational system.¹⁴ It guarantees freedom of education and introduces the dual system of public education alongside private (confessional) education. For private primary education, full public funding is prescribed, under the conditions laid down by Act of Parliament. Educational standards for primary education which is fully financed by public funds shall respect ‘in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit’. Thus, freedom of education entails freedom to found a school, to administer a school, and to determine the confessional identity of the school and its education.

For categories other than primary education – (confessional) secondary schools, and schools at the professional levels and universities – similar arrangements have been adopted in the respective Acts of Parliament. With respect to public education, the Constitution requires ‘due respect to everyone’s religion or belief’.¹⁵

12 For the text of Article 1 Netherlands Constitution, see the Annex.

13 In conjunction with these two Articles, Article 23 of the Constitution should be mentioned (see the Annex). This Article deals with education; it guarantees freedom of education and establishes the dual system of education with publicly-run schools and privately-run (usually denominational) ones which receive public funding on the same footing as publicly-run schools.

14 For a commentary on this Article, see *D. Mentink, B.P. Vermeulen, ‘Artikel 23’*, in A.K. Koekkoek (red.), *De Grondwet. Een systematisch en artikelsgewijs commentaar, W.E.J. Tjeenk Willink 2000* (derde druk), p. 245–272. See also *D. Mentink, ‘Scheiding van kerk en staat in het onderwijsrecht’*, in *Tijdschrift voor Religie, Recht en Beleid* 2010 (1).3, p. 42–60.

15 This is an expression of ‘positive’ neutrality, a neutrality that is open to expressions of religion or belief in the public domain, in contrast to a conception of neutrality that aims to ban expressions of religion or belief in the public domain. See also below, Section III, under ‘*Instruction about Religion*’.

No age limits, minimum ages or time limits exist for children who want to attend religious courses provided by churches or by religious groups. In fact it is very common in both Christian Catholic and Protestant Church services for parents to take their little children with them to attend the 'children's church' or Sunday school which is often provided parallel to the worship of their parents. Special Sunday schools after the church service also exist. Slightly older Protestant teenagers often attend catechism classes before they officially join the church themselves as adults.

A few closing remarks on the general system of education: at age 12, pupils normally proceed to secondary education. The latter comprises preparation for different types of professional education, ranging from trades and crafts to academic education. The duration of the various types of secondary education varies from four to six years. The system is open in that a diploma of one type gives access to another type, avoiding overlap. Apart from this ordinary system, a system of special needs education exists.

III. RELIGION AND ITS SUBSTITUTES AS SUBJECTS OF INSTRUCTION¹⁶

Religious Instruction (i.e., Confessional Teaching) in Public Schools

For religion as a subject of instruction in public primary schools, Articles 50 and 51 of the Primary Education Act (*Wet op het Primair Onderwijs*) are important. Article 50 of this Act states that the school board of a public school offers its pupils the opportunity to receive religious instruction or instruction based on a non-religious belief. This should be offered in the school and within the normal school hours. It also states the maximum number of hours that this instruc-

16 No specific factual information is available to me on the role of religion in teaching within the framework of classes in literature, history, philosophy, arts or language. Generally, it can be said that, if religion plays a role in such education, this should be restricted to a non-confessional one in public schools, whereas it can have a confessional dimension in demoninational schools.

tion can take up on an annual basis and relates this to the number of hours that pupils receive primary education in general. It also states that the school board provides other educational activities for the pupils who do not follow the religious or non-religious instruction in the school.

Article 51 of the Primary Education Act states that religion as a subject is taught at public schools by teachers who are designated to do so by the respective churches or legal entities that – according to their charter – have the purpose to provide such religious education. Non-religious education is provided by teachers who are designated to do so by (similar) legal entities based on a non-religious belief.

The way in which Articles 50 and 51 of the Primary Education Act are formulated makes clear how religious instruction in public education is positioned. The content is not provided by the school itself, but by religious teachers of various denominations who are authorized to do so by their respective denominations. The school functions as a host, merely providing the facilities: instruction within school hours and on the school premises.

The system according to which parents can request that their children be instructed in religion in the public school dates from 1842.¹⁷ In 1963, the option of instruction in non-religious belief was added.

Traditionally, the ordinary qualifications and requirements set for teachers in public schools have not been applicable to those teaching religion. As we have seen, the school merely acts as the host and the choice of teacher and the content of the religious teaching fell outside the scope of the school board. This also applied to teacher qualifications as these were seen to be closely related to the content itself.

In 2004 a new system of so-called competence requirements (*bekwaamheidseisen*) for teachers was set up under the new Educational Professions Act (*Wet Beroepen in het Onderwijs (BIO)*). De-

¹⁷ Source: *J.P. de Vries*, ‘Wat is het godsdienst- en levensbeschouwelijk vormingsonderwijs (G/HVO) op de openbare basisschool?’, maart 2010 (unpublished paper), at <http://www.gvoenhvo.nl/pers-en-publicaties.html>.

spite profound discussions in both Houses of Parliament on the issue, the Act became applicable to religious instructors as well. As a result, the denominational organisations responsible for designating religious teachers to public schools joined forces at the national level to design a system of core capabilities and to see to it that religious instructors met them. To achieve this, they requested the necessary funding. In 2008, the Lower House of Parliament awarded an annual amount of € 10 million for this purpose, to be effective as of the school year 2009–2010. This is important as public schools must offer religious education and are responsible for financing it at the same time. Of course, financial aspects can be a problem in practice.

According to a survey carried out on behalf of the Ministry of Education in 2007, instruction in religion and/or non-religious belief was provided in 56 % of public primary schools; in 30 % of public primary schools, such instruction was not offered though parental interest did exist.¹⁸

At present, the number of teachers of religion (practically all part-time) at public primary schools is as follows: roughly are 400 Protestant, 300 Humanist, 15 Islamic, and 10 Roman Catholic. In total, about 73,000 pupils in public schools receive instruction in religion.¹⁹

Religious Instruction (i.e., Confessional Teaching) in Private Schools

Although private schools on a non-confessional basis exist, practically all private schools are confessional schools. As we have seen, these are funded by public money on the same footing as public schools. They are subject to the vast amount of legislation dealing with education, albeit that this legislation, in as far as it relates to private schools, respects their freedom of establishment, denomination, and organisation (the freedom of *stichting*, *richting*, *inricht-*

18 Ibid.

19 Ibid.

ing).²⁰ This means that instruction in religion takes place on a confessional basis. Such religious instruction is part of the *raison d'être* of the school.

As a consequence of the freedom of denomination of the confessional school, public inspection of the school, to which also confessional schools are subject, does not extend to the religious education it provides. This is regarded to fall outside the sphere of competence of public inspectors. This fundamental principle has come under discussion due to imaginary incidents in Islamic schools.

In the year 2002, public attention was suddenly evoked by reports in the media that Islamic schools – especially in the context of religious education – were promoting *jihād*.²¹ This prompted the issue of inspection of such education. The incidents gave rise to a public investigation into the factual situation. The result of this investigation showed that the media reports were highly exaggerated.²² On the issue of inspection, the ‘compromise’ was reached that the basic principle of non-inspection of religious education in the confessional school was upheld. However, if it were to transpire that, on the basis of the general inspection, serious doubts emerged about its functioning also in terms of the basic values of a liberal democracy, further inspection, including religious teaching would be justified. By this compromise, not only the basic principle was upheld, but also the difficult issue of equal treatment as regards religion (here, Islamic schools versus confessional schools of other religions) was circumvented.

20 See below, Section IV.

21 See, BVD, De democratische rechtsorde en islamitisch onderwijs. Buitenlandse inmenging en anti-integratieve tendensen, 's-Gravenhage: BVD, februari 2002 (notably p. 3).

22 See the Inspection Report ‘Islamitische scholen en sociale cohesie’, Utrecht, oktober 2002; and the follow-up Report ‘Islamitische scholen nader onderzocht’, oktober 2003 (both available online).

Instruction about Religion

Instruction about religion takes place in both public schools and private confessional schools. Respect for religious and non-religious pluralism in *public schools* is clearly expressed in various Articles of the Primary Education Act. This is not only a passive responsibility (see the Constitution) but, as the Primary Education Act makes clear, also an active one. Article 46, for example, states that public education pays attention to the religious, non-religious, and social values as existing in Dutch society, and acknowledges the meaning of the plurality of denominations. Of course, this is done without giving precedence to one denomination or another. This active responsibility is also manifest in the way religious expressions by pupils or teachers are approached.²³

In *confessional private schools*, attention is paid to the variety of religious and non-religious denominations as well. The legal basis, however, is not the same article from the Primary Education Act. In the ‘core goals’ of the curriculum of both types of schools, the topic of *geestelijke stromingen* has a place. This concept is hard to translate into English; it refers to religious/philosophical belief systems. Confessional schools are allowed to express their own denominational preferences in this respect.

IV. RELIGIOUSLY MOTIVATED BEHAVIOUR IN SCHOOLS

General

As with the topics previously discussed, the legal regime with regard to religiously motivated behaviour in schools differs according to whether it takes place within a public school or a private confessional school.

Private schools can be freely established – though in order to be financed and recognised, they need to comply with many requirements and criteria. They have the liberty to give shape to their reli-

²³ See below, Section IV.

gious identity through confessional education and in the way they deal with the curriculum – though they must offer the same topics and standards. They enjoy a large degree of freedom in their personnel policy, where hiring and firing in relation to the confessional identity of the school is concerned. Likewise, they enjoy a degree of liberty in their admission policy for pupils in relation to the confessional identity of the school.

In the areas notably of admission policy of pupils and the hiring and firing of personnel, political sensitivities exist as to the degree of liberty which school authorities enjoy. These areas are not covered by education legislation but by the Equal Treatment Act – enacted in 1994 after a process of ten years of social and parliamentary debate. Even after its enactment, the issue has never completely been out of attention, and concrete cases – whether or not they result in cases presented to the Equal Treatment Commission or courts – are capable of instantly stirring public debate. The issue of admission of pupils in confessional schools has acquired a new – and highly sensitive dimension – in the light of integration policies and debates (since public schools are not allowed to select pupils and private schools are, especially in view of religion). The issue of personnel policies is slightly less affected by integration debates, but continues to touch a sensitive nerve in society. Recently, a parliamentary initiative bill has been introduced in the Lower House of Parliament with the aim of restricting the freedom of private confessional schools in these policy areas, which no doubt will trigger fierce parliamentary debate.²⁴

Religion within the Framework of Working Conditions of Teachers and Other Staff

Public schools: Dutch neutrality in the public domain does not entail that the public domain must be void of all religious expression. On the contrary, the plurality of religious expressions is respected.

²⁴ *Kamerstukken II*, 2010–2011, 32 476, nrs.1–3.

Where education is concerned, the Constitution states: ‘Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone’s religion or belief’ (Article 23, paragraph 3).

The Equal Treatment Act,²⁵ which is also applicable to education, forbids both the public and private sector to make distinctions between people on the basis of, among other things, religion in a wide area of social activity.²⁶ The general rule is that so-called direct discrimination – discrimination using e.g. religion as a criterion – is not allowed at all. So-called indirect discrimination – i.e., differentiating on the basis of a criterion that in effect leads to discrimination on the basis of, for instance, religion is not allowed either; however, there may be objective justification grounds for such differentiation.

It is not allowed to hire or fire teachers and other staff on the basis of religiously motivated criteria. There is room for religious expression by teachers (such as wearing headscarves or crosses), but teachers must be committed to working in a ‘neutral’ environment, that is, to providing public education. The mere fact that they wear such symbols is not a proof that they do not have such commitment. According to the Equal Treatment Commission – a quasi-judicial institution that delivers non-binding opinions on cases arising under the Act – the issue should be clarified in a discussion between the (aspiring) teacher and the school board.

The refusal of public school authorities to accept the behaviour of male Muslim teachers or other staff to shake hands with women has been regarded as justified by the Equal Treatment Commission. This is a case of a so-called indirect discrimination, not a discrimination based on religion as such, but which may result therein. As part of the ‘values and norms’ and behavioural codes in the school, the school may require the willingness to shake hands with members of the opposite sex and its actual practice. In determining whether or

25 For an English version of the Act of Parliament, see www.cgb.nl.

26 Churches and the religious office do not fall within its scope.

not the Equal Treatment Act has been violated in concrete cases, the precise circumstances of the case play an important role.

Private confessional schools: Confessional organisations are not exempted from the scope of the Equal Treatment Act, but the Act recognises the right of confessional organisations (including schools) to take religion into account in hiring and firing personnel. Thus, the Act tries to balance the fundamental rights of equal treatment on the one hand and freedom of religion, education, and assembly on the other hand.

The confessional school authorities determine the confessional character of the school, which may range from strict to quite liberal. Generally speaking, school authorities may also determine whether they have an open admission policy for pupils and require loyalty to the religious denomination for specific staff only or for all staff. However, in determining this, they need to keep within the margins of the law, e.g., the Equal Treatment Act. This means at least that they cannot act at will, but must carry out their policy in a consistent manner. They must also be able to clarify the connection between their religious identity and the standards that they apply.

The exception to the prohibition of discrimination as laid down in paragraph 1 is set out in Article 5, paragraph 2, under c of the Equal Treatment Act. It states that paragraph 1 does not apply to:

‘c. the freedom of an educational establishment founded on religious or ideological principles to impose requirements on the occupancy of a post which, in view of the institution's purpose, are necessary for it to live up to its founding principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.’

In practice, the issues that arise in confessional schools with regard to teaching and other staff are that of a change of religion or denomination, homosexual practice, divorce or remarriage, living together without being married, or, more generally speaking, behaviour that does not fall in line with the school's ethos. The question often comes down to the interpretation of the clause in the quoted subsection as to ‘the sole grounds’ and, connected to that, the issue of how

far into a teacher's or other staff member's private life the loyalty requirements may stretch; or, from the perspective of the school: how it can uphold its credibility through its personnel and in its functioning. Here, as in the case of public schools, in practice the circumstances of the case are quite important; in both areas, many cases in point exist.

Religious Expressions by Pupils

In the domain of religious expressions by pupils in education too, a distinction must be made between public and private confessional education.

Public schools: To start with, pupils in public schools may not be admitted or refused on the basis of religion. Furthermore, the Constitutional provision stating: 'Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief' (Article 23, paragraph 3) is relevant to religious expressions of pupils, too. The specific legislation which applies in this field is, again, the Equal Treatment Act, which forbids direct discrimination in the relevant field and only allows objective justification grounds for indirect discrimination.

In practice, this means that religious expressions, symbols, or garments used by pupils are no problem. Sometimes schools take the religious needs of pupils specifically into account by, for instance, providing a prayer space for Islamic students, even though they are not obliged to do so. Where garments are concerned which completely cover the female pupil's face, the Equal Treatment Commission set up under the Equal Treatment Act has accepted justification grounds in pedagogical and communicational situations.

Private confessional schools: We have already seen that confessional school authorities determine the confessional character of the school, which may range from strict to quite liberal. This may include the determination of the admission policy (ranging from quite open to quite strict). In upholding their policy they at least cannot act at will, and must apply their policy consistently.

In the absence of Islamic schools in their particular neighbourhood, Islamic parents often choose a school of a Christian denomination for their child and they are generally welcomed by the school.²⁷

The system with the Equal Treatment Act as a legal framework which covers many cases in the area of religious symbols in public places is also applicable to domains other than education. The weighing of justification grounds is obviously not a completely technical or value-neutral operation. This may lead to the fact that similar cases are assessed differently. It also necessitates critical analysis and debate on the arguments and outcomes of specific cases.

Religious Symbols in Schools

For the regime with respect to religious symbols in schools, again, the distinction between public and private schools is of overriding importance. As to public schools, no instances are known where religious symbols led to problems. This may well be explained by the difference between public and private schools and the wide availability of private, i.e. confessional, schools.

As to confessional schools, the issue of religious symbols in schools has not given rise to problems either. It is not very likely that a confessional school would be interested in religious symbols of another religion. Where its own religious denomination is concerned, the school is perfectly allowed to display the symbols of it.

As to religious activities like the dedication of a school building, this is perfectly possible with regard to or in a denominational school of the denomination in question, but is hard to imagine with respect to a public school.

²⁷ For a discussion, among other things, of the consequences of this in terms of religious pedagogic, see *Henk Witte, Bert Roebben, and Sophie van Bijsterveld*, 'Die Niederlande', in Karl Graf Ballestrem, Sergio Belardinelli, Thomas Cornides (Hrsg.), *Kirche und Erziehung in Europa*, VS Verlag für Sozialwissenschaften/GWV Fachverlage GmbH (Politik und Religion), Wiesbaden 2005, p.179–201.

V. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Religious Holidays

As to religious events, such as those of the religious calendar, it is clear that confessional schools pay attention to these in the perspective of their own denomination. They may do so, of course, where religious events of other religions or denominations are involved as well. For public schools, this may be the case as well, albeit that they do not operate from a religious perspective themselves.

In the organisation of the school calendar, obviously all schools, whether denominational or not, follow the general calendar which incorporates Christian feast days like Christmas, Easter, and Whitsun as holidays.

Private confessional schools may be confronted with the wish of teachers or staff to take a day off on their religious holiday, not being the religious holiday of the denomination of the school (although this might not occur very often). In such cases, this must be solved on the basis of ordinary labour law, taking into account that the wish for a holiday is religiously motivated.²⁸ The same situation applies for teachers or staff in a public school.

For a private confessional school, the issue of specific denominational holidays which are not part of the Dutch cultural calendar may be more prominent at the level of the school itself than at the level of individual employees.

Opting out of School Activities – General

The general framework for opting out is provided by Article 41 of the Primary Education Act, which applies to both public and private

28 For taking a day off on a religious holiday in private employment relationships, see HR 30 maart 1984, NJ 1985, 350 (the case concerned the assessment of whether a justified reason existed for an instant dismissal of an employee who took a day off for religious reasons, after having been refused this by her employer).

schools. Paragraph 1 states that the pupils take part in all educational activities designated for them. Paragraph 2 states that the school board is authorised to provide exemptions for particular educational activities at the request of the persons responsible for the child. This is only possible on the grounds specified by the school board, which also determines which alternative activities will be required in such a case. It is possible that no such exemption is foreseen. With respect to the issue of opting out, the Equal Treatment Act can also play a role.²⁹ The perspective of the Equal Treatment Commission is solely determined by this Act, that is, equal treatment.

Opting out of Religious Instruction or Instruction about Religion

With regard to religious instruction in the public school, there is only the possibility of opting in. For private confessional schools, opting out of religious instruction is not the most natural thing as it plays an important role in the school's identity; however, the competent authorities of the school can decide to enable such opting out (for instance, if the school admits pupils of other religions or religious denominations than its own).

Religiously Motivated Home Schooling

According to the Compulsory Education Act [*Leerplichtwet*], each child must be enrolled in a school between the age of 5 and 18. This is the responsibility of the persons responsible for the child. Articles 5 and 5a of the Compulsory Education Act create the possibility for exemption. Grounds are the physical or mental inability of the child, being enrolled in a school abroad, or the leading of a travelling life. Article 5 sub b states as a ground for exemption: the fact that those responsible for the child have severe objections against the denominational character of all schools that is offered within a reasonable

²⁹ See for an advisory report of the Equal Treatment Commission, http://www.cgb.nl/webfm_send/389.

distance of the school or, should they not have a fixed residence, against all schools in the Netherlands in which the child could be enrolled.³⁰ A requirement is that the child has not visited a school the year prior to the application. The Act also specifies the procedure which should be followed to obtain an exemption (i.e., application to mayor and aldermen of the municipality). Home schooling is rare in the Netherlands.³¹

VI. CONCLUDING REMARKS

The analysis presented has highlighted the importance of the distinction between private (confessional) education and public education. The relevance of this distinction for issues relating to religion in education is paramount. The distinction permeates practically all these issues.

The popularity and importance of confessional education in the Netherlands cannot be underestimated. At the same time, religion is important in public schools as well, both in terms of education about religions and as regards the facility of religious instruction on a voluntary basis.

This system is the product of two hundred years of development and constitutes one of the most fascinating chapters in Dutch constitutional history. In a way, the system and its specific features have always been subject to discussion and have always been challenged. This is also currently the case. Changing ideas on education, on inte-

30 The paragraph reads in Dutch: "... zij tegen de richting van het onderwijs op alle binnen redelijke afstand van de woning – of, indien zij geen vaste verblijfplaats hebben, op alle binnen Nederland – gelegen scholen onderscheidenlijk instellingen waarop de jongere geplaatst zou kunnen worden, overwegende bedenkingen hebben."

31 For recent surveys, see *H. Blok, S. Karsten*, *Vervangend onderwijs aan kinderen van ouders met een richtingbezwaaar*, Amsterdam: SCO-Kohnstamm Instituut 2008 (<http://www.sco-kohnstammstituut.uva.nl/pdf/sco802.pdf>); and *H. Blok, B. Triescheijn, S. Karsten*, *Vervangend onderwijs aan kinderen van ouders met een richtingbezwaaar; aanvullend onderzoek*, Amsterdam: SCO-Kohnstamm Instituut 2010 (<http://www.sco-kohnstammstituut.uva.nl/pdf/ki840.pdf>).

gration and religious pluralism and on state intervention all have an impact on the education system as well.

ANNEX

Article 6 of the Constitution:

- “1. Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.
2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders.”

Article 1 of the Constitution:

“All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.”

Article 23 of the Constitution:

- “1. Education shall be the constant concern of the Government.
2. All persons shall be free to provide education, without prejudice to the authorities’ right of supervision and, with regard to forms of education designated by law, their right to examine the competence and moral integrity of teachers, to be regulated by Act of Parliament.
3. Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone’s religion or belief.
4. The authorities shall ensure that primary education is provided in a sufficient number of public-authority schools in every mu-

nicipality. Deviations from this provision may be permitted under rules to be established by Act of Parliament on condition that there is the opportunity to receive the said form of education, whether in a public-authority school or otherwise.

5. The standards required of schools financed either in part or in full from public funds shall be regulated by Act of Parliament, with due regard, in the case of private schools, to the freedom to provide education according to religious or other belief.

6. The requirements for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit.

7. Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools. The conditions under which private secondary education and pre-university education shall receive contributions from public funds shall be laid down by Act of Parliament.

8. The Government shall submit annual reports on the state of education to the States General.”

RELIGION IN PUBLIC EDUCATION – POLAND

JÓZEF KRUKOWSKI

I. GENERAL BACKGROUND

1. Facts and Figures

A. Demography

According to the records provided by the Central Statistical Office (publication issued in 2010), the population of Poland is approximately 38,135,900¹.

In terms of religion, Polish society is pluralistic. There are 163 religious denominations in Poland. In terms of numbers, the Catholic Church holds the first position (35,104,500), the Orthodox Church is second (504,600) and Protestant Churches come third (158,600). There are also Muslim religious communities (2,700), Jewish religious communities (1,400), as well as new oriental and western religious communities (9,100). The Catholic Church comprises 92.1 % of the total population. The Catholic Church in conjunction with all registered religious communities represents 94.7 % of the population. The percentage of people who do not belong to any of the registered religious communities amounts to 5.3 % of the total population². This group includes atheists, agnostics and people who believe in God but do not identify with any of the registered religious communities.

1 Główny Urząd Statystyczny. Wyznania religijne. Narodowe i etniczne mniejszości w Polsce 2006–2008 (Central Statistical Office. Religious Denominations. National and ethnic minorities in Poland 2006–2008), Warszawa 2010, p. 17–18.

2 Ibidem.

B. State and Church Relations

In Poland, religious instruction in public education constitutes one of the elements of the constitutional system of State-Church relations, which in the 20th century was subject to radical changes³. During the interwar period (1918–1939), according to the Constitution of 1921, religious instruction in public schools was a National Curriculum subject, in accordance with the denominational affiliation of students. During the Communist dictatorship (1945–1989), the system of State-Church relations was based on the Soviet Union's hostile separation rule; religion was removed from public schools, and the whole system of education was based on the Marxist-Leninist ideology. Transformation of the Polish political system, initiated in 1989, led to the transition from an atheistic totalitarian communist state to a democratic secular state. Within this new political regime, religious instruction in public schools was guaranteed by the Constitution of Poland (1997),⁴ the Concordat between the Holy See and Poland of 1993 (Art. 12)⁵ and ordinary acts defining the State's relation to individual churches and other religious communities⁶.

The Constitution of Poland guarantees the right to freedom of conscience and of religion in an individual (Art. 53) as well as an institutional dimension (Art. 25)⁷. The key principles of State-Church relations are as follows: equal rights for churches and other religious communities; the autonomy and independence of State and Church, each in their own domain; the impartiality of public authorities towards religious, worldview and philosophical convictions, while ensuring the freedom to manifest those convictions in public

3 *J. Krukowski*, *Polskie prawo wyznaniowe* (Polish Law on Church-State Relations), 4th edition, Warszawa 2008, p. 35–44.

4 *Dziennik Ustaw* (Journal of Laws), 1997, No. 78, item 483.

5 *Dziennik Ustaw*, 1998, o. 51, item 318.

6 In Poland, the legal situation of 11 churches and other religious communities is regulated by individual acts, while the situation of 152 has been regulated by entering them into a Register kept by the Minister of Internal Affairs and Administration, on the basis of the Act on the Guarantees of Freedom of Conscience and of Religion of 1989. Cfr: *J. Krukowski*, *op. cit.*, p. 79–87.

7 Cfr: *J. Krukowski*, *op. cit.*, p. 60–88.

areas; the cooperation between State and Church for the good of man and for the common good (Art. 25). Religious instruction in public schools is the accomplishment of the principle of cooperation between State and Church in the framework of respecting the parents' rights to educate their children within the conception of morality and religion compatible with their own convictions.

The guarantees concerning religious instruction in public schools, which are included in the Concordat as regards the Catholic Church (Art. 12), have been expanded, through relevant acts, to other religious communities, whose legal situation is regulated by law.

C. Numbers of Private and Public Schools in the Country

In Poland, in the school year 2009/2010 there were 26,970 public schools and 2,080 non-public schools with the public status. In total 14,072 primary public and non-public schools with public status had 427,804 students; 13,089 lower secondary schools (*Polish: gimnazja*) – public and non-public with public status – educated 949,362 students; and 7,349 general secondary schools – public and non-public with public status – had 459,269 students⁸. The total number of schools with public and non-public status without religions instruction was 211⁹.

D. Description of the General School System

In Poland the public educational system is pursuant to the provisions of the Education Act of 7 September 1991¹⁰. This system embodies: pre-school education and three-tiered school education: 1) primary education (6 years); 2) lower secondary school education (*Polish: system gimnazjalny*) (3 years); 3) higher secondary school education

8 According to the information provided by the Ministry of Education, <http://www.cie.men.gov.pl>; 15.10.2010.

9 The information provided by *Pawel Höffner*, an officer in the Ministry of Education, 15.10.2010.

10 *Dziennik Ustaw*, 1991, No. 95, item 425; 2004, No. 256, item 2572 (consolidated text).

(3 years) – high schools, technical colleges, vocational schools (*Polish: szkoły ponadgimnazjalne*). Compulsory education is required for children and youth who are aged 6 to 18. It is also required for foreigners, with no difference from Polish citizens in this respect. Public education is free of charge. The management of schools is through the self-governments. An educational part of the general subvention is transferred to the self-governments' budget for managing the schools. Non-public schools also collect tuition fees.

2. Religion as a Subject of Instruction and Its Substitutes

A. Religious Instruction

The majority of school children in Poland attend public schools. Religion has been a school subject on the Polish National Curriculum since 1 September 1990. It was introduced on the basis of the circular of the Minister of Education of 3 August 1990; this was then stabilised on the basis of the Education Act of 7 September 1991 (Art. 12) and the Ordinance of the Minister of National Education of 14 April 1992 on the organisation of religious instruction in public schools¹¹. The motives for this system of religious instruction in Poland are the following: respect for the parents' right to educate their children in the domain of morality and religion and for the universal ethical and Christian values ingrained in the cultural heritage of the nation.

The regulations concerning religious instruction in public schools have been a subject of controversy in the mass-media. Therefore, at the request of the opponents of religious instruction in public schools, the Ombudsman has filed several complaints to the Constitutional Court. However, these interventions have had poor results¹².

11 Dziennik Ustaw, 1992, No. 36, item 155.

12 The first complaint filed by the Ombudsman concerned the reinstatement of religious instruction on the basis of the circulars of the Minister of National Education of 1990. However, on 20 January 1991 (case No. K 11/90), the judgement of the Constitutional Court dismissed the complaint, referring to art. 2 and Protocol no. 1 of the European Convention on the Human Right and Fundamental Freedoms, which concerns the re-

Religious instruction is provided by public pre-schools and primary schools on the parents' (or legal guardians') request. In lower and higher secondary schools, either parents or students themselves, once they reach the age of majority, may declare whether they will follow religious instruction. At pre-school level, religion has been a subject of a complaint by the Ombudsman to the Constitutional Court. However, the Court in its judgment of 20 April 1993 stated that conducting religious instruction is consistent with the Constitution of Poland¹³.

The parents and students may express their request concerning participation in religious instruction to the school headmaster. The Constitutional Court, in its judgement of 30 January 1991, declared that the parents' statement does not infringe upon the freedom of conscience and religion because "also a non-believer may submit such a statement, whereas a believer may relinquish it."¹⁴

B. Confessional Teaching

School authorities are obliged to organise religious instruction at pre-school level and in public schools in accordance with their denominational affiliation. In this respect the Polish Constitution states that: "Parents have the right to provide their children with moral and religious education in accordance with their own convictions" (Art. 53, 3); "Religion of a church or of another religious community whose legal situation is regulated by law, may be a school subject, however

specting by the education system of the parents' right to educate their children in the domain of morality and religion in accordance with their own convictions. On a second occasion, the Ombudsman filed a complaint against the Ordinance of the Minister of National Education of 14 April 1992, in which he challenged: introducing ethics as a school subject alternative to religious instruction, the qualifications of religious instruction teachers, and saying prayers by the students outside lessons of religious instruction. The Judgement of the Constitutional Court, on 20 April 1993 (case No. U 12/92), declared the main objections of the Ombudsman as unfounded, stating that the Minister did not exceed his legal competences.

¹³ Judgement of the Constitutional Court, case No. K 11/90.

¹⁴ Judgement of the Constitutional Court, case No. U 12/92.

the freedom of conscience and of religion of other persons may not be infringed upon” (Art. 53, 4).

Not all religious communities are interested in enjoying the right to provide religious instruction in public schools. Therefore, in the school year 2009/2010, students who are members of 24 religious communities took religious instruction. Those communities were: The Catholic Church, The Polish Autocephalous Orthodox Church, The Evangelic-Augsburg Church, The Methodist Church, The Evangelic-Reformist Church, The Polish Catholic Church, The Free Christians Church, The Church of Christ, The Baptist Christians Church, The Church of the Mariavites, The Evangelical Christian Church, The Seventh Day Adventists Church, The Church of Pentecost, The New Apostolic Church, The Church of God in Christ, The Christian Reformed Church, The Church of Evangelical Christians, The Polish Church of Free Christians, The Community of Christian Churches, The Pentecost Communities, The Evangelical Brethren Church, The Christian League, The Union of Jewish Confessional Communities, The Islamic League¹⁵.

As Polish society is religiously pluralistic, a need arises to specify the number of students who should be provided by the public school with religious instruction, according to their denominational affiliation. The Ordinance of the Minister of National Education of 14 April 1992 specifies this issue as follows:

- Pre-schools and schools are obliged to organise religious instruction for a group of no less than seven students of a given class or children (of a pre-school group). For a smaller number of students in a given class or pre-school groups, religious instruction should be organised in inter-class and inter-pre-school groups;
- If less than seven students of a given denomination or of several different denominations wish to attend religious instruction in a given school or pre-school, the management of this school or preschool shall organise, in consultation with

¹⁵ Information provided by the Ministry of Education.

the relevant church, religious instruction in an inter-school group or in a catechetical facility out of school. The number of students in such a group should be no less than three.

- If students from schools managed by different authorities are members of one inter-school group or out-of-school (out-of-preschool) group, then those authorities shall determine, through consultation, the rules for managing those groups;
- In particularly justified cases, the authority that manages the school or preschool may organise, using the available financial resources, religious instruction for a given denomination in a different manner than the one described above (clauses 1–3).

The purpose of the above rules is to enable religious instruction for students who belong to minority religious communities, which, within the whole school, or even in the whole town, have relatively few students.

Students in school classes and those in catechetical facilities organised through consultation with the school authorities are to be provided with two, or, at least one hour of religious instruction a week.

The above rules of organising religious instruction are also applicable to the head teachers of correctional facilities for young offenders and juvenile shelter homes¹⁶.

C. Religious Studies

In the Polish education system there is no specific subject called “Instructions on Religions” or “Religious Studies” However, basic

¹⁶ Ordinance of the Ministry of Justice of 14 September 2001 on the detailed regulations of participation in lessons of religious instruction and religious practices, and the organisation of religious practices in correctional facilities for young offenders and juvenile shelter homes; *Dziennik Ustaw*, 2001, No. 106, item 1157.

information about different religions is introduced through the teaching of other subjects (cfr. E).

D. Ethics

Ethics, as a school subject, is stipulated in the Polish educational system. The Ordinance of the Minister of Education of 14 April 1992 contains the following rules:

- The school shall organise lessons of ethics, based on the National Curriculum which has been admitted for use at school on the terms specified in the Education Act, for those students whose parents express such a wish, or who themselves express it.
- Depending on the number of students who declare their participation, classes of ethics may be organised pursuant to the terms applicable to religious instruction.
- The school is obliged to provide, at the time when classes of religious instruction or ethics take place, supervision or educational activities for those students who do not take religion or ethics at school.

Ethics handbooks are prepared by centres interested in secular education, and are then approved by the Minister of Education. Within the basic programme, the teaching of ethics is provided at primary, lower secondary and higher secondary level.

Ethics classes are supposed to have an educational character; so for instance dialogue should be conducted in such a way that it supports the process of searching for and revealing or “discovering” values.

Poland does not lack teachers of ethics. Every teacher qualified to be a form teacher also holds qualifications to teach ethics at the primary-school level. On a higher level, only teachers of humanities subjects, who have been adequately trained, may teach ethics. In fact, there are more teachers ready to conduct classes than are actually needed.

The teaching of ethics is realised on the basis of rules analogous to those which are applicable to religious instruction. The school management is obliged to provide the teaching of ethics when parents, or students themselves – once they reach the age of majority – express such declaration. Difficulties in the practical organisation of ethics classes result from the lack of students – within a given class, school, or even the entire town – interested in taking lessons in ethics.

Ethics, just like religious instruction, is an optional subject within the school education system. A question arises: why did the Polish legislator not provide for obligatory participation in lessons of ethics for those students whose parents, or the students themselves, once they have come of age, did not wish to participate in religious instruction? The following arguments are presented as an answer to this question: 1) the legislator did not wish to introduce a formal division of students into believers – who take part in religious instruction, and non-believers – who take part in lessons of ethics; 2) the legislator wished to take into account the fact that there are religious communities which are neither interested in religious instruction, nor in the teaching of ethics at public school (e.g. Jehovah's Witnesses), and they are likely to boycott them; 3) the legislator did not wish to exclude the opportunity of participation in lessons of ethics for those students, whose parents – or the students themselves – expressed the wish to participate in classes of religious instruction and ethics.

In fact, there is a small number of parents and students interested in the teaching of ethics in public schools in Poland. In the school year 2009/2010 lessons of ethics were conducted in 948 public schools in the whole country¹⁷. This state of affairs is subject to severe criticism coming from the secular mass-media, which insist on teaching ethics with no religious motivation, as well as to claims from some bishops of the Catholic Church who argue that ethics

¹⁷ The information provided by Grażyna Płoszczajska, an officer in the Ministry of Education.

should be introduced into the school education programme as an obligatory subject for students who do not participate in religious instruction. One should note, however, that the above-mentioned demands are not supported by any rational arguments. This is so because the students who do not participate in lessons of ethics in public schools are provided with educational activities, within which the programme of ethics is realised. Therefore, the students whose parents did not wish for them to participate in religious instruction or ethics classes, are not deprived of the school's educational influence.

The issue of ethics in public schools in Poland has been the subject of a judgement by the European Court of Human Rights in Strasbourg¹⁸. A Polish citizens filed a claim against Poland due to difficulties that they encountered in the realisation of their wish for the school to organise lessons in ethics for their son. The Court, in its judgement of 15 June 2010, stated that the Polish education system provides guarantees for the teaching of ethics for interested persons, while the obstacles in organising lessons of ethics for one particular student arose not due to the lack of corresponding legal regulations but due to the fact that they have not been applied in this particular case.

18 The European Court of Human Rights, Case of *Grzelak v. Poland*, Strasbourg 15 June 2010, Application no. 7710/02, <http://cmiskp.echr.coe.int/tkp197/view.asp>; 15.10.2010. The Court decided: "Both subjects (religion and ethics) are optional and the choice depends on the wish of parents or pupils, subject to the proviso that a certain minimum number of pupils were interested in following any of the two subjects. The Court notes that it remains, in principle, within the national margin of appreciation left to the States under Article 2 of Protocol No. 1 to decide whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted... The Court observes that system of teaching religion and ethics as provided for by Polish law – in its model of application – falls within the margin of appreciation as to the planning and setting of the curriculum accorded to States under Article 2 of Protocol No. 1".

E. Religion within the Framework of Classes in Literature, History, Philosophy, Arts and Languages

According to the curriculum in force since 1 October 2009, elements of religious studies are introduced to the students through lessons in subjects such as: history, literature, philosophy, and particularly civil education, which includes information about religious denominations and ethnic minorities¹⁹.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. Religion within the Framework of Working Conditions of Teachers and Other Staff

Teachers of religion are employed in preschools or public schools on the basis of a written, personal referral to a given preschool or school, issued by a diocesan bishop or the head of another religious community. A revocation of the referral is equal to a loss of qualifications to conduct religious instruction in a given preschool or school by the teacher. However, he or she may teach a different subject.

A teacher of religious instruction is employed by the director of the school or pre-school. Whereas a teacher who gives lessons to an inter-school group or within out-of-school (out-of-pre-school) tuition, is employed by the director designated by the responsible authority.

Teachers of religious instruction are employed pursuant to the Teacher's Charter (26 January 1982) and the National Education Act (7 September 1991). They hold the teacher's qualifications to keep the class register, to write down the final mark in religious instruction/ethics on the school certificate, to receive remuneration and social care on the terms applicable to teachers of other subjects. A

¹⁹ Ordinance of the Minister of Education of 23 December 2009; Dziennik Ustaw 2009 No. 4, item 17.

teacher of religious instruction is a member of the faculty; however, he may not be a qualified educator.

The pedagogical qualifications required from teachers of religion are determined in the agreement between The Minister of National Education and the Conference of Polish Bishops and the representatives of other religious communities²⁰.

2. Religious Symbols at School

In Poland, hanging a cross or other religious symbols in school classrooms is not obligatory. It is, however, possible to place a cross there – as a symbol of the Christian religion and national culture; or a symbol of another religious denomination, provided that this is the parents' or students' (once they have reached the age of majority) wish. It is an expression of realising the Constitutional principle of respect for the right to free manifestation of one's religious convictions in public areas.

3. Religious Garments

In Poland there are no problems connected with religious garments being worn by teachers of religious instruction who are clergymen or members of a monastery. Neither are there any problems with religious garments being worn by the students, especially – Muslim girls. So far, there has been no need for the public school authorities to take any position towards this kind of problem.

20 See Agreement between the Conference of the Polish Episcopate and the Minister of Education of 6 September 2000 on the qualifications required from teachers of religious instruction (*Dziennik Urzędowy Ministra Edukacji Narodowej* – Journal of Ministry of Education, 2000, No. 4, item 20); Agreement between the Polish Ecumenical Council and the Minister of Education of 4 July 2001 on the professional qualifications required from teachers of religious instruction from churches associated in the Polish Ecumenical Council (*Dziennik Urzędowy Ministra Edukacji Narodowej* – Journal of Ministry of Education, 2001, No. 3, item 18).

4. *The Possibility of Benediction of School Buildings*

In Poland, the benediction of school buildings is not prohibited. In practice, there are cases of such buildings being blessed by clergymen, if the parents and the management of a given school express such a wish. It is consistent with the provision of Art. 25, clause 2 of the Polish Constitution.

