

Religious education in public schools

Polish and Romanian practices

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Abstract

The following material represents a learning tool and has the main objective of presenting two similar cases – settled, the first, at supranational level and, the second, at national level, both of them revolving around the issue of discrimination against pupils in providing religious education in public schools. In the alternative, the current paper aims to provide a brief overview of studies, papers and materials, as well as of relevant European legislation and legal instruments related to religious education in Europe's public schools. Poland and Romania, the two states referred to in the current learning material, are both members of the Council of Europe and of the European Union. Further below we shall refer to several legal instruments adopted by the European Union and by the Council of Europe. As concerns the case being brought before it against Poland, the European Court of Human Rights concluded that there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. For the entire period of the primary and secondary levels of education (1998/1999 - 2008/2009), Mateusz Grzelak, a Polish agnostic pupil who did not wish to study the optional subject "Religion", was not able to attend the classes of the alternative optional subject "Ethics", although he submitted several applications to this end. Instead of a mark for the optional subject, as most children were given, Mateusz Grzelak obtained a straight line. A school leaving certificate, in which the subject "Ethics" is crossed out and which contains a straight line instead of a mark for the subject "Religion", is a document unequivocally emphasising the absence of that pupil's religious beliefs. Such a certificate was also given to Mateusz Grzelak. In Romania, the Constitutional Court decided that the study of religion in public schools shall comply with the person's freedom of conscience. The Court concluded that the legal provisions of the Law on national education requiring a person to submit a written request to withdraw from religion courses are unconstitutional.

Keywords

right to education; right to religious education; religious education in public schools; education; youth; human rights in classrooms; discrimination; freedom of religion; freedom of conscience

Introduction

name. When it comes to education field, the European Union only possesses supporting competence, therefore EU can only intervene to support, coordinate or supplement actions of the member states¹. Member States are responsible for the content of teaching and the organization of their education systems.² Everyone's right to education is guaranteed, as well as the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions.³ The Charter of Fundamental Rights of the European Union guarantees everyone's right to freedom of thought, conscience and religion, a right which includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.⁴

¹ According to Article 6 of the Treaty on the functioning of the European Union. Please see http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=53

² According to Article 165 of the Treaty on the functioning of the European Union. Please see http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=121

³ Article 14 - Right to education – of the Charter of Fundamental Rights of the European Union http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=395

⁴ According to Article 10 of the Charter of Fundamental Rights of the European Union http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=394



In 2005, the Parliamentary Assembly⁵ of the Council of Europe adopted Recommendation 1720 (2005) on Education and Religion⁶ which acknowledged the key role that education plays in the construction of a democratic society and stated that education is “essential for combating ignorance, stereotypes and misunderstanding of religions”.⁷ What is expected from the Member States of the Council of Europe is to encourage dialogue with and between religions and to foster education on religion⁸ taking into consideration that “[k]nowledge of religions is an integral part of knowledge of the history of mankind and civilisations.”⁹

Moreover, the Parliamentary Assembly made recommendations for the benefit of the Member States' governments so that religious studies are taught by means of state education on the basis of several criteria:

- "the aim of this education should be to make pupils discover the religions practised in their own and neighbouring countries, to make them perceive that everyone has the same right to believe that their religion is the true faith and that other people are not different human beings through having a different religion or not having a religion at all;
- it should include, with complete impartiality, the history of the main religions, as well as the option of having no religion;
- it should provide young people with educational tools that enable them to be quite secure in approaching supporters of a fanatical religious practice;
- it must not overstep the borderline between the realms of culture and worship, even where a country with a state religion is concerned. It is not a matter of instilling a faith but of making young people understand why religions are sources of faith for millions;
- teachers on religions need to have specific training. They should be teachers of a cultural or literary discipline. However, specialists in another discipline could be made responsible for this education;
- the state authorities should look after teacher training and lay down the syllabuses which should be adapted to each country's peculiarities and to the pupils' ages. In devising these programmes, the Council of Europe will consult all partners concerned, including representatives of the religious faiths.”¹⁰

Three years later, on 10 December 2008, the Committee of Ministers adopted Recommendation CM/Rec(2008)12 to member states on the dimension of religions and non-religious convictions within intercultural education.¹¹ The declared scope of the recommendation was to ensure taking into account in the framework of intercultural education of the dimension of religions and non-religious convictions.

The international research project REDCo - "Religion in Education. A Contribution to Dialogue or a factor of Conflict in transforming societies of European Countries"¹² - was a EU funded project, with a three years duration, which aimed at studying the potential and limitations of religion in education. “The main aim of the project REDCO was to establish and compare the potentials and limitations of religion in the educational fields of selected European countries and regions in order to identify approaches that can contribute to making religion in education a factor promoting dialogue in the context

⁵ <http://assembly.coe.int/nw/Home-EN.asp>

⁶ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/EREC1720.htm>

⁷ Recommendation 1720 (2005) the Parliamentary Assembly on “Education and Religion” (adopted by the Parliamentary Assembly on 4 October 2005), point 6.

⁸ See point 6, Recommendation 1720 (2005) the Parliamentary Assembly cited above.

⁹ Recommendation 1720 (2005) the Parliamentary Assembly cited above, point 8

¹⁰ Recommendation 1720 (2005) the Parliamentary Assembly cited above, points 14.1 – 14.6.