5. *Special Issues, e.g. Religiously Motivated Behaviour of Pupils, Teachers and the Staff in School, Prayers in Public, Prayer within the Framework of Classes or Other School Events, Religious Services*

In Poland, students may say a prayer in school classrooms before and after the classes – in these public schools, where parents or students themselves (once they have reached the age of majority) expressed such a wish towards the school director. It is an expression of the public authorities' respect for each person's right to demonstrate their beliefs in public sphere. The Ordinance of the Minister of National Education of 1992 reads as follows: "Saying prayers at school should be an expression of the students' common aspirations, as well as – of tact and sensitivity on the part of the teachers and form teachers".

In the period of Lent, students, who participate in religious instruction "are provided with three subsequent days of holiday from school classes, in order to take part in the retreat, if the Church or the other religious denomination to which they belong, obliges its members to do this." Retreat takes place beyond school buildings. The entities obliged to respect these guarantees are the school headmasters and teachers.

In the period of Christmas, in accordance with a Polish common custom, festive "wafer" (*Polish: opłatek*) meetings take place in schools, during which the students and teachers exchange Christmas greetings while sharing a Christmas wafer and sing Christmas carols. The participation in those meetings – both by the students, as well as the teachers – is entirely optional.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

1. Religious Holidays: the Possibility of and Conditions for Taking Days off

The respect for religious holidays as days free of work in public institutions, and free of school, is connected with protecting the freedom of religion in the public sphere. Polish law guarantees the respect for the right of believers of the Catholic Church and of other religious communities, whose legal situation has been regulated, to celebrate their holidays.

A catalogue of holidays of the Catholic Church is included in the Concordat of 1993 (Art. 9), while of other religious communities – in individual statutes. The Act on Guarantees of Freedom of Conscience and of Confession ensures to persons belonging to churches and other religious communities whose holidays are not public holidays, the right to a holiday from work or school, if they wish for such a holiday – the adults themselves, and minors – on their parents' or their guardians' request. The course of action to be undertaken by the students in order to be granted a holiday from school, is specified in the Ordinance of the Government²¹. Students may submit a request for granting them a holiday from school no later than 7 days prior to the holiday. They may submit this request at school, in the manner established at a given school, also at the beginning of the school year. It is a duty of the person granting the holiday to define how the student shall make up for his or her lack of educational accomplishment resulting from the holiday.

21 Ordinance of the Ministers of Labour and Social Policy and of National Education of 11 March 1999 on holidays from work or school for persons who are members of churches and other religious communities for the celebration of religious holidays that are not public holidays; *Dziennik Ustaw* 1999, No. 26, item 235.

2. Opting out of Religious Instruction or Instruction about Religions

In fact, in Poland there are no problems connected with being released from religious instruction or instruction about religions at school because participating in religious instruction is optional, and the curriculum does not include a separate school subject on religions.

Parents or students themselves, once they reach the age of majority, who have submitted a declaration on the subject of their participation in lessons of religious instruction or ethics, may submit another statement, in the course of the school year, stating their withdrawal from continuing this participation. Should they do this before their performance is assessed, they shall not be given a grade in religious instruction/ethics on their school certificate. Beginning from the school year 2009/2010, the grade in religious/instruction is included in the grade point average on the school certificate – for those students, whose parents, or they themselves, once they have reached the age of majority, have expressed the wish to participate in religious instruction.

3. Opting out of Physical Education (e.g. Co-educational Swimming Instruction for Muslim Girls)

In the Polish public education system there are no problems with students being granted a release from physical education classes or for Muslim girls being granted a release from co-educational swimming classes.

4. Opting out of Biology (e.g. due to Believing in Creationism)

So far, there have been no problems in Poland regarding the students being released from biology classes, e.g. from being taught about the evolution theory for the benefit of creationism.

JÓZEF KRUKOWSKI

5. Religiously Motivated Home-Schooling

So far, there has been no need in Poland for school authorities to grant permission for establishing home schools for reasons justified by the choice of religion.

RELIGION IN PUBLIC PORTUGUESE EDUCATION

ANDRÉ FOLQUE

I. GENERAL BACKGROUND

1. Facts and Figures

It is estimated that about 10,600,000 people¹ live in Portugal (51.7 % female, 48.3 % male). Demographical searches show **four main trends**:

- (a) An increasing longevity (life expectancy at birth has risen to 75.5 for males and 81.7 for females),
- (b) A decreasing birth rate, as the total fertility rate is around 1.49 children born/woman,
- (c) A significative flow of immigrants which avoid a population decrease² (106,294 Brazilians, 53,494 Ukrainians, 14,053 Moldovians, 19,155 Romanians, 10,448 Chinese, 5,114 Russians and 4,104 Bulgarians) as well as many people from ancient Portuguese colonies in Africa and Asia: Angola (27,619), Mozambique (5,681), Guinea-Bissao (24,391), Cape Verde (51,353), Saint Thomas and Prince (10,627). Many people from Eastern Timor, Macao and the former Portuguese State of India – Goa, Damao and Diu – have dual citizenship,³ and others are obtaining naturaliza-

1 All these figures are from *Maria João Rosa/Paulo Chitas*, Portugal em Números (2010) Lisboa.

2 Between 1993 and 2008, demographical growth is due to immigration, and births overlap deaths by just 100,000, which means an average of 6,000 births p.a. over the death rate, *Maria João Rosa* (2010), p. 13.

3 Only legal foreign residents (2008), according to the *Foreign and Frontiers Service*, reach 4.1 % of the population.

tion (in 2008, 9,926 Cape Verdeans, 8,391 Brazilians, 4,589 British, 4,463 Angolans and 4,449 Moldavians).

(d) A very different age structure with just 16.5 % of people 0–14 years and 17.3 % over 65 years old.

In 2007, there were 1,670,763 students,⁴ including:

- 247,826 children in nurseries
- 469,831 in 1st cycle
- 240,199 in 2nd cycle
- 375,978 in 3rd cycle
- 336,929 in secondary schools

The religious map of Portugal shows a majority of Catholics across the country. Other denominations are mostly centred in Lisbon and there are very small communities of Jews («marranos», descendants from those who resisted expulsion as an alternative to forced conversion in the early sixteenth century). Some English families settled in Oporto and Madeira for business reasons; these explain the presence of traditional Anglican communities. In other coastal cities some protestant communities were set up during the nineteenth century, and these were to survive their founders (Figueira da Foz, Aveiro, Setúbal, Faro).

The number of Catholics did not decrease between the first modern census (1900) and the latest one (2001). However, the Catholic average is much smaller.

Roman Catholics, of those who answered this optional question in 2001, were around 7.4 million (84.5 %) but growth has been slow as to those who declared themselves non-believers or even atheists (225,234 in 1991, 342,987 in 2001). Forms of Eastern Orthodoxy went up from 2,564 in 1981 to 11,319 in 1991, and 17,443, in 2001. Other Christian numbers rose from 116,423 in 1991 to 171,046 ten years later. Those who declared themselves Muslims were 9,134 in 1991 and 12,014 in 2001. Hindus are about 5,000, Buddhists, some

⁴ www.min-edu.pt.

8,000. The Jewish population is decreasing: 3,519 in 1991, and just 1,773 ten years later.

Those who did not answer or did not choose any religious profile were 1,476,748 in 1991 but no more than 786,822 in 2001.

As in other countries, those who simply declare themselves Roman Catholics are much more numerous than those attending mass every Sunday and other holy festivals (about 20 %, with much more weekly attendance in the north than in the south). Large crowds in Fatima do not evidence any regular commitment. In fact, many of them do not attend church. This gap is not as high as other religious groups and I guess there is no gap at all as to non-believers.

Nevertheless, more than half of marriages, every year, are Catholic which is remarkable considering that a second Catholic marriage is allowed only for widows and for those who obtain a marriage annulment in the ecclesiastical courts.

2. General School System

The Portuguese Constitution, the original text of which is from 1976, ensures freedom of learning and teaching (art. 43, par. 1) as well as the right to open private and social (cooperative) schools (par. 4). On the other hand, on public policies and cultural rights, art. 74 proclaims equality in educational opportunities for all, which includes the public task of providing a basic compulsory education which is free and for everybody (par. 2, a)) and, moreover, the Government must «create a network of public schools to meet the needs of the whole population» (art. 75, par. 1), although it also recognizes and supervises private and social education (par. 2).

A nine-year basic education is mandatory for everyone under 18; it has three cycles:

- 1st cycle (four levels) – 6 to 10 years old.
This aims to develop oral language and a progressive mastery of reading and writing, to attain basic concepts in arithmetic and calculation, to understand the physical and

social environment, and to practise arts, drama, music and sports.

- 2nd cycle (two levels) – 11 to 12 years old.
This seeks to train pupils in the humanities, arts, sports, science, and ethical and civic education, in order to enable children to acquire and interpret information in a creative and critical way.
- 3rd cycle (three levels) – 13 to 15 years old.
This aims at giving a systematic understanding of modern culture and at training children, on the one hand, for work, and, on the other hand, for higher studies.

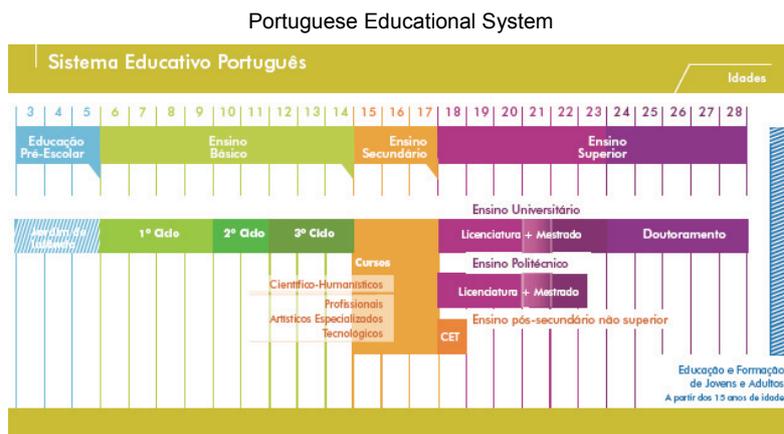
Secondary or high school (on three levels) seeks to prepare students for universities or for jobs, according their skills.

At the age of 15, students must choose one of four branches,⁵ alongside general courses in the Portuguese language, philosophy, one foreign language, physical education and facultative moral and religious education. There had been a plan to establish a subject on personal and social development for those who do not attend religious classes. The fact is that this subject is not available.

There are also occasional programmes offered by vocational schools and a programme called ‘new chances’ with single units designed not to complete cycles but to give a second opportunity for those who did not undertake training at the normal age or left school early.

At all levels there are a small number of specific schools to learn the arts (painting and sculpture, music, theatre).

5 (A) Sciences and Technologies; (B) Social and Human Sciences; (C) Socio-Economic Sciences; (D) Visual Arts.



3. Numbers of Private and Public Schools

The religious orders have lost much of the dominant role they had in education since the dawn of independence as well as through the Portuguese missions in India, Japan, Tibet, South America and Africa.

Throughout the nineteenth century efforts were made to open a network of secondary public schools (*liceus*) in major cities as an essential part of the political programme of constitutionalism.

Although compulsory since 1835, primary education was still largely entrusted to clergy. In 1878, three quarters of people were still illiterate (many more in the countryside than in towns, many more in the south – about 80 % – than in the north – about 45 %).

However, there was a huge improvement in the second half of the nineteenth century.⁶ At the end of the reign of Mary II (1853), there was a school for every 1685 inhabitants and for every 40 square kilometres. Midway through the reign of her grandson, Charles I in 1899, there was a school for every 890 inhabitants and every 15 square kilometres.

⁶ Rui Ramos et al., *História de Portugal*, (2010), Lisboa, p. 529.

This trend suffered a blow with the proclamation of the Republic (5.10.1910), for whose political leaders, ironically, the extension of education was a key objective. By closing convents and monasteries, the government wasted something it did not itself have to offer: schools and teachers.

The enrolment rate, after rising from 22 % to 29 % in the last ten years of the monarchy, stalled around 1920 (at 30 %) – but in the same year adult illiteracy still affected 2/3 of the population.

Between 1911 and 1917 the high schools set up in major cities increased their number of students from 10,640 to 11,827.

This trend weakened thereafter and would not recover until after 1960.

But in 2007⁷ there were 12,510 schools (19.5 % of them private) for 1,670,763 students.

The constitution (art. 43, par. 4) assures freedom for private schools on all levels,⁸ but no public grants are provided, other than in the case of small towns and villages which have no public schools.

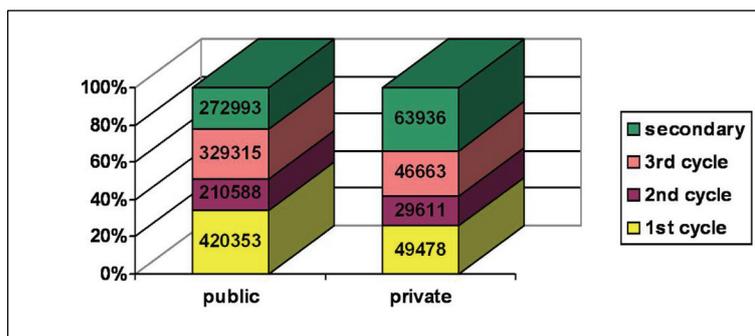
The many Catholic schools (above 200) are much sought after by families as they are prestigious institutions. Every year, national figures for student marks to enter universities are compared. Many Catholic schools are at the top of the rankings.

As we can see from the following table, the number of students in private schools is larger in relation to the higher levels of the education system:

⁷ www.min-edu.pt.

⁸ «The right to establish private and cooperative schools is safeguarded»; see also art. 75, par. 2: «The State recognizes and supervises private and cooperative education, in accordance with law».

RELIGION IN PUBLIC PORTUGUESE EDUCATION



2006/2007 – Planning and Studies Office – Ministry of Education

The reason for this is that parents rely much more on private schools to ensure that their children gain entrance to universities.

II. RELIGION AS A SUBJECT AND ITS SUBSTITUTES

1. Confessional Teaching

As already mentioned, classes in moral and religious education is an option for parents or students themselves if they are 16 years old. Churches are free to programme classes and to select their own teachers who are paid by the State.

More than 460,502 students in public schools chose in 2009/2010 to attend moral and religious education:⁹

- Basic education – 442,292 students (57.6 %).
- Secondary education – 18,210 students (2.4 %).

The figures for 2008/09 were different with many more students at the highest levels:

- Basic education – 60.47 %.
- Secondary education – 10.2 %.

⁹ Educational Statistics Department, Ministry of Education.

All public schools should provide for Religious and Moral Catholic Education. Other churches or religious groups may provide this if a minimum of 10 students are enrolled.

Muslims do not seem particularly interested in confessional classes inside public schools. The mosque seems to be the more appropriate forum in which to learn the Koran. According to latest official figures, only some Evangelical churches and one Baha'i community exercised this right to provide confessional education in public schools. Evangelical classes are attended by nearly 2,500 students.

This was not always the case. We must take two steps back in history to understand the contemporary position of religious freedom. The abolition of the constitutional monarchy in 1910 brought an end to the confessional state. The Republic recognized equal rights for religious minorities – Jews and Protestants – but triggered a wave of measures hostile to Catholics. The republican programme was not constrained to build a neutral State. It sought a secular society, and did not disguise its aim of eradicating Portuguese Catholicism for generations to come.

Church properties were confiscated. Most of them have not been returned since. Religious orders were abolished. Schools suffered a major blow, especially with the expulsion of the Jesuits who provided high quality schooling.



The persecution of many priests was violent, resulting in the death of some.¹⁰

The Separation Act (20.4.1911) established a body in each parish to control worship, heavily restricting freedom of speech for bishops and priests. Terrorist groups, which the police and government pretended not to

¹⁰ In prison, Jesuits heads, ears and noses were carefully measured, because it was considered that followers of St. Ignatius of Loyola had some specific anthropometric characteristics. See the cover photo of *António Araújo, Jesuítas e Antijesuítas* (2004), Lisbon.

see, often attacked Catholic newsrooms. Diplomatic relations with the Holy See were broken. The Great War allowed for some relaxation and slowed down the persecution of Catholics who identified with the monarchy and Spanish interests.

The authoritarian regime, which began on 28 May 1926 with the so-called Telegraph Revolution, seemed unavoidable for many, when public finances, political parties and the people showed themselves exhausted. The mainstream view was not to restore either Manuel II (1889–1932) to throne or Catholic rule. The motto was to restore order and national greatness. The new regime raised the most fatal ambition of republicans: to save too vast a colonial empire for too long. In order to achieve sympathy with the Catholic majority, there began a slow process of reconciliation with Rome.

Nevertheless, the government forbade the ringing of bells to celebrate the Lateran Accords in 1929. Salazar, then Finance Minister, was not overly concerned. He knew that his time was yet to come.

The short-lived military dictatorship (1926–1932) was backed by civilians and was followed by a long civil dictatorship backed by the military (1932–1974).

The Constitution of the *Estado Novo* (1933), which had a nationalist character, kept the separation between church and state, but little by little Portugal informally adopted the Catholic religion not as its official religion but as a healthy national tradition.

Moral and Civic Education classes were introduced as mandatory in all cycles of education.¹¹ However, the subject programme lacked the backing of the Minister of National Education. From his reading of the programme, its purpose was to identify Christianity with the supreme national values of the leader. One of the aims of the programme for the 3rd year could not be clearer: *“The need to transform stubbornness or obstinacy (...) in the habit of keeping quiet while the actions taken seem reasonable, and to accuse him of the habit dispassionately hearing the opinions of others and following*

11 Decree Law 27 084, on 14 October 1936.

faithfully the determinations of others even when opposed to their opinion, as became of him who provided it with authority.”

Criticising public policies created a problem of conscience for several Catholics. Indeed, criticism was seen as political opposition and this as disloyalty both to God and Salazar.

The Concordat signed at the Vatican City in 1940, when Portugal, protected from World War II, celebrated 800 years of national independence, provided as regards religious instruction: «Teaching will be the teaching of Catholic religion and morality in public schools, elementary, middle and complementary, to students whose parents, or those in their place, have not made application for an exemption.» (Article XXI).

So as not to offend the radical republicans Salazar neither revoked the 1911 Separation Act nor removed the equal status accorded to religious minorities. These groups were increasing but they were grateful to the Government. In fact, thousands of European Jews found in Lisbon a safe haven during World War II. Nevertheless, most of them only stayed long enough to cross the Atlantic.

Catholic opposition was hostage to a government that could prevent the nomination of bishops. Only the exile in 1959 of the Bishop of Oporto, D. Antonio Ferreira Gomes (1906–85), and the winds blowing from Vatican II (1963–1965), aroused a collective critical consciousness which sought religious freedom.

Marcello Caetano, Salazar's successor (1968–1974) also adopted a Law on Religious Freedom in 1971.¹² Although in some respects it was a balanced piece of legislation, it did not allow teaching of other religions in public schools; moreover, recognition of new denominations was dependent on them being compatible with the fundamental principles of constitutional order and the interests of Portuguese sovereignty. These led to conflicts with protestant missionaries who denounced the atrocities committed in the Colonial War (1961–1974) and with some Catholic bishops who, with the tacit support of Pope Paul VI, favoured the formation of a local clergy in Africa.

¹² Law 4/71, 21 August 1971.

How did this law survive the return of democracy until 2001?

The democratic regime which was consolidated in 1976, after a troubled period of revolutionary Marxist hegemony, protected a rather ambiguous status quo. No democratic parties wanted a return of the religious position of 1911 – this would have led to a civil war pitting the south against the north and the central districts with the islands (Azores and Madeira), where Catholicism has always had deeper roots in cultural and social life.

The effect was to benefit the Catholic Church in the best of both worlds: retaining some privileges of the authoritarian regime without the counterparts that dictatorship demanded.

For more than twenty years, almost everybody agreed on enlarging rights and freedoms to other religious groups. Two major factors discouraged this. The first was quite simple. Political parties were sure that a new statute law would not benefit them electorally. The second was the fear of powerful and suspicious evangelical groups arriving from Brazil.

As is well-noted by *Jorge Miranda*,¹³ religious discrimination resulted primarily from a failure of the legislature. Freedom should be built not on the impoverishment of Catholic freedom, but on the status of other churches and religious groups (with increasing numbers of Protestants, Hindus and Muslims, most of them having left former Portuguese colonies).

In any case, specific rules would have to be designed as the forms of worship, beliefs and traditions of each religion are quite different. Churches cannot be viewed as football teams or political parties.¹⁴ Specific rules were needed but not privileges. No special rules can be accepted on individual rights and guarantees, but rights

13 Manual de Direito Constitucional, IV (Direitos Fundamentais), 3ª ed., Coimbra, 2000, p. 427.

14 See *Paulo Pulido Adragão*, *A Liberdade Religiosa e o Estado*, Coimbra, 2002, p. 444. Against this position, see *Jónatas Machado*, *O regime concordatário entre a 'Libertas ecclesiae' e a liberdade religiosa*, Coimbra, 1993, pp. 59 e segs.

relating to cooperation between State and Churches¹⁵ do not have to be the same. Equality does not mean uniformity.

Only the entry into force of the Religious Freedom Act (2001) and the new Concordat with the Holy See (2004) met the constitutional design of religious freedom for all.

It is interesting to note that during this period (1976–2004) the very few issues that exercised the Constitutional Court concerned religious and moral education.

The opt-out clause for those not wishing Catholic Education classes remained.¹⁶ In Judgment No. 423/87, the Court overturned the rule that required parents or students to make an express declaration of non-attendance. Later, in Judgment No. 174/93, Court accepted that classes in Catholic Religious and Moral Education could be taught by the classroom teacher himself. It would appear that the separation principle does not go so far as to separate teachers from religion. It seemed to be legitimate, in the light of constitutional norms, that the same teacher has a dual representation.

Religious and Moral Education is now treated in the following acts:

- Decree-Law No. 323/83, of July 5, which implements the Concordat. State and municipalities must ensure the provision of Catholic Religious and Moral Education classes at all levels of education, allowing the Portuguese Episcopal Conference to approve programmes and textbooks and reserving to each bishop the hiring of teachers. These «are part of the faculty of the schools where they work, enjoying the rights and duties inherent in their teaching function» (art. 5., par. 2).
- **Basic Law on the Educational System** (Parliamentary Statute 46/1986, 14 October); art. 47, par. 3 of this states that Catholic religion and moral teaching is optional, in accor-

15 On this way, *Carlos Blanco de Moraes*, *Liberdade religiosa e direito de informação*, in *Perspectivas Constitucionais*, II (1997) Coimbra p. 286.

16 On this issue, *António Duarte Silva/José de Sousa Brito*, *La jurisprudence constitutionnelle em matière de liberté de religion et de croyance*, in *Les aspects juridiques de la liberté confessionnelle*, Conférence Internationale, (2008) Ljubljana, pp. 204.

dance with the constitutional principles of separation between public powers and churches and of non-denominational public education.

- Ordinance No. 333/86 of 2 July, which takes care of the particularities of religious education in the 1st Cycle, and allows the class teacher himself to teach the subject (for children who have asked for it). In any event, teachers should develop good cooperation and work together on the educational programming of school work.
- Decree No. 831/87 of 16 October, which deals with the preparation of Catholic teachers for the subject.
- Ordinance No. 344-A/88 of 31 May, which introduces the need for an explicit statement of the parents to enrol their children in religious classes.
- Decree Law No. 407/89 of 16 November, which provides for a table of teachers of Catholic Religious and Moral Education.
- Order No. 104/89 of 16 November, which authorized experimental classes on Evangelical Religious and Moral Education.
- Joint Order No. 179/97, of 26 July, recognizing the qualifications of teachers of Evangelical Education.
- Decree-Law No. 329/98 of 2 November, making definitive enlargement to other denominations, where a school meets the minimum of ten students (art. 6, No 1).¹⁷
- **Religious Freedom Act**¹⁸ (Parliamentary Statute 16/2001, 22 June) where religious teaching in public schools is granted for prescribed churches (art. 24, par. 1) but not as an alterna-

17 The refusal by the Minister of Education may take place only if «the moral guidance and religious education that is intended to minister contravene the law or public order» (art. 3, par. 3).

18 Whose application to the Catholic Church is residual (art. 58).

tive to other subjects (par. 2).¹⁹ Programmes, teachers training and class materials must be provided by churches accomplishing general education policies.

- A new **Concordat** between the Portuguese Republic and the Holy See, signed on 18 May 2004; art. 19 of this provides: «The Portuguese Republic, within the religious freedom framework and the task of cooperation with parents on their children's education, ensures the proper conditions to provide, in accordance with Portuguese law, Catholic religion and moral teaching in non-superior public schools, with[out] any kind of discrimination» (par. 1).

At a glance, it would seem a quite good system. Children get free classes on their religion at the very same school they attend each day. Teachers are paid by the Government and school programmes are free of public input. The Government fulfils its constitutional task of assisting parents on their children's education (art. 67, par. 2, c)).

However, there are some significant defects in this system:

a) Confessional classes, according to the Religious Freedom Act (art. 24, par. 2), do not constitute an alternative to other classes or subjects. Thus, the choice is between some free time in the playground or one more class in the timetable.

b) Religious Education is the poor relation among subjects: classes are scheduled for lunchtime or late afternoon.

c) A minimum of 10 students in each school, as stated on Decree-Law No. 329/98 of 2 November (art. 6, par. 1) does give few opportunities to many non-Catholic groups. Protestants, Jews and Muslims are not particularly concentrated in certain areas of cities. Only classes of students from various schools would achieve the minimum number required by law.

¹⁹ It means that a school subject entitled Personal and Social Development (prescribed by former law, but never established) is no more mandatory for those who do not opt for religious classes.

2. Religion within the Framework of Classes

Outside the limited scope available for confessional education (45 minutes weekly), religion is not generally addressed in the curriculum.

Recent research, developed by the Commission for Religious Freedom on basic textbooks,²⁰ reveals religion is presented as something belonging to the past, losing its place inversely to scientific growth: “*In the 13th century, people were very religious. Everywhere, at every village, however small it was, there was a chapel, a church or a simple hermitage*”;²¹ or: “*Reason against the oppression of the church – largely responsible for the cultural lag in time (...)*”;²² or, religion has been “*the most responsible for superstition or obscurantism until the eighteenth century*”.²³ Huge generalizations are often made. Islam is identified as a whole with Arabic countries: all Muslims are foreigners from Arabic countries and all Arabic peoples are Muslims. One book for children aged 12 states that Iraq is predominantly Sunni, and that women in Islam “*cannot go out alone and have virtually no rights*”.²⁴

Moreover, in history classes Muslims in Portugal are regarded only as a phenomenon in the distant past (711–1249): the moors left some words on Portuguese language, some buildings and legends. No links are made either to communities who stayed until the sixteenth century or to new communities which are growing every year.

Art and music are taught without reference to religious cultural backgrounds, signs and symbols. Many students ignore the real meaning of Christ’s Passion even when they listen to Johann Sebastian Bach masterpieces.

Everyone agrees on the importance of teaching Greek or Egyptian mythology. Nevertheless, many of my pupils in university are

20 *Esther Mucznik, A Religião nos Manuais Escolares, Comissão da Liberdade Religiosa, Lisboa, 2007.*

21 *Mucznik (2007), p. 24.*

22 *Ibid.*

23 *Ibid.*

24 *p. 28.*

ignorant about who wrote the Gospels or about the letters of St. Peter and St. Paul. Similarly, when I introduce the concept of human dignity (art. 1, Constitution), they are usually surprised to learn of its roots in the Bible. I ask them to read Matthew, 12:12, and then to work over Pico della Mirandola and Immanuel Kant texts. To their minds Christianity has created only old churches, old priests and old fashioned sexual restrictions.

Prejudice pertains mostly to Catholicism and Islam. At public schools, a child who is religious would probably feel like a 'nerd'.

Logical arguments about God's existence are scarcely discussed in philosophy classes. Students are led to think that links between faith and science have been finally broken with Comte and Darwin.

The Bible and the Koran are never read in public schools, in spite of interest in literature studies.

The 1976 Constitution forbids the Government to plan education and culture in accordance with philosophical, aesthetic, political, ideological or religious guidelines,²⁵ and provides for a non-denominational public school system.²⁶ However, it does not delete philosophy, politics or religion from classrooms.

3. Instruction about Religions

As confessional classes are optional, the central religious issues are absent from general studies – this represents a significant gap in the educational system.

On this matter, Mário Soares, former Chief of State, and since 2007 Chairman of the Religious Freedom Commission, asked Government in 2009 to devote a part of Civic Studies classes and textbooks to religious issues – Religion in Societies. This was not intended to support this or that church, but to give children some keys to understand religious facts and to be aware of religion's role on history, arts, philosophy and ethics.

²⁵ Art. 43 (2).

²⁶ Art. 43 (3).

The former Minister for Education gave her agreement and some Commission members – forming a small committee – wrote guidelines for 12 classes for 8th level children. We are still waiting for implementation of this.

III. COMPORTEMENT RELIGIEUX DANS LES ÉCOLES PUBLIQUES

1. Religion dans le cadre des conditions de travail des professeurs et des autres employés

Suite au décret-loi n° 407/89, les enseignants d'éducation religieuse ont acquis les mêmes droits que les autres professeurs. L'évêque peut, toutefois, licencier ces travailleurs sans aucune cause civile. La motivation est de droit canonique.

La principale objection des enseignants de l'éducation morale et religieuse contre la nouvelle loi relative à la liberté religieuse (loi n° 16/2001, 22 juin, art. 24, 3) concernait une norme les empêchant, en raison de la séparation, d'enseigner d'autres matières à ces étudiants.

La plupart des personnes à qui cette loi ne s'applique pas (article 58) sont catholiques à moins que le Concordat ne prévoie rien. Ce n'est effectivement pas le cas.

Le 8 juin 2009, le ministère de l'Éducation a indiqué que ces enseignants sont soumis à des règles générales relatives aux horaires scolaires. La durée de leur travail hebdomadaire doit, toutefois, être adressée à l'Éducation morale et religieuse. Ce n'est le cas que si les heures qui restent le sont à attribuer à l'enseignement d'autres matières. Si ce n'est pas le cas, l'école doit recruter deux professeurs inutilement pour enseigner la morale et l'éducation religieuse.

Comme tous les autres travailleurs publics, les professeurs et les autres employés des écoles ont le droit de suspendre leur travail le jour de repos hebdomadaire, ainsi qu'à d'autres moments prescrits par leur religion, à condition qu'ils travaillent dans le cadre d'horaires flexibles et qu'ils aient une compensation intégrale de leur période de travail (article 14, 1 de la loi n° 16/2001).

ANDRÉ FOLQUE

Il est recommandé aux services des écoles de défendre au personnel juif et adventiste d'enseigner le vendredi soir et le samedi. On remarque cependant parfois une opposition à cette règle de la part des autres enseignants et instituteurs qui voient dans ce droit un privilège permettant d'obtenir un plus long week-end.

2. Symboles religieux dans les écoles

La loi n° 1941 du 11 avril 1936 avait renvoyé le crucifix des salles de classe de l'école primaire (aujourd'hui, le premier cycle de l'éducation de base).

Il était temps de chercher la réconciliation avec l'État après la période de discrimination dure envers les catholiques sous la première République. Il a, ainsi, été déterminé dans la Base XIV que: « Dans toutes les écoles publiques primaires et élémentaires, est placé, derrière et au-dessus du bureau de l'enseignant, un crucifix comme symbole de l'éducation chrétienne donnée par la Constitution. Le crucifix sera acheté et placé de la façon dont le ministère de l'Éducation nationale l'aura déterminé. »



Le crucifix est resté seulement dans quelques classes, après la chute en 1974 de l'ancien régime

Aujourd'hui le crucifix n'est présent que dans certaines salles de classe. Ce n'est qu'en 1999 que la question a été soulevée au sein du public par des groupes organisés en faveur de la laïcité. Le Médiateur de la République (*Provedor de Justiça*) a reçu quelques plaintes,

ce qui a suggéré aux autorités publiques de rechercher une solution équilibrée et raisonnable: les rares écoles primaires qui conservent les symboles religieux peuvent les conserver jusqu'à une opposition de la part des enseignants, des parents ou des élèves.

Après l'arrêt Lautsi, prononcé en 2009 par la Cour européenne de Strasbourg, la question fut de nouveau soulevée par des mouvements athéistes radicaux.

Il existait d'autre part une pétition devant le Parlement afin de permettre non seulement le crucifix, mais aussi l'affichage de symboles d'autres religions dans les écoles publiques.²⁷

L'argument de la matrice culturelle de la croix, au-delà du symbole purement religieux, n'avait, toutefois, pas été utilisé dans la discussion.

Certains préconisent que le fait d'enlever les crucifix des salles de classe devrait s'accompagner d'un soutien aux parents visant au libre choix des écoles religieuses.²⁸ En effet, si la Constitution oblige l'État à coopérer avec les parents dans l'éducation de leurs enfants (art. 67, par. 2 c)), cette tâche ne peut se limiter à une école où Dieu est exclu.

La controverse est au bout. À Madère, le président du gouvernement régional a fixé, par l'ordonnance n° 17/2010 du 21 juillet, la présence de crucifix dans toutes les salles de classe. Il est intéressant de citer une partie de l'exposé des motifs:



(Drapeau officiel de la Région autonome de Madère)

²⁷ Diário de Notícias, 28.9.2010.

²⁸ Mário Pinto, in www.liberdade-educacao.org/republicae (19.12.2005).

«Considérant que la Région autonome de Madère ne doit pas cautionner ce qui est appelé l'euro-sclérose, marquée par une attaque des valeurs qui soutiennent la civilisation européenne, laquelle est également une conséquence de l'actuel soi-disant postmodernisme,

Considérant qu'il n'est pas possible aux termes de la réalité culturelle et de leur pédagogie scolaires nécessaires, de concevoir l'Europe et le Portugal sans les fondements du christianisme,

Considérant qu'à cet effet, la laïcité de l'État n'est en aucun cas lésée par la présence du crucifix dans les écoles et qu'au contraire, l'État doit fixer un point de vue propre à l'origine de la civilisation des peuples (...),

Considérant que le crucifix en particulier, ne représente pas seulement l'Église catholique, mais tous les cultes fondés sur la même racine formée par la civilisation européenne,

Il n'existe ainsi aucune raison pour le retrait des crucifix dans les écoles.»

Une plainte a tout de suite été déposée auprès du Médiateur. Il dispose de la possibilité de saisir la Cour constitutionnelle et, donc, de demander l'invalidation avec force générale de ces normes de Madère sur la base de leur violation à la neutralité religieuse de l'enseignement public (art. 43).

3. *Habits religieux*

Le port de vêtements religieux ne soulève pas de questions controversées au Portugal, ceux-ci sont du moins présents au sein des tribunaux, des autres organes de protection des droits et libertés obliques ou des médias.

Un rabbin tout comme un prêtre est pleinement libre d'entrer et de sortir des écoles publiques avec ses habits religieux.

L'usage du foulard par des filles musulmanes n'est pas un vrai problème dans les écoles portugaises. L'usage de *kippah* comme celui des croix est pacifique.²⁹

²⁹ Bien plus pacifique que l'usage des téléphones mobiles dans les salles de classe.

4. Possibilité de bénir des bâtiments scolaires

Le ministère de l'Éducation a récemment nié avoir empêché les écoles d'adopter de nouveaux noms de nature religieuse, y compris le nom de saints, très enracinés dans le Centre, le Nord et les îles. Cette mesure semble constituer un recul positif.

De nombreuses personnalités de premier plan dans l'histoire du Portugal, tels que des écrivains, musiciens, ou des dirigeants militaires ont également été des hommes célèbres au vue de leur foi.³⁰ Mettre en place un soupçon en la matière équivaldrait au fait de supprimer des musées les objets d'art sacré en raison de la 'nuisance' religieuse de l'espace public.

Au cours de nombreuses cérémonies publiques, telles que l'inauguration de travaux publics, le lancement des nouveaux avions ou des navires, on assistait traditionnellement à la présence d'un dignitaire ecclésiastique catholique qui prononçait une prière et donnait la bénédiction selon le rite lui-même. Les catholiques se signaient, tandis que les autres furent confinés au rôle de témoin.

Traditionnellement, le Patriarche de Lisbonne (cardinal et Prince de l'Église) et, pas rarement, l'Archevêque Primat de Braga, prenaient part à des événements publics plus importants: les commémorations officielles de dates historiques, la prise de possession du Président ou des gouvernements.

La présence de représentants d'autres religions a commencé à prendre place au cours des quinze dernières années. C'était le cas de l'ouverture solennelle de l'Expo 1998 et de plusieurs célébrations à propos des découvertes maritimes du XV^e au XVI^e siècle.

Toutefois, la loi n° 40/2006 du 25 août, a éradiqué les dignitaires ecclésiastiques de leur rôle de protocole officiel. Aujourd'hui seul le nonce apostolique, en qualité de doyen du corps diplomatique, est représenté (art. 36, 1).

30 D. Nuno Álvares Pereira, responsable militaire par les victoires de l'armée portugaise sur Castille, en 1385, a été canonisé par Benoît XVI l'année dernière. Père António Vieira, jésuite du XVII^e siècle (1608–1697), défenseur des Indiens du Brésil, a été considéré le Prince de la langue portugaise par Fernando Pessoa. Père António Andrade (1580–1634), le premier Européen au Tibet.

Les autorités civiles et militaires n'ont plus le devoir d'inviter les représentants des Églises. Elles peuvent toutefois le faire. Dans ces cas, les prêtres, les rabbins, les imams, les papes ou les pasteurs « jouissent des honneurs dus à la dignité et à la représentativité des fonctions qu'(ils) exercent. Leur rang est déterminé par leur implantation au sein de la société portugaise » (art. 38, 1).

Il se pose la question de savoir si cette implantation est d'ordre historique – ce qui donnerait la priorité, après les catholiques aux juifs sur les protestants et musulmans – ou bien sociologique.

Le Portugal a signé, très récemment, un accord international³¹ avec l'Imamat ismaélien. Le Parlement a reconnu sa personnalité juridique internationale (tout comme avec les compositions avec l'Ordre souverain de Malte). Cette mesure donnera certainement une place entre les agents diplomatiques au représentant de Son Altesse l'Aga Khan et de ses successeurs.

Certes, l'ouverture de la plupart des bâtiments publics continue de recevoir le rituel de bénédiction, en particulier les écoles relevant de la gestion municipale. En fait, nombreux sont les maires qui considèrent qu'il s'agit d'une relation de politesse au sein d'une société plurielle. L'Église répond à l'invitation avec la prière ou la bénédiction, une courtoisie de sa part, mais sans aucune subordination du pouvoir politique aux autorités religieuses, ni aucun risque d'ingérence dans la politique.

5. Sujets spéciaux, tels que: comportement religieux des élèves, professeurs et autres employés, prière publique, prière dans le cadre de leçons ou d'autres événements scolaires, services religieux

La présence des religions dans quelques événements des écoles est autorisée puisque les enseignants et les élèves de l'enseignement moral et religieux ne peuvent être confinés aux espaces privés extérieurs à l'école.

31 Résolution de l'Assemblée de la République 109/2010 du 24 septembre.

Les lignes directrices du ministère de l'Éducation pour les écoles indiquent que la participation à des pratiques religieuses ou à des actes d'adoration se déroulera dans l'espace privé à l'intérieur de l'école. Beaucoup d'écoles disposent d'une chapelle pour les catholiques ou d'une salle spécifique partagée entre les orthodoxes et quelques protestants. Les étudiants ne peuvent pas être lésés du fait de leur participation. Il existe quelques fêtes au sein de l'école pour Noël et Pâques; il s'agit généralement de messes célébrées ou également d'un service de culte appartenant à d'autres religions.

Le Médiateur a suggéré en 2004 que certaines écoles ne reviennent pas sur la prestation des qualifications dans l'église locale. Cette disposition n'empêchera pas les élèves et les enseignants catholiques, après la remise des diplômes, de joindre l'église ou la chapelle pour le rituel de bénédiction.

IV. RENONCIATION AUX OBLIGATIONS SCOLAIRES POUR DES RAISONS RELIGIEUSES

1. Fêtes religieuses: possibilité et conditions des congés les jours concernés

Le Concordat de 2004 prévoit dans son article 30 sept fêtes catholiques,³² au-delà des dimanches, qui sont reconnues comme des jours fériés nationaux. Cette mesure recherche une conformité à l'article 3 afin de permettre aux catholiques de respecter leurs devoirs religieux.

Pour les autres religions, la loi n° 16/2001 du 22 juin, prévoit que les élèves sont dispensés de suivre des cours « le jour consacré au repos et au culte », à condition que leurs Églises soient inscrites sur le Registre national des personnes morales religieuses et ont présenté l'année précédente les dates et les heures de précepte religieux (art. 14, 2).

32 Nouvelle Année et Mère de Dieu, Vendredi Saint, Corps de Dieu, Assomption de la Bienheureuse Vierge Marie aux Cieux, Toussaint, Immaculée Conception de la Vierge Marie, Noël.

Les vacances trimestrielles, d'une durée de quinze jours, coïncident avec Noël et Pâques. Ce calendrier n'est pas exclusivement catholique puisque la plupart des protestants célèbrent Noël et Pâques en même temps. Malgré tout, les fêtes sont similaires pour les chrétiens orthodoxes qui suivent le calendrier julien ou qui fixent les Pâques comme les juifs.

En ce qui concerne les examens, l'article 14, 3, prévoit que « Si la date des examens d'évaluation des élèves coïncide avec le jour dédié au repos ou au culte, les épreuves pourront être passées lors de la 2^e session ou d'une nouvelle session, un jour qui ne soulèvera pas la même objection ».

L'affaire la plus controversée en ce qui concerne les jours sacrés a eu lieu à propos d'une épreuve d'entrée au barreau. La candidate était adventiste du septième jour. Appelée à témoigner un samedi, elle a saisi la Cour par le biais d'une procédure spéciale de *subpoena* pour la défense des droits et libertés personnelles (art. 20, 5, Constitution³³). Bien qu'il s'agisse d'un cas étranger à l'école, la décision de la Cour administrative centrale du Nord (08.02.2007)³⁴ a appliqué par analogie cette disposition juridique et joua ainsi un rôle très important dans la jurisprudence.

2. *Autres renonciations par motifs religieux*

La renonciation à l'enseignement de la gymnastique ou à l'enseignement de la biologie (en raison de l'évolutionnisme) ne bouleverse, jusqu'aujourd'hui, la société portugaise. De même en ce qui concerne l'enseignement au foyer pour des raisons religieuses.

33 Et article 109 du Code de contentieux administratif.

34 Proc. 1394/06, www.dgsi.pt.

V. RÉFLEXIONS FINALES

La religion s'est confrontée à plusieurs carrefours constitutionnels. De tels carrefours concernent les croyants face à l'école tout comme les croyants face à d'autres espaces publics.

Le premier défi concerne la liberté de croyance et de religion tout en se situant parmi les droits négatifs. En considérant cette liberté comme une liberté publique, un droit de défense, on perd de vue les devoirs de protection de l'État envers les croyants: soit fournir de bonnes conditions afin que ceux qui sont croyants puissent pratiquer leur foi librement et confortablement.

Le second problème est le fondamentalisme relatif à la séparation. L'État est séparé des Églises de manière à garantir dans ses choix politiques la neutralité et l'impartialité face à plusieurs visions sacrées du monde. La séparation est cependant également une garantie de la liberté religieuse. Ce que la séparation empêche c'est le fait de choisir sans un autre critère que celui de Dieu ou des dieux. La séparation ne contraint pas à toujours décider contre Dieu uniquement pour attester de la laïcité. La concordance de Dieu avec César n'est pas nécessairement un péché, ni la preuve d'une erreur.

La séparation concerne l'État face aux Églises et non pas face aux religions ou aux croyants. La même chose devrait se produire pour les arts comme pour les sports: l'État encourage les artistes et les athlètes bien qu'il doive s'écarter des courants esthétiques et des clubs de football. Ce fait n'empêche pas l'existence d'équipes nationales de football ou le soutien public envers des films, des livres ou des recherches scientifiques ou des films qui se présentent dans les compétitions internationales.

Le troisième carrefour constitue un défi majeur. Bien que le principe d'égalité entraîne une égalité de traitement, les diverses religions comme les diverses langues sont, par leur propre nature, différentes. Une loi, qui elle serait uniforme pour toutes les religions, constituerait toujours un pas en arrière.

La quatrième question cause beaucoup de bouleversements autour de la laïcité. Un État laïc n'est pas celui qui ignore la religion

dans le cadre du développement de la personnalité et de la conscience. L'État qui ne tient pas compte de la religion devient un État ignorant et répandant l'ignorance parmi ses écoles et ses élèves.

Enfin, la question des majorités religieuses. *Ronald Dworkin*,³⁵ en prenant à la lettre l'origine historique de son pays, décrit les droits fondamentaux comme des atouts contre la majorité. On peut juger, à tort, que les Églises dans chaque pays ne doivent bénéficier d'aucune protection si elles rassemblent la plupart des croyants. La liberté religieuse ne peut, cependant, pas confiner la majorité des croyants à un statut subalterne.

Être catholique au Portugal, aujourd'hui, est parfois difficile, en particulier dans les espaces publics, comme à l'école. Les catholiques sont perçus aujourd'hui comme une épave du passé, en négligeant l'individu lui-même qui n'aurait d'autre conscience que celle résultant des écrits des papes. Comme si l'Église empêcherait chacun de penser et d'agir, les catholiques seraient comme des automates ou personnages formant des chœurs de la tragédie grecque.

Ce préjugé dans l'école publique va de même avec la méfiance sur l'Islam ou le traitement du judaïsme comme un bric-à-brac. L'apport de la religion au cœur de l'école publique, comme condition de pleine liberté, présuppose qu'on regarde la foi des hommes rationnellement.

³⁵ *Taking rights seriously*, Londres, 1977, p. 194.

RELIGION AND PUBLIC EDUCATION IN ROMANIA

EMANUEL P. TĂVALĂ

PREAMBLE – HISTORICAL BACKGROUND

Traditionally, Church-State relations in the predominantly Orthodox countries were based on the Byzantine principle of *symphony*, that is of harmony, understanding and cooperation between two distinct institutions: a spiritual one and a political one, which were, however, united by the common social life of Church believers and of State citizens.

However, in the Romanian Principalities (Moldavia und Walachia) the symphony of the Byzantine Empire was adapted to the realities of the Principalities and then of the modern Romanian State, influenced by the secularised Western spirit.¹

Historically, the first schools in Romania were organised near churches or monasteries and that is why religion was the main discipline of the educational system. Furthermore the first education laws were elaborated in Romanian Principalities in the 18th century and these were drawn up by the bishops of the two countries. In Transylvania, the laws of education were those of the Habsburg Empire, as the “*Allgemeine Schulordnung*”, dating from 6 December 1764. In the Romanian Principalities the first law of the 19th century was

1 Daniel Ciobotea, State-Church Relationship in Romania. Tradition and Modernity, in Adrian Lemeni, Florin Frunza, Viorel Dima, Religious Liberty in Romanian and European Context, Ed. Bizantina, Bucuresti, 2005, p. 18. Furthermore, the Church-State symphony was nowhere symmetrical in the sense of equality of similar forces, but almost always asymmetrical and uneven. The Church was permanently praying for the State, and often it was also entreating the State to help it. The State, in its turn, supported the Church, but it was also often tempted to subjugate the Church. In this sense, in all its history, the symphony between Church and State was marked by the tension between ideal and insufficiency, between the tradition of *continuity* and the tendency of *renewal*.

made in August 1818 by Gheorghe Lazăr, the reformer of the school system in these two countries (former professor at the Theology Faculty from Sibiu, created in 1786).² The next reforms in the two countries (after 1859, the Romanian Principalities) focussed on religious education. Religion was a discipline in the general curriculum of public schools until 1948, when the communists decided that the discipline, along with the Church, had no place in Romanian society and churches had to continue their activities in a so-called “liturgical ghetto” (only in churches).

1989 offered the chance to reintroduce Religion into the curriculum of all public schools.

I. GENERAL BACKGROUND

1. Facts and Figures

According with the Constitution from 2003, Romania is organised as a Republic. It is a country situated in South-East Europe and has a surface of 238,392 km². Since the 1st of January 2007 it has been one of the 27 member states of the European Union. The population is about 21.7 million citizens,³ but we should mention that many of them emigrated and work now in other EU countries (like Spain or Italy). The majority of population are Romanians, 89.5 %, 6.6 % are Hungarians, 2.5 % Gipsies and 0.3 % Germans. Speaking about religion, 86.7 % declare themselves to be Orthodox Christians, 4.7 % belong to the Roman-Catholic Church, 3.3 % to the Reformed Churches and 0.9 % to the Greek-Catholic Church. The country is organised in 41 counties and the capital is Bucharest.

According to Education Law, the Romanian educational system is organised by the *Ministry for Education, Research and Innovation*. Education begins in Romania with the kindergarten (3–6 years old),

2 In the school system introduced by *Lazăr*, religious education was present at all levels, related to writing (for the primary schools) or Philosophy and Law (for the superior levels).

3 According to the last population census from 2002.

which is optional, but the last kindergarten year is now compulsory on the basis of a new law (February 2011). The basic comprehensive school consists of 8 years (1–4 primary level and 5–8 lower secondary level). The upper secondary level is from grades 9–12 and is divided into high-schools and vocational training/professional schools. Schooling in Romania is compulsory until the 10th grade.⁴

After the events of 1989 private schools have also been allowed, provided they respect the general curriculum applicable to public schools. We should mention that the private school system is well-developed especially with regard to kindergartens, but there are also private schools opened by private investors or by the Church.

On figures from last year, the school system had approximately 4.4 million registered pupils, from which 650,000 attended kindergartens (even though this is not compulsory) and 3.11 million (approx. 14 % of the total population) attended primary and secondary schools. The education given in the public schools is free of charge, but for some activities the schools can take money provided the conditions foreseen by the law are met.⁵

Today in Romania there are approximately 12,000 religion teachers and the material resources, which come from the state budget, cost approximately 500 billion lei for one school year. The number of pupils who attended the Religion classes in the last school-year was approximately 3 million.

It is useful here to refer to the German system of Protestant religious education. In the period between the two World Wars of 365,000 Protestants there were 342,869 children of school age (it was a unique situation in the East European context).⁶ From 100,000 Church members 60,000 left in 1990. German schools survived largely due to Romanian Orthodox children, who represent 85 % of

4 *Stefan Cosoroabă*, Religious Education in Romania, in Peter Schreiner (ed.), Religious Education in Europe. A collection of basic information about RE in European countries, Comenius Institut, Münster, 2000, p. 135.

5 *Valer Bel, Vasile Timiş*, La mission par l'activité didactique religieuse, in *Studia universitatis Babeş-Bolyai, Theologia Orthodoxa*, Nr. 2/2005, p. 22.

6 *Stefan Cosoroabă*, Religious Education in Romania, p. 137.

all pupils today.⁷ In the last school year 4,756 pupils took part in Protestant religious education, delivered by 65 teachers, out of which 50 % are pastors.⁸ Only 3 are fully employed by the schools – the others work on the basis of an hourly wage.

2. Religion as a Subject of Instruction and Its Substitutes

2.1. Religious Instruction (i.e. Confessional Teaching)

The Church had to fight a great deal to secure a place for Religion classes, which should have been accepted in public schools alongside the other disciplines. A first step was made in 1990 when the Minister for Education and State Secretariat for Cults signed an agreement to reintroduce moral-religious education into public schools. This agreement stipulated that:

- beginning with the school year 1990/1991, religious education is introduced in public schools for the primary classes and second classes, for an hour every two weeks;
- Moral-religious education is an optional and facultative discipline. It is present in the timetable and is taught in public schools.
- Moral-religious education emphasises ethical and cultural historical elements. The teaching-plans are designed by each Church in agreement with the State Secretariat for Cults and are approved by the Education Ministry. The content of the teaching plan and the teaching should be realized in an ecumenical spirit, taking into consideration the main principles of common life in a modern state.
- Moral-religious education is taught by teachers from the public schools, priests or theologians. These lessons can be

7 In Sibiu/Hermannstadt there are 1718 Church Members and 1702 pupils in Protestant religious education, this because at the German High School there was for a long period of time no Romanian Orthodox teacher for this discipline who could speak German too.

8 *Stefan Cosoroabă*, Religious Education in Romania, p. 140.

taught by teachers of primary schools and for all of them the Churches should give their agreement.

- Moral-religious education is subject to Romanian laws like all disciplines.⁹

In the new 1991 **Romanian Constitution** religious freedom is the object of Article 29.

Article 29 – Freedom of conscience

(1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.

(2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.

(3) All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.

(4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.

(5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.

(6) Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them.

From the perspective of the legislator, freedom of religious beliefs is one of the constitutive elements of liberty of conscience, the latter comprising *freedom of thought and opinion, as well as the freedom of religious beliefs* (paragraph 1). Freedom of conscience deals both with the freedom of individuals (*freedom of thought, opinion and religious beliefs*) and the freedom of religious communities (*all religions shall be free and autonomous*).¹⁰

⁹ *Vasile Timiș*, *Religia în școală. Valențe ecleziale, educaționale și sociale*, Ed. Presa Universitară Clujeană, Cluj, 2004, p. 29.

¹⁰ The major principles of religious freedom, equality and autonomy, are found in this article in terms comparable with the provisions of European constitutions, as well as

The fundamental law ensures religious freedom by guaranteeing equality, non-discrimination and the absence of restrictions and constraints in the realm of religion, provided that this “must be manifested in a spirit of tolerance and mutual respect”. Concerning relations between Church and State, the Constitution does not assert a secular state or the separation between the Church and the State, nor does it make any reference to any religious organisation as the official or privileged church.

The Constitution recognizes also *the right of parents and legal guardians to provide the education of minor children*, whose responsibility devolves on them, according to their own convictions. Regarding par. 6 of article 29, we may say that *religious liberty emerges as factor of spiritual communion within the family, the parents having the right, but also the obligation, to raise and educate their children*.¹¹

Article 32 par. 7 of the Constitution guarantees the freedom of religious education as a component of the fundamental right of education.¹² Thus, *“the state secures the freedom of religious education, according to the specific requirements of each religious group. In public schools, religious education is organized and guaranteed by the law”*. Two aspects are worth mentioning: On one hand, the state commits itself to ensure freedom of religious education by providing the legal framework in which it is possible for religious groups to

with the international standards. The freedom of conscience, including the freedom of religious beliefs is guaranteed and can not be restricted in any way, as no one can be compelled to embrace an opinion or religion contrary to his own convictions.

11 *Viorel Dima*, Freedom of Religion in the Romanian Legislation, in Adrian Lemeni, Florin Frunza, Viorel Dima, Religious Liberty in Romanian and European Context, Ed. Bizantina, Bucuresti, 2005, p. 272.

12 Many discussions took place about religious education, especially because the new Constitution was the first after the events from 1989 following the communist period. There were many proposals for this article. Some (members of Parliament) proposed that programmes at all levels should have religious education. (The study of the Bible should be obligatory, including for universities, and the study of Christian thought and the history of the Christian faith should be also part of the curriculum). In opposition to this proposal came another one, for religious education to be “*optional*”. For more information see the Commentary on the Romanian Constitution, Ed.All.Beck, Bucuresti, 2004, p. 123.

establish schools for religious education and training of their personnel, and offers material support for this type of education. On the other hand, religious education or the teaching of religion finds its place in public schools. As to religious education in public schools, the provisions of article 32, par. 7 are to be corroborated with the provisions of Article 29, par. 6.¹³ That is why I have presented both these article – to clarify the position. In implementing the obligations of ensuring religious education in public schools, the state must secure the parents' right to educate their children according to their own beliefs.

2.2. *Religious Liberty in Education*

The religious rights in education are regulated basically by article 9 of the Law on Education,¹⁴ which stipulates that:

- Religion is a school class included in the “*common root*” (that is, part of the obligatory classes) within the school curriculum for primary, secondary, high school and vocational/professional education.
- The pupil, with the consent of the parents or legal guardians, chooses the religion and denomination to be studied.
- Based on the written request of the parents or legal guardians, the pupil may choose not to attend the religion class. The student who, for objective reasons, is not provided with adequate conditions for attending the religion class is exempted from attending it.

The officially state-recognized religions have the right to organize two types of education:

A type of education within the theological public education system, tailored for the training of clerical personnel and for the mission activities of the churches. This right is not ensured equally and non-

¹³ *Viorel Dima*, Freedom of Religion..., p. 274.

¹⁴ Law Nr. 84/24 July 1995 modified, republished in the Official Monitor, Part I, nr. 1 from 5 January 1996.

discriminatorily, it being provided only for the officially state-recognized denominations and proportionally with the numerical weight of each denomination, according to the updated official census.

A private personal education system: Due to the lack of other provisions in the text, we may understand that this type of education could be for all levels and sections (not only theological). However, in practice, the school authorities also request compliance with the same conditions for this type of education, so that rarely and with difficulty religious groups obtain permits to establish and administer educational units for other sections than the theological ones or those dedicated to the training of personnel for social and missionary activities. Despite the difficulties, private kindergartens are very numerous and the Church has also organised private schools – and the process continues.

The former Education Law (1995) established that for primary school (I-IV) religious education is compulsory, for secondary school (classes V-VIII) it is optional and for high-schools it has the status of a facultative discipline. The law was in accordance with the decision of the Constitutional Court (nr. 72/18.07.1995) about introducing religion as a discipline in the educational system with the possibility of choosing religion and confession.¹⁵

Article 18 of the new law (1/2011) stipulates that Religion is to be obligatory in the general curricula of all study years, but alongside the choice of religion and confession.

In recent history, after 1990, in the school year 1990/1991, “*moral-religious education*” was introduced as a compulsory discipline for primary schools, as optional for secondary schools and as facultative for high schools. At the beginning it was for one hour every two weeks, and it was confessional teaching. After having seen the positive impact of the new discipline, the Minister ordered (Order nr. 9176/01.02.1991) “*moral-religious education*” to be provided in public schools for one hour every week. For the 1992/1993 school-

¹⁵ Vasile Timiș, *Religia în școală...*, p. 33.

year, the Ministry established (in Directive nr. 10447/07.09.1992), in accordance with the former documents, the status of “moral-religious education” for primary and secondary school as well as the situation of teachers. As from 17 August 1993 by virtue of Ministerial Order nr. 10306 “moral-religious education” was called “Religion”.¹⁶

The Romanian Orthodox Church asked for changes to art. 9 of the law. The Church had undertaken a private initiative by collecting one million signatures for this change. They asked for a clearer status of religious and theological education in Romania. After accepting the initiative, the Romanian Government elaborated the OUG¹⁷ 36/1997 to change the education law from 1995, art. 9, paragraph 1, to the form set out above.

An enhanced status for religion in the public schools was provided by Order 3670/17th of April 2001 on the implementation of the religion teaching-plan in high schools – this began with the school year 2001/2002. Art. 5 of this order provides that the pupil may not attend religion classes but should attend another class instead – namely an optional discipline but one not mentioned in the order.¹⁸

The two instruments, the Education Law and Order Nr. 3670, set religion as a school discipline, part of the common curricular area “*Man and society*”. In this situation, religion no longer has the status of an optional discipline, but becomes an optional alternative.

In Note nr. 37609/26th of August 2001 the Ministry established that in all teaching plans, for all schools and at all levels, religion is introduced as a scholarly discipline, beginning with the school year 2001/2002. Through the Order 5723/23rd of December 2003 of the same Ministry, religion is included for all specialities of the pre-university school system.¹⁹

The Teachers’ statute, art. 136 par. 1, provides that religion may be taught only by specialist teachers, in accordance with the agree-

16 *Stefan Cosoroabă*, Religious Education in Romania, p. 140.

17 OUG – Government’s Urgency Order.

18 *Vasile Timiș*, Religia în școală..., p. 33.

19 *Vasile Timiș*, Religia în școală..., p. 34.

ments between the Education Ministry and those Churches which are officially recognised by the state.²⁰

The Orthodox Church re-acted immediately. Taking into account that religion is for all classes, the Church was looking for unity and continuity in the teaching programmes for all classes and levels. June 1999 saw the approval for the necessary teaching programmes for classes 1–8, in June 2000 for the 9th grade and in September 2000 for 10th–12th grades.²¹

The process of printing the necessary books for religion began at the same time as the formulation of programmes. For the first eight classes the books were set by the religion teachers from Iasi, and for the other classes by teachers from Transylvania. Experienced teachers were given the opportunity to make their own manuals and then these should have been approved by the Synod of the Orthodox Church for Orthodox religion classes.

At the beginning of 2008, a new law for education was proposed and this is still being debated publicly after it was declared by the Constitutional Court as contrary to the Constitution. Initially, religion was no longer to be seen as part of the common body of all other disciplines which are obligatory for high schools (article 10, paragraph 1). The decision whether or not to take part in religion classes as a facultative discipline is given exclusively to the pupil once he/she attains the age of 16 (art. 10, par. 2).²²

The Romanian Patriarchate expressed its disappointment with the new proposed law, especially because of the character of religion in high-schools, and it coordinated a national campaign called “*We*

20 *Berthold W. Köber*, *Das Recht der Religionsgemeinschaften in Rumänien*, in Wolfgang Lienemann, Hans Richard Reuter (ed.), *Das Recht der Religionsgemeinschaften in Mittel-, Ost- und Südosteuropa*, Nomos Verlag, 2005, p. 377.

21 *Vasile Timiș*, *Religia în școală...*, p. 41.

22 The minister of education said, at a public conference that for him Religion is a beautiful story, like a myth which should be related until the age of 14 and after this age the pupil should be free to choose after his own thought what the pupil thinks will be good and useful for the future. The Church sees in high school children those mature persons for whom the Church should fight to keep them on the right path, especially after the age of 14, when temptations in the spiritual field are very great.

want no high school without God” which was successful. As a result, religion remained part of the core curriculum for high schools too.

In Romania, therefore we may speak of *religious instruction in public schools*, even if it is orthodox, catholic or protestant. If the pupils do not want to attend these classes they have the right to opt out, and in this case they have no grade in it. There is (still) no alternative discipline instead of religion, such as ethics, history of religions or ecumenical teaching.

Given the religious factors, as shown before, in a society where the Church and the State have always collaborated, it is difficult for religion not to have a place in other subjects such as Literature, History, Arts or Language.

It would be impossible not to mention in Literature or History classes the 16th century translations and works of *deacon Coresi* or metropolitan Dosoftei of Moldavia who translated and printed “*The lives of the Saints*”, which were also used in schools. Later, other books appeared which were especially printed for school use, such as “*The Calvinistic Catechism*” (Sibiu/Hermannstadt, 1544) which is understood to be the first book in Romanian. Such catechisms were printed after 1544 by the Orthodox Church²³ and are known as “*Bucoavna*”.²⁴

Also, at the beginning of the 16th century, Prince Neagoe Basarab (1512–1521) wrote, in Slavonic, “*The teachings for his son Theodosius*” which contained a number of rules for the time when his son succeeded to the throne. The book contains many references to the Christian faith and is studied today in literature or history classes nowadays.

The first school to use Romanian as the language of teaching was in Braşov (Germ. *Kronstadt*) in 1490. This school had two cycles: an elementary one, to prepare those aspiring to be tradesmen or

23 There is another book printed by the Orthodox Church in 1544, also a Catechism, but it is lost today.

24 The one printed at Alba Iulia in 1564 has a specification in the title that it is for the use of pupils as an introduction into the Christian faith. See also *Mircea Pacurariu, Geschichte der Rumänischen Orthodoxen Kirchen, Oikonomia 33, Erlangen, 1994, p. 567.*

merchants and a second one, for those aspiring to become priests. This is very important for the history of Romanians and represents a feature of study as well as the involvement of the Church in the different important moments of the Romanian history.²⁵ The formation of the Romanian States cannot be properly understood without reference to the Church and its organisation. Also, the 1848 revolution cannot be understood without the portraits of the active religious personalities involved. The Church was always close to the State in all its difficult and important moments and these aspects cannot be forgotten.

When we speak of the language, the Church was the first institution to introduce Romanian as an official language. When we speak of art, painting, sculpture or architecture, anywhere in the country, first and foremost we find the best examples in churches.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

Even using the concept of symphony to describe the relations between State and Church, the principle according to which religious groups “*enjoy its support that includes providing of religious assistance*” has as a consequence the fact that there is a close connection between churches and the Romanian State, not a union or total separation.²⁶ Despite these facts there is no religious influence within the framework of working conditions of teachers and other staff. I would mention that there were several cases when some of the teachers (female) wore head-kerchiefs, though they were not very well-received in the schools but were rather identified with an exaggerated piety – however, there were no court cases on such problems. In any event, it is not compulsory for male or female teachers of Religion to wear religious dress.

25 Vasile Oltean, *Configurația istorică și bisericească a Brașovului (sec. XIII-XX)*, Ed. Andreiana, Sibiu, 2010, p. 497.

26 Daniel Ciobotea, *State-Church Relationship...*, p. 20.

1. Religious Symbols at School (e.g. Crucifix Case in Italy)

Four years ago, in the summer of 2006, Romania “had a taste of its own war over religious symbols.”²⁷ The case concerned religious icons. On 12 August 2006 the philosophy teacher Emil Moise, whose daughter attended the Fine Arts High School in the city of Buzău, requested the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării, CNCD*) to stop an act of discrimination allegedly constituted by the display of religious symbols in the aforementioned public school. Moise claimed the displays in question discriminated against atheists, agnostics and persons belonging to minority faiths. He also referred to the symbols’ negative effect on the development of children’s personal and creative autonomy, particularly since Romanian Orthodox symbols also transmit “values of subservience”.²⁸

The Legal Resource Centre (*Centrul de Resurse Juridice*) filed an *amicus curiae* with the CNCD in support of professor Moise. This document interpreted the display of religious symbols in schools as a violation of religious liberty and freedom of conscience. On 13 November 2006, several non-governmental organizations and other public intellectuals published an open letter in which they underlined the importance of the case for Romania’s democratization and noted that the coming hearings “concern a tremendously important issue with wide-ranging national implications.”²⁹

In its decision of 26 November 2006 the College of Directors of the National Council for Combating Discrimination found for the plaintiff in his central claim that the display of religious symbols in public schools constituted a form of discrimination against agnostics and minority faiths, and ordered that such displays be present only

27 Gabriel Andreescu, Liviu Andreescu, The European Court of Human Rights’ Lautsi Decision: Cotext, Contents, Consequences, in *Journal for the Study of Religions and Ideologies*, 9,26 (Summer 2010), p. 47–74, here p. 56.

28 Emanuel Tavală, Reîntoarcerea la iconoclasm?, in *Saeculum*, Nr. 3/2006, Sibiu, p. 3.

29 Gabriel Andreescu, Liviu Andreescu, The European Court..., p. 58.

during classes of religious education.³⁰ The Council recommended that the Ministry of Education and Research adopt, within a reasonable time-frame, regulations designed to safeguard the proper exercise of children's right to learn under fair conditions, as well as the right of parents to educate their children in conformity with their religious and philosophical worldviews and, further, to ensure the principle of state secularism and the autonomy of religious *cults* (acknowledged religious denominations) and of children's religious freedom.

While the College of Directors avoided some of the more sensitive issues raised by Moise – such as the question of the “values of subservience” allegedly promoted in schools by some Orthodox practices – its decision was thoughtful, carefully crafted, and of remarkable significance. The decision was greeted with a fiery debate involving parliamentarians, two ministries (the Ministry of Education and Research and the Ministry of Culture and Religious Affairs), religious groups, secularist and fundamentalist NGOs, public intellectuals, and militant journalists.³¹

The Orthodox Patriarchate's press office released a communiqué in which it called any decision to remove religious symbols a “brutal, unjustified measure restricting religious freedom.”

Alone among the *cults*, the Seventh Day Adventist Church saluted the CNCD decision, noting that the state and its institutions, public schools among them, should not be “involved in promoting and supporting the teachings and values of a particular religion or religious faith.” The Ministry of Education and Research and, respectively, two BOR-friendly non-governmental associations (the Civic Media and the Pro-Vita for the Born and the Unborn), appealed the National Council's decision in two separate cases. After the lower-court decisions, on 11 June 2008 the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție, ICCJ*) declared the appeals admissible and overturned point 2 of the CNCD decision

30 *Jürgen Henkel*, *Ikonen stören den Zeitgeist in Rumänien*, on the web page www.cbrom.de of the Romanian Ecclesial Center München.

31 *Jürgen Henkel*, *Ikonen stören...*

recommending that the Ministry of Education elaborate and enforce regulations concerning the display of religious symbols in public institutions. The Bucharest Court of Appeals, on the other hand, ruled in the second case that the National Council decision was legal and upheld it. As the latter ruling was not appealed, it is now binding and definitive. Consequently, there are, at the present time, two distinct court decisions in Romania concerning the display of religious icons in public schools – and they contradict each other. After the ICCJ decision, Moise complained to the European Court of Human Rights.³² Not long after this appeal, the ECtHR issued its *Lautsi* judgment.

2. *Benediction of School Buildings*

The case against the icons (religious symbols) in school rooms was and is considered to be a singular or at last a rare one. The general position is in favour of such symbols in public spaces, probably because of the Christian tradition which was not totally interrupted in the communist period. In favour of this situation comes the special service performed by priests at the beginning of the new school year. They bless the children, teachers and parents with holy water and read a special prayer for the new school year. I would say that the beginning of the new school year would be unimaginable without this service conducted by the priests.

This is not the only such moment in the life of pupils during the school year. Prayers might be used during religion classes as well. Before the important religious holydays (Easter or Christmas) the pupils are invited to go together with the religion teacher to the local Church for confession and to take communion.

Priests are also invited to bless newly-built schools or parts affected by renovation works.

In small communities (villages) the pupils take part in public worship on the holy day of Jesus' Ascension when Romanians also commemorate the heroes of all times. The pupils sing songs in hon-

32 *Gabriel Andreescu, Liviu Andreescu, The European Court...*, p. 59.

our of those of their ancestors who died for in the cause of liberty and they listen to the speeches of churchmen and laymen about their heroic events.

These actions of the Church probably stimulated the authors of a book for religion classes to explain to the pupils that if they do not respect their teachers and parents, they might annoy God who could punish them for not listening.³³

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

According to Romanian law (Law Nr. 53/2003, art. 134, par. 1) there are legal holidays in Romania some of which them are religious holydays, namely: the first and second day of Christmas, Easter and Pentecost and the day of 15th of August (*Assumption of Mary*). The day of Pentecost and the 15th August were added by the Parliament on 30 October 2008, because there were not enough official holidays in the country in comparison with other European countries. We should mention that these days are free days for most of the workers in the public and private sectors. The remainder of religious holidays are not free and there is no possibility the teachers and pupils to take time off for them, probably because a plan for the school year has been settled at the beginning and taking off such a day would require the teachers and pupils to recuperate that day on a Saturday or a similar day.

What we should mention is that those persons who are not Christians and do not celebrate Christmas, Easter, Pentecost or Mary's Assumption, may have two other free days instead of those prescribed law. What is interesting is that those persons are free both on the Christian religious holydays and on two other days, because

33 *Camelia Muha, Maria Orzetic, Elena Mocanu, Manualul de Religie pentru clasa I, Editura Sf. Mina, Iasi, 2003.* Under the title Disobedience is punished, a little girl is carelessly playing on the street and she gets admitted to hospital. The moralized poem is: *My mate Alina/ For a week is she in the hospital/ Playing without care/ She fell and broke her arm.*

when more than 95 % of the population is free, then others belonging to other religions are obligatorily free, since they do not have the possibility to work in a company where 99 % of the workers are free on the 25th of December.

If we should speak about options which pupils have for religion classes, the single option is whether or not to attend such classes. As said before, there is no other discipline for those who do not (for different reasons) want to attend these classes. This lack could be explained by the small number of pupils who do not attend the classes. I would not say that this is only a problem of conscience, but is also a practical one. The grades for this discipline are good and very good and this means that the final grade could be better than if the pupil did not attend the class. The education law originally proposed that those children who do not attend religion classes could study other disciplines, such as History of Religions, History of Culture and Arts or other important disciplines for ethical and social behaviour. All these disciplines were foreseen in the law “instead of Religion classes”. As we have seen, the Romanian patriarchate expressed its disapproval of this proposal, and the MPs changed the formulation with the result only Religion remained as a study discipline without other optional disciplines. But, as said before, the law was declared un-Constitutional.

The Romanian education system is not as developed as systems in Western Europe. For example, *physical education* consists of only one class in the designated sports room (if the pupils are happy and the school has such a place). The same argument would be made out for religious classes, though also for example Muslims in Romania represent only a small minority in Dobrukscha (South East Romania). But there are no cases on this. The same situation pertains in the case of *biology classes* or other such disciplines which might be in contradiction with any religious principles of any confession or religion.

A new trend in some European countries is religiously motivated *home-schooling*.³⁴ In the case of Romania this type of education was never religiously motivated – the motive is economic. Only some amongst the Romanian bourgeoisie enjoyed the privilege of home-schooling during the 17th and 18th century – but they were motivated by differences in social class between (1) the pupils in public schools and (2) those belonging to a higher social class.

34 The Swiss initiative for example, of parents who live in the Zurich Canton and would like their children educated in such a school system is a well-known case.

RELIGION IN PUBLIC EDUCATION – SLOVAKIA

MAREK ŠMID

I. GENERAL BACKGROUND

1. Facts and Figures

Demography

The Slovak Republic came into existence as an independent State in 1993 with approximately 5.5 million people residing at its territory (referred to hereafter in this text as “the population”). Traditionally, the Catholic confession of the Latin rite prevails over other denominations and Greek Catholics, Orthodox Christians, Protestants and Jews are considered traditionally as integral parts of society.

The most recent census was undertaken in 2001, with the next one due in 2011. The part of the population declaring themselves to be affiliated with one of the Slovak churches or religious communities increased significantly after the census of 1991. According to the 2001 census, 84.1 % of the population (i.e. 4.5 million as compared with 3.8 million in 1991) was identified by own subjective individual declarations with one of the State-recognized churches or religious communities: the Roman Catholic Church 68.9 % and the Byzantine Catholic Church (Greek Catholics) 4.1 % (i.e. Catholic Church 73 %); Evangelical (Lutheran) Church of the Augsburg Confession 6.9 %; Reformed Christian Church 2 %; Orthodox Church 0.9 %.

The figures for other small churches or religious communities are expressed in thousands; e.g. the Jewish community c. 2,500 members.

Approximately 13 % of the population declared themselves as having no confessional affiliation in 2001, as against 9.8 % in 1991.

Information as to 3 % of the population has not been cleared.

MAREK ŠMID

Numbers of Private and Public Schools in the Country

The following table, based on statistics from the Ministry of Education, shows the numbers of schools in 2009/2010.

Type of school	State	Private	Denominational	Together
Pre-school educative institutions (kindergartens)	2,765	64	44	2,873
Primary schools	2,076	36	112	2,224
Primary artistic schools	191	80	11	282
Linguistic schools	22	18	1	41
High schools	156	38	55	249
Musical high schools (Conservatories)	6	7	1	14
High professional schools	383	85	19	487
Special education schools	365	25	14	404

The main founders of denominational schools are the Catholic Church (199), including the Catholic University, Evangelical Church (18), Reformed Church (9), Orthodox Church (4) and Brethren Church (3).

Over the last 5–7 years there has been a visible stabilization, even stagnation, in the growth of denominational schools run by churches or religious communities. There is also some growth in the field of private schools of a non-religious nature.

*Description of the General School System*¹

According to the Constitution of the Slovak Republic, everyone has the right to education. School attendance is compulsory. Its duration and the relevant age limits are stipulated by law: compulsory education in Slovakia is for 10 years, but at most until completion of the school year during which a student turns 16.

Citizens have the right to free education at primary and secondary schools and, based on their abilities and society's resources, at higher educational establishments. Schools other than state schools may be established, and instruction in them provided for, only under conditions defined by law. Such schools may charge a tuition fee.

Law No. 596/2003 on State administration in education and educational self-government determines the competence, organisation and function of administrative bodies of state administration in the educational system, towns, municipalities and self-government bodies, and defines their duties in the field of state administration competencies in education. It determines the network of schools and educational institutions, decides on the location of a school, school facility, or a vocational education centre in the network, possible changes, and the exclusion of a school from the network. The Law designates the bodies authorised to establish schools, educational institutions or centres of vocational education. Such bodies are towns, municipalities, regional boards, registered churches or religious communities, and other corporate bodies or individuals. Education provided by denominational or private schools must be as adequate as that provided by other schools. The aim of denominational and private schools or educational institutions is to provide, in addition to quality education and training, alternative content, methods, and formats in education and training. Establishment of these schools allows parents to apply their right to choose a school or edu-

1 Basic information concerning the larger part of the Description of the General School System was taken from the article: *Michaela Moravčíková*, Religious Education and Denominational Schools in the Slovak Republic. In ASLAN, Ednan (ed.) *Islamische Erziehung in Europa/Islamic Education in Europe*. Wien Köln Weimar: Böhlau Verlag, 2009. S. 457–473.

cational institution for their children according to their belief and conscience. Further, it creates a competitive environment to stimulate improvement in the educational system.

Churches and religious communities have the right to establish, administer and employ primary schools, secondary schools, universities and educational institutions in compliance with the provisions of the law. These schools and educational institutions have the same position as state schools and educational institutions and they are an important and equal part of the education system of the country.

The Slovak Republic gives full recognition to diplomas awarded by these schools and institutions and considers them equal to diplomas awarded by state schools of the same kind, field and level. Hence, they are acknowledged as equivalent to state diplomas; moreover, the same is true for academic degrees and titles.

Government funding provided for private and denominational schools is equivalent to funding for state schools. Government funding of educational institutions is based on normative principles. Financing per student per year (norms) is the same for both denominational and state schools. However, state educational institutions (kindergartens, canteens, after-school nurseries, etc.) and state artistic schools still have more financial advantages in comparison to the same kind of schools founded by churches (or other private founders). Financial means for schools and educational institutions from budget chapters of the Ministry of Education are provided for their founders through the Regional Education Offices according to the residence of the founder.

Most state universities include theological faculties. There are six theological faculties in Slovakia at four different universities: Roman-Catholic Theological Faculty of Cyril and Methodius at the Comenius University in Bratislava, Evangelical Theological Faculty at the Comenius University in Bratislava, Theological Faculty at the University of Trnava, Theological Faculty at the Catholic University in Ružomberok, Greek-Catholic Theological Faculty at the University of Prešov, and Orthodox Theological Faculty at University of Prešov. There are also theological institutes and seminaries for the

formation of priests in Slovakia. These seminaries are specialised workplaces of public universities or theological faculties where university students are taught the values promoted by the relevant church in accordance with the internal policies of that church. Seminaries could also be autonomous legal entities that have an agreement with the university. In this case, seminarians are taught the values promoted by the relevant church in accordance with its internal policies, and the university education is provided by the university or theological faculty.

There are also theological institutes and seminaries in Slovakia. *Missio canonica*, or authorisation by the church, is an inevitable condition for any educational activity at these institutions. Internal policies of theological faculties and denominational universities are approved by the academic senate pursuant to the church's or religious community's pronouncement. Law No. 131/2002 on higher education stipulates paragraphs dealing adequately with the rights and duties of denominational public universities and theological faculties. 22 paragraphs of the Act on universities refer in the main to academic rights and freedoms, the establishment of schools, academic self-government and its field of activity, rectors, deans, acceptance and disciplinary proceedings, rights and responsibilities of students, university teachers, or agencies of the scientific council and executive board of the public university.

In 2000, the Catholic Church established the Catholic University in Ružomberok: its operation is supported by State financial contributions. Its establishment was confirmed by the Bishops Conference of Slovakia. The Catholic University currently has four faculties: philosophy, theology (in Košice), health, and pedagogy.

On January 20, 2004 the National Council of the Slovak Republic gave its consent to the Treaty between the Slovak Republic and the Holy See on Catholic Education as well as the Agreement between the Slovak Republic and the registered churches and religious societies on religious education.

In the Treaty between the Slovak Republic and the Holy See on Catholic Education, ratified on June 4, 2004, the Slovak Republic

proceeded from the Constitution of the Slovak Republic (above all from the Articles 12, 24 and 42), and the Holy See, from the documents of the Second Vatican Council, above all from the declaration *Gravissimum educationis* and from the norms of Canon Law – and both contracting parties also proceeded on the basis of Article 9 of the **Basic Treaty** between the Slovak Republic and the Holy See. The Agreement came into force, under Article VI, paragraph 2, on July 9, 2004.

The Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education is the first of a series of agreements anticipated by the Basic Agreement between the Slovak Republic and Eleven Registered Churches and Religious Societies. The ratification of the Agreement took place at the same time as the ratification of the Treaty between the Slovak Republic and the Holy See on Catholic Education, on May 13, 2004. The Treaty between the Slovak Republic and the Holy See on Catholic Education was signed by the President of the Slovak Republic for the SR and the State Secretary for the Holy See. The Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education was signed by three top constitutional representatives and the leaders of the eleven churches. The treaty with the Holy See has status in international law and the other agreement is a domestic agreement having the same legal impact during its application guaranteed by Slovak law.