¹¹ <https://wcd.coe.int/ViewDoc.jsp?id=1386911&Site=CM>

¹² Please see <http://cordis.europa.eu/documents/documentlibrary/123869721EN6.pdf>



of European development. The project aimed at analysing conceptual and practical approaches to mutual understanding in the field of religious education. It analysed how theoretical and practical approaches in schools and universities that encourage openness towards others and mutual respect across religious and cultural differences can be strengthened, without excluding existing tensions between people of different religion, culture and political opinion.”¹³






It is also important to mention that at EU level, a “Guideline on the promotion and protection of freedom of religion or belief”¹⁴ was adopted in 2013 by the Council of the European Union. The fundamental right of the individual to education is enshrined in Article 2 of Protocol no 1¹⁵ to the Convention for the Protection of Human Rights and Fundamental Freedoms and is worded as follows:

Article 2 Right to Education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.¹⁶

With one single exception, namely France, Member States of the European Union provide religious education within their educational systems. Some of these countries offer confessional religious education, others non-confessional religious education.

Table Religious education in EU Member States¹⁷

	Member State	Type of religious education	Mandatory discipline
1.	 AUSTRIA	Confessional religious education	Mandatory
2.	 BELGIUM	Confessional religious education	Mandatory
3.	 BULGARIA	Confessional religious education	Non-mandatory
4.	 CROATIA	Confessional religious education	Non-mandatory
5.	 CYPRUS	Confessional religious education	Mandatory

¹³ Please see http://cordis.europa.eu/result/rcn/47525_en.html

¹⁴ See

[http://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_\(june_24_2013_fac\).pdf](http://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_(june_24_2013_fac).pdf)













¹⁵ http://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁶ www.echr.coe.int/Documents/Convention_ENG.pdf












¹⁷ The following information is builded upon the paper "Religious Education in Public Scholls of the Member States of the European Union" by Sorin Şelaru and George Vâlcu (Romanian version available only).

<http://www.orthodoxero.eu/media/Documente/Religia%20in%20Uniunea%20Europeana.pdf>



6.	 CZECH REPUBLIC	Confessional religious education	Non-mandatory – as a rule (Mandatory in confessional schools)
7.	 DENMARK	Non-confessional religious education	Mandatory
8.	 ESTONIA	Non-confessional religious education	Non-mandatory
9.	 FINLAND	Confessional religious education	Mandatory
10.	 FRANCE	As a rule, religious education is not included in the curriculum.	-
11.	 GERMANY	Confessional religious education	Mandatory
12.	 GREECE	Confessional religious education	Mandatory
13.	 HUNGARY	Confessional religious education	Non-mandatory - as a rule (Mandatory in confessional schools)
14.	 IRELAND	Confessional religious education	Mandatory
15.	 ITALY	Confessional religious education	Non-mandatory
16.	 LATVIA	Confessional religious education	Non-mandatory
17.	 LITHUANIA	Confessional religious education	Non-mandatory



18.	 LUXEMBOURG	Confessional religious education	Non-mandatory
19.	 MALTA	Confessional religious education	Mandatory
20.	 THE NETHERLANDS	Both confessional and non-confessional religious education	Non-mandatory
21.	 POLAND	Confessional religious education	Non-mandatory
22.	 PORTUGAL	Confessional religious education	Non-mandatory
23.	 ROMANIA	Confessional religious education	Mandatory (on request)
24.	 SLOVAKIA	Confessional religious education	Non-mandatory
25.	 SLOVENIA	Non-confessional religious education (school classes VII-IX)	Non-mandatory (Mandatory in confessional schools)
26.	 SPAIN	Confessional religious education	Non-mandatory
27.	 SWEDEN	Non-confessional religious education	Mandatory
28.	 UNITED KINGDOM	Non-confessional religious education	Mandatory



Terminology Clarification

One of the first questions that may come up to one's mind when hearing or reading about "Religious Education" is connected to establishing the correct meaning of the concept. The Collins Dictionary¹⁸ defines the concept as follows:

"religious education

(education)

1. an education in a school which places a strong emphasis on the beliefs associated with a particular religion → She had a religious education.
2. the teaching or instruction of a particular religion → He does not believe in religious education.
3. (British) a subject taught in schools in the UK which educates about the different religions of the world → His favourite subject at school was religious education."

From a terminological point of view, there is a variation in the use of the concepts defining this subject of *education*¹⁹ taught in schools and several terms may be encountered, such as "Religion", "Religious Studies"²⁰ "Religious Instruction" or "Religious Teaching", apart from "Religious Education".

A. Polish Practice Religious Education in Poland: ECHR judgment in the case of Grzelak v. Poland The right not to disclose one's belief or religious convictions

Polish domestic context. Domestic legislative framework

According to the data provided by the 2011 national population and housing census²¹, the population of Poland is approximately 38,500,000.²² Among these people, around 90% declared their affiliation to the Catholic Church, with a majority of Roman Catholic believers. Statistically, the next positions are held by Orthodox believers, approximately 500,000 persons, amounting to almost 1% of the total population, as well as Protestant believers, approximately 159,000 persons.

The statistical data highlighted that almost 95% of the total Polish population belonged to a religion, while 5% of the total population did not declare their affiliation to any of the recognised religious communities. This 5%-group includes atheists, agnostics and people who believe in God, but do not identify with any of the registered religious communities".²³

The Constitution²⁴ of Poland enshrines and ensures the freedom of conscience and religion. Freedom of religion includes everyone's freedom to profess or to accept a religion, to manifest it individually or collectively, publicly or privately, by

¹⁸ <http://www.collinsdictionary.com/dictionary/english/religious-education>

¹⁹ According to Merriam-Webster Dictionary the concept "religious education" is defined as

"1 : instruction in religion as a subject of general education

2 : instruction in the principles of a particular religious faith."

<http://www.merriam-webster.com/dictionary/religious%20education>

²⁰ Please see for example point 14 of Recommendation 1720 (2005) the Parliamentary Assembly, cited above

²¹ See <http://stat.gov.pl/en/topics/population/census-2011-results/the-methodology-of-the-2011-national-population-and-housing-census-selected-aspects,1,1.html>

²² See <http://stat.gov.pl/en/topics/population/population/> <http://countryeconomy.com/demography/population/poland>

http://www.indexmundi.com/poland/demographics_profile.html

²³ Józef Krukowski, "Religion in public education. Poland", p. 1, available at http://www.uni-trier.de/fileadmin/fb5/inst/IEVR/Arbeitsmaterialien/Staatskirchenrecht/Europa/Konferenz_2010/Poland.pdf

²⁴ See <http://www.constitution.org/cons/poland/konse.htm>



worshipping, praying, participating in ceremonies, performing of rites or teaching. The religion of a church or other legally recognised religious organisation may be taught in schools, provided that other peoples' freedom of religion and conscience is not infringed thereby. Parents have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions.²⁵ The Constitution also enshrines an individual's right not to be compelled by organs of public authority to disclose his philosophy of life, convictions or religious beliefs.

The relationship between the Polish State and churches and other religious organisations has found a regulated place in the fundamental law. Therefore, it is based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.

Another fundamental right, also guaranteed by the Polish Constitution, is the right to education: "everyone shall have the right to education".²⁶

In Poland, the study of religion in public schools was introduced in the school curriculum in the summer of 1990²⁷ and is optional.

"Poland's Public Schools to Offer Classes in Religion"

Despite objections from the nation's tiny Protestant minority and qualms among senior Government officials, Poland's public schools will begin voluntary classes in religious education this fall.

The decision, reached earlier this summer, illustrates the continuing political influence of the Catholic Church in post-Communist Poland as it pursues its traditional agenda. But it also is graphic evidence of the Church's fear that it is losing touch with the younger generation of Poles, in a country in which more than 90 percent of the people identify themselves as Roman Catholic.²⁸

"Poland resists secularization"

In communist times religion was banned from schools, but it made a return in the 1990s, when Poland ratified a concordat with the Vatican. The curriculum is prepared by the Church, not the ministry of education, and the teachers are also chosen by religious authorities, not the school director. The program is supposed to be based on knowledge, not piety, but there have been cases of catechists marking pupils according to their participation in the life of their local parish.

Theoretically, religion is supposed to be offered together with a secular ethics course, but the vast majority of Polish schools have shied away from offering the subject, citing high costs and low interest. According to the education ministry, ethics is offered in only 334 of Poland's 32,000 schools, while religion is offered in 27,500 schools.²⁹

²⁵ Article 53(3) of Polish Constitution. See <http://www.constitution.org/cons/poland/konse.htm>

²⁶ Article 70(1) of Polish Constitution. See <http://www.constitution.org/cons/poland/konse.htm>

²⁷ Also see <http://www.nytimes.com/1990/08/14/world/poland-s-public-schools-to-offer-classes-in-religion.html?pagewanted=print>

²⁸ By Stephen Engelberg August 14, 1990 <http://www.nytimes.com/1990/08/14/world/poland-s-public-schools-to-offer-classes-in-religion.html?pagewanted=print>

²⁹ By Jan Cienski, December 13, 2009 <http://www.globalpost.com/dispatch/poland/091208/polish-church-secularization?page=0,1>



At the time, the Polish Ministry of Education established that parents of primary school pupils and parents of pupils and/or pupils in secondary schools were required to make a declaration expressing their intention to attend classes of religious instruction.³⁰

Two years later, in 1992, the specific legislation was amended by an Ministry of Education's ordinance regulating the organisation of religious instruction in public schools; the disciplines "Religion" and "Ethics" were optional subjects and, in order to study either of the two, it was necessary to make a declaration to the school management. The school management had to organise the course for pupils from different classes, namely for an inter-class group, if the number of pupils in a given class, who expressed their intention in attending any of the two subjects, was less than seven. The school management was to organise the course in cooperation with other schools in the municipality, namely for an inter-school group, provided that at least three pupils were interested in following such a course

If the inter-class group was smaller than seven pupils, the school management was to organise the course in cooperation with other schools in the municipality (for an inter-school group), provided that at least three pupils were interested in following such a course. According to the respective ordinance, no data indicating which religion was studied in the course followed by a pupil should be included in the school certificate. The mark for "Religion/Ethics" did not have any influence on whether a pupil moved up to the following grade.

The Ombudsman challenged the conformity of several provisions of the ordinance with the Constitution and the Freedom of Conscience and Religion Act in force at the material time. Among other provisions, the Ombudsman objected to the legality of the obligation imposed on parents or pupils to make a "negative declaration" to the effect that they did not wish to attend religious instruction classes held in the public school. The Constitutional Court upheld the constitutionality and legality of the most part of the ordinance, noting that the inclusion of religious instruction in the public school curriculum was not such as to infringe the constitutional principle of separation of Church and State. Moreover, that principle required that both State and Church remain autonomous, each in its own sphere of activity, without leading to isolation or even competition between them. The Court further emphasised that the State's neutrality and its secular character could not generate a prohibition on providing religious instruction in public schools and that this religious instruction was subject to parents' expression of their personal options in this regard. In support of its argument, the Court invoked the obligation imposed on the State by Article 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Moreover, it noted the necessity of amending the ordinance so that each pupil is granted the right to follow both Religion and Ethics courses, as opposed to the regulation in force, which provided for the possibility to attend only one of the two courses. This way, any possibility of dividing pupils into believers and non-believers would be eliminated. The Court further declared unconstitutional the provision establishing the obligation to make a "negative declaration", which was subsequently repealed.