The above-mentioned documents also recognise the right of churches and religious communities to establish and to operate their own schools and school institutions of any kind and type. At the same time, the state guarantees not to demand that the denominational schools carry out educational programmes inconsistent with the principles on upbringing and education of the relevant church. Churches pledge to offer both general and special education at denominational schools consistent with the general and special education at state schools of equivalent degree and type. Both sides also agree to cooperate in the process of preparation and creation of educational programmes and in the sphere of education and upbringing

in denominational schools. The schools belonging to churches and religious societies will get the same funding as all the other schools in compliance with the legal order of the Slovak Republic. The Agreement also enables churches to establish pedagogical and catechetical centres with a nation-wide field of activity in order to provide professional and methodical guidance for denominational schools, as well as expert education of pedagogical and non-pedagogical employees of denominational schools. The state should financially support theological faculties as well as avoid any obstacles to the establishment and activities of university pastoral centres.

Article 6 of the Agreement between the Slovak Republic and the Registered Churches and Religious Societies on religious upbringing and education declares that the Agreement is open for accession by other churches and religious communities registered in compliance with the legal order of the Slovak Republic. All contracting parties must agree with the accession. In compliance with the legal order of the Slovak Republic, any registered church or religious community which is not a signatory of the Agreement can demonstrate a will to sign a similar bilateral agreement with the Slovak Republic.

2. Religion as a Subject of Instruction and Its Substitutes

Religious Instruction

According to Article 24 of Slovak Constitution, churches and religious communities *organise religious teaching* and, according to the Law No. 308/1991 on freedom of religious faith and the status of churches and religious communities, believers have the right to be educated in a religious spirit and – in the event of fulfilment of conditions established by the internal rules of churches and religious communities as well as by generally binding legal regulations – to teach religion. Similarly, the Basic Treaty between the Slovak Republic and the Holy See and the Agreement between the Slovak Republic and registered churches and religious communities regulate matters concerning religious instruction and education in connection

with more detailed arrangements (these are the so-called special or partial agreements). The right to religious education is guaranteed also by Law No. 29/1984 on the System of primary and secondary schools (the School Act).

All of these legal instruments – the Constitution, Slovak internal law as well as the Treaty and the Agreement – provide a legal guarantee to enable religious education in school as well as pre-school facilities in accordance with the will of parents or guardians. Persons appointed by churches and religious societies may teach religion in all schools and educational institutions which are part of the educational system of the Slovak Republic. The curricula of religion and religious education have to be approved by the relevant church in accordance with the statement of the Ministry of Education of the Slovak Republic. Besides the appropriate qualification, religious education also requires canonical mission or authorisation by the church or religious community in accordance with legal norms of the Slovak Republic. This condition also applies to university teachers of theological disciplines.

Instruction about Religions

Special subjects including instruction on religions may be embodied in the school educative programme which is the basic document of every school. Instruction on religions form part of some subjects or lessons but there is no information on the creation of a separate and special system of such subjects in Slovakia other than specialized university studies.

Ethics

The above-mentioned legal norms introduce religious education into the Slovak educational system as an elective mandatory subject, where students have a free choice to attend ethics classes as an alternative. The lowest possible number of students of religious education class is twelve. Registered churches and religious communities may

also include in their religious education classes students from different classes and different beliefs with their permission. If the number of students is lower than the required twelve, the principal consents to the teaching of religious education during religious lessons of other denominations, ethics lessons, or after school.

One lesson a week is the standard quota for religious or ethics education in state or private primary schools. In primary denominational schools, students have two lessons of religious education per week. At state or private (non-denominational) high schools, there is one lesson of religious or ethics education per week in the first and second classes. In the third and fourth classes students may, if the school offers such a possibility, choose one of these subjects as a non-mandatory, and thus supplementary, subject. At denominational high schools students may have two lessons of religious education per week in all four classes.

Religion within the Framework of Various Classes

Standard religious information is presented in connection with the teaching of literature, history, philosophy, history, arts and languages. The approach of the individual teacher is decisive alongside the standards set by the State.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

Religion within the Framework of Working Conditions of Teachers and Other Staff

Teachers of religion have the same status in labour law relations as teachers of other subjects; however, they have to be appointed by their church or religious society. For Catholics this means the authorization of *missio canonica*; for other churches and religious communities the conditions are based on the equivalent principle which applies in accordance with their law. Parents or guardians decide on the religious education of the child up to the age of 15.

Religious Symbols at Schools

There is no restrictive legal regulation concerning this issue in Slovakia. The Declaration of the National Council of the Slovak Republic No. 1845 of 10 December 2009 states that “placement of religious symbols in schools and in public institutions is the full right of each Member State of the European Union, including the Slovak Republic and it is in accordance with the Convention on Human Rights and Freedoms of 1950”.

In Slovakia, one case which appeared in the mass-media concerned complaints of parents against the placing of a cross in the premises of a state school (1999). However, the complaint was resolved with the agreement of the parents who chose to allow the cross at the school. Therefore, there was no litigation in the courts on the matter.

Religious Garments

The only serious case of this type was against a nun named Dalmatia working in a nursery (2006). Parents argued that sister Dalmatia’s wearing of religious clothing violated their freedoms. However, in order to calm the situation, the nun left her work voluntarily.

The Possibility of Benediction of School Buildings

There are no legal rules on the issue. Directors of schools have full competence in the matter and no complaints have arisen in Slovakia.

Special Issues

Denominational schools are free to require prayers or organize religiously-motivated activities. Such activities performed in State or private schools are confined to religious education lessons. No complaints have arisen on the matter.

III. OPTING OUT FROM SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Religious Holidays: the Possibility of and Conditions for Taking off the Relevant Days

The Law on Instruction and Education (No. 245/2008) allows school directors to allow school pupils to be absent from lessons on reasonable grounds for a period of 5 days. A religious holiday may be properly considered such a compelling reason. The Ministry of Education takes into account religious holidays when it sets the regular school holidays. Several religious holidays are determined by law or by agreements with churches and religious communities as public holidays and therefore bank holidays.

Opting out of Religious Instruction

There is a right to choose between religious instruction and ethics – both are optional; there have been no complaints to date on this matter.

Opting out of Physical Education

No requests or complaints on this matter have arisen as yet.

Opting out of Biology

No requests or complaints on this matter have arisen as yet.

Religiously Motivated Home-Schooling

The Law on Instruction and Education (No. 245/2008) provides for the possibility of individual instruction and education on the basis of a decision of the school director. There have been no cases of religiously motivated applications for this. Financial subventions are not specified for concrete subjects – thus all the general parameters apply also to religious instruction.

RELIGION IN PUBLIC EDUCATION – SLOVENIA

BLAŽ IVANC *

I. INTRODUCTION

The role of religion and religious education in public schools has been and remains one of the most disputed issues in Slovenia. As a post-communist country Slovenia has a specific historical experience with secularization and the totalitarian state. The introduction of a Communist system in the Socialist Federative Republic of Yugoslavia (SFRY) and in the Socialist Republic of Slovenia as a constituent part in theory implied the imposition of the principle of the separation of church and state together with the principle of state neutrality. However, de facto it brought a system of strict state control over religion.¹ According to the Marxist ideology atheism was the privileged belief in Slovenia. All religious communities were prohibited by law to take part in public life and religion was belittled as such. Private schools were prohibited. The Roman Catholic Church (Catholicism was and remains the dominant religion in the Slovene nation) was held to be the most important “permanent internal enemy” of the Communist regime.² The imposition of atheist ideology was a severe blow to freedom of education and has encompassed the area of education as a whole. Religious education was expelled from public schools (in 1952) and, in a way similar to that which occurred e.g. in the Czech Republic, schools became an instrument for secularization and the teachers were instructed to play

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1 The Constitution of the Socialist Federal Republic of Yugoslavia (1974; Art. 174).

2 See also: *Šturm, L.* (2004), p. 607–650.

the role of “priests of atheism”.³ Only after democratic changes that started in 1990 did freedom of education, the role of religion, and the organization of public and private schools, become matters of public debate.

II. GENERAL BACKGROUND

1. Facts and Figures

1.1. Demography

According to the 2002 Census the religious and denominational structure of the population of Slovenia (total population is approximately 1,964,036) presents the following picture:

Roman Catholic	57.80 %	(1,135,626)
Protestants	0.80 %	(16,135)
Orthodox Christians	2.30 %	(45,908)
Muslims	2.40 %	(47,488)
Other religions	0.30 %	(1,950)
Believers without specific religion	3.50 %	(68,714)
Atheist	10.10 %	(199,264)
Response denied	15.70 %	(307,973)
No response known	7.10 %	(139,097) ⁴

1.2. Numbers of Private and Public Schools in the Country

Up until today 99 % of all schools in Slovenia are public schools. With regard to elementary schools there are only three private

³ *Tretera, J. R.* (2005), p. 37.

⁴ Statistični urad Republike Slovenije, Popis prebivalstva, gospodinjstev in stanovanj 2002 – Statistical Office of the Republic of Slovenia, Census 2002). (URL: <http://www.stat.si/pxweb/Dialog/Saveshow.asp>).

schools (the Waldorf School and two catholic schools) among 802 elementary compulsory public schools. There are also six private and 158 public upper secondary schools.

1.3. Description of the General School System

The basis for the modern Slovenian School Law is the relevant fundamental constitutional provisions which relate to education. The Constitution of the Republic of Slovenia (hereinafter: the Constitution),⁵ in Art. 57, ensures freedom of education and sets up a compulsory primary education, which is publicly financed. The state has to create the opportunities for citizens to obtain a proper education.⁶ Thus, the State has a duty to create the necessary legal framework for the establishment and operation of private schools and to recognise the public validity of an education obtained from private schools. The prohibition of private schools would not be consistent with the notion of a democratic society.⁷

In Slovenia, basic education (ISCED level 1 and ISCED level 2) lasts 9 years and overlaps with compulsory education. The same institution (Grammar School) provides education in all 9 grades. The structure of upper secondary education in Slovenia includes: general upper secondary education (*gimnazija*), technical education and vocational upper secondary education.

The Education Act

A crucial piece of modern Slovenian School Legislation is the *Organization and Financing of Upbringing and Education Act* (hereinafter: the *Education Act*),⁸ which regulates the relations between

5 The Constitution of the Republic of Slovenia (1991).

6 Art. 57 of the Constitution: "(1) Freedom of education shall be guaranteed. (2) Primary education is compulsory and shall be financed from public funds. The state shall create the opportunities for citizens to obtain a proper education".

7 Šturm (2002), p. 582.

8 Organisation and Financing of Upbringing and Education Act (*Zakon o organizaciji in financiranju vzgoje in izobraževanja*), Official Gazette RS, Nos. 12/96, 23/96 – corr., 101/1999, 22/2000, 64/2001, 101/2001, 108/2002, 34/2003, 79/2003, 65/2005, 117/2005, 129/2006.

public and private school systems, the internal organization of schools and their financing.⁹ According to the Education Act, religious communities may establish kindergartens and schools under the same conditions as other private-law subjects. Private educational institutions may be financed in two ways: they are either granted licences or financed directly under statute. In order to receive a licence the private school or kindergarten has to include itself in the public network and execute only a public programme. Non-licensed private kindergartens, private elementary and music schools and private general secondary schools (but not also professional schools), which carry out public programmes and comply with statutory conditions, have the right to public funds to the extent of 85 % of the funds that the State or local community designate for salaries and material costs per student in public schools.¹⁰

2. Religion as a Subject of Instruction and Its Substitutes

2.1. Religious Instruction (i.e. Confessional Teaching)

Art. 41 of the Constitution provides for freedom of conscience and belief (hereinafter: the right to religious freedom). It broadly protects the freedom of self-definition and it refers not only to religious beliefs but also to moral, philosophical and other worldviews. This article gives the assurance of freedom of conscience (the positive entitlement), the right of a person not to have any religious or other beliefs, or to not manifest such beliefs (the negative entitlement), and the right of parents to determine their children's upbringing in the area of freedom of conscience.¹¹ Art. 7 of the Constitution of the

9 The Education Act is supplemented by the Kindergartens Act (Official Gazette RS, No 12/96 et seq.), the Primary School Act (Official Gazette RS, No 12/96 et seq.) and the Technical Education Act (Official Gazette RS, No 12/96 et seq.).

10 Art. 86 of the Education Act. About transitional rules on funding of the private religious schools and their staff that were granted licenses before adoption of the Education Act and were/are provided with 100 % state funding see detailed in: *Šturm* (2004), p. 632.

11 Art. 41 of the Constitution:

Republic of Slovenia¹² enshrines: (1) the principle of separation of the state and religious communities, (2) the principle of equality among religious communities, and (3) the principle of free activity (autonomy) of religious communities within the legal order.¹³ The most controversial part of the Education Act is Chapter XI. (having only one article: Art. 72) regulating the “Autonomy of School Premises”, because of its prohibition of not only religious teaching, but also of any other kind of denominational activity in public schools and kindergartens. Paras. 3 and 4 of Art. 72 of the Education Act (as first enacted by the National Assembly) provided as follows:

“(3) Denominational activities are not permitted in public kindergartens and schools or in licensed kindergartens and schools.

(4) Denominational activities determined in the previous paragraph of this article encompass:

- religious lessons or denominational religious lessons aimed at raising students in that religion,
- lessons in which a religious community decides on the substance, textbooks, teachers' education and the suitability of individual teachers for teaching,
- organised religious rites.”

From the relevant statutory provision it follows that the Legislator did not first regulate the manner of ensuring the positive aspect of religious freedom and consequently introduced also some limitations or measures in order to protect the negative aspect of religious freedom (e.g. the prohibition of mandatory attendance of religious lessons; the organization of religious lessons prior to the beginning of

“(1) Religious and other beliefs may be freely professed in private and public life. (2) No one shall be obliged to declare his religious or other beliefs. (3) Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions”.

¹² The Constitution of the Republic of Slovenia (1991); Para. 1 Art. 41.

¹³ Art. 7 of the Constitution: “(1) The state and religious communities shall be separate. (2) Religious communities shall enjoy equal rights; they shall pursue their activities freely”.

or after lessons so that the students who do not want to take part in such lessons may uninterruptedly leave etc.).¹⁴ On the contrary, the Legislator not only embraced the idea of French secular school (*l'école laïque*)¹⁵ or the United States of America's model,¹⁶ but surpassed them by introducing an ultra-strict model of separation of religion and state/school, which is quite different from that of the majority of European countries where the laws guarantee religious instruction within the framework of the public school.¹⁷ The legislator's approach of ensuring only negative neutrality in public (and also in private) schools was heavily inspired by the idea of strict or negative *Läicité* (ideological secularism) and its negative perception of religion (e.g. the supporters and the drafters of the Education Act regarded Catholicism as an ideology and not as a religion).¹⁸ The system of a private or "free" education system at the level of elementary schools in Slovenia is – 20 years after the change to a democratic system – still in its initial development phase.

2.2. Instruction about Religions and Ethics

The Grammar School Curriculum introduced 1. a facultative non-confessional subject Religions and Ethics, and 2. a compulsory subject Civic and Patriotic Education and Ethics. The subject Civic and Patriotic Education and Ethics takes place in the 7th and 8th years of grammar school and amount to one hour per week (totally 70 hours). A pupil may decide to take the subject Religions and Ethics in last

14 Umek, S. (2004) p. 22.

15 Detailed about the notion of *Läicité* and the current development towards a *Läicité nouvelle*: Robert, J. and Duffar, J. (1996), p. 552.

16 Kodolja, Z. (1999), p. 153.

17 Judge of the Constitutional Court F. Testen in his separate opinion stressed that: "Ultimately also the traditionally lay-oriented France allowed e.g. the founding of vicariates in public (secondary) schools, and the U.S. Supreme Court ordered the New York public school district to enable a student group to organise on the premises of the public school outside school hours meetings for students to pray and study the Holy Bible. In these countries school premises as State symbols were not thereby given religious connotations." See the decision of the Constitutional Court *Mihael Jarc et al.* No U-I-68/98.

18 Kodolja for instance holds Catholicism to be a mere ideology, equally dangerous as has been the Marxist ideology in the past. See Kodolja, Z. (1999), p. 153.

three years of grammar school. Also in the area of upper secondary education the subject Religions and Ethics remains an optional subject (having totally 15 hours per year). Churches and religious communities do not have any influence on the content or the execution of the mentioned subjects.

2.3. Religion within the Framework of Classes in Literature, History, Philosophy, Arts, and Language

The school legislation does not have special provision concerning religious content in subjects such as History, Philosophy, Literature, Arts, Language Classes etc.

III. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. Religion Within the Framework of Working Conditions of Teachers and Other Staff, Religious Symbols at School (e.g. Crucifix Case in Italy) and Religious Garments

There are no specific provisions in the public school law concerning religious symbols and religious garments at public schools. The statute deals with religious elements within the framework of working conditions of teachers and other staff.

2. The Possibility of a Benediction of School Buildings

There are no legal impediments concerning the benediction of a private school building. In relation to public schools legal rules enshrined in Article 72 of the Education Act are not clear enough. Benedictions of public schools are more or less a general and non-disputed practice.

3. Special Issues, e.g.: Religiously Motivated Behaviour of Pupils, Teachers and Staff in School, Prayers in Public, Prayer within the Framework of Classes or Other School Events, Religious Services

Article 72 of the Education Act prohibits organised religious rites (e.g. religious services) in public schools and does not address other

matters of religiously motivated behaviour of pupils, teachers and staff.

4. *Constitutional Review*

In the case of *Mihael Jarc et al.* No U-I-68/98 (November 2001) the Court reviewed the question of whether the provisions of the Education Act interfere with the positive aspect of the freedom of religion,¹⁹ the principle of equality,²⁰ the rights of parents,²¹ and the right to free education.²² The Court first declared that the general prohibition of denominational activities in public schools²³ is not inconsistent with the Constitution and the ECHR. The only inconsistency with the Constitution is the prohibition of denominational activities in licensed kindergartens and private schools in regard to the denominational activities which take place outside the scope of the execution of a valid public programme financed from State funds.²⁴ The Court instructed the National Assembly to remedy the established inconsistency in a time limit of one year and the Legislator consequently changed the provision of Art. 72 of the Education Act by allowing the licensed kindergartens and schools to carry out denominational activities which take place outside the scope of the execution of a public service.

4.1. *The Principle of Separation vs. the Right to Religious Freedom*

The Court first acknowledged that the Constitution “does not specially regulate denominational activities in (public and licensed) schools, which means that it neither prohibits nor requires such...”. This would (rightly) suggest that the matter was left to be regulated by the Legislator. However, the Court then argued that the general principle of the separation of the State and religious communities (on

19 Para. 1 Art. 41. of the Constitution.

20 Art. 14 of the Constitution.

21 Para. 3 Art. 41. of the Constitution and Art. 2 of Protocol No 1 to Convention for the Protection of Human Rights and Fundamental Freedoms.

22 Art. 57 of the Constitution.

23 Para. 4 Art. 72 of the Education Act.

24 Para. 3. Art. 72 of the Education Act.

the basis of which the State is bound to neutrality, tolerance and a non-missionary manner of operation)²⁵ means that on school premises the religious content cannot be part of public lessons (i.e. neither part of lessons in a public school, nor part of teaching in the framework of the public service of a licensed private school). For the Court, teaching of religion *in* as well as *by* public schools would be intolerable.

As a consequence of the Court's initial standpoint a dilemma regarding the criterion for review turned up: whether the principle of separation should be interpreted in the light of the right to religious freedom or whether the right to religious freedom is the main criterion for review (which ought to be interpreted in the light of the principle of separation).²⁶ Since the constitutional right to religious freedom is one of few most hierarchically protected rights and unconditionally protected constitutional values (it may in no case be abolished and it can only be limited under very strict conditions),²⁷ there should not have been any doubt that it cannot be outranked by the principle of separation. Thus, the Court's above-mentioned conclusion could not be deduced from the principle of separation alone. However, as the main criterion for judicial review of the general prohibition of denominational activities in public kindergartens and schools served the principle of separation.²⁸

In reviewing the provision prohibiting the denominational activities in public kindergartens and schools the Court did refer to the right to religious freedom, but failed to make a consistent test of proportionality, which includes a careful and profound balancing between the positive and the negative aspect of the right to religious freedom. In the Court's argumentation strict interpretation of the

25 Art. 7 of the Constitution.

26 *Orehar Ivanc, M.* (2000), p. 48.

27 Art. 16. of the Constitution.

28 Judge *Tresten* opposed to the selected mode of review (Para. 1 Art. 7 of the Constitution) insofar as it referred to the premises of public kindergartens and schools. In his opinion, in the case of licensed kindergartens and schools, the freedom of the founders of these schools to profess the religion should also have been considered as a necessary criterion for review.

principle of separation prevailed, which pushed aside a full-scale balancing of both constitutionally protected aspects of the right to religious freedom:

“According to Art. 41.2 of the Constitution, citizens have the right not to declare their religious beliefs and to require that the State prevent any forced confrontation of the individual with any kind of religious belief. A democratic State (Art. 1 of the Constitution) is, on the basis of the separation of the State and the Church (Art. 7 of the Constitution), obliged in providing public services and in public institutions to ensure its neutrality and prevent one religion or philosophical belief from prevailing over another, since no one has the right to require that the State support them in the professing of their religion. To reach this goal it is constitutionally admissible that the State takes such statutory measures as are necessary to protect the negative aspect of freedom of religion and thereby realize the obligation of neutrality. ... Furthermore, the interference with the positive aspect of freedom of religion cannot be considered inappropriate as thereby the forced confrontation of non-religious persons or persons of other denominations with a religion they do not belong to can be prevented. This interference is also proportionate, in the narrow sense of the word, in so far as it relates to the prohibition of denominational activities in public kindergartens and schools. These are namely, public (State) institutions financed by the State and are as such the symbols which represent the State externally and which make the individual aware of it. Therefore, it is legitimate that the principle of the separation of the State and religious communities and thereby the neutrality of the State be in this context extremely consistently and strictly implemented. Considering the fact that a public kindergarten or a public school do not represent the State only in carrying out their educational and upbringing activities (public services) but also as public premises, the principled prohibition of denominational activities does not constitute an inadmissible disproportionality between the positive aspect of the freedom of religion and the rights of parents to raise their children in accordance with their religious persuasion on one hand and the negative aspect of freedom of religion on the other hand.”

However, in reviewing the general prohibition of denominational activities in licensed kindergartens and schools which take place outside the scope of the execution of a valid public programme fi-

nanced from State funds, the Court relied on the right to religious freedom as the main criterion for review. In order to determine a proper balance between the negative and the positive aspect of religious freedom the Court now carried out the test of proportionality more accurately. According to the Constitution, human rights and fundamental freedoms are limited only by the rights of others and in such cases as determined by the Constitution.²⁹ The Court reviewed whether the interference, as enacted by the Education Act, with the positive aspect of the freedom of religion (conscience) of an individual and the right of parents is admissible to ensure the protection of the constitutional rights of others. The Court stressed that:

“in reviewing proportionality in the narrow sense we must weigh in a concrete case the protection of the negative aspect of the freedom of religion (or freedom of conscience) of non-believers or the followers of other religions on one hand against the weight of the consequences ensuing from an interference with the positive aspect of freedom of religion and the rights of parents determined in Art. 41.3 of the Constitution on the other. There is no such proportionality if we generally prohibit any denominational activity in a licensed kindergarten and school. By such prohibition the legislature respected only the negative freedom of religion, although its protection, despite the establishment of certain positive religious freedoms and the rights of parents to provide their children a religious upbringing, could as well be achieved by a milder measure.”

For the Court, teaching of religion *in* licensed schools as a matter of principle is tolerable. However, teaching of religion *by* licensed schools is only being tolerable in the case it is not performed in the scope of public service.

4.2. *Public Sphere, Premises, Service and Financing vs. Religion*

Although the doctrines used by the Court in order to support its argumentation are not sufficiently elaborated, one can conclude that in the Court's opinion the doctrine of state neutrality rules out the presence of religion in the public sphere. The socialist Constitution (1974) pro-

²⁹ Art. 15 of the Constitution.

hibited the activity of Churches in public sphere. A new Constitution (1991), by introducing the principle of democracy and the right to religious freedom departs from the old totalitarian views on religion. Freedom of religion is not only ensured in private life, but also in public life. This means that religion and other convictions are part of public life or society. Thus, the religious moment is relevant and legitimate especially in the fields of public media, education, culture and social affairs.³⁰

The Court's argumentation is not only unconvincing, but also inconsistent in terms of logic and comparative legal doctrine. The meaning of the term "public" (as already indicated in the above cited Court's arguments on the meaning of the principle of state-church separation) turned out to be a crucial point of review. However, it remained unclear what really is entitled to legal protection: the premises of public schools, the public service as such, the public financing or the whole public sphere. The separate opinion of Justice *Testen* mentioned above also reveals other problems with the Court's argumentation. *Testen* claims that the criterion of review (the legitimate goal) that justifies State restriction of denominational activities on the premises of schools and kindergartens, insofar as also referring to the premises of public kindergartens and schools, might only be the negative aspect of religious freedom, enshrined in the Para. 2 Art. 41 of the Constitution. He rightly stressed that "if only the rights of parents and children determined in Para. 1 and 3 Art. 41 of the Constitution on one hand and the rights of other users of public school services determined in Para. 2 Art. 41 of the Constitution, on the other hand, are weighed against each other, the results of such weighing should be the same for public schools and licensed schools." In *Testen's* opinion the decision gives no convincing reasons why it is constitutionally admissible that denominational activities on the premises of public schools are in principle not permitted at all, while in private schools and licensed schools such activities cannot be prohibited. Namely, in the case of public kindergartens and schools the rights of parents and children are

30 *Orehar Ivanc, M.*, p. 447.

equally interfered with as in the case of licensed schools. Whereas, in the case of licensed schools, it is constitutionally feasible to ensure the exercising of the negative aspect of the right to religious freedom by a milder measure (providing that persons with different beliefs are not forced to involuntarily encounter the expressions of religious beliefs), there are no reasons why the same would not also be feasible in the case of public schools.

From a comparative perspective, does the constitutional principle of separation between state and church in some other countries of the European Union *per definition* prohibit the religious education in public schools? I consider this is not the case. For instance, in Portugal teaching of religion in public school is allowed on a voluntary basis.³¹ A principle of separation was introduced also in Hungary, where it is interpreted in the light of neutrality and benevolent separation. Thus, churches have the right to provide religious education in public schools at the request of students or their parents.³² Even in France, which has secular public education, *laïcité* takes different forms (e.g. elementary schools must leave clear one day to enable parents to arrange for religious education outside the school and the existence of chaplaincies at level of secondary schools) and the three *départements* of the east of France still enable religious education in public schools as part of a general curriculum.³³ Šturm believes that the church-state balance has still been influenced by strict neutrality that limits church-state interaction: “such an approach of negative neutrality does not accord with modern views of religious freedom, which envision greater church-state cooperation, protection of positive religious freedom, and the state intervention in public religious activities when necessary to protect public order.”³⁴

The most problematic issue about the particular decision is that the Court did not provide for any kind of protection of positive as-

31 See in detail about the relevant jurisprudence of the Portugal Constitutional Court: *Canas, V.* (2005), p. 454.

32 *Schanda, B.* (2005), p. 329.

33 *Basdevant-Gaudemet, B.* (2005), p. 171.

34 *Šturm, L.* (2004), p. 642.

pects of religious freedom in public schools, except in an extremely rare situation, when denominational activities cannot be carried out in a local community, due to the fact that there are no other appropriate premises.³⁵ Nor did the Court take into account the general state of affairs in the field of education, especially almost total absence of private elementary schools (at the time there were no religious elementary schools, established by the churches or other religious communities). Consequently, the right to free education and the religious freedom is not guaranteed. The Court supported the introduction of archaic model of negative *Läicité* in education and consequently decided in favour of an ultra-strict model of separation between state and religious communities. Neither the Legislator's way of regulating religious education in public schools, nor the decision of the Court are comparable with the constitutional and legislative solutions of other countries of the European Union.³⁶ It can also be argued that the Legislator overlooked the need to somehow remedy the injustices, done by the indoctrination in the system of public education in the past.³⁷

However, in its recent decision No U-I-92/07-23 on the Religious Freedom Act the Court referred to the decision on the Education Act and acknowledged that the negative aspect of religious freedom cannot outweigh the positive one, which indicates that the Court changed its perspective (par. 86).

IV. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

The Legislator's decision to opt out religion from the area of public education has important consequences concerning the possibility for opting out of school obligations for religious reasons.

³⁵ The only exception, introduced by the Education Act, shows that the public school premises are not untouchable for religion. Para. 5 Art. 72 of the Education Act.

³⁶ For comparative analysis see: *Robbers, G.* (2005).

³⁷ See more *Ivanc*, 2007.

1. Religious Holidays: Possibility of and Conditions for Taking off the Relevant Days

According to the State Holidays Act major Christian holidays are not working days. Non-Christian pupils may use the right to be absent from school for five days without giving any kind of justification (Art. 53 of the Primary School Act). The headmaster may even consent to a longer absence. This decision is within his discretion.

2. Opting out of Religious Instruction or Instruction about Religions

Since there is no religious instruction in public schools and instruction about religions is a facultative subject, the problem of opting out does not arise.

3. Opting out of Physical Education (e.g. Coeducational Swimming Instruction for Muslim Girls) and opting out of Biology (e.g. Due to Believing in Creationism)

The question of opting out of Physical Education or out of Biology, which are obligatory subjects (Art. 16 of the Primary School Act), has not yet arisen. The only reason for opting out of compulsory subjects is poor health (Art. 52).

4. Religiously Motivated Home-Schooling

The Primary School Act provides for Home-Schooling (Arts. 1, 5 and Chapter VII/ 88–92) and has no special provisions that would regulate its religious motivation. The provisions of the *Education Act* concerning the “Autonomy of School Premises” cannot apply to home-schooling. The risk of interference with the right of parents to determine their children’s upbringing as to freedom of conscience in the area of home-schooling is extremely low, but in practice there is hardly any case of home-schooling that is directly or indirectly religiously motivated.

V. CONCLUSION

The system of private or “free” education in Slovenia is – 20 years after the change to a democratic system – still in its initial development phase. Since the Education Act, under the pretext of the “Autonomy of School Premises”, ousts religion from the field of public education, the constitutional right of parents to determine their children's upbringing in the area of freedom of conscience in most cases remains void.

In regard to public schools the legislator decided for a (too) strict regulation of religious issues, taking into consideration only the negative aspect of religious freedom and ignoring the positive one. Thus, the school legislation does not regulate issues such as opting out of school obligations for religious reasons. However, there is a certain free field for discretion (e.g. the headmaster's decisions) that in concrete cases enables solutions that go in favour of religious opt-outs.

REFERENCES

- Brigitte BASDEVANT-GAUDEMET*, State and Church in France in: Robbers (ed.) State and Church in the European Union, Second Edition, Nomos, Baden-Baden, 2005, p. 157–185.
- Ernst Wolfgang BÖCKENFORDE*, Staat – Gesellschaft – Freiheit: Studien zur Staatstheorie und zum Verfassungsrecht, Suhrkamp Verlag, Frankfurt am Main, 1976.
- Zdenko KODELJA*, The Teaching about Religion at Slovene Public Schools, The School Field, Vol. X, No 3/4, 1999, p. 153–158.
- Barbara NOVAK*, Šola in otrokove pravice (The School and Childs' Rights), Zbirka Pravna obzorja št. 26, Cankarjeva založba, Ljubljana, 2004.
- Charalambos PAPASTATIS*, State and Church in Greece in: Robbers (ed.) State and Church in the European Union, Second Edition, Nomos, Baden-Baden, 2005, p. 125–138.

- Drago ČEPAR, Blaž IVANC* (Eds.), *Legal Aspects Of Religious Freedom – Les Aspects Juridiques De La Liberté Confessionnelle*, International Conference, Ljubljana, September 15–18, 2008, Office of the Government of the Republic of Slovenia for Religious Communities.
- Blaž IVANC*, A values dilemma in Slovenian public school law: missed balancing of negative and positive aspect of religious freedom in public schools, in *Secularism and Beyond: International Conference*, Copenhagen, May 29 to June 1, 2007, http://www.ku.dk/satsning/Religion/sekularism_and_beyond/pdf/Paper_Ivanc.pdf.
- Leonid PITAMIC*, Naravno pravo in narava prava in: *Filozofija prava – študijsko gradivo*, Pravna fakulteta Univerza v Ljubljani, 1993/94, p. 137–147.
- Gerhard ROBBERS* (ed.), *State and Church in the European Union*, Second Edition, Nomos, Baden-Baden, 2005.
- Jacques ROBERT and Jean DUFFAR*, *Droit de L'Homme et Libertés fondamentales*, Editions Montchrestien E.J.A., Paris, 1996.
- Metoda OREHAR IVANC*, Svoboda religije proti ločitvi države in religije (Freedom of Religion against the separation of the State and Religion) in: Lovro ŠTURM (ed.), *Cerkev in država. Pravna ureditev razmerja med državo in cerkvijo* (Church and State. Legal regulation of the relationship between the state and the church), Comparative survey, Nova revija, Ljubljana, 2000, p. 17–49.
- Metoda OREHAR IVANC*, Commentary on the Art. 41 of the Constitution of the Republic of Slovenia) in: Šturm, L. (eds.), *Komentar Ustave Republike Slovenije* (Commentary on the Constitution of the Republic of Slovenia), Faculty of Post-Graduate State and European Studies, Ljubljana, 2002, p. 444–459.
- Balász SCHANDA*, State and Church in Hungary in: *Robbers* (ed.) *State and Church in the European Union*, Second Edition, Nomos, Baden-Baden, 2005, p. 323–345.
- Lovro ŠTURM*, Church-State Relations and the Legal Status of Religious Communities in Slovenia, *Brigham Young University Law Review*, Number 2, Volume 2004, p. 607–650.
- Jiří Rajmund TRETERA*, State and Church in the Czech Republic in: *Robbers* (ed.) *State and Church in the European Union*, Second Edition, Nomos, Baden-Baden, 2005, p. 35–54.

BLAŽ IVANC

Simon UMEK, Komentar odločbe Ustavnega sodišča RS (A Commentary to the Decision of the Constitutional Court), Pravna praksa, No 20, 2004, p. 22.

Canas VITALINO, State and Church in Portugal in: Robbers (ed.) State and Church in the European Union, Second Edition, Nomos, Baden-Baden, 2005, p. 439–467.

RELIGION IN PUBLIC EDUCATION – SPAIN

AGUSTÍN MOTILLA

I. GENERAL BACKGROUND

1. Facts and Figures

1.1. Demography¹

The total number of students enrolled in schools authorized by the Educational Authorities is 7,632,961. According to the different stages and cycles, they are divided as follows: Nursery school – 1,848,180; Primary school – 2,721,357; Obligatory Secondary Education, or Junior High School (designated as OSE hereafter, ages 12–16) – 1,809,133; *Bachillerato*, or Senior High School – 637,582 and Professional Education – 585,561 (in both cases ages 16–18). As compared with the previous school year, there have been increases in Nursery school (2.7 % more) and Professional Education (7.8 % more). A slight reduction in the number of OSE students has also been detected (0.1 % less).

1.2. Number of Private and Public Schools in the Country

In the whole of Spain, 67.3 % of students attend public schools. The rest, 32.7 %, attend private schools, 20 % attend schools chartered by the Educational Authorities and 12.7 % attend totally independent private schools.

¹ The information and numbers given correspond to the 2009–2010 school year as published by the Department of Statistics of the Spanish Ministry of Education. They are available on the webpage <http://www.educacion.es/mecd/estadisticas/educativas/dece/Datos.Cifras.web.pdf>.

The number of authorized schools at each level of education is as follows. At Nursery School level, of a total of 6,947, 3,477 schools are public and 3,470 are private, chartered or not. At the Primary School level, there is a total of 10,302 schools (some of which also include those at Nursery School level). Of these, 9,825 are public and 477 are private. 2,269 schools offer both Primary School and OSE. Of these, 653 are public and 1,616 are private. 4,669 schools offer OSE, Senior High School (*Bachillerato*) and Professional Education. Of these, 3,898 are public and 771 are private. Lastly, there are centres that offer every level of non-university education except for Nursery School, in other words, Primary, OSE, Senior High School and Professional Education. There are 1,323 of these and all, except 2, are private. In all, there are 26,033 non-university educational institutions in Spain, of which 18,089 are public and 7,944 are private.

It is also critical to point out the importance in the private school sector of the Catholic school system. The owners of these schools are the church hierarchy, religious orders or congregations, and Catholic associations recognised as such by the Catholic Church². Catholic schools represent 37.8 % of the private school sector and 11.1 % of the total of public and private schools together. Enrolment in Catholic schools is 1,387,835³ students. It is important to note that the majority of Catholic Schools, approximately 93 %, have some kind of charter connection with the Administration. Of a total of 2,630 Catholic schools, 2,430 are chartered⁴.

2 The data offered here correspond to the 2009–2010 school year. They can be consulted at <http://www2.esuelascatolicas.es/estadisticas.pdf>.

3 Distribution by level: Nursery School – 281,787 pupils, Primary School – 535,483 pupils, OSE – 415,602 students, Senior High School – 103,203 students and, lastly, Professional Education – 51,760 students.

4 Distribution by level: Nursery School, of a total of 2,293, 2,126 have some kind of charter relationship; Primary School, 2,100 out of 2,136 have the same, in OSE, it is 1,963 out of 2,001, Senior High School, 777 out of 803 and in Professional Education, 640 out of 649. It is important to take into account that most Catholic schools offer the full range of non-university levels.

1.3. Description of the General School System

The present Spanish educational system is regulated by the *Ley organica 2/2006 de 3 de mayo, de Educación* (Organic Law of Education 2/2006 of May 3) which divides non-university education into four levels. Nursery School, which is voluntary, goes from a child's birth up to the child's sixth birthday. At this point, Primary School begins. Its duration is 6 years and lasts till the age of 12, and it is obligatory and free. The principal subjects studied in this cycle are artistic education, physical education, environmental studies, Spanish language and literature, a foreign language and mathematics. The OSE is also obligatory and free, lasts four years, and goes from the age of 12 until the age of 16. The subjects include natural sciences, physical education, social sciences, Spanish language and literature, a foreign language, mathematics, plastic arts, music and technology. Once the student has finished his/her obligatory education, (s)he can choose to stop studying or choose either to do the *Bachillerato* (Senior High School), which prepares one for university, or to spend two years in various cycles of Professional Education. The *Bachillerato*, which also lasts two years, up to the age of 18, is divided into four areas of specialization: arts, science and technology, humanities, and social studies. There are also common subjects, which all students must take: physical education, philosophy and citizenship, history of philosophy, Spanish history, language and literature and a foreign language. The native languages of the Spanish regions (autonomous communities) must be taught in their territory as a compulsive subject.

The types of educational institutions authorized by state authorities to give non-university courses may be publicly or privately owned. In the first case, they have different names depending on the type of courses taught: "Nursery Schools" at kindergarten level, Primary Education Schools at the primary level, and "*Institutos*" or High Schools, in which OSE, *Bachillerato* and Professional Education courses are taught. Private schools can enter into an agreement with the Authorities to offer one or more of the levels of education,

as long as they satisfy local schooling needs in the area where they are situated. Through this agreement, they receive public funding for the maintenance of the school. In many cases, the Educational Authorities pay the salaries of the teachers who work in these schools. In this case, tuition is free for the students, the criteria for admission are similar to those of public schools, the principal one being the proximity of the school to the student's home. Also, the parents, teachers and students participate in the organisation and running of the schools through an organism called the School Council (*Consejo Escolar*).

2. Religion as a Subject of Instruction and Its Substitutes

2.1. Religious Instruction (i.e. Confessional Teaching)

The Agreement on Education and Cultural Affairs of 3 January 1979 between the Spanish State and the Holy See establishes the obligatory subject of "Catholic Religion" to be included in the curricula of Primary Education, OSE, Senior High School and Professional Education. This subject is obligatory in all schools, but it is voluntary for the students. It is to be considered of the same importance as other basic disciplines.⁵ The church hierarchy establishes the content of the courses and suggests the textbooks to be used.⁶ The Spanish Episcopal Conference has assumed this task. The Ministry of Education approves the content, makes them public by ministerial decree⁷ and approves the textbooks on this subject to be used every year. The Spanish Constitutional Court has declared that the system of insertion of the teaching of Catholic religion into the educational system is a manifestation of the cooperation of the public administration with different religions – Article 16.3 of the Spanish Constitution – in order to make it possible for parents to give their children a reli-

5 Article II of the Agreement.

6 Article VI of the Agreement.

7 This was established in the decrees of October 5, 1993, for *Bachillerato* and Professional Education, and of June 6, 2007 for Nursery School, Primary School and OSE.

gious and moral education corresponding to their convictions – Article 27.3 of the Spanish Constitution⁸.

A question that has been one of the most extraordinarily controversial issues ever since the approval of the present Constitution is that of the legal status of the Catholic religion teachers in public schools. The Agreement on education establishes that it is the educational authorities who select the people who are to teach this subject from among those proposed by the bishop of each diocese⁹. The State undertakes to pay the teachers of Catholic religion the same salary as that of assistant teachers with temporary contracts¹⁰. The jurisprudence of the Spanish Supreme Court determined that the legal status of the teacher is that of an employment relationship, limited to the duration of one academic year, with the educational authorities who own the school. If this person is not proposed again for the following year, this will not constitute a dismissal, but rather a termination of contract due to the expiry of the agreed time period¹¹. This legal principle is reflected in educational legislation: Organic Law 2/2006 of May 3 determines that the renewal (of the contract) will take place automatically every year, unless the Church specifically expresses its wish to replace the teacher, and that this dismissal will take place as determined by law¹². In ruling 38/2007, the Spanish Constitutional Court determined that it was constitutional that it should be the various religious organisations who select the person who is to teach the subject of religion, and that in determining the suitability of this person, the religious organisation is allowed to evaluate the candidate not only on the basis of his knowledge, but also on that of his personal conduct. Nevertheless, the non-renewal of a teacher's contract for the following academic year must be based on religious motives, and this can be investigated by a court

8 Sentence 38/2007 of the Constitutional Court, fifth juridical principle.

9 Article III of the Agreement.

10 This was accorded in the agreements signed between the Spanish Episcopal Conference and the Ministry of Education on May 20, 1993 and February 26, 1999.

11 In reference to this, see, among others, the sentence of the Spanish Supreme Court of June 7, 2000.

12 Additional Clause 3.3.

of law. The bishops' proposal must consist of the names of various suitable people so that the Authorities can choose from among them on the basis of their merit and personal capacities, as laid out in Article 103.3 of the Spanish Constitution, as conditions for their incorporation into the Administration. The jurisprudence of the Spanish Supreme and Constitutional Courts is implemented by the Royal Decree 696/2007 of June 1¹³.

The faiths or denominations that have signed an agreement with the Spanish State, the Evangelical, Jewish and Islamic Federations, approved by the respective laws of November 10, 1992, are authorized to teach religion classes in public and chartered schools; in the latter, only if they are not contrary to the philosophy of the school. These different Federations have the right to approve the contents and the textbooks which must also have been previously authorized by the administration. The State undertakes to provide suitable spaces where religious instruction may take place¹⁴. However, unlike what occurs with the teaching of the Catholic religion, the subjects of Evangelical, Jewish or Islamic religion are not taught during school hours.

The teachers are to be proposed by the Federations. Ever since the signing of the Agreements between the Ministry of Education and the Evangelical Federation and the Islamic Commission of March 1, 1996,¹⁵ if there happen to be more than ten students in the course or educational level who wish to receive religious instruction, the State undertakes to hire a teacher. In this case, the legal situation of these Evangelical or Islamic teachers will be the same as that de-

13 Thus, for example, Point 6 establishes that access to a position must correspond to a series of objective criteria which shall be examined by the competent authorities, these include, teaching experience, academic degrees, and training courses completed. Point 7 regulates the termination of contract, naming, among its causes those described in the Workers' Statutes, an administrative decision as a consequence of disciplinary proceedings, as well as the "revocation in accordance to law of accreditation or unsuitability to teach religion classes according to the criteria of the religious organization which approved it".

14 See Article 8 in each of the Agreements.

15 Approved by the Resolutions of April 23· 1996.

scribed for the Catholic religion teachers. Their situation will also be regulated by the above-mentioned Royal Decree 696/2007 of June 1.

2.2. *Instruction about Religions*

The present educational system only teaches about different religions, their influence in culture, art or world history, at the OSE level¹⁶ and as an optional subject for those students who do not choose the alternative of Catholic religion. The norms of implementation of Organic Law 2/2006 of Education of 3 May, which determine the minimum requirements for the OSE, mention, as an optional alternative to the Catholic religion class, “History and Culture of Religions”, whose contents emphasize the monotheistic religions, and their artistic and cultural manifestations, as well as their relationship to presently existing States. The Spanish Supreme Court has ruled that the teaching of this subject does not violate the constitutional right to ideological freedom and, consequently, to not receive teachings contrary to one’s personal convictions. According to the Supreme Court, the study of religions as an academic subject, taught on an intellectual and objective level, does not constitute indoctrination nor does it impose any ideology or belief¹⁷.

2.3. *Ethics*

Organic Law 1/1990 of October 3 on the general organisation of the educational system establishes an education based on democratic values and peaceful coexistence as a cross-cultural subject; in other words, in the absence of a specific course on this subject, different

16 See Royal Decree 1631/2006 of December 29 and Order ECE/2220/2007 of July 12, Annex II.

17 Ruling of the Supreme Court of January 25, 2005. The Constitutional Court has also stated that the study of Canon Law as a scientific subject in Law studies is not against the individual freedom of beliefs proclaimed in Article 16 of the Spanish Constitution (Sentence 359/1985). The Parliamentary Assembly of the European Council has also insisted on the necessity of knowing different religions and their roles in modern society [Resolution 1396 (1999) “Religion and Democracy”].

subjects were inserted into courses in the humanities which educated the students in the values which, in accord with the Constitution, favour freedom, responsibility, democratic citizenship, solidarity, tolerance, equality and justice.

While recognizing the cross-cultural character of ethical education, Organic Education Law 2/2006 of 3 May, introduces a specific additional course called “Education for Citizenship and Human Rights” in every year of Primary, OSE, and Senior High School.¹⁸ The aims of this subject, as defined by the law, which considers it a fundamental subject, are to promote “the full development of the personality and affective capacity of the students, training them in the respect of fundamental rights and freedoms, the affective equality between men and women, the recognition of affective-sexual diversity, as well as a critical evaluation of the inequalities that will permit the overcoming of sexist behaviour”. Its specific contents are set out by several Royal Decrees that define the minimum content¹⁹ and leave the specific development of these contents to the Autonomous (Regional) Communities.

Aside from the content of these courses, another controversial aspect corresponds to the criteria and qualifications for teaching these courses. These criteria go beyond the mere transmission of knowledge and require the student to assume and formulate his own values. Thus, the grade obtained not only depends on the knowledge assimilated, but also on the attitudes of the student that show that (s)he also shares these values.

When various organisations of parents appealed to the courts against the obligatory nature of what they consider to be an ideological subject that attacks the right of parents to educate their children according to their own convictions, the Supreme Court ruled in various sentences dated February 11, 2009, that no kind of indoctrination is being imposed because the contents of the courses refer to the

18 In the fourth course of OSE it receives the name of “Ethical-Civic Education” and in Senior High School it is called “Philosophy and Citizenship”.

19 See Royal Decrees 1513/2006 of December 7, 1538/2006 of December 15, 1631/2006 of December 29 and 1467/2007 of November 2.

values that underlie the Spanish Constitution and, therefore, it is legitimate to encourage the feelings and attitudes which favour the practical application of the constitutional values.

2.4. Religion within the Framework of Literature, History, Philosophy, Art and Language Classes

The historical and social importance of the Catholic Church in Spain has determined that a great number of manifestations in all spheres of thought and creativity have been directly or indirectly influenced by the Christian religion and the special point of view of this religion was held and is still maintained by the Catholic Church. For this reason, the Christian religion is present to a greater or lesser degree in all humanistic disciplines. This, of course, is reflected in the contents and textbooks of subjects such as art, philosophy, history, literature, etc.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. Religion within the Framework of Working Conditions of Teachers and Other Staff

Article IV of the Agreement on Education and Religious Affairs signed by the Holy See and the Spanish State on January 3, 1979, inserts into the curricula of Teacher Training Schools the subject “Catholic Doctrine and the Teaching thereof”. This subject, which is optional for the students, is to be taught in the same conditions as other fundamental subjects, and this is reflected in the number of credits assigned to it.²⁰ Its contents as well as its textbooks are determined by the Spanish Episcopal Conference. The professors, as occurs in the non-university levels, are chosen by the university aca-

²⁰ In a communiqué sent by the General Administration of Academic Organization on November 5, 1980 to the Rectors, these are informed that the students of the Teacher Training Schools must take no less than 180 hours of courses in Catholic doctrine to be considered qualified to teach the Catholic religion.

demic authorities from among those proposed as suitable by the bishops.

Aside from the possibility of attending courses offered on Catholic doctrine and morals, neither specific religious knowledge nor beliefs are required, nor do they play a role in the selection of teachers and the carrying out of their functions at any level of the educational system.

2. Religious Symbols in Schools

The presence of crucifixes in the classrooms of public schools has become the object of growing controversy in society. There is no general rule applicable to the whole of Spain.

As education is one of the responsibilities that the central government has transferred to the autonomous communities,²¹ the situation relative to the presence or not of crucifixes in schools varies depending on the policy followed in each region. In some of these, such as Catalonia or the Basque Country, the crucifixes have been removed in accordance with the internal directives issued by the educational authorities. In the regions in which the crucifixes have been maintained, there have been some decisions of courts of law which, it must be said, have not established clear and uniform jurisprudence regarding the constitutionality of the presence of static symbols in schools.

Both the sentence of October 15, 2002, of the Superior Court of Justice of Madrid and that of September 20, 2007 of the Superior Court of Justice of Castilla-Leon, maintain that the crucifixes can be considered either as religious symbols which violate the right to religious freedom of parents or students of non-Christian faiths, or elements of purely cultural or pedagogical value whose mere presence does not represent an attempt to proselytise if it is not accompanied by religious indoctrination. Since the constitutionality or

²¹ In the Autonomous Cities of Ceuta and Melilla, education still is directed by the Ministry of Education.

unconstitutionality of crucifixes has not been definitely established, it is the organisms governing education that have to decide whether to keep them or not. According to the first ruling cited, that of October 15, 2002, it is the Educational Administration which owns the school that is competent to make a decision about this. The sentence of the Superior Court of Justice of Castilla-Leon considers that it is the School Council, the highest entity responsible for evaluating pedagogical elements in each school, which is responsible for deciding this question.

Two years later, this same Court, in a ruling of December 14, 2009, chose to consider that the mere existence of crucifixes may violate the rights of parents to transmit their religious and moral values to their children as well as the ideological and religious freedom of parents or children. Therefore, the crucifixes must be removed if the parents so request, but if they do not do so, they may remain because the Spanish Constitution also says that the religious beliefs of Spanish society must be taken into account (Art. 16.3). Notwithstanding, the European Court of Human Rights decision *Lautsi v. Italy*, of November 3, 2009, will certainly have an increasing influence in future Spanish rulings.

As for other traditional Catholic displays in schools such as the setting up of nativity crèches at Christmas time, the Superior Court of Justice of Murcia, in a ruling of November 30, 2009, rejected the claim of a public-school teacher requesting that they be removed because they violate the right to equality and religious freedom. In the eyes of the Court, the Spanish state is not secular, but rather non-denominational. Therefore the neutrality it must maintain in relation to religious beliefs cannot go against the rights and freedoms of its citizens. The removal of the crèche in question would represent a negative discrimination against Catholic parents and students who are the majority in the school.

3. Religious Garments

The specific regulations of public schools relative to education do not usually contain prohibitions of certain kinds of apparel of religious significance. Rather they mention the general obligation to show respect and decorum. However, referring to expression of one's own religion, both laws about education and the regulations resulting from these proclaim the students' right to religious freedom, and these include the right to display external symbols of their beliefs.²² The cases involving the Islamic headscarf or *hijab* have been solved up until now by respecting the rights of Muslim girls. It must be noted that in Spanish cities such as Ceuta and Melilla, almost half the female students in school are of Moroccan origin and wear the *hijab* and there have been no problems. In those cases on the Spanish peninsula in which a student has been initially expelled from school, the educational authorities have considered that priority must be given to the right to receive education, to religious freedom and to cultural identity, and ordered the readmission of the student. Nevertheless, the question remains controversial and has had important repercussions in the media. There is no jurisprudence relative to the disciplinary measures that could be adopted against Islamic students who decided to wear garments of religious significance. There have been no reports so far of incompatibility between these and specific educational activities. If such cases were to occur, for example in physical education classes, swimming, laboratory work, etc, the priority of the right to education and the obligation to attend classes would prevail over the right to wear a headscarf.

There have been no cases reported of public school teachers having been dismissed for wearing garments with a religious significance.

22 See Article 6.3 of Organic Law 8/1985 of July 3 which regulates the right to an education and Article 16.1 of Royal Decree 732/1995 of May 5 defines the rights and duties of students and the norms of coexistence in schools. Most of the Spanish autonomous communities have also special regulations about the rights and duties of students in their territory.

4. The Possibility of Blessing School Buildings

In private schools, it depends on the philosophy of the school and the decision of its owner.

In public schools, the non-religious character of the State prevents religious blessings from taking place. Nevertheless the Order of August 4, 1980, which regulates religious attendance and religious rites in schools, establishes that special areas shall be designated in these schools where students wishing to participate can gather, and religious rites can be celebrated. If these exist, it is the religious authorities who determine what needs to be done to provide this space with a sacred character. If these are Catholic churches and chapels where religious services take place, the specific authorization of the bishop must be obtained and then a blessing takes place²³.

5. Special Issues

Conceived as an aid for parents to exercise their right to educate and train their children in their own moral and religious beliefs (Art. 27.3 of the Spanish Constitution), the above-mentioned Order of August 4, 1980 regulates religious attendance in schools. As we have already mentioned, in schools, special areas are to be prepared for students who wish to attend and for religious services to be celebrated (Art. 1). The chapels already used for religious services are to be reserved for this purpose without this impeding their eventual use for other educational activities (Art. 3). As for the organisation of this religious attendance, this is to be agreed between the hierarchy of the church or religious organisation and the educational authorities (Art. 2).

23 Canons 1215 and 1217 of the Code of Canon Law.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

1. Religious Holidays: Possibility of and Conditions for Taking Off the Relevant Days

The Workers' Statute²⁴ states in general terms that the weekly day of rest shall be Sunday (Art. 37). Although the origin of this precept is religious, the Constitutional Court has stated that this weekly day of rest should be considered as secular and not religious²⁵.

Referring to nationally observed holidays whose origin is the commemoration of a religious event in the religious tradition of the majority of Spaniards, the Catholic faith, the Workers' Statute establishes the limit of 14 holidays of either a secular or religious nature²⁶. Among these, and obligatory for all of Spain, is Christmas. The other religious holidays, as described in Article III of the Agreement on Legal Affairs with the Holy See, are to be determined by common agreement of church and secular authorities. Consequently, as established by Article 45 of the Royal Decree of July 28, 1983, which develops Article 37 of the Workers' Statute,²⁷ the government is to establish the holidays for each year. The religious holidays will be established by agreement with the Episcopal Conference.

In schools, for those religions, other than the Catholic, which have an agreement with the State, an effort is made to make their holidays compatible with the general regulations described above by excusing them from attending classes. In the Agreement with the Evangelical Federation, students of the Adventist faith and of other denominations that have Saturday as their day of rest are excused from classes "from sunset on Friday until sunset on Saturday", if requested by the student or the person charged with the custody of

24 See Legislative Royal Decree 1/1995 of March 24, in which the revised text of the Law of the Workers' Statute is approved.

25 Sentence 19/1985 of February 13 of the Constitutional Court.

26 The Autonomous Regional Communities can replace some of the holidays by celebrations specific to the Community.

27 Elaborated in accordance with Royal Decree 1346/1989 of November 3.

the student (Art. 12.2). Also instead of Sunday, for Jewish students the weekly day of rest is Friday afternoon and all of Saturday. On these days and on the High Holidays of Judaism, students are dispensed from attending classes or taking examinations (Arts. 12.1 and 2). For Muslims, students are excused from classes in the same way on Islamic holidays and Fridays from 1:30 to 4:30 p.m. (Arts. 12.1 and 2).

2. Opting out of Religious Instruction or Instruction about Religion

In general lines, while their children are minors, the State guarantees the parents the right to give their children the religious and moral education according to their personal convictions.²⁸ Adulthood is reached at the age of 18, after this, individuals obtain their full civil and political rights among which is the right to have their own religious convictions.²⁹

In addition to this, Spanish law, in accord with international agreements, recognises the right of religious freedom for minors. Article 6 of Organic Law 1/1996 of January 15, on the legal protection of minors states that “the minor has a right to freedom of ideology, conscience and religion”. The parents have the right and the duty to cooperate so that the minor may exercise this right in a way that contributes to his general development. In Education, Article 6.3 of Organic Law 8/1985 of July 3, which regulates education, recognises the right of students to “respect of their freedom of conscience, and their religious and moral convictions as set out in the Spanish Constitution”. And in this same sense, Article 16.1 of Royal Decree 732/195 of May 5, which establishes the rights and duties of students as well as the rules of social coexistence in schools – along with the specific regulation enacted by the Spanish autonomous communities – proclaims the right of students to respect for their freedom of conscience and religious and moral convictions.

28 Article 27.3 of the Spanish Constitution and Article 4.1 of Organic Law 8/1985 of July 3, which regulates the right to an education.

29 Article 1 of Organic Law 1/1996 of January 15, on legal protection of minors.

The Spanish legal system does not specify the ages as of which students are allowed to exercise their rights in the educational system. In the case of disagreement between parents and children, the case must be presented to a local judge, who will resolve the conflict giving priority to the interests of the minor and considering his degree of maturity.³⁰

3. *Opting out of Specific Subjects*

Spanish law has considered two kinds of cases in which students are exempted from attendance and qualification in specific subjects for philosophical or religious reasons.

In the first case, a student's parents requested exemption from the obligation to attend sex education classes, which are a part of the subject of Natural Sciences in the eighth level of Primary Education, because the contents of the explanations were contrary to their religious and moral convictions. The Superior Court of Justice of Cantabria, in its ruling of March 23, 1998 rejected the parents' claim. The sentence points out that once a school's plan of study has been approved, its contents become obligatory for all students and teachers; therefore attendance and participation in these activities is mandatory. The right of parents to determine the education of their children has as its limit the rights of the other members of the school community. Parents cannot predetermine the contents of the study plan of a public school in accordance with their own philosophy; however, they always have the freedom to choose a specific kind of education by exercising their right to choose a suitable school.

In the second case, some parents requested exemption from the obligation to attend and be examined in the subject "Education for Citizenship and Human Rights" because they considered its contents

30 However, practice indicates that as the student nears adulthood, (s)he decides whether or not to take the course in Catholic religion. According to the statistics for each stage of education, if in Elementary Education 74 % of the pupils choose Catholic religion, in OSE enrolment drops to 44.7 % and in *Bachillerato* to 37 %. (The data produced by the Office of Statistics of the Episcopal Conference may be consulted in the webpage of the Spanish Episcopal Conference).

to be contrary to their religious and moral convictions. After several contradictory sentences in inferior courts, the Spanish Supreme Court in a ruling of February 11, 2009 rejected the petition. For the Supreme Court, parents have the right (Art. 27.3 of the Spanish Constitution) to request the annulment of the standards that regulate obligatory subject matter when these conflict with their right to determine what religious or moral teachings they wish their children to receive, but they do not have the right to request excuses and exemptions. According to Article 27.2 of the same text, the Public Authorities are obliged to achieve the educational goal of developing the student's personality in respect of democratic principles and human rights, and this obligation limits the rights of the parents, as long as the contents of the courses do not constitute indoctrination. The Court considers that "Education for Citizenship", in the minimum contents determined by the norms established by the Education Law, contains the necessary information presented in an objective and plural way and, therefore, does not constitute indoctrination, neither does it intend to replace the beliefs of the parents with a kind of civic ethics.

4. Religiously Motivated Home-Schooling

Unlike the laws of other European countries, Spanish law does not envisage the possibility of parents educating their children at home. Obligatory schooling between the ages of 6 and 16 prevails although no one has been penalized for practising home-schooling.

Ruling 260/1994 of October 3 of the Spanish Constitutional Court resolved the sanction requested by the *Generalitat* of Catalonia, which had assumed temporary guardianship of some minors whose parents belonged to the religious group the Children of God, because, among other reasons, the children were not enrolled in school. The parents claimed that, for them, the family is a basic element in the education they want to give their children in accord with their faith, and that they supply this education in their home. Furthermore, in Catalonia, classes are taught in the Catalan language

and the children only speak English. The Court in a rather succinct exposition, considered that there was not sufficient justification for removing the children from their parents' custody and putting them in the custody of the administration.

Nevertheless, the last paragraph of the ruling, and, we insist, without any legally coercive effect, recognises that “the deprivation of custody in no way diminishes or eliminates the authority of the *Generalitat* to guarantee the appropriate education of the minors ... Only if the exercise of that right were effectively impeded could the right invoked by the plaintiff be considered to have been violated, and this cannot be deduced from the case documents.”

Since then, in decisions of lower courts, parents who had schooled their children at home have been absolved of the accusation of not fulfilling the duties inherent to parental custody. In a Sentence of October 9, 2009 of Criminal Court nº 10 of Teruel, the judge, without touching on the subject of the obligation to school children or the advantages of home-schooling, considers that, in this case, parents who educate their children at home according to the standards and methods established by the Association for Free Education, do not violate the duty of parents to school their children. On the contrary, they have shown that they are personally implicated in the transmission of knowledge and moral and ethical training, as well as seeking recognition of their children's academic level by the public school system. The psychiatric reports show that the minors are emotionally normal and display a reasonable degree of socialization.

The general framework of the Spanish case law exposed has changed after the decisive ruling of the Constitutional Court dated on December 2, 2010.

The plaintiff defends home-schooling as a constitutional right based in Article 27 of the Spanish Constitution; it is, in his opinion, a pedagogic measure against the low level and the wrongdoing of the official education. The Constitutional Court does not consider the practice of home-schooling a constitutional right. The parents' right of education is safeguarded by the possibility to choose the school for their children and to teach them outside the school time. On the

contrary, the option in the Spanish legal system of obligatory schooling from six to sixteen years old is, as the Constitutional Court stated, a reasonable and a proportional measure in order to satisfy the constitutional aim about the right of education. Certainly, the Spanish legislator could rule the possibility of allowing parents the education of their children at home under control of the state. Anyway, the Court considers that home-schooling is a worse option than the obligatory schooling under the constitutional requirements: the last accomplishes the need for the socialization of children, which is an essential part of “full development of [the] human personality of minors” (Article 27.2 of Spanish Constitution). As a result the Ruling rejected the petition of the plaintiff because it lacked constitutional content. No doubt this Sentence is a turning point as to home-schooling in Spain.

RELIGION IN PUBLIC EDUCATION – SWEDEN

LARS FRIEDNER

GENERAL BACKGROUND

Sweden has 9.3 million inhabitants (2009), of which about 2.2 million, nearly 24 %, are under the age of 20.¹

The Swedish school system consists of pre-schools,² primary and secondary schools,³ and upper secondary schools.⁴ A child normally starts the primary school the year when he or she is about to become seven years old and continues there, and then in the secondary school, for in total nine years.⁵ The primary and secondary schools are compulsory.^{6,7}

The pupils who continue to upper secondary schools normally take a three-year course.⁸

The pre-schools can take care of children from one year of age and on. It is compulsory for the municipalities to offer all parents pre-school for every child.⁹

1 www.scb.se.

2 Sw. *förskola*.

3 Sw. *grundskola*.

4 Sw. *gymnasieskola*.

5 Ch. 3, s 7, 10 Education Act (1985:1100), Sw. *skollagen*; Ch. 7, s 10, 12 Education Act (2010:800); this new Education Act comes into force on 1 July 2011, when the Education Act 1985 is repealed, s 1-2 Act (2010:801) on Introducing the Education Act (2010:800), Sw. *lagen om införande av skollagen*.

6 Ch. 3, s 7, 10 Education Act.; Ch. 7, s 4-7 Education Act (2010:800).

7 This article only deals with pre-schools, primary and secondary schools, and upper secondary schools; according to the current Education Act, there are also other kinds of schools: Sami schools, special schools, schools for the people with learning disabilities, upper secondary education for adults, and Swedish for immigrants (SFI).

8 Ch. 5, s 8 Education Act (1985:1100); Ch. 16, s 15 Education Act (2010:800).

9 Ch. 2 a, s 6-9 Education Act (1985:1100); Ch. 8, s 4-7 Education Act (2010:800).

There are 4,660 primary and secondary schools (2009), of which 709 are private. About 9 % of the private primary and secondary schools have a religious aim. There are 976 upper secondary schools, of which 458 are private. The statistics do not point out any upper secondary school as having a religious aim. The number of pupils in primary and secondary schools is about 892,000, of whom about 11 % attend private schools, and in upper secondary schools about 395,000, of whom about 22 % attend private schools. Regarding pre-schools a little less than 20 % of the children (out of about 450,000) attend private schools.¹⁰ There are no statistics on the number of religious pre-schools.

The number of private schools in Sweden has increased dramatically in recent years.¹¹ This is due to the fact that the municipalities are obliged to give private schools the same economic support, in principle, as public schools.¹²

The general curriculum for the public schools, which also has to be followed by the private schools, contains no religious teaching (i.e. confessional training) but teaching about religion.¹³ As a part of the full religious freedom, which has been in effect in Sweden since the 1950s,¹⁴ it is nowadays an obvious fact that there should be no religious teaching in public schools. Private schools, however, are free to have religious teaching, as long as they also follow the curriculum decided by the central government. The new Education Act (2010:800), which will enter into force on 1 July 2011, contains provisions on this matter.¹⁵ The Government stated that:

In the view of the Government there may in a school with a confessional aim, within the framework of the teaching, be scope for worship, hours of prayer or other forms of religious practice, e.g. deepening

¹⁰ www.skolverket.se.

¹¹ *Ib.*

¹² Ch. 2 a, s 17 a, Ch. 9, s 6, 8 a Education Act (1985:1100); e.g. Ch. 8, s 21, Ch. 10, s 37, Ch. 16, s 55 Education Act (2010:800).

¹³ www.skolverket.se.

¹⁴ Religious Freedom Act (1951:680), Sw. *religionsfrihetslagen*.

¹⁵ Ch. 1, s 6-7; the current Education Act (1985:1100) also has such provisions (Ch. 2 a, s 13, Ch. 9, s 2, 8).

ing one's own doctrine of faith as preparation for confirmation. Nor is there any restraint regarding elements of religious symbols or something similar in the equipment. If confessional elements occur in the teaching, participation should be voluntary for the child or the pupil. ... A (private) school shall be open for all pupils, and participation in confessional elements can therefore not be imposed as a provision for reception or continued school attendance. How the question of volunteering more exactly shall be solved by each school must be handled locally in a practically functioning manner according to the needs and the conditions that apply for the activities concerned. It may many times be natural that all pupils are present at the confessional elements, without every one actively participating. For instance, all pupils may be present during saying grace before the school meal or at a prayer that concludes the morning gathering but those who do not want to participate in the prayer choose to abstain. The possibility of having confessional elements means that there may be time for confessional activities during the school day. According to the Government, there is no conflict between the possibility of confessional elements and the demand that those elements shall be voluntary. The confessional elements shall always be offered with respect for the integrity of the pupils. Furthermore, it shall, as it is today, be possible within the framework of the pupil's free choice or the school's choice in the primary or secondary school ... or the individual choice in the upper secondary school to offer instruction in religion, history or civics that involves a deepening in Christianity, Islam, Judaism etc., e.g. in the form of studies of the Bible or the Koran. Such instruction must, though, be made in such a way that the instruction is still non-confessional, that is to say it shall be scientifically based and objective and comprehensive. This means, for instance, that the actual instruction must not contain any elements at all in the nature of practising creed. The basic democratic values and human rights, which form the basis for the school's fundamental values, must without restriction be observed also by schools with a confessional aim. The instruction shall be pursued applying the requirements of the curriculum regarding objectivity and comprehensiveness, openness for different understandings, tolerance, and possibilities to personal decisions. Thus, the fact that a school offers some confessional elements may not limit the objectivity and the comprehensiveness of the instruction. ... In this context, the Government also wants to call attention to the fact that the provisions regarding confessional elements aim at the school. They therefore do not for in-

stance imply any obstacle for pupils in a public school arranging break activities that contain confessional elements. Hence, the scope for such activities must, in the same way as today, be judged from the point of view of general provisions on the right of free speech. Corresponding demands for objectivity and comprehensiveness apply for pre-schools ... which have a confessional aim. Within the pre-school, the idea of instruction comprises a broad educational perspective where care, development, and learning constitute one whole. This means that the distinction between instruction and education is not as clear. The Government considers that, within the broader concept of education, there will be scope for confessional elements among the activities. This might, as an example, concern saying a grace, reading aloud from religious stories or visiting a church. The confessional elements shall, as in private schools, be voluntary for the children. Thus, the custodian of a child shall be given the possibility to choose whether or not the child shall participate in such confessional elements. From the draft provisions on respecting the best interests of the child it follows that the child shall be given the possibilities to express his or her own opinions concerning these kinds of questions and that such opinions shall be attributed importance in relation to the child's age and maturity.¹⁶

The curriculum regarding literature, history, arts and languages includes some religious aspects. The curriculum regarding religion also contains religious aspects of literature, history, arts and languages as well as ethics.¹⁷

Religion classes are compulsory in primary and secondary schools as well as in upper secondary schools.¹⁸

RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

In Sweden, there are no religious aspects on working conditions for teachers or other staff in public schools. The question of benediction of public school buildings has never been discussed, at least not for

16 Government Bill 2009/10:165 p. 226 f.

17 www.skolverket.se.

18 *Ib.*

the last 50 years, when the last chain in the link between the public schools and the Church was broken.¹⁹ Nor is there currently any discussion in Sweden concerning religious symbols (e.g. crucifixes), praying, or religious services in public schools. No special, religiously motivated behaviour has been expected on the part of pupils or teachers or other school staff.

The question of religious garments has recently been handled by the Swedish National Agency for Education.²⁰ A decision from 2003²¹ was aimed at the wearing of a *burqa* (i.e. a black, all-covering garment with head-scarf, which means that you can only see the pupil's eyes through a veil) in an upper secondary school. The Agency stated that

clothing garments are normally decided entirely by the individual pupil. ... In some situations it can be seen as a question of order, which is a matter for the school to deal with. In the upper secondary school there is a wider scope than in the primary or secondary school to make local provisions on order, as it is not a mandatory education. If the wearing of a *burqa*, according to a serious assessment, risks causing disturbance to the order of the school, for instance through quarrelling between pupils, feelings of discomfort, or unsafeness among other pupils, or that discussions about the garment detract from the teaching to an unreasonable extent, the management of the school may decide, either through general provisions on order or a decision for the individual case, that the pupils are forbidden to wear a *burqa* at school. The assessment may differ considering the local situation. If there are only a few pupils who make the manifestation (to wear a *burqa*), it may be enough that the ban only covers lessons. If it is many pupils who in different ways make extreme manifestations, the call for order may oblige a ban regarding the whole school. ... The question also has another perspective. ... (T)he teacher must be able to see the face of the pupil to determine whether the pupil has understood what the teacher is saying. The wearing of a *burqa* makes it more difficult or impossible [to facilitate] the personal and psycho-

19 Until 1962 the bishops of the Lutheran church had a (formal) position as supervisors of the upper secondary schools within their dioceses. During this period there have probably been occasions when a bishop gave the benediction to a newly built school.

20 Sw. Skolverket.

21 58-2003:2567.

logical interaction between the teacher and the pupil, which will be of manifest detriment to the pupil. It may be strongly questioned whether the school can fulfil its mission of conveying knowledge in a situation when the pupil wears a *burqa*. The teacher must continuously evaluate the development of knowledge by every pupil. Thus, the teacher must be able to identify and have communication with the pupils. ... Other problems and risks may arise at for instance physics and chemistry lessons and other lessons when pupils must handle technical devices.

The Agency concluded:

Thus, the school management has the right and the obligation to act against religious expressions and special cultural expressions that may disrupt order and affect security or if the school cannot fulfil its educational task.²²

In another decision, from 2006, the Agency criticized a primary school for having forbidden a pupil to wear a Muslim head-scarf at school.²³ The Agency stated that

the position of the Swedish National Agency for Education is that the management of a school may impose restrictions for a certain garment only due to the circumstances in special cases. Such a decision is motivated only if it can be proven that the garment in that particular case affects the order and security of the school or if the school is thereby impeded in fulfilling its educational task. ... That a school declares a general ban on the pupils wearing any kind of headgear means that pupils e.g. wearing religious headgear [such] as a head-scarf or a Jewish *kippa*, are restrained from practising their religion. A peaked cap or another kind of cap cannot be seen as equal to a head-scarf. ... The Agency considers that the action of (the school), to deny a pupil to wear a head-scarf with reference to general provisions of order, means that pupils who are wearing headscarves for religious reasons are excluded from the school. The Agency states that (the school) by acting in this way is not open to all pupils as prescribed by the Education Act.²⁴

22 Ib.

23 52-2006:689.

24 Ib.

The two cases show quite clearly the current position of Swedish law.

OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

There are, in Sweden, no general provisions that give a pupil the right to be off school on religious holidays. The working year of the schools is normally divided into an autumn and a spring semester, allowing holidays for Christmas, New Year and Twelfth Night.²⁵ Within the semesters, the head teacher decides on holidays,²⁶ normally including Easter holidays.²⁷ It is known that the head teachers in at least one municipality in the country have decided on holidays for the day of the Muslim *Eid al-Fitr*, but this is not common. On the other hand, the parents of a pupil have the possibility in the primary and secondary school of taking the child out of school for up to ten days per year.²⁸

The current Education Act contains a provision allowing the possibility of exemption from compulsory school education. The permission for exemption is granted by the school's head teacher.²⁹ This possibility has been used to release immigrant children from physical education and swimming as well as from education regard-

25 Ch. 4, s 1 Compulsory Education Ordinance (1994:1194), Sw. *grundskoleförordningen*; Ch. 3, s 2 Upper Secondary Education Ordinance (1992:394), Sw. *Gymnasieförordningen*.

26 Ch. 4, s 5 Compulsory Education Ordinance; Ch. 3, s 6 Upper Secondary Education Ordinance.

27 Twelfth Day, Easter Friday, Easter Monday, and Ascension Day (Protestant Calendar) are public holidays according to Section 1 Act (1989:253) on Public Holidays, Sw. *lagen om allmänna helgdagar*.

28 Ch. 6, s 8 Compulsory Education Ordinance: holidays could exceed ten days under particular circumstances, but should then be decided by the Board of the school (otherwise by the head teacher). In the new Education Act (2010:800) the possibility of extra holidays is governed by the Act (Ch. 7, s 18), not the Ordinances; it is expressly said in the *travaux préparatoires* for this provision that a religious holidays could be a reason (Government Bill 2009/10:165 p. 707); there are also in the upper secondary school possibilities for extra holidays: Ch. 6, s 20 Upper Secondary Education Ordinance.

29 Ch. 3, s 12 Education Act (1985:1100).

ing sexuality.³⁰ This provision cannot be used for granting exemption from teaching on religions, as in 1995 another provision was repealed that had previously granted this right to members of other churches or religious communities than the Lutheran *Church of Sweden*.³¹ The new Education Act (2010:800), which as mentioned will come into force on 1 July 2011, decreases the possibilities for exemption.³² The Government stated, when the new act was drafted that

education at school shall be comprehensive and founded on facts and modelled so that all pupils can participate, regardless of the pupil's and his or her custodian's religious or philosophic understanding. The Education Act and the curricula underline the importance of a dialogue between the school and the custodians. Through a trustful and functioning dialogue with the families the school may create an understanding of the activities of the school and for different elements in the teaching. The school might also occasionally, if it is reasonable, divide the pupils into different groups or apply other organizational and pedagogic measures to avoid delicate situations arising for individual pupils or groups of pupils. This could for instance concern swimming instruction, where girls and boys are separated. The teaching shall however be carried out according to the basic values expressed by the curricula. Thus, there should not be any elements that can be interpreted as offending anyone. According to the view of the Government, the need for a provision on possibilities for exemption from instruction may therefore be questioned. However, a possibility of granting a pupil exemption from isolated compulsory elements of the instruction is not excluded in very exceptional cases. The provisions are therefore to be modelled substantially more restrictively than today. To stress that exemption is only possible in such exceptional cases, exemption may only be granted when there are extraordinary reasons. The requirement for extraordinary reasons means that the reasons for exemption must be very strong. Exemption can only apply for isolated elements of the teaching. A decision on exemption can therefore only apply to isolated occasions during a school year. In

30 *Högden*, Utbildning på (o)lika villkor – om kön och etnisk bakgrund i grundskolan (Eng. Education on (un)equal conditions – about gender and ethnic background in the primary and secondary school) p. 106f., Stockholm 2007.

31 Ch. 3, s 12 Education Act (1985:1100); Government Bill. 1995/96:200 p. 66f.

32 Ch. 7, s 19.

this connection it ought also to be pointed out that the earlier right to exemption from teaching in religion for pupils belonging to certain religious communities is abolished since 1 June 1997.³³

Religiously motivated home-schooling is accepted under the current Education Act.³⁴ However, from 2011, with the new Education Act, this possibility is abolished. There is still, if there are extraordinary reasons, a possibility for home-schooling,³⁵ but this possibility does not apply for home-schooling due to religious reasons. The Government stated that

from current school statutes it is obvious that the teaching at school shall be comprehensive and founded on facts and through that modelled so that all pupils can participate, regardless of the pupil's or his or her custodian's religious or philosophical beliefs. Set against this background it is the view of the Government that there is currently no need for a provision in the Education Act which allows scope for home-schooling due to the religious or philosophical beliefs of the family.³⁶

The Government discussed whether this statement complies with the Swedish obligations under the European Convention of Human Rights and the Swedish constitution and drew the conclusion that the state does not have to respect a conviction of the parents that conflicts with the child's right to education. Thus, the statement of the Government does not conflict with Sweden's international obligations or the Swedish constitution. The Government continued that

for the future there will also be needed a certain scope for, during a limited time, getting permission for completing the compulsory education in another way. As mentioned in the draft for the current provisions it could for instance deal with a case when a pupil has moved here from one of our neighbour countries but chooses to remain in the school of the neighbour country for the rest of the semester or when a pupil takes part in a film production or something similar. The provi-

33 Government Bill 2009/10:165 p. 341.

34 Ch. 10, s 4.

35 Ch. 24, s 23 Education Act (2010:800).

36 Government Bill 2009/10:165 p. 523.

LARS FRIEDNER

sions ought also to be relevant when a pupil goes for a longer journey. The wording of the provisions implies that these provisions must be applied most restrictively. The right of all children to an equal education is one of the cornerstones for the Swedish education system. The actual activities, for the limited time to which permission can refer to (up till one year at a time), must appear to be a satisfactory alternative to the ordinary teaching. The assessment of whether there are extraordinary reasons shall be based on the best interests of the pupil.³⁷

³⁷ *Ib.* p. 524.

RELIGION IN PUBLIC EDUCATION – UNITED KINGDOM

DAVID MCCLEAN

Any account of public education in the UK has to take account of its composite (or quasi-federal) nature. Education in England is now the responsibility of the Department for Education. In Wales, where the schools system is broadly similar, education is a devolved responsibility of the Welsh Assembly Government. Different systems are to be found in Scotland and Northern Ireland.

GENERAL BACKGROUND

Facts and Figures

Demography

As at January 2007, the latest date for which statistics are available for the whole country,¹ the number of pupils in each part of the UK was as follows:

England	8,149,176
Wales	489,069
Scotland	723,196
Northern Ireland	329,619

¹ The English statistics are from The Composition of Schools in England (Department for Children, Schools and Families Statistical Bulletin, June 2008); those for Wales from Schools in Wales: General Statistics 2009 (Welsh Assembly Government); for Scotland from the website of the Scottish Government; for Northern Ireland from that of the Department of Education, Northern Ireland.

In each case there has been a slight decline, in line with the overall population trend.

Systems of Schools Provision

The types of schools found in each part of the UK reflect historical differences.

In England and Wales the Church of England² was for many centuries the main provider of education. The Elementary Education Act 1870 made the first provision for the establishment of state schools provided by local schools boards in those areas, principally large conurbations, where existing Church provision was inadequate. Most schools are now 'maintained schools' funded in whole or part by the 172 local education authorities (LEAs), usually the elected County or District Council, and required to follow the national curriculum. They fall into four categories:

- 'community schools' owned and managed by the LEA;
- 'voluntary controlled schools' almost always church schools, with the church owning the property but the LEA employing the staff and controlling admissions;
- 'voluntary aided schools', again usually church schools, where there is some financial contribution to the capital costs of the school by the church, which appoints a majority of the governors who employ the staff and control admissions;
- 'foundation schools', rather similar but here the capital costs are fully funded by the state and the church or other charitable body has only a minority of governors.