The Constitutional Court also held that giving marks for religious instruction was in conformity with the Education Act, which provided that both compulsory and optional subjects were to be assessed by marks given to a pupil in a school year.

A few years later, the legislation in the field was further amended. The Ministry of Education adopted an ordinance providing that the marks obtained for "religion/ethics", as well as for other optional subjects, were to be counted towards the average mark obtained in a given school year.

³⁰ Although the Ombudsman challenged certain provisions of the ministerial circulars before the Constitutional Court, arguing that the obligation to make that declaration was contrary to the Freedom of Conscience and Religion Act, which stipulated that citizens had the right not to disclose their religion or beliefs, the Court concluded that the circulars were in conformity with the Fundamental Law and the special laws in force in this field.



The facts leading to the complaints lodged with ECHR

On 25 January 2002, three members of Grzelak family addressed to the European Court of Human Rights (ECHR), complaining in their application, inter alia, especially about the absence of a mark for the subject "religion/ethics" on the school reports of their son, Mateusz Grzelak.

The Grzelak family, composed of spouses Urszula and Czesław, and their son, Mateusz, lived in Sobótka, Poland, at the time the application was lodged with ECHR.

In 1998, when he was seven, Mateusz Grzelak began his schooling in primary school and, according to the option expressed by his parents, who were agnostics, he did not wish to attend "religion" classes. The Grzelak spouses submitted repeated requests for their son to follow the classes of the subject "ethics", but their applications were dismissed, as, apparently, Mateusz was the only child in his class who had submitted such a request. Since it was impossible for Mateusz to follow the alternative course and religion instruction classes were scheduled in the middle of the school day, between other compulsory courses, when the religion course was held he had to wait in the corridor without any supervision or to spend his time in the school library or in the school club.

Spouses Grzelak maintained that their son was subjected to discrimination and to physical and psychological harassment by other pupils, as he did not attend religious instruction classes. For that reason, the child has been repeatedly moved to other schools in the same town.

After several unsuccessful requests addressed to the headmasters of the schools to which Mateusz had been moved, spouses Grzelak sent a letter to the Ministry of Education, asking a series of questions concerning this problem and presenting their son's situation. The answer provided by the ministry to these questions was reiterated a few months later, at the request of the President's Office, which had also received a letter from the spouses.

In its reply, the Ministry of Education emphasised that religious instruction and courses in ethics were organised at the parents' request and, where the school authorities requested a declaration to that effect, it was for organisational reasons only; **the school authorities could not require parents to make a "negative declaration", that is a declaration that their child would not attend religious instruction classes, and the positive declaration could not be understood as a declaration concerning parents' religious beliefs.** It was also noted that, if only one pupil was interested in following a course in "ethics", the school authorities should establish if it would be possible to create, in a given municipality, an inter-school group to study that subject; if it was not possible to set up such a group, the school had to endeavour to ensure the supervision of the pupil during the religious education class or to organise other activities for the pupil (doing his/her homework, using the school library, etc.)

In the reply to the question asked by the spouses Grzelak, as to whether the fact that a child had a straight line instead of a mark for the subject "religion/ethics" on the school report indicated that legal provisions on the organisation of religious instruction in State schools were contrary to the Education Act and infringed human rights, the ministry referred to a judgment of the Constitutional Court. In its judgment, the Constitutional Court, asked to interpret the provisions on the marking system established in the Ordinance on the organisation of religious instruction in State schools, concluded that the inclusion of a mark for the subject "religion/ethics" indicated that courses in those subjects were provided in public schools and that this rule concerning marks did not breach the right to freedom of conscience and religion.

In the reasoning for the application addressed to ECHR, which concerned the absence of a mark for "religion/ethics" on Mateusz Grzelak's school report, the three members of Grzelak family invoked Article 9 and 14 of the Convention.



Article 9. Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and 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.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are 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.³¹

Article 14. Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.³²

Although the application was lodged by all members of the family, ECHR concluded that it could examine the complaints only concerning Mateusz Grzelak, as he was the only one who fulfilled the conditions to have the status of victim, if an infringement of Article 9 taken in conjunction with Article 14 of the Convention was found. In support of his case, Mateusz Grzelak argued that the entire education system in Poland was centred on Catholicism, so that the persons who did not share this faith were discriminated against. He stated that, in practice, classes in "ethics" were not provided in public schools and, for that reason and, at the same time, to avoid any problems such as the ones encountered by the applicant himself, non-Catholic persons accepted to send their children to religious instruction classes.

ECHR judgment

Ruling on the complaint under Article 14 taken in conjunction with Article 9 of the Convention, concerning the absence of a mark for the subject "Religion/Ethics" on Mateusz Grzelak's school reports, ECHR allowed it by unanimity. It held by six votes to one that, in respect of Mateusz Grzelak, there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention and it held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage.

In the reasoning of its judgment, ECHR recalled that Article 14 of the Convention, enshrining the prohibition of discrimination, complements the other substantive provisions of the Convention and the Protocols to the Convention and it cannot have an independent existence, since it has effect only in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions.

Freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a democratic society, within the meaning of the Convention. That freedom entails, inter alia, freedom to hold or not to hold religious beliefs or to practice or not to practice a religion. This article represents the very guarantee of religious pluralism in a democratic society, since it is a vital instrument balancing both the identity of believers and their conception of life and the identity of atheists, agnostics, sceptics or persons who did not adopt a certain religion. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to restrict freedom of thought, conscience and religion in order to reconcile the interests of the various groups and to ensure that everyone's beliefs are respected. Moreover, the freedom to manifest religious beliefs can comprise a negative aspect, namely the right of individuals not to

³¹ www.echr.coe.int/Documents/Convention_ENG.pdf

³² *idem*



reveal their faith or religious beliefs and not to be compelled to adopt a stance from which it may be inferred whether or not they have such beliefs.

ECHR held that Mateusz Grzelak's complaint fell within the ambit of the negative aspect of freedom of thought, conscience and religion, as it revealed his lack of religious affiliation, and, for this reason, the complaint was founded on Articles 14 and 9 taken together.

ECHR observed that, despite the repeated requests made by spouses Grzelak, Mateusz was never able to follow a course in "ethics" throughout his entire schooling at primary and secondary level (namely between the 1998/1999 and 2008/2009 school years) and, therefore, he never obtained a mark for this subject, his school reports containing a straight line in the space reserved for this subject. Thus, ECHR held that there was a high probability that any reasonable person would consider that the pupil concerned did not have religious beliefs, especially in a society such as the Polish one, where the vast majority of religion instruction classes concerned the Roman-Catholic faith.

In this context, the absence of a mark for the subject "religion/ethics" took on a particular significance, amounting to a difference in treatment between pupils who obtained marks for this subject and pupils who did not have any marks for this subject on their school reports. The European Court also took into account the fact that on Mateusz's primary school leaving certificate the subject "ethics" was crossed out, the message conveyed by this document being unequivocal and anything but neutral: the optional course in the subject "ethics" was not available and the pupil chose not to attend the alternative religious education classes.

Mateusz Grzelak's right not to manifest his religion or belief was infringed.

The European Court on school and religion

The European Court of Human Rights recognises the wide variety of school systems sketched above. On the one hand, a public school may not indoctrinate pupils and teaching may not be disrespectful to the philosophical or religious convictions of the pupil's parents. On the other hand, Article 2 of the First Protocol to the ECHR does not prevent states from imparting, through teaching or education, information which is, directly or indirectly, of a religious or philosophical kind. (...) [T]he Court leaves the national authorities room for all kinds of school systems. In accordance therewith, the Court applies a rather wide margin of appreciation when reviewing rules in the educational field.³³

Communication from the Polish Rationalists Association

The evidence prepared for the case 7710/02, Grzelak v. Poland by the Helsinki Foundation of Human Rights, intervening as a third party in the case, contain statistics showing enormous disproportions between availability of ethics lessons and religious education in Polish schools.

According to information sent at that time from the Ministry of Education to the Helsinki Foundation of Human Rights, 27500 out of 32136 schools in Poland (85,57%) tutored religious education (of all denominations), and only 334 schools (1,03%) provided lessons of ethics. The number of religious education teachers employed by Polish schools reached 21370 people at the time, while ethics was taught only by 412 teachers in entire Poland. According to the reports published by weekly magazine Polityka, newspapers Gazeta Wyborcza and Metro, as well as various press websites, Polish schools currently employ about 33500 religious education teachers (12000 more than at the time when Grzelak's

³³ Aernout Nieuwenhuis: European Court of Human Rights - State and Religion, Schools and Scarves, An Analysis of the Margin of Appreciation as Used in the Case of Leyla Sahin v. Turkey, Decision of 29 June 2004, Application Number 44774/98, p. 505 <http://internationalhumanrightslaw.net/wp-content/uploads/2011/01/European-Court-of-Human-Rights-State-and-Religion-Schools-and-Scarves-An-Analysis-of-the-Margin-of-Appreciation-as-Used-in-the-Case-of-Leyla-Sahin-v-Turkey.pdf>



case started) and about 900 ethics teachers (500 more). Most of those teachers give ethics lessons in addition to their primary subjects of teaching, so in reality ethics is taught by foreign languages, history or even religious education teachers! As these numbers clearly show, in the last two years disproportions between religious and ethics education still grow to the detriment of ethics. On the part of education authorities at every level — i.e. the Ministry of Education, local Education Authorities, and schools' administrations — there comes no good news for parents and their children as to the availability of ethics instruction.

Implementation of the ECHR judgment³⁴

On 25 March 2014, that is almost four years after the judgment delivered by ECHR, finding the violation by Poland of Article 14 taken in conjunction with Article 9 of the Convention, an amendment to the Ordinance of the Ministry of Education on the organisation of religious instruction in State schools was adopted. The amendment provided for a new rule, according to which the authorities of a school were under the obligation to organise a religion/ethics course, even if there was only one request to this effect.

Pupils who reached the age of majority or parents of minor pupils (on behalf of the latter) were required to submit a written request mentioning that they wished to attend such a course; the mere verbal expression of this option was considered to be insufficient.

The amendment entered into force on 1 September 2014. There had been attempts to amend the legislation so that "Ethics" classes can be provided through the e-learning system.