There are some other types of maintained schools, notably 'special schools' catering for children with disabilities or learning difficulties.

There is at present a small number of 'academies' which are free from LEA control and are funded directly by central Government. The first Academies opened in 2002 and there are currently 203 of

² There is now a distinct (Anglican) Church in Wales but until 1920 its dioceses were part of the Church of England.

RELIGION IN PUBLIC EDUCATION – UNITED KINGDOM

which 53 have a faith designation. The Government elected in May 2010 has introduced legislation (the Academies Act 2010) which enables almost all schools to apply to become academies.

The table shows the numbers of the main types of schools in England. All three and four year olds are entitled to 12.5 hours of free early education for 38 weeks of the year; this entitlement may be used at one of the 448 maintained nursery schools or at a school or pre-school in the private sector.

	Comm'ty	Found'n	Vol aided	Vol control'd	Total maintained	Independent
Primary (5-11)	10,726	362	3,731	2,542	17,361	(all types) 2,284
Secondary (11-18)	2,112	564	554	113	3,343	
Special	Detail not available				1,006	

Church of England schools, mainly in the primary sector, account for 2,100 voluntary aided schools and 2,500 voluntary controlled schools. There are about 2,000 Roman Catholic schools, almost all voluntary aided; of these some 350 are secondary schools, where the Church of England has rather fewer.

In *Scotland*, the Church of Scotland was the main provider until the Education (Scotland) Act 1872 which placed its schools under local school boards which also built additional schools. Roman Catholic schools remained outside the state system until 1918 but are now publicly funded in the same way as other schools. There are (2010) 2,692 public schools in Scotland, 418 being Catholic schools, and 159 independent schools.

The pattern in *Northern Ireland* is of 'controlled schools' in which the staff are appointed by one of the five Education and Library Boards in the Province, and a roughly equal number of 'maintained schools' in which the staff are employed by the Council for Catholic Maintained Schools.

The National Curriculum

All maintained schools in England must follow the National Curriculum. The new Government has announced that it intends to loosen the requirements to allow teachers more freedom, but what follows states the position as at June 2010. The Curriculum is organised in 4 'Key Stages', two for the primary years (5–11) and two for the secondary years (11–18). It includes attainment targets, outline programmes of study and (controversially) assessment arrangements. For the first, second and third key stages, the National Curriculum has three 'core' subjects, mathematics, English, and science, and additional 'foundation' subjects, design and technology, information and communication technology, physical education, history, geography, art and design, music, and in relation to the third key stage citizenship and a modern foreign language.³ The primary stages of the National Curriculum also include non-statutory material on Personal, Social and Health Education. There are fewer prescribed foundation subjects for Key Stage 4.

RELIGION AS A SUBJECT OF INSTRUCTION AND ITS SUBSTITUTES

England and Wales

It will be seen that religious education is not part of the National Curriculum. That is, however, merely because the curriculum for that subject is prescribed locally and not nationally. Every maintained school in England must follow a 'basic curriculum' which includes the subjects of the National Curriculum, provision for religious education for all registered pupils at the school and in the case of a secondary school, provision for sex education for all registered pupils at the school.⁴

³ Education Act 2002, s 84 as amended.

⁴ Education Act 2002, s 80. There are similar arrangements in Wales, with minor variations.

The School Standards and Framework Act 1998 imposes a duty on the local education authority, the governing body of the school and its head teacher to secure that religious education is provided.⁵ The nature of the religious education depends on whether or not the school is designated as having ‘a religious character’.⁶ A school must be so designated on application if (a) at least one member of the governing body of the school is a person appointed as a foundation governor to represent the interests of one or more religions or religious denominations; or (b) the premises provided for the school when first established were so provided on trust so that, in the event of the discontinuance of the school, the property concerned was to be held for, or sold and the proceeds of sale applied for, the benefit of one or more religions or religious denominations; or (c) the premises provided for the school when first established were so provided on trust in connection with the provision of education, or the conduct of an educational institution, in accordance with the tenets of one or more religions or religious denominations.⁷

Where the school does *not* have a religious character, the religious education follows the local ‘agreed syllabus’. The local syllabus for religious education is agreed under a procedure now set out in the Education Act 1996 though the system dates from 1944. Every agreed syllabus must

reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.⁸

Each local education authority has a standing advisory council on religious education (SACRE).⁹ Apart from some co-opted and non-voting members, the council consists of four representative groups: a group of persons to represent the Church of England; a group of

⁵ School Standards and Framework Act 1998, s 69.

⁶ School Standards and Framework Act 1998, Sch 19.

⁷ Religious Character of Schools (Designation Procedure) Regulations 1998, SI 1998/2535, reg 5.

⁸ Education Act 1996, s 375(3).

⁹ See Education Act 1996, s 390ff.

persons 'to represent such [other] Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area'; a group of persons to represent teachers' associations; and a group of persons to represent the authority. Each group has one vote, which means that three of the four groups must be in favour of any proposal. The council advises the authority on religious education matters and also advises the authority on religious worship in community schools or in foundation schools other than those which 'have a religious character'. If the local agreed syllabus is to be reviewed a 'conference' is convened, with the same groups as are represented on the council; to adopt the syllabus a unanimous decision is required, so that (for example) the Church of England representatives must assent.¹⁰

Where the school *does* have a religious character, the religious education will in practice be in accordance with the tenets of the relevant religion or religious denomination. In the case of voluntary aided schools, this is the case unless the parents of children at the school ask for the local 'agreed syllabus'. In other schools that syllabus is to be used unless the parents ask (as they usually will) for education in accordance with the tenets of the religion, which means the syllabus set by the church or faith concerned, and such education must be provided but for not more than two periods in each week.¹¹

Non-statutory guidance published by the relevant Government department makes these points:

The study of religion should be based on the legal requirements and provide an appropriate balance between and within Christianity, other principal religions, and, where appropriate other religious traditions and worldviews, making appropriate links with other parts of the curriculum.

¹⁰ Education Act 1996, Sch 31.

¹¹ The Education Act 2005 contains provisions applying to schools designated as having a religious character requiring the inspection of any denominational education given to pupils, and the content of the school's collective worship: Education Act 2005, s 47ff.

Not all religions need to be studied at the same depth or in each key stage, but all that are studied should be studied in a way that is coherent and promotes progression.

Pupils should have the opportunity to learn that there are those who do not hold religious beliefs and have their own philosophical perspectives.

The Office for Standards in Education (OFSTED) published in June 2010 a report *Transforming Religious Education: Religious Education in Schools 2006–9*. Some of its findings were:

Pupils' achievement in RE in primary schools was good or outstanding in 40 % of schools and was inadequate in only 10 %. Students' achievement in RE in the secondary schools showed a very mixed picture. It was good or outstanding in 45 % but was inadequate in 16 %. Most of the secondary schools in the survey with sixth forms did not fully meet the statutory requirement to provide core RE for all students beyond the age of 16.

RE made a positive contribution to key aspects of pupils' personal development, most notably in relation to the understanding and appreciation of the diverse nature of British society. However, the subject's contribution to promoting pupils' spiritual development was often limited.

There is uncertainty among many teachers of RE about what they are trying to achieve in the subject resulting in a lack of well-structured and sequenced teaching and learning, substantial weaknesses in the quality of assessment and a limited use of higher order thinking skills to promote greater challenge.

There were a number of specific weaknesses in the teaching about Christianity. Many primary and secondary schools visited did not pay sufficient attention to the progressive and systematic investigation of the core beliefs of Christianity. There were significant inconsistencies in the way humanism and other non-religious beliefs were taught, and some uncertainties about the relationship between fostering respect for pupils' beliefs and encouraging open, critical, investigative learning in RE.

The effectiveness of specialist staff training in RE was inadequate in 40 % of the schools visited. They were not giving sufficient time and

DAVID MCCLEAN

resources to support teachers' professional development in the subject. The effectiveness of local arrangements to support RE varied too much and many local authorities did not ensure that their Standing Advisory Councils on Religious Education had sufficient capacity to fulfil their responsibilities effectively.

Scotland

There is no statutory curriculum in Scotland. A Government-sponsored *Curriculum for Excellence* project provides recent guidance including material on 'religious and moral education'.

Northern Ireland

Legislation for Northern Ireland in effect applies the English provisions.¹²

RELIGIOUSLY MOTIVATED BEHAVIOUR

Religion within the Working Conditions of Teachers and Other Staff

England

There are rules in England as to the appointment and dismissal of certain 'reserved' teachers at foundation or voluntary controlled schools which have a religious character. Where the number of teachers is more than two, the teachers must include persons who are selected for their fitness and competence to give religious education in accordance with the school's trust deed or with the tenets of the school's specified religion or religious denomination, and are specifically appointed to do so. The number of reserved teachers must not exceed one-fifth of the total number of teachers. The appointment of reserved teachers requires the approval of the foundation governors. If the foundation governors of such a school consider that a reserved

¹² Education (Northern Ireland) Order 2006.

teacher has failed to give the required religious education efficiently and suitably, they can secure his or her dismissal.¹³ In connection with the appointment of a person to be head teacher of the school, where the head teacher is not to be a reserved teacher, regard may be had to that person's ability and fitness to preserve and develop the religious character of the school.¹⁴

Other teachers and staff (teachers in schools of a religious character who are *not* reserved teachers, and all teachers and other staff at other schools) are protected by anti-discrimination provisions. No one may be disqualified by reason of his or her religious opinions,¹⁵ or of attending or omitting to attend religious worship, from being a teacher, or from being employed or engaged for the purposes of the school otherwise than as a teacher. No teacher may be required to give religious education. No teacher may receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he or she does or does not give religious education, or by reason of his or her religious opinions or of attending or omitting to attend religious worship.¹⁶

A very different régime applies in the case of a voluntary aided school. There, preference may be given, in connection with the appointment, remuneration and promotion of teachers at the school, to persons

- a) whose religious opinions are in accordance with the tenets of the relevant religion or religious denomination, or
- b) who attend religious worship in accordance with those tenets, or who give, or are willing to give, religious education at the school in accordance with those tenets.

13 School Standards and Framework Act 1998, s 58.

14 School Standards and Framework Act 1998, s 60(4).

15 See *Ahmad v Inner London Education Authority* [1978] QB 36, CA (under earlier legislation: the appellant teacher was not allowed to absent himself to attend Friday prayers at the mosque; he resigned and claimed unfair dismissal; held that he was not entitled to attend religious worship during school hours and that the employers had acted reasonably).

16 School Standards and Framework Act 1998, s 59.

What is more, regard may be had, in connection with the termination of the employment of any teacher at such a school, to any conduct on his or her part which is incompatible with the precepts, or with the upholding of the tenets, of that religion or religious denomination.¹⁷

Scotland

In Scotland, legislation dating from 1918 but now in section 21(1) of the Education (Scotland) Act 1980 makes special provision for ‘denominational schools’. Section 21(2A) provides that

[a] teacher appointed to any post on the staff of any such school by the education authority shall satisfy the Secretary of State as to qualification, and shall be required to be approved as regards his religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted.

Apart from three Anglican schools and one Jewish school, this applies to the Catholic schools and in effect gives the bishop of the relevant Catholic diocese control over the appointment of teachers.

Northern Ireland

In Northern Ireland there is no equivalent legislation and so no requirement of episcopal approval of appointments in Catholic schools.

Religious Garments

There have been several cases about the wearing of ‘religious’ items by school girls.

*R (Begum) v Headteacher and Governors of Denbigh High School*¹⁸ concerned the *jilbab* which the claimant wished to wear. The school allowed Muslim, Hindu and Sikh girls to wear the *Shalwar Kameeze* and the claimant had formerly done so. She now

¹⁷ School Standards and Framework Act 1998, s 60(5).

¹⁸ [2006] UKHL 15, [2007] 1 AC 100.

claimed that only a long coat-like garment, referred to in the judgment as the *jilbab*, would satisfy her religious beliefs. Her claim failed on the ground that she had never been ‘excluded’ from school in the sense of the relevant legislation but *Bennett J* also rejected an argument based on Art 9 of the ECHR as what was in issue was the girl’s refusal to respect the school uniform policy rather than her religious beliefs as such.

A rather similar result was reached in a case about the wearing of the *niqab* veil, *R (X) v Y School*.¹⁹ There were 120 Muslim girls in the school; none wore the *niqab*, although X’s older sisters had done so when they were in the school some years before. Again the Art 9 issue was side-stepped, as X could easily have moved to an equally good school nearby where the *niqab* was allowed.

Article 9 was considered again in *R (Playfoot) v Governing Body of Millais School*.²⁰ The claimant started to wear a ‘purity’ ring in breach of the school’s uniform policy. She argued that she was a committed Christian with a genuine belief that she should remain sexually abstinent before marriage and that the ring was a sign of that belief. The court held that the act of wearing a ring was not intimately linked to the belief in chastity before marriage, so as to show that the wearing of the ring was a manifestation of the religious belief. Accordingly, Art 9 was not engaged.

In *R (Watkins-Singh) v Governing Body of Aberdare Girls’ High School*²¹ the article in question was the *kara*, a small plain steel bangle worn by Sikhs as a visible sign of their identity and faith. The applicant, a girl in a Welsh school, was refused permission to wear the *kara*, on the grounds that it contravened the school’s policy forbidding jewellery. She succeeded, not on the basis of Art 9 but under the UK’s anti-discrimination legislation: there was held to be indirect discrimination on the ground of race under the Race Relations Act 1976 and on the ground of religion under the Equality Act 2006.

19 [2007] EWHC 298 (Admin), [2008] 1 All ER 249.

20 [2007] EWHC 1698 (Admin), [2007] 3 FCR 754.

21 [2008] EWHC 1865 (Admin), [2008] 3 FCR 203.

Silber J went out of his way to describe his judgment as ‘fact-sensitive’ and not laying down any more general rule about the *kara*.

Religious Worship in Schools

It is quite common for schools to make use of the local parish church (Church of England or as appropriate) for an annual carol service in the weeks before Christmas, and some schools attend on other occasions during the year. England and Wales are probably unusual in having legal requirements as to worship in schools.

Section 70(1) of the School Standards and Framework Act 1998 lays down the general rule that each pupil in attendance at a community, foundation or voluntary school must on each school day take part in an act of collective worship. However, a parent, or in the case of a sixth-form pupil the pupil, may ask to be excused from attendance at religious worship at the school, and the request must be complied with.²² The act of collective worship may consist of a single act of worship for all pupils or separate acts of worship for pupils in different age groups or in different school groups.²³

As regards the nature of the worship, it must be ‘wholly or mainly of a broadly Christian character’, which means that it must reflect the broad traditions of Christian belief without being distinctive of any particular Christian denomination. Not every act of collective worship need comply with this ‘broadly Christian’ requirement, provided that, taking any school term as a whole, most such acts which take place in the school do comply.²⁴ In the case of a foundation school which has a religious character or a voluntary school, the required collective worship must be in accordance with the tenets and practices of the relevant religion or religious denomination.²⁵ Local clergy are often involved in taking ‘school assemblies’.

22 School Standards and Framework Act 1998, s 71.

23 School Standards and Framework Act 1998, Sch 20, para 2(2).

24 School Standards and Framework Act 1998, Sch 20, para 3.

25 School Standards and Framework Act 1998, Sch 20, para 5.

In certain cases, the requirement for Christian collective worship is waived. This requires a decision by the local standing advisory council on religious education after a process which involves the head teacher and the governing body of the school and a consultation exercise with the parents. The council is to have regard to any circumstances relating to the family backgrounds of the pupils at the school, or of the pupils of the particular class or description in question, which are relevant for determining the character of the collective worship appropriate in their case.²⁶

The position in *Scotland* is broadly similar. A Scottish Executive circular in 2005 said:

In recognition of Scotland's Christian heritage, schools are encouraged to use the rich resources of this tradition when planning religious observance.

Many school communities contain pupils and staff from faiths other than Christianity or with no faith commitment. This should be taken fully into account in supporting spiritual development. It is of central importance that all pupils and staff can participate with integrity in forms of religious observance without compromise to their personal faith stances.

Religious Tests for Admission

Church schools of all types are popular with parents and often receive more applications for admission than there are places available. It is often said that parents will attend church solely to enhance their children's chances of admission to a popular Church school.

A case illustrating aspects of the law dealing with this situation was decided in 2004.²⁷ The London Oratory School is a distinguished school expecting its pupils to be fully committed and practising members of the Roman Catholic Church. It had always used interviews as part of the selection process but a Code of Practice

²⁶ Education Act 1996, s 394.

²⁷ *Governing Body of the London Oratory School v The Schools Adjudicator* [2004] EWHC 3014 (Admin); [2005] ELR 162.

Relating to School Admissions issued in February 2003 by the Secretary of State for Education provided that church schools could not interview parents and/or prospective pupils for the purpose of ‘assessing religious or denominational commitment where this is provided for in their admission arrangements’. Under section 84 of the School Standards and Framework Act 1998, the governors of the school were required to ‘have regard to’ the Code. For admission in 2005, the governors decided to retain the interview system to test the religious practice and commitment of parents and pupils. This decision was challenged by a primary school and quashed by the ‘Schools Adjudicator’. Her decision was reversed by the High Court.

That court noted that ‘have regard to’ did not make the Code strictly binding on the school. The adjudicator’s view that the inclusion of questions about the Ten Commandments and Scriptures were inappropriate topics for discussion in an interview to determine catholicity was rejected as unreasonable. On the other hand an attempt to base an argument on behalf of the parents in the case on Article 2 of Protocol 1 to the European Convention on Human Rights failed: the parents all had a right to secure education for their children at schools which conformed with their Catholic faith, but this could not be elevated to a right to be educated at the Oratory School.

A case, which attracted much public attention, concerned admission to another over-subscribed school known as JFS, derived from its earlier name the Jewish Free School.²⁸ It was the policy of the school to give preference to those whose status as Jews was recognised by the Office of the Chief Rabbi of the United Hebrew Congregation of the Commonwealth. The child whose parents sought admission had a Jewish father and his mother, by origin an Italian Roman Catholic, had converted to Judaism but not via an Orthodox synagogue. Under Jewish law as applied by the Chief Rabbi, the child was not Jewish and was refused admission. He claimed unlaw-

28 *R (on the application of E) (respondent) v Governing Body of JFS* [2009] UKSC 15. It attracted interventions by the Board of Deputies of British Jews, the British Humanist Association, the Equality and Human Rights Commission and the Secretary of State for Children, Schools and Families.

ful race discrimination, contrary to the Race Relations Act 1976. By a majority, the Supreme Court of the United Kingdom upheld his claim, finding direct discrimination on grounds of ethnic origins. The minority held that the exclusion had been based on religious and not racial grounds, but *Lord Hope* and *Lord Walker* found indirect discrimination on the grounds of ethnic origin.

Corporal Punishment

Corporal punishment is prohibited in schools in England.²⁹ A group of Christian parents sought judicial review of this provision. They argued that a belief in this form of discipline was part of their religious belief and to prevent them using it (in an independent school) breached their rights under Art 9 of the European Convention.³⁰ The House of Lords recognised that Art 9 was engaged, but held that the legislation pursued a legitimate aim in that children were vulnerable and the aim of the legislation was to protect them and promote their wellbeing. The means chosen to achieve that aim were appropriate and not disproportionate.

OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

Religious Holidays

In England, section 444 of the Education Act 1996 provides that a child is not to be taken to have failed to attend regularly at the school by reason of his absence from the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs. There are no modern cases on this provision, but in *Marshall v Graham*³¹ it was held that Ascension Day was a day exclusively set apart for religious observance by the Church of Eng-

²⁹ Education Act 1996, s 548(1).

³⁰ *R (on the application of Williamson and others) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 All ER 1.

³¹ [1907] 2 KB 112, DC (decided under earlier legislation dating from 1870).

land. It was immaterial that the only observance would be attendance at one service. In practice, there are some cities with large non-Christian populations where schools are allowed to close on certain days, usually Guru Nanak's birthday, the first day of Eid-ul-Fitr and Diwali. Schools will seek to accommodate other types of case, e.g. where the Orthodox dates for Christmas or Easter fall in the school term.

Opting out of Religious Instruction

If the parent of a pupil at a community, foundation or voluntary school requests that the pupil may be wholly or partly excused from receiving religious education in accordance with the school's basic curriculum, the pupil must be so excused.³² If the parent of such a pupil desires the pupil to receive religious education of a kind which is not provided in the school, then on certain conditions the pupil may be withdrawn from the school to receive that alternative religious education.³³

Opting out of Physical Education etc.

The Muslim Council of Britain has asked that Muslim schoolchildren be given separate changing rooms for sports and swimming and single-sex classes for sex education but these requests have not been met. In one area, Ealing in London, the local standing advisory council on religious education has recommended a specially-designed swimming costume for Muslim girls which consists of a tunic and long trousers, but this attracted some derision in the national press.

32 Schools Standards and Framework Act 1998, s 71(1).

33 Schools Standards and Framework Act 1998, s 71(3).

Opting out of Biology and Sex Education

There is a limited provision in section 405 of the Education Act 1996 that if the parent of any pupil in attendance at a maintained school requests that the pupil be wholly or partly excused from receiving sex education at the school, the pupil must, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn. Some 0.04 % of parents choose to exercise this right. In fact sex and relationship education is not a compulsory part of the National Curriculum; schools have to provide sex education but its content is not prescribed. In 2009, the then Government announced that ‘sex and relationships education’ would come within the National Curriculum with a prescribed content, and the opt-out would only apply in respect of children until their 15th birthday. It was also proposed that schools having a religious character, while obliged to deal with such issues as same-sex relationships and contraception, would still be able to ensure that the classes reflected the religious ethos of the school. These proposals were heavily criticised (from all sides) and were abandoned in order to get other aspects of the legislation approved before the dissolution of Parliament in April 2010. The new Government is reviewing the National Curriculum and has not made detailed announcements on this topic.

Government guidance is that creationism should not be taught in schools science lessons. This does not prevent private schools teaching creationism and *Sir Peter Vardy* established in 1990 the Emmanuel Schools Foundation which has opened four academies in the northeast of England said to have this practice.

Home-Schooling

The law requires parents to ensure their children receive full-time education suitable to their age, ability and aptitude, but this obligation can be met by the parents, or tutors employed by them, instead of sending the child to a school. This does not seem to be discour-

DAVID MCCLEAN

aged; indeed an official website (*directgov*) points out that ‘you do not need to be a qualified teacher to educate your child at home; your child is not obliged to follow the National Curriculum or take national tests; you do not need special permission from a school or local authority to educate your child at home, but you do need to notify the school in writing if you're taking your child out of school; you do not need to observe school hours, days or terms; you do not need to have a fixed timetable, nor give formal lessons; and some local authorities provide guidance for parents, including free National Curriculum materials’. A proposal that education at home would have to be approved and registered by the local authority was made by the then Government in 2009 but did not become law. Although some parents opt for home-schooling for religious reasons, it is not possible to quantify this; other reasons, such as bullying of a child or general dissatisfaction with the school provision may be more important.

LA RELIGION DANS L'ÉDUCATION PUBLIQUE – DROIT INTERNATIONAL ET EUROPÉEN

JEAN DUFFAR

GRILLE THÉMATIQUE ET PARAGRAPHES CORRESPONDANTS

I – BASE GÉNÉRALE -1-3

§ 1 – *Les faits et les chiffres*

A – Démographie

B – Nombre d'écoles publiques et privées dans le pays

C – Description générale du système scolaire

§ 2 – *Religion comme matière d'enseignement et ses substituts*

A – Instruction religieuse c.-à-d. enseignement confessionnel – 4

1 – Instruments internationaux de protection des droits de l'homme – 5-6

2 – Union européenne et Conseil de l'Europe – 7-9

3 – Cour européenne des droits de l'homme: L'article 2 du Protocole n°1 (P1-2) – 10-12

a – P1-2: 1^{re} phrase: « Nul ne peut se voir refuser le droit à l'instruction » – 13-17

b – P1-2: 2^e phrase « L'État, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques. » – 18-26

B – Enseignement des religions – 27

1 – Les instruments internationaux universels de protection générale des droits de l'homme – 28-33

2 – La jurisprudence de la Cour

a – Le programme – 34

b – Cour, Folgero, 29.06.2007 – 35-39

c – Cour, Zengin, 09.10.2007 – 40-44

d – Cour, Lautsi c. Italie, 03.11.2009 – 45

3 – Les Conventions, Résolutions et Recommandations des organes du Conseil de l'Europe et du Parlement européen: religion et convictions dans l'éducation interculturelle – 46-49

- a – La Recommandation 1720 (2005) « Éducation et Religion » de l'Assemblée Parlementaire du Conseil de l'Europe du 4 octobre – 50-52
 - b – Livre Blanc sur le dialogue interculturel du Conseil de l'Europe (2008): « Vivre ensemble dans l'égalité » – 53-54
 - c – Réponse jointe du Comité des Ministres du 16.09.2008, Dimension religieuse du dialogue interculturel: « Laïcité européenne » – Valeurs communes et Convergences – 55-56
 - d – Recommandation CM/Rec(2008)12 sur la dimension des religions et des convictions non religieuses dans l'éducation interculturelle – 57-60
- 4 – *Projet de recherche: « REDCo »: le rôle de la religion dans l'enseignement: Les recommandations en matière de politiques publiques du projet de recherche REDCo -19 mars 2009 – 61-64*
- C – *Éthique – 65-74*
- D – *Religion dans le cadre de leçons de littérature, histoire philosophie, art, langue – 75-76*

II – COMPORTEMENT RELIGIEUX DANS LES ÉCOLES PUBLIQUES

- § 1 – *Religion dans le cadre des conditions de travail des professeurs et d'autres employés – 77-79*
- § 2 – *Symboles religieux dans les écoles (par exemple le crucifix en Italie) – 80-82*
- § 3 – *Habits religieux – 83-88*
- § 4 – *Possibilité de bénir des bâtiments écoliers*
- § 5 – *Sujets spéciaux tels que comportement religieux des élèves, professeurs et autres employés, prière publique, prière dans le cadre de leçons ou d'autres événements scolaires, services religieux – 89-92*

III – RENONCIATION AUX OBLIGATIONS SCOLAIRES POUR DES RAISONS RELIGIEUSES

- § 1 – *Fêtes religieuses possibilité et conditions de vacance les jours concernés – 93-96*
- § 2 – *Renonciation à l'enseignement religieux ou à l'enseignement des religions – 97-98*
- § 3 – *Renonciation à l'enseignement de la gymnastique (par exemple enseignement de la natation pour les jeunes filles musulmanes) – 99*

§ 4 – *Renonciation à l'enseignement de la biologie (par exemple en faveur du créationnisme)*

§ 5 – *Enseignement au foyer pour des raisons religieuses – 100-103*

TEXTE DES RÉPONSES

I – BASE GÉNÉRALE

1 – Le sujet retenu pour nos travaux présente plusieurs justifications. D'abord, la complexité: selon les « Guidelines », l'éducation primaire et secondaire est un des sujets les plus compliqués au regard des droits de la religion ou de la croyance.¹

La religion dans une école privée ne présente qu'un intérêt limité puisque les parents ont, souvent, choisi l'école en fonction de ses orientations religieuses, philosophiques ou autres. Il existe, en général, une homogénéité des enseignements, des enseignants, des programmes et des élèves.

2 – La religion dans l'éducation publique est à l'évidence un sujet de recherche plus complexe. L'école publique est, par définition, l'école de tous. Tous les élèves en âge scolaire sont, en principe, tenus de la fréquenter. Ils viennent d'origines diverses, parfois de pays éloignés, certains sont adeptes de religions extra-européennes ou sont sans religion. L'enseignement doit, d'abord, apporter aux élèves une réponse aux défis, en particulier, de la mondialisation, aux nouvelles technologies et aux phénomènes connexes.² L'enseignement de la religion ne peut être aujourd'hui envisagé que dans un contexte pluraliste: « Dans le contexte de l'enseignement la neutralité devrait garantir le pluralisme (...) l'État est tenu à la neutralité confessionnelle dans le cadre de l'éducation publique où la présence aux cours

1 Guidelines for Review of Legislation Pertaining to Religion adoptées par la Conférence de Venise les 18 et 19 juin 2004, p. 13.

2 Observation générale n° 1 (2001): les buts de l'éducation sur le paragraphe 1 de l'article 29 de la Convention relative aux droits de l'enfant CRC/C/103; 3.

est requise sans considération de religion et qui doit chercher à inculquer aux élèves une pensée critique ».³

3 – La jurisprudence ne fournit pas de réponse à chacune des rubriques de la grille thématique et toutes les décisions ne sont pas connues. Aussi le présent rapport ne peut-il répondre que partiellement et seulement à certaines rubriques de la grille.

§ 1 – *Les faits et les chiffres*

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A – Instruction religieuse c.-à-d. enseignement confessionnel

4 – L'existence d'un enseignement religieux à caractère confessionnel dans une école publique pose déjà des questions de principe évoquées dans des instruments internationaux, auxquelles certaines instances internationales ont été confrontées.

1 – Instruments internationaux de protection des droits de l'homme

5 – Le paragraphe 4 de l'article 18 du Pacte international relatif aux droits civils et politiques (PIDCP) énonce « Les États parties au présent Pacte s'engagent à respecter la liberté des parents et, le cas échéant, des tuteurs légaux *de faire assurer l'éducation religieuse et morale de leurs enfants conformément à leurs propres convictions.* »

L'observation générale n° 22 adoptée par la Comité des droits de l'homme qui porte sur l'article 18 (Liberté de pensée de conscience et de religion) (...) intéresse directement le sujet: « Le Comité note que l'éducation publique incluant l'enseignement d'une religion ou d'une

3 Cour, *Lautsi c. Italie*, 03.11.2009, §§ 47 e) et 56.

conviction particulière est incompatible avec le paragraphe 4 de l'article 18, à moins qu'elle ne prévoise des exemptions ou des possibilités de choix non discriminatoires correspondant aux vœux des parents et des tuteurs ».

6 – Le paragraphe 3 de l'article 13 du Pacte international relatif aux droits économiques, sociaux et culturels (PIDESC) – dans une rédaction proche de l'article 18-4 du PIDCP énonce: « Les États parties au présent Pacte s'engagent à respecter la liberté des parents et, le cas échéant des tuteurs légaux, de choisir pour leurs enfants des établissements autres que ceux des pouvoirs publics, mais conformes aux normes minimales qui peuvent être prescrites ou approuvées par l'État en matière d'éducation, *et de faire assurer l'éducation religieuse et morale de leurs enfants conformément à leurs propres convictions* ».

L'observation générale n° 13 (1999) du Comité des droits économiques sociaux et culturels (1999) porte sur le droit à l'éducation et le § 28, plus particulièrement sur le § 3 de l'article 13 du PIDESC: « ... l'enseignement dans un établissement public d'une religion, ou d'une conviction donnée est incompatible avec le § 3 de l'article 13, à moins que ne soient prévues des exemptions et des possibilités de choix non discriminatoires correspondant aux vœux des parents et des tuteurs. »

Aux termes de ces deux instruments internationaux universels, le programme de l'école publique ne devrait pas comporter, à moins que les élèves n'en soient dispensés sur simple demande des parents, une instruction religieuse obligatoire dans une religion ou conviction particulière à titre confessionnel.⁴

2 – Union européenne et Conseil de l'Europe

7 – La même conception inspire, semble-t-il, la Résolution du Parlement européen sur les droits de l'homme en 2002 et la politique de

4 On ajoutera que l'article 5 b) de la Convention de l'UNESCO de 1960 énonce « aucune personne ni aucun groupement ne devraient être contraints de recevoir une éducation religieuse incompatible avec leurs convictions ».

l'Union européenne en matière de droits de l'homme (2002/2011(INI)). « Considérant que l'État, par définition doit être a-religieux et qu'en l'absence d'une séparation de l'État et de la religion ou d'une croyance, il est parfois difficile aux croyants et aux non-croyants de s'épanouir pacifiquement ensemble et que des problèmes pourraient alors se poser aux minorités »⁵

8 – Plus récemment, dans sa réponse du 16.09.2008 aux deux Recommandations de l'Assemblée parlementaire du Conseil de l'Europe, le Comité des Ministres réaffirme son attachement au principe européen commun de séparation entre gouvernance et religion dans les États membres de la CE,⁶ dans le respect de la Convention. Ce principe avec celui de la liberté de conscience et de pensée et celui de la non-discrimination fait partie intrinsèque du concept de laïcité européenne⁷ (Bull. n° 75, p. 52). L'instruction religieuse obligatoire⁸ dans une école publique qui n'est pas assortie de dispenses quasi « automatiques » paraît contraire à la « laïcité européenne ».

9 – L'article 12-1 de la Convention sur les droits de l'enfant: « Les États parties garantissent à l'enfant qui est capable de discernement, le droit d'exprimer librement son opinion sur toute question l'intéressant, les opinions de l'enfant étant dûment prises en considération eu égard à son âge et à son degré de maturité ». Le respect du droit de

5 *J. Duffar*, Liberté de religion et Droit européen en 2003, *Revue européenne des relations Églises-État*, 2004, p. 78–79.

6 Le 05.01.2003, le Cardinal Tauran, rappelait le n° 76 de la Constitution conciliaire *Gaudium et Spes* qui affirme la séparation entre la communauté politique et l'Église. L'éminent auteur poursuit « Le Concile adopte donc le concept de la séparation structurelle entre l'Église et l'État, qui suppose que l'État ne reconnaît aucune religion comme religion d'État ».

7 *Conseil de l'Europe*, Bulletin d'information sur les droits de l'homme, n° 75, p. 52.

8 Exemple d'enseignement, semble-t-il, facultatif: la Constitution polonaise prévoit que la religion des Églises et des communautés religieuses légalement reconnues puisse être enseignée dans les écoles, dans le respect de la liberté d'autrui. Des cours d'enseignement religieux ou d'éthique peuvent être organisés à la demande des parents ou des étudiants adultes. 16 Églises et communautés auraient présenté des programmes de cours d'enseignement religieux au ministère de l'Éducation nationale. S'il y a au moins trois élèves, l'enseignement de la religion ou de l'éthique peut être organisé par regroupement, hors établissement scolaire, dans le cadre du système d'éducation publique. CCPR/C/POL/6, 17 juillet 2009, 196–197. V. cependant (infra) l'arrêt de la Cour, n° 7710/02, *Grzelak c. Pologne*, 15.06.2010.

l'enfant d'être entendu dans le domaine de l'éducation est crucial pour l'exercice du droit à l'éducation.⁹

3 – *Cour européenne des droits de l'homme: L'article 2 du Protocole n° 1 (P1-2)*

10 – Dans l'arrêt *Refah Partisi* de la Grande Chambre (GC) du 14.02.2003 la Cour rappelle sa jurisprudence sur la place qu'occupe la religion dans une société démocratique et dans un État démocratique. Un tel État n'assure pas la prééminence des règles religieuses. Plus loin, au sujet de la laïcité en Turquie, la Cour observe que le principe de laïcité cadre avec la prééminence du droit et le respect des droits de l'homme et de la démocratie

11 – Dans le système de la Convention européenne, le sujet du colloque relève plus particulièrement de l'article 2 du Protocole additionnel (P-1-2) « qui est la *lex specialis* en matière d'éducation »¹⁰: « Nul ne peut se voir refuser le droit à l'instruction. L'État, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques. » Cet article n'épuise pas la matière, indirectement appréhendée par plusieurs articles de la Convention et par l'évolution du droit international.¹¹

12 – La Cour a déclaré que les dispositions de la Convention et celles du Protocole doivent être envisagées comme un tout.¹² Les deux

9 *Comité des droits de l'enfant*, Observation générale n° 12 (2009), Le droit de l'enfant d'être entendu. CRC/C/GC/12, 20 juillet 2009, 105.

10 Cour, GC, *Folgero et autres c. Norvège*, 25.06.2007, § 54.

11 À la différence des articles 14 de la Convention sur les droits de l'enfant et 5 de la Déclaration de 1981 des Nations Unies sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion et la croyance, l'article P-1-2 n'envisage pas la religion ou l'absence de religion du mineur, même, mature. Le récent arrêt *Lautsi* 03.11.2009, mentionne cependant « le respect des convictions religieuses des parents et des croyances des enfants, implique le droit de croire en une religion ou de ne croire en aucune religion » § 47e).

12 Cour, *Affaire « relative à certains aspects du régime linguistique de l'enseignement en Belgique » c. Belgique*, 23.07.1968.

phrases de l'article 2 du Protocole doivent être lues l'une à la lumière de l'autre, mais aussi des articles 8 (droit au respect de la vie privée et familiale), 9 (liberté de pensée, de conscience et de religion) et 10 (liberté de recevoir ou de communiquer des informations et des idées).¹³

a – P1-2: 1^{re} phrase: « Nul ne peut se voir refuser le droit à l'instruction. »

13 – L'article 2 du Protocole n° 1 utilise les trois termes suivants: instruction, éducation, enseignement. La jurisprudence en a éclairé le sens: « *L'éducation* des enfants est la somme des procédés par lesquels, dans toute société, les adultes tentent d'inculquer aux plus jeunes leurs croyances, coutumes et autres valeurs, tandis que l'enseignement ou l'instruction vise notamment la transmission des connaissances et la formation intellectuelle ». ¹⁴ L'article P-1-2 s'intitule « Droit à l'instruction » mais notre sujet porte sur l'éducation.

14 – L'article 2 forme un tout que domine sa première phrase. Sur le droit fondamental de l'enfant à l'instruction se greffe le droit énoncé à la seconde phrase. L'État a le devoir de veiller à ce que les enfants puissent l'exercer. ¹⁵ (...) « la première phrase de l'article 2, dominant l'ensemble de cette disposition » ¹⁶, et ne distingue pas plus que la seconde entre l'enseignement public ou l'enseignement privé. ¹⁷ La dispense d'assiduité au cours du samedi a pu être refusée à des adventistes du 7^e jour: le samedi est un jour à part entière dans le programme pour la composition de devoirs sur table. L'État a le devoir de veiller à ce que les enfants puissent exercer leur droit à l'instruction. ¹⁸ En cas de conflit entre la première et la seconde phrase les intérêts de l'enfant priment aussi, lorsqu'au lieu de le con-

13 Cour, *Kjeldsen, Busk Madsen et Pedersen c. Danemark*, 07.12.1976, § 52.

14 Cour, *Campbell et Cosans c. RU*, 25.02.1982, § 33.

15 Cour, *Costello-Roberts c. RU*, 25.03.1993, § 27.

16 Cour, *Campbell et Cosans c. RU*, 41; Com. Déc. 25212/94, *Martin Klerks c. PB*, 04.07.1995, DR 82 B/132.

17 Cour, *Folgero*, préc., § 84.

18 Cour, *Costello-Roberts c. RU*, 25.03.1993, § 27.

forter, le droit des parents au respect de leurs convictions religieuses entre en conflit avec le droit de l'enfant à l'instruction, les intérêts de l'enfant priment.¹⁹

15 – Les requérants invoquent la violation de la première phrase de P-1-2: l'interdiction de l'accès au lycée d'élèves portant le foulard islamique aurait privé celles-ci du droit à l'instruction. Le droit d'accès aux établissements scolaires peut faire l'objet de limitations implicites, « car il appelle de par sa nature même une réglementation par l'État. » La décision expose, reprend et incorpore les motifs retenus par les autorités et juridictions turques. Les mesures étaient « clairement prévisibles »: elles appliquent le règlement sur la tenue vestimentaire que les élèves se sont engagées à respecter lors de leur inscription.

16 – L'arrêt *Leyla Sahin* note déjà que la Cour constitutionnelle et le Conseil d'État ont considéré que le port du foulard islamique par les élèves n'était pas compatible avec le principe de laïcité, dès lors que celui-ci était en passe de devenir le symbole d'une vision contraire aux libertés de la femme et aux principes fondamentaux. C'est aussi le sens de l'avis du 27.03.2002 de la Commission des droits de l'homme auprès de la préfecture d'Istanbul et de l'arrêt de la Cour constitutionnelle du 7 mars 1989: respect du principe de laïcité, de la neutralité de l'école et du pluralisme.