B. ROMANIAN PRACTICE Religious Education in Romania: Decision of the Romanian Constitutional Court - The study of religion in public schools shall comply with the person's freedom of conscience. The right of parents or legal guardians to ensure, in accordance with their beliefs, the education of under age children in their care

Romanian Domestic Context

According to the data of the last census, "86.5% of those who declared their religious affiliation are of Orthodox religion, 4.6% are of Roman-Catholic religion, 3.2% are of Reformed religion and 1.9% are of Pentecostal religion. The following religions range between 0.4% and 0.8%: Greek-Catholic (0.8%), Baptist (0.6%) and Seventh-Day Adventist (0.4%). Persons of another religion than indicated above represent 1.8% of the total. A percentage of 0.2% of the total population is constituted by persons 'without religion' or atheist."³⁵

In Romanian public schools, "religious education is organized and guaranteed by law".³⁶ "Religion" is a subject included in the common body³⁷ of the educational framework and is studied as part of the "Man and Society" Curriculum. Its inclusion in the common body gives it a compulsory character, and the curriculum allocates it one hour-course per week, starting in the zero preparatory class until the last grade in high school.

Law no. 1/2011 on national education provides that pupils belonging to religions recognised by the state, irrespective of their number, have a constitutional right to attend the religion course, corresponding to their belief. As a result, religion is taught in the confessional manner, allowing pupils to study religion according to the religious cult to which they belong and based on curricula specific to the recognised religions: Orthodox, Roman-Catholic, Greek-Catholic, Unitarian, Reformed or the Evangelical Alliance (Baptist, Pentecost, Evangelical Christian), etc.³⁸

Prior to the Decision of 12 November 2014 of the Constitutional Court, to which future references are made, pupils were practically registered automatically for the religion subject, but they had the right to withdraw subsequently by request;

³⁴ <http://www.non-discrimination.net/content/media/PL-25-ethics-in-schools-new-regulations.pdf>

³⁵ See http://www.insse.ro/cms/files/statistici/comunicate/RPL/RPL%20rezultate%20definitive_r.pdf

³⁶ Article 32(7) of the Constitution.

³⁷ The common body is constituted by compulsory subjects/study areas/preparatory modules [Article 65(2) of Law no. 1/2011].

³⁸ See <http://www.edu.ro/index.php/articles/curriculum/c556+589++583/>



their school performance would be finalised excluding the grade for this subject. A similar procedure applied in cases where a pupil, due to objective reasons, was not provided with conditions to attend the courses for this subject.

It was this provision of the Law on national education [specifically, Article 18 (2) the first sentence - stipulating that, at the written request of a pupil of legal age or the parents or legal guardian of an under age pupil, respectively, that pupil shall have the possibility not to attend religion courses], that was declared to be unconstitutional by the Constitutional Court in its Decision no. 669³⁹ of 12 November 2014, published in the Official Gazette no. 59 of 23 January 2015.

Romanian Constitutional Court's Decision

On 28 May 2014, the Court was called upon to rule on the plea of unconstitutionality of the provisions of Law no. 84/1995 on education and Law no. 1/2011 on national education.⁴⁰

The author of the plea of unconstitutionality, Emil Moise, told in an interview on 13 November 2014 for the daily newspaper *Adevărul* (The Truth)⁴¹ the story behind his legal action for changing the registration method for the study of the subject "Religion". Mr Moise, a philosophy teacher in Buzău, is father to a girl who, back in 2009, was attending the Arts High School in Buzău; further, Mr Moise's daughter took the decision not to attend the Religion course. In such case, under the legal provisions in force at the time, Mr Moise, as parent of an under age child, was required to submit to the high school management a request to grant his daughter permission not to study the Religion course, for which she had been registered *ex officio*. It was at this point that Mr Moise lodged his first application with the Constitutional Court, as he believed that the solution adopted by the legislator – namely, imposing an obligation to make a request for withdrawal from a course which a person does not wish to attend but for which that person was registered automatically – was unconstitutional and unnatural, but his plea of unconstitutionality was dismissed.⁴² Subsequently, as said in the afore-mentioned article, Mr Moise decided to use another strategy and prove "in court that the article in the Law on education with regard to teaching religion in schools was unconstitutional since it violated other organic laws guaranteeing fundamental human rights".⁴³

Relying on the plea of unconstitutionality in civil proceedings, Emil Moise submitted that, as religion is included in the common body of the educational structure, while there is a legal possibility that, by request, a pupil is exempted from attending Religion courses, prior to making such a request that pupil is automatically registered for that course and thus required to attend it, which gives this subject a compulsory character, albeit temporarily. The author of the plea submitted that, in light of this *de facto* compulsory character, children and parents are under a certain pressure, forcing them to either take no action or take a burdensome action in case they do not wish to attend religion courses.

³⁹ See http://www.ccr.ro/files/products/Dec_669-dos_537_ADMITERE_RELIGIE.pdf

⁴⁰ In addition, the author of the plea of unconstitutionality alleged the unconstitutionality of the provisions of Article 61 (3) of Law no. 47/1992 on the organisation and functioning of the Constitutional Court.

⁴¹ See http://adevarul.ro/news/eveniment/povestea-profesorului-invins-binomul-stat-bor-anulat-metodele-impunere-religiei-scoli-1_5464e9ad0d133766a8d4810f/index.html

⁴² It's RCC Decision no. 306 of 27 March 2012, published in the Official Gazette no. 388 of 11.06.2012. That plea of unconstitutionality was raised by Emil Moise before the Buzău District Court in a case concerning the settlement of a criminal complaint under the provisions of Article 278¹ of the Code of Criminal Procedure, brought against the prosecutor's resolution in File no. 477/P/2010 of the Prosecutor's office attached to the Buzău District Court, upheld by the Chief Prosecutor, who decided not to open criminal proceedings against religion teachers Marius Adrian Rădulescu and Mihaela Ionescu for the offences listed in the Criminal Code in Article 247 (abuse of power by restriction of certain rights) and Article 318 (obstruction of the freedom of religions) as the facts did not exist. In the grounds of his action, Mr Moise submitted that during 8 years of schooling he never expressed his approval for his daughter to attend religion courses. Nevertheless, as his child was automatically registered for that course, she assisted and participated in religious events, being forced to make the sign of the cross at the start and the end of each religion course. In her first year in high school, when his daughter refused to attend religion courses, her absences were recorded in the class register, causing the accumulation of absences from this course to be debated in the teachers' college. According to Mr Moise, nobody, not even the law, could oblige him to make a request for the discontinuation by a person of an offence affecting his child. Mr Moise believed that only persons willing to attend the religion course should be compelled to make a request in this connection.

⁴³ Article cited above from the daily newspaper *Adevărul*, 13 November 2014.



Referring to the compulsory character of the Religion subject, the Constitutional Court underlined that, under Romanian constitutional provisions, the freedom of religious education is ensured by the state in accordance with the specific requirements of each religious cult: “[i]n public schools, religious education is organized and guaranteed by law” [Article 32 (7) of the Romanian Constitution]. In this perspective, Religion as a school subject, component of the common body, has a compulsory character, but only for the Romanian State, which is under the obligation to include it in the educational framework and to ensure that Religion is taught to the 18 recognised religions.⁴⁴ In relation to the pupils, the law provides them with the possibility not to attend religion courses, and in this perspective the subject has an optional character.

In an analysis of constitutional provisions, the Court distinguished two obligations incumbent upon the state: a negative one – not to interfere in the establishment of religious beliefs or in joining a religious belief or faith, and a positive one – to create the legal and institutional mechanisms so that when a person expresses their intent to study or adhere to the precepts of a religious belief or cult, they have the possibility to do so in accordance with their constitutional rights.

Thus, the state’s positive obligation to ensure the necessary framework for studying religion may arise only after expressing the wish to study this subject, as stated by a pupil of legal age or by the parent or legal guardian of an under age pupil. Under no circumstance can a person be placed *ab initio* in a position to defend or protect their freedom of conscience, as the Constitution guarantees the right to religious education but not the obligation to attend such courses, since the Constitution guarantees the unrestricted freedom of thought, opinions and religious beliefs, as well as the fact that no one shall be constrained to adopt an opinion or adhere to a religion that is contrary to their beliefs. The free manifestation of choice involves the person’s own initiative in the sense of attending religion courses, not the express refusal to attend those courses. In the reasons for its decision, the Constitutional Court also stated that expressing an opinion in light of constitutional provisions regarding the freedom of conscience and religion applicable to religious education must always have a positive meaning – the person’s choice to study Religion, not a negative meaning – the person’s choice not to study Religion, since in the latter case that person is presumed as having already manifested their option to study, thereby having to take subsequent action to withdraw from the class – or, such a provision is nothing but a constraint on that person to express an option, which is *de plano* a violation of the freedom of conscience enshrined in the Constitution.⁴⁵

Thus, the Court concluded that the legal provisions of the Law on national education requiring a person to submit a written request to withdraw from religion courses are unconstitutional.

The provisions declared unconstitutional shall cease their legal effects after 45 days from the publication of the Constitutional Court’s decision if, in the meantime, the Parliament or the Government, as the case may be, fail to bring the unconstitutional provisions in compliance with constitutional provisions. In the meantime, the provisions declared unconstitutional are suspended *de jure*. Thus, as of 23 January 2015, the afore-mentioned provisions are suspended *de jure* and shall cease to have legal effects on 10 March 2015 if the legislator does not make amendments to the impugned provisions.

The Constitutional Court’s decision received mixed reviews in Romanian society. In a press release, the Romanian Patriarchate stated that the decision was “discriminatory and humiliating for the Religion course”, as it transferred the “entire decisional responsibility onto parents, but only in relation to the Religion course⁴⁶, and not to other school

⁴⁴ Article 49 of Law no. 489 of 28 December 2006 on religious freedom and the legal status of religions, republished and amended, provides that in Romania there are 18 recognised religions, according to the annex included in this law.

⁴⁵ Points 17-19 in RCC’s Decision no. 669/2014.

⁴⁶ See the press release of the Romanian Orthodox Patriarchate <http://patriarhia.ro/o-decizie-discriminatorie-si-umilitoare-pentru-ora-de-religie-7684.html>



subjects. It is obvious this is an attempt to discourage pupils from attending the Religion course by means of excessive bureaucratic measures for the majority of parents, while favouring the minority who do not accept the Religion course, even though religious education is guaranteed by the Constitution”.⁴⁷ The Patriarchate also expressed bewilderment as to the reasons for declaring unconstitutional a legal provision in existence for almost 20 years without any amendment to the law or the case-law having occurred in the meantime and for thereby ordering such amendment.