17 – L'interdiction de l'accès de l'établissement poursuit les buts légitimes de la protection des droits et libertés d'autrui et de l'ordre. Elle n'est pas disproportionnée puisqu'elle ménage la possibilité d'avoir la tête couverte pendant les cours de Coran. Ces règles générales préservent « la neutralité de l'enseignement secondaire qui s'adresse à un public d'adolescents susceptibles d'être exposés à un risque de pression ». D'ailleurs, ces mesures n'ont été mises en œuvre qu'en dernier ressort.²⁰

19 Com. Déc. 13887, 05.02.1990, DR, 64/158; Déc. 08.09.1993, DR75/65; Cour, *Amaro Martins Casimiro c. Luxembourg*, 27.04.1999. La solution de la Cour coïncide avec le principe de l'intérêt supérieur de l'enfant qui domine la Convention sur les droits de l'enfant.

20 Cour, Déc. irrecevable, n° 26625/02, *Kose et 93 autres c. Turquie*, 24.01.2006.

b – P1-2: 2^e phrase « L'État, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques. »

18 – La primauté de la première phrase n'anéantit pas l'importance de la seconde qui « vise en somme à sauvegarder la possibilité d'un pluralisme éducatif essentielle à la préservation de la 'société démocratique' telle que la conçoit la Convention.²¹ » Elle implique que l'État veille à ce que les informations ou connaissances figurant au programme soient diffusées de manière objective, critique et pluraliste dans une atmosphère sereine préservée de tout prosélytisme intempestif.²² Elle lui interdit de poursuivre un but d'endoctrinement.²³

19 – Dans la même affaire *Kose* (préc.) les requérants invoquent la violation de la 2^e phrase de P-1-2. Ils allèguent que l'interdiction du foulard islamique (V. supra) porte atteinte aux droits qu'ils tiennent de la 2^e phrase, alors qu'en inscrivant leurs enfants dans des écoles Imam-Hatip, ils espéraient un enseignement conforme à leur conviction religieuse et en particulier que leurs filles portent le foulard à l'école sans aucune restriction.

20 – Ces lycées ne sont pas des écoles confessionnelles, font partie du système éducatif et n'échappent pas au principe de laïcité. L'État ne saurait être dispensé de son rôle d'arbitre neutre, garant du pluralisme confessionnel. Les autorités compétentes doivent veiller à ce que la manifestation par les élèves de leurs croyances religieuses ne se transforme pas en un acte ostentatoire, qui constituerait une source de pression et d'exclusion. Tant les parents, que les élèves ont été informés des conséquences de l'inobservation des règles en vigueur. Le respect des règles vestimentaires ne prive pas les parents de leur droit « d'éclairer et conseiller leurs enfants, d'exercer envers eux

21 Cour, *Kjeldsen, Busk Madsen et Pedersen c. Danemark*, 07.12.1976, § 50.

22 Cour, Déc. n° 26625/02, *Kose et 93 autres c. Turquie*, 24.01.2006 (préc.).

23 Cour, *Kjeldsen*, préc., § 53; *Vogt*, 26.09.1995, § 60. Déjà dans l'arrêt *Kokkinakis* la Cour avait abordé le prosélytisme abusif qui est une forme d'endoctrinement.

leurs fonctions naturelles d'éducateurs, de les orienter dans une direction conforme à leurs propres convictions religieuses ou philosophiques »²⁴ (V. mutatis mutandis *Valsamis*, 18.12.1996, § 31). Le code vestimentaire impose et les mesures y afférentes ne portent pas atteinte au droit énoncé à la seconde phrase de l'article 2 du Protocole n° 1.

21 – La seconde phrase est dominée par le pluralisme éducatif – école de la formation du citoyen d'une société démocratique –, qui implique l'interdiction de tout endoctrinement, illustrée par l'affaire *Ciftci*. Pour s'inscrire aux cours coraniques, les élèves doivent être titulaires d'un diplôme d'enseignement primaire. Cette exigence vise l'acquisition d'une certaine maturité par les élèves désireux de poursuivre une formation religieuse dans des cours coraniques. Loin de constituer une tentative d'endoctrinement visant à empêcher l'instruction religieuse, la condition posée par le législateur vise, en fait, à restreindre l'exercice, d'un éventuel endoctrinement des mineurs se trouvant dans un âge où ils se posent beaucoup de questions tout en étant facilement influençables par des cours coraniques.²⁵ L'endoctrinement n'a pas sa place dans l'éducation d'une société démocratique et donc pluraliste.

22 – L'État ne réalise pas le pluralisme éducatif en se bornant à organiser, par exemple, un cours d'instruction religieuse conforme aux convictions des parents ou encore en subventionnant des écoles privées.²⁶ Il doit respecter les convictions religieuses et philosophiques des parents dans l'enseignement tel qu'il existe et qu'il se développe.²⁷ La seconde phrase de l'article 2 s'impose aux États dans

24 « Ce sont des convictions qui méritent respect dans une société démocratique ... ne sont pas incompatibles avec la dignité de la personne et ne vont pas à l'encontre du droit fondamental de l'enfant à l'instruction, la première phrase de l'article 2 dominant l'ensemble de cette disposition » Cour, *Campbell et Cosans c. RU*, 25.02.1982, § 36.

25 Cour, Déc. Irrecevabilité, *Ciftci c. Turquie*, 17.06.2004.

26 L'État n'est pas tenu, aux termes de l'article P-1-2, de créer ni de subventionner un établissement d'enseignement conforme à des convictions religieuses ou philosophiques. À propos d'une école Rudolf Steiner, Com. Déc. 9461/81 X et Y c. RU, 07.12.1982, DR 31/212.

27 Com. Déc. 9461/81, *X et Y c. RU*, 07.12.1982, DR 31/212.

l'ensemble des « fonctions » dont ils se chargent en matière d'éducation et d'enseignement, y compris celle qui consiste à organiser et financer un enseignement public. « Il ressort des travaux préparatoires » que l'on n'a pas perdu de vue la nécessité d'assurer dans l'enseignement public le respect des convictions religieuses et philosophiques des parents (...). En raison du poids de l'État moderne, c'est surtout par l'enseignement public que doit se réaliser ce dessein (soit sauvegarder la possibilité d'un pluralisme éducatif).²⁸ « L'article 2, qui vaut pour chacune des fonctions de l'État dans le domaine de l'éducation et de l'enseignement, ne permet pas de distinguer entre l'instruction religieuse et les autres disciplines. C'est dans l'ensemble du programme de l'enseignement public qu'il prescrit à l'État de respecter les convictions tant religieuses que philosophiques²⁹ des parents ». ³⁰

23 – Dans le cas où malgré les oppositions et réserves des instruments internationaux, un cours d'instruction religieuse – en général de la religion dominante – existe néanmoins, le pluralisme éducatif exige que la dispense de cet enseignement soit automatiquement accordée aux parents qui la demandent pour leurs enfants. En principe, l'article P-1-2 laisse dans la marge d'appréciation des États la décision de dispenser une instruction religieuse dans les écoles d'État et le système d'instruction, mais dans le respect de l'interdiction de tout endoctrinement.³¹

24 – La Grèce offre une illustration récente de ces principes. Sur une population d'environ 11 millions d'habitants, plus de 90 % est de

28 Cour, *Kjeldsen*, préc., 07.12.1976, § 50.

29 « Eu égard à la Convention tout entière, compris l'article 17, l'expression 'convictions philosophiques' vise (...) des convictions qui méritent le respect dans une société démocratique (...) ne sont pas incompatibles avec la dignité de la personne et, de plus ne vont pas à l'encontre du droit fondamental de l'enfant à l'instruction, la première phrase de l'article 2 dominant l'ensemble de cette disposition. » Cour, *Campbell et Cosans c. RU*, 25.02.1982, § 41. « Plus généralement, le mot 'convictions' pris isolément, n'est pas synonyme des termes 'opinion' et 'idées'. Il s'applique à des vues atteignant un certain degré de force, de sérieux, de cohérence et d'importance » Cour, *Valsamis c. Grèce*, 18.12.1996, §§ 25–27.

30 Cour, *Kjeldsen*, préc., § 51.

31 Cour, n° 7710/02, *Grzelak c. Pologne*, 15.06.2010, § 104.

religion orthodoxe. L'enseignement de la religion orthodoxe était obligatoire dans les enseignements primaires et secondaires. Les parents d'élèves qui justifiaient leur appartenance à une autre religion (un million environ de la population est non orthodoxe) pouvaient obtenir une dispense d'assiduité pour leurs enfants. Le caractère obligatoire de l'instruction religieuse orthodoxe serait maintenu, mais la dispense d'assiduité serait accordée sur simple demande non-motivée des parents d'élèves. Cette réforme a été présentée comme une application de la jurisprudence de la Cour.

25 – En définitive, les organes du Conseil de l'Europe (Comité des Ministres et Assemblée parlementaire) comme ceux de l'Union européenne transposent la théorie de la séparation des pouvoirs – sur laquelle reposent les régimes démocratiques – aux relations État-Religions. Cette séparation ressort notamment du rôle que la Cour attribue à l'État en matière religieuse (« organisateur neutre et impartial des diverses religions cultes et croyances » V. supra). Il en résulte qu'un État n'est pas tenu, aux termes de l'article 2 du Protocole 1, d'organiser dans les écoles publiques, un cours d'instruction religieuse confessionnelle pour une religion particulière. Si ce cours existe, (Concordat, Constitution, loi,) il ne saurait, aux termes de l'article 2 du Protocole, être obligatoire; les dispenses doivent être accordées automatiquement sur simple demande non motivée des parents.

26 – Ces formulations abruptes n'excluent pas qu'un État puisse inclure dans les programmes scolaires l'enseignement des religions. (V. infra) Dans ce cas le respect des convictions des parents « doit prendre en compte le respect des convictions des autres parents » et « doit être possible dans le cadre d'une éducation capable d'assurer un environnement scolaire ouvert et favorisant l'inclusion plutôt que l'exclusion, indépendamment de l'origine sociale des élèves, des croyances religieuses ou de l'origine ethnique. L'école ne devrait pas être le théâtre d'activités missionnaires ou de prêches; elle devrait être un lieu de rencontre de différentes religions et convictions philosophiques, où les élèves peuvent acquérir des connaissances sur leurs pensées et traditions respectives. » Ce « principe », extrait d'un ré-

cent arrêt de la Cour,³² donne un contenu actuel à l'obligation pour l'État de respecter les convictions des parents dans un milieu scolaire multiculturel.

B – Enseignement des religions

27 – Le titre est suffisamment éloquent: il n'exprime pas l'enseignement d'une religion particulière à titre confessionnel (l'instruction religieuse); il se rattache au droit des élèves à la culture, qui comprend notamment la connaissance des principales philosophies et religions du monde. Les textes internationaux universels, la jurisprudence de la Cour et les documents du Conseil de l'Europe et de l'Union européenne semblent partager une doctrine commune favorable à l'enseignement des religions, élément important de la cohésion sociale dans une société multiculturelle.

1 – Les instruments internationaux universels de protection générale des droits de l'homme

28 – Le paragraphe 1b) de l'article 5 de la Convention de l'UNESCO concernant la lutte contre la discrimination dans le domaine de l'enseignement du 14.12.1960 énonce: « Qu'il importe de respecter la liberté des parents (...) 2° de faire assurer, selon les modalités d'application propres à la législation de chaque État, *l'éducation religieuse et morale* des enfants conformément à leurs propres convictions.»

29 – Le Pacte international des droits économiques sociaux et culturels (PIDESC) contient, en particulier, deux articles pertinents: l'article 15-1 et l'article 13-1.

- Article 15-1: « Les États parties reconnaissent à chacun le droit a) de participer à la vie culturelle; » Le Comité des droits économiques sociaux et culturels considère que pour la mise en œuvre de cet article, la culture comprend, parmi de

32 Cour, n° 30814/06, *Lautsi c. Italie*, (préc.) 03.11.2009, §§ 56 et 47 c).

nombreux éléments, (...) « *la religion* ou les croyances, les rites et cérémonies. »³³ Au nombre des biens culturels, la relation de parenté interculturelle productive, qui s'établit lorsque différents groupes, minorités et communautés peuvent librement partager le même territoire, revêt un intérêt particulier. Nul ne peut invoquer la diversité culturelle pour violer ou limiter les droits de l'homme garantis par le droit international (pratiques néfastes liées aux traditions).³⁴ La religion fait partie de la culture et participe du droit de participer à la vie culturelle.

– Article 13

« 1. Les États parties au présent Pacte reconnaissent le droit de toute personne à l'éducation. (...) »

3. Les États parties au présent Pacte s'engagent à respecter la liberté des parents et, le cas échéant, des tuteurs légaux, de choisir pour leurs enfants des établissements autres que ceux des pouvoirs publics, mais conformes aux normes minimales qui peuvent être prescrites ou approuvées par l'État en matière d'éducation, et de faire assurer l'éducation religieuse et morale de leurs enfants conformément à leurs propres convictions. »

« Le droit à l'éducation (...) qui permet aux individus et aux communautés de transmettre leurs valeurs, leur religion, leur coutume, leur langue et d'autres références culturelles, et qui contribue à promouvoir la compréhension et le respect des valeurs culturelles d'autrui ». ³⁵

30 – L'observation générale n° 13 (1999) du Comité des droits économiques sociaux et culturels (1999) porte sur le droit à l'éducation

33 V. aussi la Déclaration universelle de l'UNESCO sur la diversité culturelle qui place dans la définition de la culture: (...) « les systèmes de valeur, les traditions et les croyances » et Préambule de la Recommandation de Nairobi « Recouvre les valeurs, les croyances, les convictions (...) ».

34 Comité des droits économiques, sociaux et culturels, Observation générale n° 21, Droit de chacun de participer à la vie culturelle, E/C.12/GC/21, 21 décembre 2009, §§ 13-16-18.

35 Ibid, § 2.

et le § 28, plus particulièrement sur cet élément du § 3 de l'article 13 du PIDESC qui « permet l'enseignement dans les *établissements publics* de sujets tels que l'histoire générale des religions et la morale, à condition qu'il soit dispensé d'une manière impartiale et objective, respectueuse des libertés d'opinion, de conviction et d'expression ». Les critères de l'impartialité et de l'objectivité ne sont pas définis mais l'enseignement doit respecter la pluralité des convictions et la neutralité scientifique. La représentation historiquement négative d'une religion, un exposé tendancieux et scientifiquement non fondé de faits historiques, des distinctions désobligeantes ou des jugements de valeur à l'égard d'un peuple ou d'une minorité à raison de ses croyances séculaires ou de ses pratiques religieuses ne font pas un enseignement impartial et objectif. Même si la tâche est difficile, l'enseignant doit observer une attitude de stricte neutralité.³⁶

31 – Dans les instruments internationaux universels, le paragraphe 4 de l'article 4 de la Déclaration des Nations Unies sur les droits des personnes appartenant à des minorités nationales ou ethniques, religieuses et linguistiques (Résolution de 1992, 47/135 de l'AGNU) (préc.) énonce: « Les États devraient, le cas échéant, prendre des mesures dans le domaine de l'éducation, afin d'encourager la connaissance de l'histoire, des traditions, de la langue et de la culture des minorités qui vivent sur leur territoire. Les personnes appartenant à des minorités devraient avoir la possibilité d'apprendre à connaître la société dans son ensemble ».

32 – Ce paragraphe 4 de l'article 4 de la Déclaration exprime les mêmes préoccupations que les articles 7 de la Convention sur l'élimination de toutes les formes de discrimination raciale et 29 de la Convention sur les droits de l'enfant.³⁷

36 *Abdelfattah Amor*, Rapporteur spécial de la Commission des droits de l'homme sur l'intolérance religieuse, « Discrimination raciale, intolérance religieuse et éducation » A/CONF.189/PC.2/22, 3 mai 2001, 57.

37 Paragraphe 1 de l'article 29 « Les États parties conviennent que l'éducation de l'enfant doit viser à:
Favoriser l'épanouissement de la personnalité de l'enfant et le développement de ses dons et de ses aptitudes dans toute la mesure de leurs potentialités;

L'objectif d'ensemble du paragraphe 4 de l'article 4 est « d'assurer l'intégration, mais sur la base du respect de chacun des groupes culturels, linguistiques, ou religieux, qui à eux tous, constituent la société du pays ». Pour éviter les phénomènes de xénophobie et d'intolérance il faut un enseignement à la fois multiculturel et interculturel.³⁸

33 – Deux textes plus récents.

- Le Document final établi par le Président-rapporteur du Comité spécial sur l'élaboration de normes complémentaires mentionne que certains États/groupes d'États ont estimé que dans l'élaboration des normes complémentaires, le Comité spécial « devrait examiner les voies et moyens d'une promotion du *dialogue interculturel et interreligieux à tous les niveaux*, tout particulièrement au niveau local » (...). Les dispositions à élaborer devraient demander aux gouvernements et aux partis politiques « de ne pas participer au sabotage des efforts actuellement déployés pour promouvoir l'harmonie et les relations amicales entre les diverses cultures, religions et civilisations ».³⁹
- L'alinéa 11 de la Résolution 14/11 adoptée le 18 juin 2010 par le Conseil des droits de l'homme qui « engage le Rapporteur

Inculquer à l'enfant le respect des droits de l'homme et des libertés fondamentales, et des principes consacrés dans la Charte des Nations Unies;

Inculquer à l'enfant le respect de ses parents, de son identité, de sa langue et de ses valeurs culturelles, ainsi que le respect des valeurs nationales du pays dans lequel il vit, du pays duquel il peut être originaire et des civilisations différentes de la sienne;

Préparer l'enfant à assumer les responsabilités de la vie dans une société libre, dans un esprit de compréhension, de paix, de tolérance, d'égalité entre les sexes et d'amitié entre tous les peuples et groupes ethniques, nationaux et religieux et avec les personnes d'origine autochtone;

Inculquer à l'enfant le respect du milieu naturel».

38 « L'enseignement multiculturel suppose des politiques et des pratiques qui satisfassent les besoins en matière d'éducation de chacun des groupes appartenant à une tradition culturelle différente, tandis que l'enseignement interculturel suppose des politiques et des pratiques grâce auxquelles les membres des différentes cultures en position majoritaire ou minoritaire apprennent à avoir des rapports constructifs les uns avec les autres » Commentaire du Groupe de travail sur les minorités sur la Déclaration (...), préc., §§65–70.

39 A/HRC/AC.1/2/2, 26 août 2009, §§ 34–35.

spécial à travailler avec les médias dans le but de promouvoir un climat de respect et de tolérance par la *diversité religieuse et culturelle ainsi que le multiculturalisme*». ⁴⁰ Ces quelques exemples montrent le souci des instances internationales universelles de promouvoir le dialogue interculturel et interreligieux. Ce même souci est partagé par les instances européennes. L'enseignement des religions sera évoqué d'abord dans la jurisprudence de la Cour -2- puis dans les documents (Résolutions et Recommandations) des organes du Conseil de l'Europe -3- et les recommandations du REDCo. -4-

2 – La jurisprudence de la Cour

a – Le programme

34 – Les États définissent le programme qui peut comprendre des informations ayant un caractère religieux ou philosophiques, sans que les parents puissent s'y opposer. Ces solutions ont été données par la Cour, saisie de l'application de la législation sur l'éducation sexuelle, par des parents qui en avaient sollicité la dispense, pour leurs enfants.

- La Cour relève « qu'elle ne blesse pas en soi les convictions religieuses et philosophiques des requérants dans la mesure prohibée par la seconde phrase de l'article 2 du Protocole interprétée à la lumière de la première et de l'ensemble de la convention » ⁴¹.
- Dans une autre affaire similaire, la Cour relève que l'information en matière d'éducation sexuelle « ne touche pas au droit des parents d'éclairer et conseiller leurs enfants, d'exercer envers eux leurs fonctions naturelles d'éducateurs, de les orienter dans une direction conforme à leur propres convictions religieuses et philosophiques ». Et l'arrêt d'ajouter: « *Dans la*

40 AA/HRC/RES/14/11, Liberté de religion ou de conviction: mandat du Rapporteur spécial sur la liberté de religion ou de conviction.

41 Cour, *Kjeldsen*, préc., § 54.

mesure où les parents ont opté pour l'enseignement public, le droit au respect de leurs croyances et idées tel que garanti par l'article 2 du Protocole n° 1, ne saurait être analysé comme leur conférant le droit d'exiger un traitement différencié de l'enseignement imparti à leur fille en accord avec leurs propres convictions ».

b – Cour, Folgero, 29.06.2007

35 – Dans l'affaire *Folgero*, la dispense totale du cours obligatoire – christianisme, religion et philosophie – « KRL » (préc.) est refusée aux requérants « humanistes » pour leurs enfants, scolarisés dans le primaire.⁴² Ce cours figure au programme de la scolarité obligatoire d'une durée de 10 ans.

– D'autres parents, victimes d'un semblable refus, ont adressé une communication au Comité des droits de l'homme. Le 3 novembre 2004, celui-ci déclara que le cadre de fonctionnement du cours KRL, y compris le régime des dispenses appliqué aux plaignants constituait une violation de l'article 18 § 4 du Pacte (préc.).⁴³

36 – L'intention initiale du cours KRL est louable: enseigner ensemble le christianisme et les autres religions et philosophies pour accueillir tous les élèves sans distinction de milieu social, de foi religieuse, de nationalité, d'appartenance ethnique ou autre distinction. Ces intentions sont conformes aux principes de pluralisme et d'objectivité consacrés par l'article 2 du Prot. 1: faciliter le dialogue et éviter le sectarisme. La part faite au christianisme – eu égard à l'histoire et à la tradition – n'est pas une entorse aux principes de pluralisme et d'objectivité susceptibles de constituer un endoctrine-

42 « Eu égard à la Convention tout entière, y compris l'article 17, l'expression 'convictions philosophiques' vise (...) des convictions qui méritent respect dans une société démocratique (...) ne sont pas incompatibles avec la dignité de la personne et, de plus ne vont pas à l'encontre du droit fondamental de l'enfant à l'instruction, la première phrase de l'article 2 dominant l'ensemble de cette disposition ». Cour, *Campbell et Co-sans c. RU*, 25.02.1982, § 36.

43 Cour, GC, *Folgero et autres c. Norvège*, 29.06.2007, §§ 43–45.

ment⁴⁴ (V. aussi Cour, *Zengin*, infra) (§§ 87–89). « La seconde phrase de l'article P-1-2 n'empêche pas les États de diffuser par l'enseignement ou l'éducation des informations ou connaissances ayant, directement ou non, un caractère religieux ou philosophique. » (§ 84 g); elle « ne renferme aucunement le droit pour les parents de laisser leurs enfants dans l'ignorance en matière de religion et de philosophie. » (§ 89)

37 – La présence de la – *clause de vocation chrétienne* – doit être mentionnée. L'enseignement doit donner aux élèves une éducation chrétienne et morale (clause analysée par le juge *Stang Lund*, §§ 35–36). Cette clause se trouve soulignée, dans le programme, par la prépondérance marquée du christianisme, en comparaison des autres religions (connaissance et compréhension approfondies de la Bible et du christianisme comme patrimoine culturel, sous l'angle de la foi évangélique luthérienne). Avec le respect des valeurs chrétiennes, il représente la moitié du programme, l'autre moitié porte sur les autres religions et philosophies. Est aussi prévue la participation à des activités religieuses (prières, Psaumes) (§§ 90–95). Dans le contexte de l'enseignement, la neutralité devrait garantir le pluralisme (§ 84). Ce déséquilibre est-il compensé par le système de dispenses?

38 – Sur le régime des dispenses, l'analyse du juge *Stang Lund* est critique (§ 42). L'arrêt relève que l'exigence de motivation de la demande de dispense conduira les parents à devoir révéler des aspects intimes de leurs convictions religieuses et philosophiques, pour donner une image « raisonnable » à leur demande. Les difficultés pratiques des dispenses ne seraient-elles pas résolues par l'inscription des élèves dans des écoles privées, toutes financées à 85 % par l'État? Non, « l'existence de pareille possibilité ne saurait dispenser l'État de son obligation de garantir le pluralisme dans les écoles publiques qui sont ouvertes à tous ».

39 – Dans ces conditions, en dépit des intentions louables du législateur (...) « l'État défendeur n'a pas suffisamment veillé à ce que les

44 Cohérence entre l'article 2 du Protocole 2 et l'article 9 de la Convention, la Commission avait déjà déclaré que « l'article 9 offre une protection contre l'endoctrinement religieux par l'État ».

informations et connaissances figurant au programme de ce cours soient diffusées de manière objective, critique et pluraliste pour satisfaire aux exigences de l'article 2 du Protocole n° 1. (...) Le refus d'accorder aux requérants une dispense totale du cours de KRL pour leurs enfants a emporté violation de cette disposition » (§§ 101–102).

c – Cour, Zengin, 09.10.2007

40 – Les requérants,⁴⁵ le père (*Hasan Zengin*) et sa fille (*Eylem Zengin*) – scolarisée dans une école publique – sont de confession Alévi (§§ 8–9) La demande de dispense du cours de culture religieuse et de connaissance morale présentée pour la requérante est rejetée. Le jugement du tribunal administratif du 28.12.2001, confirmé par un arrêt du Conseil d'État du 14.04.2003, décide: « L'article 24 de la Constitution a établi que la culture religieuse et l'éducation morale font partie des matières obligatoires enseignées dans les écoles primaires et secondaires, et l'article 12 de la loi n° 1739 [énonce] que la culture religieuse et l'éducation morale font partie des matières obligatoires enseignées dans les écoles primaires et les lycées et écoles de même niveau. Dans ce contexte le refus de la demande du plaignant n'est pas contraire à la loi » (...) (§ 16).

41 – L'arrêt de la Cour reproduit les lignes directrices du cours de culture religieuse et connaissance morale dispensé de la 4^e à la 8^e (Décision ministérielle du 19.09.2000) ainsi qu'un bref résumé des six manuels utilisés pour cet enseignement (§§ 20–23). Les requérants soutiennent que la manière dont ce cours obligatoire est dispensé porte atteinte aux droits qu'ils tiennent de la seconde phrase de l'article 2 du Protocole 1 (V. le texte supra). Cette phrase implique que l'État, en s'acquittant des fonctions assumées par lui en matière d'éducation et d'enseignement, veille à ce que les informations ou idées figurant au programme soient diffusées de manière objective, critique et pluraliste, permettant aux élèves de développer un sens critique à l'égard du fait religieux dans une atmosphère sereine, pré-

45 Cour, n° 1448/04, *Hasan et Eylem Zengin c. Turquie*, 09.10.2007, § 16.

servée de tout prosélytisme intempestif. Elle lui interdit de poursuivre un but d'endoctrinement qui pourrait être considéré comme ne respectant pas les convictions religieuses et philosophiques des parents (§ 52).

42 – En vertu de la Constitution turque,⁴⁶ *Eylem Zengin*, élève d'une école publique, a du suivre l'enseignement obligatoire de « culture religieuse et connaissance morale » à partir de la quatrième année du primaire (§ 56). La Cour conclut que l'enseignement de la matière « culture religieuse et connaissance morale » ne répond pas aux critères d'objectivité et de pluralisme et ne respecte pas, en particulier, les convictions religieuses et philosophiques de *Hasan Zengin*, Alévi, confession dont le traitement, dans le cours, est manifestement insuffisant (§§ 58–70).

43 – 43 pays européens sur 47 (§§ 30–34), organisent un enseignement religieux dans les écoles publiques. Est prévue la possibilité pour les élèves de ne pas suivre les cours de religion (§§ 33 et 71). La dispense est prévue en Turquie pour les élèves turcs de confession chrétienne et juive: « à condition qu'ils attestent de leur adhésion à ces religions ». Cette condition appelle à s'interroger sur une éventuelle contradiction de la législation avec l'article 24 al. 3 de la Constitution « Nul ne peut être contraint (...) de divulguer ses croyances et ses convictions religieuses » (...) et avec les « convictions religieuses » de l'article 9 de la Convention, qui relèvent avant tout du for intérieur. Le système de dispense exige le dévoilement des convictions (violation de l'article 2 du Prot. 1; contrariété avec l'arrêt du Conseil d'État du 14.04.2003); il n'est pas un mécanisme approprié pour protéger les parents et les enfants contre un éventuel conflit entre l'enseignement obligatoire de l'islam sunnite reçu en classe – pour lequel il n'existe pas d'alternative – et les valeurs et convic-

46 Constitution art. 24 al. 4 « L'éducation et l'enseignement religieux et éthique sont dispensés sous la surveillance et le contrôle de l'État. L'enseignement de la culture religieuse et de la morale figure parmi les cours obligatoires dispensés dans les établissements scolaires du primaire et du secondaire. En dehors de ces cas, l'éducation et l'enseignement religieux dépendent de la volonté propre de chacun et, en ce qui concerne les mineurs, de celle de leurs représentants légaux ».

tions différentes pratiquées dans la famille. Le droit des requérants garanti par la deuxième phrase a été violé.

44 – En définitive, ces deux arrêts de violation sanctionnent une évolution qui aboutit à la suppression du pluralisme éducatif. Le pluralisme constitue un principe inhérent à une société démocratique au sens de la Convention.⁴⁷ La notion a été étendue par la Cour: il repose sur « la reconnaissance et le respect véritables de la diversité et de la dynamique des traditions culturelles, des identités ethniques et culturelles » comme « des convictions religieuses et des idées et concepts artistiques, littéraires et socio-économiques »⁴⁸. Dans les deux arrêts présentés, à partir d'une vision pluraliste et ouverte de l'enseignement des religions, la pratique a glissé vers un cours d'instruction religieuse de la religion dominante sans possibilité de dispense non motivée. C'est la négation du respect du pluralisme éducatif, du secret des convictions⁴⁹ et du droit de ne pas avoir de religion ou de conviction. Ces deux tentatives demeurent encourageantes: elles fournissent deux exemples qui peuvent être transposables dans d'autres contextes, si l'équilibre entre religions est respecté et si les « dérapages » éventuels de l'enseignement sont contrôlés.

d – Cour, Lautsi c. Italie, 03.11.2009

45 – La portée de ces deux arrêts de la Cour est confirmée et développée dans un attendu de l'arrêt *Lautsi c. Italie* qui exprime des préoccupations multiculturelles. « Le respect des convictions des parents doit être possible dans le cadre d'une éducation capable d'assurer un environnement scolaire ouvert et favorisant l'inclusion plutôt que l'exclusion indépendamment de l'origine sociale des élèves, des croyances religieuses ou de l'origine ethnique. L'école ne devrait

⁴⁷ Cour, *Handyside c. RU*, 07.12.1976.

⁴⁸ Cour, GC, *Gorzelik c. Pologne*, 17.02.2004, § 92. V. *Julie Ringelheim*, La société démocratique comme espace culturel pluraliste: Réflexions sur la jurisprudence de la Cour européenne des droits de l'homme, E/C.12/40/5, 9 mai 2008, 22 p.

⁴⁹ Nul ne peut être contraint de révéler ses convictions religieuses ou non religieuses, Cour, Déc. *Sofianopoulos et autres c. Grèce*, n° 1977/02, 1988/02 et 1997/02; Cour, n° 21924/05, *Sinan Isik c. Turquie*, 02.02.2010, §§ 37–38.

pas être le théâtre d'activités missionnaires ou de prêches; elle devrait être un lieu de rencontre de différentes religions et convictions philosophiques, où les élèves peuvent acquérir des connaissances sur leurs pensées et traditions respectives »⁵⁰. Le but recherché est l'absence d'objection des parents au contenu de l'enseignement interculturel dispensé, qui ne serait pas celui d'une religion particulière mais de toutes les religions et convictions comme éléments indispensables d'une culture commune et universelle. Ce contenu ne fait pas obstacle à ce que les parents transmettent leurs convictions intimes personnelles à leurs enfants.

3 – Les Conventions, Résolutions et Recommandations des organes du Conseil de l'Europe et du Parlement européen: religion et convictions dans l'éducation interculturelle

46 – Les textes du Conseil de l'Europe expriment la même préoccupation que les textes internationaux universels: ils constatent la difficulté des sociétés multiculturelles à se construire paisiblement et la nécessité de relations harmonieuses entre des populations d'origines diverses installées sur le même territoire. La plupart des sociétés modernes vivent la contradiction entre l'État-Nation, expression d'une identité exclusive et le multiculturalisme ethnique, culturel et religieux auquel elles résistent. Pour que la lutte contre le racisme puisse réussir, dans la perspective d'un multiculturalisme démocratique, égalitaire et interactif, les États doivent promouvoir le respect et la protection des spécificités ethniques, religieuses et culturelles ainsi que la reconnaissance des valeurs universelles.⁵¹

47 – La Convention cadre du Conseil de l'Europe pour la protection des minorités nationales du 1^{er} février 1995 utilise les expressions « esprit de tolérance » notamment en matière d'éducation (art. 6-1) et

50 Cour, n°30814/06, 03.11.2009, § 47)c.

51 Rapport soumis par le Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée, Doudou Diène, 62-64. A/HRC/7/19, 20 février 2008.

« dialogue interculturel ». Il « comprend la connaissance de la culture, de l'histoire, de la langue et de la religion » des minorités nationales et de la majorité (art. 12-1) ainsi que « des possibilités de formation pour les enseignants et d'accès aux manuels scolaires » et de contacts entre élèves et enseignants appartenant à des communautés différentes (art. 12-2).

48 – Les trois arrêts *Folgero*, *Zengin* et *Lautsi* sont en phase avec la doctrine du Conseil de l'Europe sur la pratique du dialogue interculturel qui comporte à l'évidence un dialogue interreligieux⁵² ainsi qu'une éducation interculturelle.⁵³ La même préoccupation est partagée par le Conseil de l'Union européenne: « La promotion d'un dialogue interconfessionnel et multiculturel au niveau de l'Union européenne contribuerait à préserver et à renforcer la paix et les droits fondamentaux » (...).⁵⁴

49 – Les idées qui inspirent le dialogue interculturel ont été exprimées dès 2005 dans une Recommandation de l'Assemblée parlementaire. Celle-ci a précédé la présentation du Livre blanc sur le dialogue interculturel du Conseil de l'Europe. Depuis, dans une littérature riche, seront retenus deux documents du Comité des Ministres qui soulignent la fonction renforcée des religions et des convictions non religieuses dans l'éducation interculturelle et dans l'apprentissage de la citoyenneté démocratique. Ces mêmes idées inspirent les Recommandations de REDCo (Religion dans l'éducation).

52 Recommandations de l'Assemblée parlementaire du Conseil de l'Europe 1804 (2007) et 1805 (2007) et Réponse du Comité des Ministres du 16.09.2008, Bulletin d'information sur les droits de l'homme, n° 75, juillet – octobre 2008, p. 52.

53 Recommandation CM/Rec(2008)12 du Comité des Ministres aux États membres sur la dimension des religions et des convictions non religieuses dans l'éducation interculturelle adoptée par le Comité des Ministres le 10 décembre 2008.

54 Décision du Conseil du 19 avril 2007 établissant pour la période 2007–2013, dans le cadre du programme général « Droits fondamentaux et Justice », le programme spécifique « Droits fondamentaux et citoyenneté », JOUE 27.04.2007, L 110.33.

*a – La Recommandation 1720 (2005) « Éducation et Religion » de l'Assemblée parlementaire du Conseil de l'Europe du 4 octobre 2005*⁵⁵

50 – L'Assemblée souligne la distinction entre croyance et connaissance, cultuel et culturel. La croyance ou la non-croyance relève du domaine strictement privé. La connaissance des religions ne se confond pas avec la croyance et la pratique d'une religion. La connaissance des religions est socialement indispensable.⁵⁶ L'enseignement du fait religieux ne doit pas transmettre une foi, mais exposer aux élèves les raisons qui justifient l'attachement de millions de fidèles à ces religions (1-2-14.4). Qui peut dispenser cet enseignement et quel doit en être son contenu?

51 – Dans beaucoup de familles, la connaissance de la religion se perd et souvent, les médias ne connaissent pas les religions. La Recommandation consacre quatre paragraphes (§§ 6-7-8-9) au rôle de l'école dans l'enseignement des religions et du fait religieux. L'école luttera efficacement contre le fanatisme, par l'enseignement de l'histoire et de la philosophie des principales religions avec mesure, objectivité et dans le respect des valeurs de la Convention européenne des droits de l'homme. Pour pallier la pénurie des enseignants, capables de présenter une vue comparative des diverses religions, l'Assemblée recommande au Comité des Ministres d'envisager la création d'un institut européen de formation d'enseignants pour l'étude comparative des religions (§§ 10-12-13.3) et de promouvoir la formation des enseignants du fait religieux (§ 13.2). Ceux-ci devraient avoir une formation spécifique de préférence d'une discipline culturelle ou littéraire (§ 14.5).

55 La Recommandation s'inspire de principes semblables à ceux qui sont développés dans un Rapport du Haut Commissaire aux droits de l'homme « *Le Racisme, la discrimination raciale, la xénophobie et toutes les formes de discrimination, la lutte contre la diffamation des religions* » E/CN.4/2005/15, 9 février 2005, 10 p.

56 Dans la Recommandation 1396 (1999) sur la religion et la démocratie, l'Assemblée a marqué la composante religieuse de plusieurs problèmes de la société moderne (mouvements fondamentalistes intolérants, actes terroristes, racisme, xénophobie, conflits ethniques).

52 – Les valeurs défendues par le Conseil de l'Europe trouvent leur origine dans celles que les trois religions monothéistes du Livre (Abraham) partagent entre elles ainsi qu'avec d'autres religions. Le pluralisme est l'inspiration majeure. L'objectif est de faire découvrir aux élèves les religions qui se pratiquent, le droit égal de chacun à tenir sa religion pour vraie et la qualité d'être humain de toute personne, qu'elle ait ou non une religion. L'enseignement doit comprendre l'histoire des principales religions ainsi que l'option consistant à ne pas avoir de religion. Il mettra les jeunes en mesure d'aborder sans crainte les partisans d'un fanatisme religieux.

*b – Livre Blanc sur le dialogue interculturel du Conseil de l'Europe: « Vivre ensemble dans l'égalité dignité ».*⁵⁷

53 – Ce livre blanc souligne les convergences entre le Conseil de l'Europe et les communautés religieuses (droits de l'homme, citoyenneté démocratique, promotion des valeurs, paix, dialogue, éducation et solidarité). Reconnaissance des finalités religieuses, mais aussi laïques de l'existence et de l'influence profonde des trois religions: christianisme, judaïsme et islam. Le dialogue interreligieux doit contribuer au renforcement de la compréhension entre les diverses cultures, protéger la dignité de chaque être humain, l'égalité entre les femmes et les hommes, renforcer la cohésion sociale, favoriser la compréhension et le respect mutuels.

54 – Le 8 avril 2008, le Conseil de l'Europe, a organisé une rencontre autour du thème « *L'enseignement de faits religieux et relatifs aux convictions. Un outil de connaissance des faits religieux et relatifs aux convictions au sein de l'éducation: une contribution à l'éducation à la citoyenneté démocratique, aux droits de l'homme et au dialogue interculturel* ». Ces rencontres (renouvelées en 2009 et en 2010) contribuent à promouvoir les droits de l'homme, la démocratie et la primauté du droit dans une Europe multiculturelle et ren-

57 Délégués des Ministres, Documents CM, CM(2008) 30, final 2 mai 2008.

forcer au sein de la société le consensus autour des solutions aux problèmes sociaux.

c – Réponse jointe du Comité des Ministres du 16.09.2008, Dimension religieuse du dialogue interculturel: « Laïcité européenne » – Valeurs communes et Convergences

55 – Dans sa réponse jointe du 16.09.2008⁵⁸ aux deux Recommandations de l'Assemblée,⁵⁹ le Comité des Ministres traite de la dimension religieuse du dialogue interculturel dans un cadre de « *laïcité européenne* ». Celle-ci comprend trois composantes: la séparation entre gouvernance et religion, principe européen commun aux États membres du Conseil de l'Europe⁶⁰ dans le plein respect de la Convention; liberté de conscience et de pensée; enfin non-discrimination. Même s'il n'en est pas fait mention, les religions engagées dans le dialogue interculturel doivent implicitement adhérer à la « *laïcité européenne* ».

56 – Le Comité des Ministres décide de poursuivre les travaux sur la dimension religieuse du dialogue interculturel,⁶¹ initiés par la première rencontre annuelle, à titre expérimental, du 8 avril 2008 (V. supra). Le thème de la session plénière de la rencontre 2009 (29–30 juin 2009) sur la dimension religieuse du dialogue interculturel portait sur l'enseignement du fait religieux et des convictions non religieuses (...) en tant que contributions pour un vivre solidaire.