On the other hand, a year before the Constitutional Court’s ruling in the case, the National Council for Combating Discrimination, through its President - Csaba Asztalos, stated that “the ex officio registration of pupils in the religion course – i.e. by the state – infringes on the right to freedom of conscience, the right of parents or legal guardians to ensure the child’s education according to their beliefs. No one in Romania is under obligation to answer a question concerning their religious affiliation. The Law on the protection of personal data forbids it. Thus, when registering a child at the school, a parent is under no obligation to answer the school staff’s question about their religious affiliation.”⁴⁸

An opinion on the Constitutional Court’s decision was also issued by the Advisory Council on Religions in Romania which took note of this decision in its meeting on 28 February 2015. During that meeting, the Advisory Council lodged an application with the Romanian Parliament to amend the provision declared unconstitutional in order to have the following wording, in compliance with the Constitutional Court’s decision and also in due respect of the person’s freedom of conscience: **“Registration or re-registration of a pupil to attend the religion course shall be made at the written request of a pupil of legal age or of a parent or legal guardian of an under age pupil; a change in this option or the withdrawal shall also be made at the written request of a pupil of legal age or of a parent or legal guardian of an under age pupil”**.⁴⁹

In Romanian schools, more than 3 million pupils were registered for the 2014 – 2015 school year.⁵⁰ In these educational units, religion is taught by 6,000 teachers, out of which 4,200 are full teachers with open-ended employment contracts. In Bucharest, “of the total of 249,000 pupils, almost 225,000 attend the religion course. Among the latter, 98 % study Orthodox religion, while the rest study one of the 18 recognised religions.”⁵¹

Prior to 6 March 2015, parents of pupils wishing to study religion were, by order of the Ministry of Education, under an obligation to submit a request to this end. The media reported cases where, in some schools, pressures were made on parents to submit that request.⁵² The day before the deadline, almost 2 million requests had been submitted.⁵³

Pupils not attending the religion course shall study instead an optional subject selected from the set of optional subjects studied in that school.⁵⁴

Concluding remarks

The fundamental right to freedom of thought, conscience and religion is recognised to every person. In ensuring the right to freedom of religion or beliefs the state holds the primary role. In this respect, it is the state’s responsibility to ensure

⁴⁷ *Idem*.

⁴⁸ Hotnews, 21 February 2013: <http://www.hotnews.ro/stiri-esential-14274816-inscrierea-din-oficiu-elevilor-ora-religie-incalca-dreptul-libertatea-constiintei-csaba-asztalos-presedintele-consiliului-national-pentru-combaterea-discriminarii.htm>

⁴⁹ *Ibidem*.

⁵⁰ See http://activenews.ro/infografic-cate-scoli-si-cati-elevi-cu-adevarat-romania_1858019.html http://www.romaniatv.net/luni-incepe-noul-an-scolar-vezi-cati-titulari-suplinitori-si-cate-cadre-didactice-pensionate-ocupa-catedrele_170093.html

⁵¹ See http://activenews.ro/cati-profesori-titulari-de-religie-avem-scoli-si-cati-elevi-participa-la-ora-de-religie_1887393.html

⁵² For more information, consult

<http://www.hotnews.ro/stiri-esential-19534937-presiuni-scoli-pentru-ora-religie-sorin-cimpeanu-despre-directorii-care-cer-parintilor-isi-inscrie-copiii-daca-nu-vor-nu-putem-accepta-niciun-fel-presiuni-nu-poate-vorba-despre-obligativitatea-optiuni.htm>

⁵³ See

<http://www.cuvantul-ortodox.ro/recomandari/2015/03/03/mai-putin-de-jumatate-din-elevi-s-au-inscris-la-ora-de-religie-apor-reclama-abuzuri-ale-cadrelor-didactice-anti-religie-razboiul-cultural-pentru-ora-de-religie-ticalosii-manipulari-si-defazari/>

⁵⁴ See <http://www.hotnews.ro/stiri-esential-15670626-fac-copiii-care-nu-merg-religie-timpul-acestor-ore-ministerul-educatiei-elevii-care-nu-frecventeaza-ora-religie-raman-scoala-studiaza-disciplina-optionala.htm>



that its legal system provides effective guarantees for the enforcement of this fundamental right. According to European and international law, the state has the double obligation to respect the above mentioned right and also to protect it against any unlawful interference.

Religious education is a topic where the balance between freedom of religion and freedom to not have a religion are in a fine point of balance between ensuring that children are free to learn about religion and at the same time free from pressure to conform to the majority religion of the country or any religion at all. The Polish and Romanian cases described above clearly show that this is not just a legal issue, but one where people's strongly held moral beliefs have to be contended with.

Media in Romania

Realitatea TV – Jocuri de putere (Power Games), Rareș Bogdan – 5 March 2015

<https://www.youtube.com/watch?v=V08Le64Jv5E>

Asociația Părinți pentru Ora de Religie (Parent Association for the Religion Course)

<http://www.oradereligie.ro/category/sustinatori/>

Teaching Materials

Role-plays

Encouraging students to involve in a role-play scenario based on Grzelak v. Poland case.

Students divided in groups shall represent the various parties in the case.

Please comment on the ECHR's judgment in this case.

Films

- Religious Education In The World Today - Slovenia https://www.youtube.com/watch?v=l8Fy_w1-JvE
- Religion and Education: Together or Separate? <https://www.youtube.com/watch?v=n6U8NVAzU-s>

Quiz

- Do religious education and religion have the same meaning? Please explain.
- What about Religious Education subject/discipline and Religion subject/discipline?
- Do you have the right to study Religious Education or do you have the obligation to study Religious Education? Please refer to the situation in the country of your origin.
- Do you consider that Religion's place is in school? Should this discipline be a compulsory one or a facultative one?