Enfin, le Comité des Ministres réaffirme son engagement « en faveur de la liberté d'expression et de la liberté de pensée de cons-

58 *Conseil de l'Europe*, Bulletin d'information sur les droits de l'homme, n° 75 juillet – octobre 2008 p. 52.

59 Recommandation 1804 (2007) et 1805 (2007).

60 Le 05.01.2003 le Cardinal Tauran, rappelait le n° 76 de la Constitution conciliaire *Gaudium et Spes* qui affirme la séparation entre la communauté politique et l'Église. L'éminent auteur poursuit « Le Concile adopte donc le concept de la séparation structurelle entre l'Église et l'État, qui suppose que l'État ne reconnaît aucune religion comme religion d'État ».

61 *Conseil de l'Europe*, Bulletin d'information sur les droits de l'homme, n° 75 juillet – octobre 2008, p. 52.

ciences et de religion, libertés fondamentales consacrées par la CEDH qui constituent les composantes essentielles de la démocratie ».

d – Recommandation CM/Rec(2008)12 sur la dimension des religions et des convictions non religieuses dans l'éducation interculturelle

57 – Cette importante recommandation⁶² vise à assurer la prise en compte de la dimension religieuse⁶³ et des convictions non religieuses dans l'éducation interculturelle: contribution notamment au renforcement des droits de l'homme et de la citoyenneté démocratique.

58 – La recommandation se réfère à certaines Recommandations de l'Assemblée parlementaire et du Comité des Ministres, relatives, notamment, aux finalités de l'éducation à la citoyenneté démocratique – facteur de cohésion sociale et de compréhension mutuelle –, au dialogue interculturel et interreligieux, aux relations des religions entre elles et avec la démocratie.⁶⁴

« La dimension religieuse de l'éducation interculturelle constitue un élément fondamental pour favoriser la compréhension mutuelle, la tolérance et une culture du 'vivre ensemble' »; le Comité des Ministres « 1. Recommande aux gouvernements des États membres, dans le respect de leurs structures constitutionnelles, des situations nationales ou locales et de leur système éducatif: (...) b. de poursuivre des initiatives dans le domaine de l'éducation interculturelle concernant la diversité des religions et convictions non religieuses afin de promouvoir la tolérance et le développement du 'vivre ensemble' ».

62 Bien que les recommandations n'aient pas force obligatoire à l'égard des États membres, la Cour, dans sa jurisprudence récente, *Rivière c. France* 11.07.2006, *Dybeku c. Albanie* 18.12.2007 et *Slawomir Musial c. Pologne*, 20.01.2009 a souligné qu'il était important de les respecter.

63 V. aux Éditions du Conseil de l'Europe: *La dimension religieuse de l'éducation interculturelle* (2005) et *Diversité religieuse et éducation interculturelle, manuel à l'usage des écoles* (2007).

64 Une importante partie de l'arrêt, GC, *Refah Partisi*, 13.02.2003, préc., §§ 90–96 s'intitule « *La démocratie et la religion dans le système de la Convention* ».

59 – Les religions et les convictions non-religieuses sont considérées comme des faits culturels dans le domaine plus large de la diversité sociale, qui contribuent avec d'autres éléments, comme la langue et les traditions historiques et culturelles à la vie sociale et individuelle.

60 – L'importance de cette recommandation pour notre sujet justifie que les principaux intitulés de l'annexe en soient reproduits:

- *Champ d'application et définitions*: Liberté de conscience; l'information et les connaissances sur les religions et les convictions non religieuses qui influencent le comportement des individus dans la vie publique doivent être enseignées en vue de développer la tolérance ainsi que la compréhension et la confiance mutuelles.
- *Objectifs d'une approche interculturelle concernant la dimension religieuse et des convictions non religieuses dans l'éducation*: s'assurer que l'enseignement de la diversité des religions et des convictions non religieuses soit compatible avec les objectifs de l'éducation à la citoyenneté démocratique, aux droits de l'homme et au respect de l'égalité de dignité de tous les individus.
- *Conditions pour aborder la diversité des religions et des convictions non religieuses dans un contexte éducatif*: attitudes qui doivent être promues afin de lever les obstacles pouvant entraver le traitement approprié de la diversité des religions et des convictions non religieuses dans un contexte éducatif.
- *Aspects pédagogiques d'une approche interculturelle des religions et des convictions non religieuses dans l'éducation*: la Recommandation donne des exemples très appropriés de conditions pédagogiques préalables et de méthodes d'apprentissage à utiliser dans le contexte pédagogique.
- *Conséquences pour les politiques de l'État en matière de formation initiale et continue du personnel enseignant*: Devoir des enseignants de contribuer à la construction d'une société plus tolérante et cohésive; assurer une formation conforme à la Convention objective et non directive.

60 – La mise en œuvre effective de cette recommandation pourrait entraîner des conséquences considérables sur l'enseignement, en général, dans plusieurs pays européens (principes d'éducation, programmes, formation du personnel enseignant, nouvelles modalités de transmission etc.).

4 – Projet « REDCo »: LE RÔLE DE LA RELIGION DANS L'ENSEIGNEMENT: Les recommandations en matière de politiques publiques du projet de recherche REDCo – 19 mars 2009

61 – *La religion dans l'Éducation. Une contribution au Dialogue ou un facteur de Conflit dans l'évolution des pays européens.* Ce projet de recherche européen et comparatif (financé par la Commission européenne) porte sur les représentations des jeunes à propos de la religion, de la diversité culturelle et des possibilités de dialogue qu'elles recèlent. La diversité religieuse pose la question de la « cohésion sociale » dans les sociétés européennes. D'où l'étude du fait religieux comme partie intégrante d'un apprentissage interculturel aux droits de l'homme.

62 – Les résultats du REDCo sont en concordance avec les recommandations du Livre blanc du Conseil de l'Europe (V. supra) et des « Principes directeurs de Tolède sur l'enseignement Religions et croyances dans les Écoles publiques » établi par le Conseil consultatif d'experts sur la liberté de religion ou la conviction (OSCE, 2007).⁶⁵ Il doit être tenu compte du contexte national dans la manière de gérer la religion dans l'enseignement.

63 – En matière de politiques publiques, les recommandations de REDCo sont orientées dans les trois directions suivantes:

⁶⁵ Les « principes de Tolède » ne sont pas examinés ici. Leur contenu peut être appréhendé à travers la jurisprudence de la Cour, les textes du Conseil de l'Europe et les Recommandations de REDCo, qui s'y réfèrent. La présente synthèse est nécessairement limitée aux dimensions de cet exposé.

- Encourager une coexistence pacifique (présentation du rôle positif des religions, dialogue et échanges entre élèves et groupes religieux ou non religieux).
- Promouvoir la gestion de la diversité religieuse et philosophique au sein de l'école et de l'université (possibilité pour les élèves de connaître les religions et les philosophies dans des enseignements spécifiques mais aussi dans l'histoire, la littérature et les sciences; apprentissage de la « tolérance active »; promouvoir le pluralisme religieux et philosophique dans la composition des équipes éducatives).
- Inclure les visions religieuses et non religieuses du monde.
- Former les enseignants à prendre en compte les faits religieux et convictionnels pertinents pour leurs disciplines et les présenter avec neutralité; à organiser des débats sur les sujets religieux et convictionnels sensibles et à gérer des éventuels conflits qui éclateraient dans la classe.

64 – *En définitive*, toute la jurisprudence et les textes convergent vers un enseignement multiculturel, qui intègre, si possible, l'universalité de la culture. Les religions qui sont, au moins, des faits culturels (V. supra) font nécessairement partie de cet enseignement, au même titre que les philosophies et les grandes doctrines (spiritualisme, matérialisme, athéisme).

La diversité et la dignité des populations et des personnes doit se refléter dans cet enseignement. Il est un élément de la cohésion sociale. Ceci explique l'importance que lui reconnaissent notamment la Cour dans les quatre arrêts présentés ainsi que l'Assemblée et le Comité des Ministres dans les Recommandations citées. Sauf déviation dans le contenu ou partialité dans la transmission (arrêts *Folgero* et *Zengin*) – à la différence des cours d'instruction religieuse – cet enseignement des religions et des philosophies peut être obligatoire et ne prévoir qu'un régime exceptionnel de dispense. N'est ce pas le lieu, le creuset du citoyen européen?

« la seconde phrase de l'article 2 du Protocole n° 1 n'empêche pas les États de diffuser par l'enseignement ou l'éducation des informations ou connaissances ayant, directement ou non, un caractère religieux ou

philosophique » (§ 84 g)); « elle ne renferme aucunement le droit pour les parents de laisser leurs enfants dans l'ignorance en matière de religion et de philosophie » (§ 89), (Cour *Folgero*, préc.).

C– Éthique

65 – L'éducation publique doit transmettre des éléments de morale civique, indispensable à toute vie sociale dans un État. Cette morale civique s'applique à tous les citoyens, indépendamment de leurs convictions religieuses ou de leur absence de convictions: « les convictions religieuses ne constituent pas une donnée servant à individualiser un citoyen dans ses rapports avec l'État »⁶⁶. Il existe nécessairement une éthique sociale commune. Trois exemples tirés de la jurisprudence de la Cour: *Folgero*, *Appel Irgang*, *Grzelak* montrent la difficulté de créer un enseignement d'éthique, ou même de proposer l'alternative religion -éthique.

66 – La matière KRL (christianisme, religion et philosophie), qui a été censurée par la Cour dans l'arrêt *Folgero* (V. supra) a été renommée « Religion, philosophies de la vie et éthique », par un amendement législatif afin que les diverses approches et défis fondamentaux soient présentés aux enfants avec impartialité.

La modification de l'intitulé, dans lequel le terme « christianisme » ne figure plus, traduit, en principe, une déconfessionnalisation de la morale. L'introduction du terme « éthique » lui imprime un contenu universel que confirme le passage, au pluriel, du mot « philosophies » impliquant que sont reconnues, désormais, plusieurs philosophies de la vie.

67 – Le Comité des droits de l'enfant se félicite de cet amendement législatif à la loi sur l'éducation, tout en s'inquiétant de la mise en œuvre pratique de la réforme et du sort des enfants de plusieurs communautés religieuses isolées. Le Comité recommande à la Norvège de réaliser une étude sur les buts de la matière renommée « Religion, philosophies de la vie et éthique » et sur le soutien nécessaire

⁶⁶ Cour, Déc. *Sofianopoulos c. Grèce*, 12.12.2002 (préc.).

aux enseignants pour en atteindre les objectifs. Il recommande aussi d'examiner la compatibilité des objectifs et des pratiques des communautés religieuses isolées avec le droit de l'enfant à une éducation axée sur les droits de l'homme.⁶⁷

68 – Deuxième exemple. Après l'introduction d'un cours d'éthique obligatoire dans le programme des classes de la septième à la dixième, des recours sont introduits par des parents: le caractère laïc de cet enseignement heurte leurs convictions protestantes. Par deux arrêts successifs, la Cour constitutionnelle allemande les rejette.

69 – Aux termes de la loi de Berlin sur l'école, l'objectif du cours est l'examen de questions d'éthique fondamentales, indépendamment des origines culturelles, ethniques, religieuses ou idéologiques des élèves. Cet objectif est conforme aux principes de pluralisme et d'objectivité de l'article 2 du Protocole 1. L'arrêt de la Cour fédérale constitutionnelle a constaté que les enseignants ne doivent pas exercer une influence illicite sur leurs élèves. Les requérants n'ont pas invoqué une atteinte à leurs convictions religieuses pendant l'année scolaire 2006–2007.

70 – L'importance du christianisme dans le programme du cours d'éthique relève de la marge d'appréciation des États ainsi que la question de savoir s'il est préférable d'organiser un cours commun ou plusieurs cours d'éthique séparés en fonction de l'appartenance religieuse des élèves. Les requérants soutiennent que le cours d'éthique va à l'encontre de leurs convictions religieuses or ni la loi, ni le programme du cours ne donnent la priorité à une croyance précise et l'on ne saurait tirer de la Convention le droit de ne pas être exposé à des convictions contraires aux siennes.

71 – En introduisant le cours d'éthique obligatoire les autorités berlinoises n'ont pas outrepassé la marge d'appréciation que leur confère l'article P1-2. Elles n'étaient pas tenues de prévoir une dispense générale de ce cours, même si un autre land a fait un choix différent (irrecevabilité).⁶⁸

67 CRC/C/NOR/CO/4, 3 mars 2010, §§ 26–29.

68 Cour, Déc. n° 45216/07, *Appel Irgang c. Allemagne*, 20.10.2009.

72 – Dernier exemple. Un élève manifeste son intention de suivre le cours d'éthique qui est proposé mais qui n'est pas organisé. Ce faisant il est contraint de révéler sa non-croyance religieuse en violation de la liberté négative de ne pas révéler ses convictions. Par ailleurs, dans la case du bulletin scolaire commune à la religion et à l'éthique, il n'a pas de note.⁶⁹ Le trait qui barre le mot « éthique » révèle qu'il n'a pas voulu suivre le cours de religion.

73 – La Cour retient l'application des articles 9 et 14 (non-discrimination) de la Convention. Différence de traitement entre les élèves qui suivent un cours de religion et le requérant qui a demandé, en vain pendant toute la durée du primaire et du secondaire (10 ans), de suivre le cours d'éthique et dont le bulletin porte un trait au lieu d'une note dans la case « religion-éthique ». Cette stigmatisation est injustifiable. Cette absence de note pèsera davantage encore à l'avenir, désormais la note religion éthique sera intégrée dans le total des notes pris en compte pour le calcul de la moyenne générale annuelle. Les élèves, tels le requérant, qui n'auront pas de note seront défavorisés scolairement.

74 – La différence de traitement entre les deux catégories d'élèves n'est pas objectivement et raisonnablement justifiée. (Discrimination) Dépassement de la marge d'appréciation de l'État en ce que le droit du requérant de ne pas manifester sa religion ou ses convictions (art. 9) a été violé. Violation des articles 14 et 9 de la Convention combinés.

D- Religion dans le cadre de leçons de littérature, histoire, philosophie, art, langue

75 – On sait que la définition et l'aménagement du programme des études relèvent en principe de la compétence des États contractants. Il paraît difficile de parler de certains de ces sujets sans mentionner et même expliquer le soubassement religieux ou antireligieux de telle œuvre littéraire (*Milton; Victor Hugo*), de tel conflit (guerre de reli-

⁶⁹ Cour, n° 7710/02, *Grzelak c. Pologne*, 15.06.2010.

gions; conflit coloniaux) de tel philosophe (matérialiste ou spiritua-
liste) ou encore de très nombreux chefs d'œuvre de la peinture (Nati-
vités; Crucifixions; scènes de l'Évangile).⁷⁰ Le silence systématique
sur le soubassement religieux de ces œuvres serait d'abord une la-
cune dans l'enseignement de ces sujets mais aussi une atteinte au
droit des élèves à l'instruction et à la culture. Le traitement adéquat
de tels sujets dans un éclairage multiculturel implique une formation
particulière des enseignants.⁷¹

76 – La seconde phrase de l'article 2 du Protocole n°1 vise avant tout
à sauvegarder la possibilité d'un pluralisme éducatif essentielle à la
préservation de la « société démocratique » telle que le conçoit la
Convention. « C'est dans l'ensemble du programme de l'enseigne-
ment public que l'article 2 prescrit à l'État de respecter les convic-
tions tant religieuses que philosophiques des parents. Étant donné le
pouvoir d'appréciation laissé aux États en la matière, la disposition
précitée leur interdit de poursuivre un but d'endoctrinement qui
puisse être considéré comme ne respectant pas les convictions reli-
gieuses et philosophiques des parents. Là se place la limite à ne pas
dépasser. »⁷² La Cour a précisé que le « pluralisme repose sur la
reconnaissance et le respect véritables de la diversité et de la dyna-
mique des traditions culturelles, des identités ethniques et cultu-
relles » et que « une interaction harmonieuse entre personnes et
groupes ayant des identités différentes est essentielle à la cohésion
sociale ». ⁷³

70 V. J. Lohm Keast, Religion diversity and intercultural education, Conseil de l'Europe, 2007, 205 p.

71 A. Valianatos, Politiques et pratiques de l'enseignement de la diversité socio cultu-
relle – Formation initiale et continue du personnel enseignant: organisation, contenu et
méthodologie, (Conseil de l'Europe).

72 Cour, inter alia, Déc. n° 26625/02, *Kose et 93 autres c. Turquie*, 34.01.2006.

73 Cour, GC, n° 44158/98, *Gorzelik c. Pologne*, 17.02.2004.

II – COMPORTEMENT RELIGIEUX DANS LES ÉCOLES PUBLIQUES

§ 1 – Religion dans le cadre des conditions de travail des professeurs et d'autres employés

77 – L'enseignant d'une école publique, met à profit ses cours d'anglais et de mathématique, pour donner un enseignement religieux; il arbore sur ses vêtements des slogans hostiles à l'avortement. Ordre lui est donné de s'abstenir de toute publicité sur ses convictions politiques, morales ou religieuses. Après plusieurs avertissements, il est licencié.

Les principes applicables ont été établis à propos d'un enseignant inscrit au parti communiste. « Un enseignant étant symbole d'autorité pour ses élèves, les devoirs et responsabilités particuliers qui lui incombent valent aussi dans une certaine mesure pour ses activités en dehors de l'école. Or aucun élément ne permet de dire que *Madame Vogt* elle-même, fût-ce en dehors de son travail au lycée, ait effectivement tenu des propos anticonstitutionnels ou ait personnellement adopté une attitude anticonstitutionnelle ».⁷⁴

78 – Dans les écoles non-confessionnelles, les enseignants doivent tenir compte du droit des parents de manière à respecter leurs convictions religieuses et philosophiques. Surtout dans une école non-confessionnelle dans laquelle les parents peuvent demander dispense des cours d'instruction religieuse et celle-ci, quelle qu'elle soit, ne doit comporter aucun catéchisme ou recueil de formules caractéristiques d'une confession religieuse particulière.

79 – L'affaire rapportée, ci-après, n'est qu'une application à un enseignant du principe selon lequel le salarié qui souhaite que les exigences de sa religion soient prises en considération dans l'aménagement de ses horaires doit les signaler lors de son engagement.

Un instituteur, déjà engagé depuis plusieurs années par contrat, demande à pouvoir se rendre à la mosquée pour la prière du vendre-

⁷⁴ Cour, *Vogt c. Allemagne*, 26.09.1995.

di. Dans sa décision, la Commission relève que ni lors de sa première entrevue pour obtenir son poste d'enseignant, ni pendant les six premières années d'exercice de son emploi, le requérant n'a indiqué qu'il pourrait demander à s'absenter, pendant les heures de classe, pour se rendre à la mosquée.

La Commission fait remarquer que l'affaire ne pose pas le problème général du caractère confidentiel des informations sur la religion d'une personne mais celui de savoir si un employé doit informer à l'avance son employeur qu'il s'absentera pendant une partie du temps pour lequel il s'engage à travailler. La Commission relève que tout au long de son emploi, le requérant avait la faculté de démissionner, s'il estimait que ses obligations pédagogiques entraient en conflit avec ses devoirs religieux.⁷⁵

§ 2 – *Symboles religieux dans les écoles (par exemple le crucifix en Italie)*

80 – La requérante allègue que l'exposition du crucifix dans les salles de classe de l'école publique fréquentée par ses enfants, âgés respectivement de 11 et 13 ans, constitue une ingérence incompatible avec la liberté de religion et de conviction ainsi qu'avec le droit à une éducation et un enseignement conforme à ses convictions religieuses et philosophiques (Violation de l'article 1 du Protocole 1 et 9 de la Convention).

81 – Selon les *principes directeurs de Tolède sur l'enseignement relatif aux religions et convictions dans les écoles publiques*,⁷⁶ « la présence d'un tel symbole dans une école publique peut constituer une forme d'enseignement implicite d'une religion, par exemple en donnant l'impression que cette religion particulière est favorisée par rapport à d'autres. » (*Lautsi*, préc. § 46).

⁷⁵ 23D, 8160/78, 12.03.1981, DR, 22/27 et D 29107/95 *Louise Stedman c. RU*, 09.04.1997, DR 89 B/104. V. J. Duffar, Religion et Travail dans la jurisprudence de la Cour de justice des Communautés européennes et des organes de la Convention européenne des droits de l'homme, *Revue du droit public*, 1993, p. 695–718.

⁷⁶ Conseil d'experts sur la liberté de religion et de conviction de l'organisation pour la Sécurité et la Coopération en Europe (« OSCE »).

82 – L'État a l'obligation « de s'abstenir d'imposer, même indirectement, des croyances, dans les lieux où les personnes sont dépendantes de lui ou encore dans des endroits où elles sont particulièrement vulnérables. La scolarisation des enfants représente un secteur particulièrement sensible car, dans ce cas, le pouvoir contraignant de l'État est imposé à des esprits qui manquent encore de la capacité critique » rapport à ce type de message (*Lautsi*, préc. § 48). Dans un milieu scolaire multiculturel, le crucifix peut être « perturbant émotionnellement » pour les élèves adeptes d'autres religions ou sans religion. La liberté négative s'étend aux symboles exprimant une croyance en une religion ou l'athéisme. Comment l'exposition obligatoire, dans les salles de classe d'une école publique, d'un symbole religieux – le crucifix –, pourrait-elle servir le pluralisme éducatif essentiel à la préservation de la « société démocratique » au sens de la Convention? (*Lautsi*, préc. § 56). Elle « restreint le droit des parents d'éduquer leurs enfants selon leurs convictions ainsi que le droit des enfants scolarisés de croire ou de ne pas croire » (Violation de P-1-2) (*Lautsi*, préc. § 57).

§ 3 – Habits religieux

83 – Selon la Rapporteuse spéciale sur la liberté de religion ou de conviction, *Madame Asma Jahangir*, les lois nationales sur les symboles religieux peuvent avoir des effets néfastes sur les personnes soit que ne pouvant porter ces symboles ou vêtements, elles ne peuvent s'identifier ou au contraire qu'elles soient tenues de porter des vêtements religieux en public.⁷⁷

84 – Le port d'une coiffure à caractère religieux – le foulard islamique – a donné matière à contentieux, notamment en France, depuis 1989. Les écolières refusent d'ôter ce foulard à l'intérieur de l'établissement même lorsqu'elles doivent participer aux cours d'éducation physique obligatoires. Ce refus est à l'origine du manque d'assiduité

⁷⁷ Rapport de la Rapporteuse spéciale sur la liberté de religion ou de conviction, M^{me} Asma Jahangir, A/HRC/4/21, 26 décembre 2007, § 26.

des élèves – obligation légale – et de leur exclusion définitive de l'établissement.

85 – Dans un avis n° 346.893 du 27 novembre 1989,⁷⁸ le Conseil d'État français a déclaré que « le port de signes religieux n'est pas en lui-même incompatible avec le principe de laïcité » mais cette affirmation est assortie de conditions, liées à la conception française de la laïcité. Le port de signes religieux:

Doit respecter la liberté d'autrui.

Est exclu le port de signes qui constituerait par leur caractère ostentatoire ou revendicatif, un acte de pression ou de provocation, de prosélytisme ou de propagande;

Ne doit pas porter atteinte à la dignité ou à la liberté de l'élève ou d'autres membres de la communauté éducative, ni compromettre leur santé ou leur sécurité;

Ne dispense pas les élèves de leurs obligations scolaires et ne doit pas perturber les activités d'enseignement;

Ne doit pas troubler l'ordre public ou le fonctionnement normal du service public de l'enseignement.

86 – L'interdiction du port du foulard pendant les cours d'éducation physique et l'exclusion, en raison du refus de l'élève de le retirer « acte motivé ou inspiré par une religion ou une conviction religieuse », (Cour, *Leyla Sahin* § 78) constituent une restriction à l'exercice de la liberté de religion. Avant de conclure à la non-violation de l'article 9 de la Convention « la Cour note également qu'en France, comme en Turquie ou en Suisse, la laïcité est un principe constitutionnel, fondateur de la République auquel l'ensemble de la population adhère et dont la défense paraît primordiale, en particulier à l'école. » La Cour rappelle (*Refah Partisi*) « qu'une attitude ne respectant pas ce principe ne sera pas nécessairement acceptée comme faisant partie de la liberté de manifester sa religion et ne bénéficiera pas de la protection qu'assure l'article 9 de la Convention. Eu égard à la marge d'appréciation qui doit être laissée aux États

78 Avis n° 346893, Revue universelle des droits de l'homme, Vol. 3, n° 4, 17 mai 1991, p. 152. Rapporté par Abdelfattah Amor, auquel le résumé ci-dessus est emprunté, op. cit., §§ 56–59.

membres dans l'établissement des délicats rapports entre les églises, la liberté religieuse ainsi reconnue et telle que limitée par les impératifs de la laïcité paraît légitime au regard des valeurs sous-jacentes à la Convention ».⁷⁹

En Turquie, et pour l'enseignement supérieur, l'arrêt *Leyla Sahin* est fondamental.⁸⁰ (...) Le port du foulard islamique constituerait, pour certaines femmes de religion musulmane, une obligation religieuse importante. Cette manifestation de la religion, notamment dans le milieu de l'enseignement, a suscité de la part des autorités, des réactions d'opposition qui sont à l'origine de la plupart des affaires: Requêtes d'étudiantes tenues de fournir des photographies d'identité les représentant tête nue,⁸¹ d'une enseignante chargée d'une classe de jeunes enfants à qui le port du foulard avait été interdit à l'école.⁸² « La Cour a notamment mis l'accent sur le 'signe extérieur fort' que représentait le port du foulard par celle-ci et s'est interrogée sur l'effet prosélytisme que peut avoir le port d'un tel symbole dès lors qu'il semblait être imposé aux femmes par un précepte religieux difficilement conciliable avec le principe d'égalité des sexes. Elle a également noté la difficulté de concilier le port du foulard islamique par une enseignante avec le message de tolérance, de respect d'autrui et surtout d'égalité et de non-discrimination que dans une démocratie, tout enseignant doit transmettre à ses élèves. »

88 – Dans l'enseignement secondaire, les lycées « Imam –Hatip » (préc.) sont des établissements d'enseignement secondaire public à vocation religieuse. Au fil du temps, l'accès à ces lycées est refusé aux élèves voilées, dont les parents se sont engagés par écrit à respecter certaines règles vestimentaires: les filles doivent avoir la tête nue, les cheveux propres et coiffés soigneusement à l'intérieur de l'école; elles peuvent se couvrir la tête, uniquement pendant les cours

79 Cour, n° 27058/05, *Dogru c. France*, 04.12.2008, § 72; Cour, n°31645/04, *Kervanci c. France*, 04.12.2008, §§ 72, 87.

80 Cour, GC, n°44774/98, 10.11.2005.

81 Déc. irrecevabilité de la Commission n° 16278/90, *Karaduman c. Turquie*; 03.05.1993, DR 74/93.

82 Cour, (déc.) *Dahlab c. Suisse*, n° 42393/98 (...); *Leyla Sahin*, GC, § 111.

de Coran. La Cour n'a vu dans le règlement vestimentaire aucune violation de l'article 2 du Protocole n°1 (1^{re} ou 2^e phrase).

§ 4 – *Possibilité de bénir des bâtiments écoliers*

§ 5 – *Sujets spéciaux tels que comportement religieux des élèves, professeurs et autres employés, prière publique, prière dans le cadre de leçons ou d'autres événements scolaires, services religieux*

89 – Mention doit être faite d'un sujet voisin de ceux cités dans l'intitulé: le renvoi de l'école pour une journée de l'élève *Victoria Valsamis*.⁸³ Sanction infligée pour refus de participer au défilé le jour de la fête nationale grecque du 28 octobre. Ses parents, témoins de Jéhovah pacifistes, invoquent la violation des articles P-1-1 du Protocole et 9 de la Convention. La Cour conclut à l'absence de violation des deux articles.

90 – L'application de sanctions disciplinaires constitue l'un des procédés par lesquels l'école s'efforce d'atteindre le but dans lequel on l'a créée, y compris le développement et le façonnement du caractère et de l'esprit des élèves (arrêt *Campbell et Cosans* précité, p. 14, § 33).

91 – Rien, ni dans le propos ni dans les modalités de la manifestation en cause, qui puisse heurter les convictions pacifistes des requérants dans la mesure prohibée par la seconde phrase de l'article 2 du Protocole n° 1 (P1-2). De telles commémorations d'événements nationaux servent, à la fois des objectifs pacifistes et l'intérêt public. En soi, la présence de militaires dans certains des défiles qui ont lieu en Grèce le 28 octobre, ne change pas leur nature. Les parents conservent leur droit « d'éclairer et conseiller leurs enfants, d'exercer envers eux leurs fonctions naturelles d'éducateurs, de les orienter dans une direction conforme à leurs propres convictions religieuses ou philosophiques ».

92 – Dans cette même affaire *Valsamis*, l'arrêt relève que *Victoria* avait été dispensée des cours de religion et de la messe orthodoxe

⁸³ Cour, n° 21787/93, *Valsamis c. Grèce*, 18.12.1996, § 32.

(*Valsamis*, §§ 8 et 30). L'arrêt *Folgero* (§§ 24 et 94) mentionne également que l'expression « activités religieuses » visait selon les travaux préparatoires de la loi, « les prières, les psaumes, l'apprentissage des textes religieux par cœur et la participation à des pièces religieuses ».

III – RENONCIATION AUX OBLIGATIONS SCOLAIRES POUR DES RAISONS RELIGIEUSES

§ 1 – *Fêtes religieuses possibilité et conditions de vacance les jours concernés*

93 – L'intitulé évoque les possibilités de dispense, déjà envisagées pour les établissements publics qui dispensent un enseignement religieux obligatoire. Les dispenses sont aussi sollicitées par les élèves d'établissements qui dispensent des cours le samedi, alors que leur religion prescrit le repos ce jour là.

94 – Le droit interne du Luxembourg prévoit, des dispenses pour célébration de cultes religieux, comprises entre huit et trente jours, par an. Ces dispenses ponctuelles « ne doivent pas revêtir un caractère général tel qu'elles aboutissent à porter atteinte au droit à l'instruction, protégé par l'article 2 du protocole n°1 et dont l'importance dans une société démocratique ne saurait être méconnue. La dispense sollicitée avait pour objet de soustraire l'enfant au rythme normal de la scolarité, le samedi » étant un jour à part entière dans *le programme* d'enseignement dans la mesure où il comporte notamment des leçons ainsi que des devoirs sur table rédigés en classe. (...)

95 – L'État a le devoir de veiller à ce que les enfants puissent exercer leur droit à l'instruction. Lorsqu'au lieu de le conforter, le droit des parents au respect de leurs convictions religieuses entre en conflit avec le droit de l'enfant à l'instruction, les intérêts de l'enfant pri-

ment.⁸⁴ La décision fait application d'une jurisprudence constante selon laquelle le droit des parents de la deuxième phrase est second par rapport au droit de l'enfant garanti par la première phrase: « Nul ne peut se voir refuser le droit à l'instruction ». Les conceptions religieuses des parents ne sauraient prévaloir.⁸⁵ (V. supra). La solution de la Cour coïncide avec le principe de l'intérêt supérieur de l'enfant qui sous-tend la Convention sur les droits de l'enfant et les droits internes.

96 – L'intitulé de la rubrique appelle un rapprochement avec un arrêt de 1976 de la Cour de justice des Communautés européennes. *Madame Prais*, candidate à un concours de recrutement du Conseil des Communautés, prévient cette institution qu'elle ne pourra se présenter aux épreuves le 16 mai 1975, date du premier jour de la fête juive de *Chavouoth*. La Cour rejette le recours aux motifs suivants: « Si un candidat fait savoir que des impératifs d'ordre religieux l'empêchent de se présenter aux épreuves à certaines dates, l'autorité investie du pouvoir de nomination doit en tenir compte et s'efforcer d'éviter de retenir ces dates pour les épreuves. Si, en revanche, le candidat ne fait pas part de ses difficultés en temps utile, l'autorité investie du pouvoir de nomination peut refuser de proposer une autre date, en particulier, lorsque d'autres candidats ont déjà été convoqués aux épreuves ».⁸⁶

§ 2 – Renonciation à l'enseignement religieux ou à l'enseignement des religions

97 – La renonciation à l'enseignement religieux est prévue dans les faits de l'arrêt *Grzelak* (15.06.2010) puisque l'élève avait choisi le cours d'éthique et non le cours de religion (infra). Il serait contraire au principe universel de la liberté de conscience qu'un élève soit

84 Cour, *Costello -Roberts c. RU.*, 25.03.1993, § 27; Com. D13887, 05.02.1990, DR, 64/158; D, 08.09.1993, DR, 75/65.

85 Cour, Déc. irrecevable, *Amaro Martins Casimiro c. Luxembourg*, 27.04.1999.

86 CJCE, *Prais*, 27.10.1976, Rec. p. 1599.

contraint de suivre un enseignement contraire à sa religion ou à son absence de religion.

98 – L'enseignement des religions, composante essentielle de la formation et de la culture d'un citoyen européen, (V. supra les recommandations du Comité des Ministres du Conseil de l'Europe) ne devrait pas faire l'objet d'une possibilité de renonciation, sous réserve que cet enseignement présente les qualités d'objectivité et d'impartialité requises (V. Cour *Folgero et Zengem*).

§ 3 – *Renonciation à l'enseignement de la gymnastique (par exemple enseignement de la natation pour les jeunes filles musulmanes)*

99 – La difficulté est à l'origine des arrêts de la Cour *Dogru et Kervanci c. France*, 04.12.2008: les élèves refusaient d'ôter leur foulard pour participer aux cours d'éducation physique (V. supra sous *Habits religieux*) « (...) la requérante pouvait prévoir à un degré raisonnable qu'au moment des faits, le refus d'enlever son foulard pendant les cours d'éducation physique et sportive pouvait donner lieu à son exclusion de l'établissement pour défaut d'assiduité » (§ 59).⁸⁷

§ 4 – *Renonciation à l'enseignement de la biologie (par exemple en faveur du créationnisme)*

§ 5 – *Enseignement au foyer pour des raisons religieuses*

100 – Les requérants sont membres d'une communauté chrétienne très attachée à la Bible. Ils rejettent l'éducation dispensée par les écoles publiques ou privées pour des raisons religieuses (éducation sexuelle, personnages des contes de fées, violence entre les élèves). La demande de dispense d'assiduité à l'école primaire obligatoire et

87 Le juge administratif français a également validé des sanctions d'exclusion définitive fondées sur le manquement à l'obligation d'assiduité résultant du refus des élèves de se rendre aux cours d'éducation physique: CE, 27.11.1996, n° 170209, *Chedouane et Wissaadane*; n° 170210, *Atouf*; 15.01.1997, n° 172937, *Aït Maskour et autres*, cité in *Kervanci* n° 29.

l'autorisation d'élever leurs enfants dans leur famille est rejetée par les autorités et les juridictions allemandes compétentes.

101 – La Cour observe que la requête porte sur la seconde phrase de l'article P-1-2. On sait que les parents ne peuvent faire obstacle au droit de l'enfant à l'instruction au motif de leurs convictions. Le droit à l'éducation appelle une réglementation par l'État: l'article 2 implique la possibilité pour l'État d'imposer la scolarité obligatoire. Il n'existe pas de consensus entre les États membres sur l'assiduité obligatoire dans les écoles primaires.

102 – Les autorités et juridictions allemandes ont soigneusement motivé leurs décisions qui reposent principalement sur les buts de l'éducation primaire; non seulement l'acquisition de connaissances, mais aussi l'intégration sociale. La Cour convient que ces buts sont mieux réalisés dans le système scolaire, ce qui relève de la marge d'appréciation des États.

103 – En outre, la Cour constitutionnelle fédérale souligne l'intérêt général pour la société d'éviter l'émergence de sociétés parallèles fondées sur des convictions philosophiques particulières et d'intégrer les minorités dans la société. Ces buts sont conformes à la jurisprudence de la Cour sur l'importance du pluralisme dans une démocratie. Les juridictions allemandes ont marqué que les parents pouvaient éduquer leurs enfants après l'école et en fin de semaine.

Enfin si pour des raisons pratiques (maladie de l'élève, profession itinérante des parents) des dispenses ont été accordées par les autorités scolaires « dans des circonstances exceptionnelles » la demande des requérants est fondée sur des motifs religieux. (Requête irrecevable).⁸⁸

⁸⁸ Cour, Déc., n° 35504/03, *Konrad et autres c. Allemagne*, 11.09.2006.

RELIGION IN EUROPEAN SCHOOLS

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The aim of the so-called European schools (*Schola Europaea*) is “to educate together children of the staff of the European Union” (Article 1 of the Convention defining the status of the European schools). The children attend classes provided in their mother tongue. As each school consists of numerous language sections, the children grow up in a multicultural and multilingual environment. The first European school was founded in 1953 in Luxembourg. Currently there are 14 such schools, based in a number of cities all across the EU: 4 in Brussels, 1 in Mol (in total 5 in Belgium), 2 in Luxembourg, 1 in Karlsruhe, Frankfurt/Main, Munich (in total 3 in Germany), in Alicante (Spain), in Bergen (the Netherlands), in Culham (the UK) and in Varese (Italy). They provide education on various levels: nursery, primary and secondary; altogether some 23,000 pupils attend these schools.

The current legal basis for the schools is the Convention concluded between Member States, signed on 21 June 1994 (published in Official Journal L 212, 17.08.1994, p. 3–14). It is an international treaty, ratified by all Member States according to their own constitutional provisions. Article 4 of the Convention lists principles on which education should be given; among them, principle 6 states that: “in education and instruction, the conscience and convictions of individuals shall be respected”. The Convention does not include any other reference to religion, convictions or similar notions, known to ecclesiastical law.

All European schools are under the supervision of the Board of Governors. The board consists of one representative from each Member State, appointed by the relevant Ministry of Education, a member of the European Commission, a representative of teaching staff and a representative of pupils’ parents. Each member state has only one vote. The chair of the board rotates between Member States

– and presidency lasts one year. The Board of Governors shall supervise the implementation of the Convention and the board is the decision-making body in educational, budgetary and administrative matters. Other than where unanimity is required expressly by the Convention (e.g. additional financial contributions), the board adopts decisions by a two-thirds majority. The Board of Governors shall lay down the General Rules of the Schools and appoints the Secretary General, who represents the Board and runs the secretariat of the European Schools. There are also two Boards of Inspectors, one for primary and one for secondary education, supervising the quality and methods of teaching. The Administrative Board is responsible for financial and administrative matters. Each school is run by a headmaster. The budget of European schools is financed by the Member States, the European Union and other revenue, including fees paid by parents.

The Board of Governors approves the General Rules of the Schools, most recently amended in October 2008. According to Article 22 of the General Rules, the teachers in discharging their duties shall take care, by maintaining self-imposed strict objectivity, not to offend the religious and political convictions of pupils and their families and to respect their culture. Article 62 underlines that religion and ethics are not progression subjects – so, even if a child receives an unsatisfactory mark, the child is promoted to the next class.

One of the subjects taught at the European school is religion. Five denominations organize their courses: Catholic, Protestant, Orthodox, Jewish and Muslim – there is no separate course offered by the Church of England. Not all courses are offered in each school – it depends on parental demand. The teaching is conducted in several languages, according to the configuration of language sections in each school. It is indeed a religious instruction; attempts to introduce teaching about religions generally have recently failed. There are two hours of religion/ethics per week, and in the final years of secondary school (5–7) one hour per week. Children opting out from religious education automatically opt in for ethics – there is

no possibility to opt out from both of them. Up to the age of 18, the parents decide whether their child is supposed to attend religious instruction or ethics. The classes are offered if at least 5 pupils (or, obviously, their parents) request instruction of a given denomination. Current discussions about the organization of schools indicate that this number may be raised in the future to 7 pupils.

The curricula for religion are written under the supervision of the superior council and approved by the relevant religious authorities (usually of the place where the European school is situated) as well as by the Superior Council (mixed pedagogical committee).

The mark received in religion is mentioned on the school report, indicating clearly whether it was ethics or religion, and in the latter case, which religion.

According to the general report of the European schools for 2010, there are altogether 80 teachers of religion and ethics, mostly recruited locally, i.e. not seconded by the educational authorities of the Member States. There are no precise data on attendance at religious classes.

Interestingly, the school calendar takes note of religious holidays by allocating “one week for the All Saints half-term holiday, to include 1 November”, “two weeks for Christmas/New Year, beginning around 22 December”, “one week for the Spring mid-term break, preferably the week in which Shrove Tuesday falls”, “two weeks for Easter, one before and one after Easter Sunday. Schools with a Greek section should ensure that Greek pupils may observe the Orthodox Church’s Easter Monday”, “White Monday”, and Ascension, where this latter is a national holiday.